M2.20a

Examination of the Submitted Fareham Borough Local Plan

APPENDICES 1 TO 15

REFERRED TO IN HEARING STATEMENT FOR MATTERS 1, 2, 3, 4 AND 6

Prepared by:

Woolf Bond Planning LLP

On behalf of:

Foreman Homes Ltd

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WBP Ref: 7671

Woolf Bond Planning
Chartered Town Planning Consultants

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Examination of the St. Albans City & District Council Local Plan
Inspectors: Mrs. Louise Crosby MA MRTPI and
Mrs. Elaine Worthington BA (Hons) MT MUED MRTPI

Programme Officer: Mrs Louise St John Howe
louise@poservices.co.uk Mobile: 07789 486419

14 April, 2020

Mr. Chris Briggs,
Spatial Planning Manager,
St Albans City & District Council.

By email only

Dear Mr Briggs,

EXAMINATION OF THE ST ALBANS CITY AND DISTRICT LOCAL PLAN

Introduction

1. The Stage 1 hearing sessions were held between 21 and 23 January 2020. Over those three days we heard discussion on legal compliance, the Duty to Cooperate, the spatial strategy and matters relating to the Green Belt.

2. We wrote to the Council on the 27 January 2020 to raise our serious concerns in terms of legal compliance and soundness and to cancel the subsequent hearing sessions arranged for February 2020. This letter sets out our concerns in detail. We are conscious that this is a difficult time for everyone due to Covid 19 and in particular Councils. We also appreciate that it is not a good time to receive unfavourable news. However, Mr Briggs has indicated to the Programme Officer that the Council wish to receive our letter as soon as possible.

3. Whilst we will not reach final conclusions on these points until you have had the opportunity to respond to this letter in summary our main concerns are:
    - Failure to engage constructively and actively with neighbouring authorities on the strategic matters of (a) the Radlett Strategic Rail Freight Interchange proposal and (b) their ability to accommodate St Alban's housing needs outside of the Green Belt;
    - Plan preparation not in accordance with the Council's Statement of Community Involvement;
    - Inadequate evidence to support the Council's contention that exceptional circumstances exist to alter the boundaries of the Green Belt;
    - Failure of the Sustainability Appraisal to consider some seemingly credible and obvious reasonable alternatives to the policies and proposals of the plan;
    - Failure of the plan to meet objectively-assessed needs; and
    - Absence of key pieces of supporting evidence for the plan.

Legal Compliance

Duty to Cooperate (DtC)

4. Section 33A of the Planning and Compulsory Purchase Act 2004 (The Act) indicates that the DtC applies to the preparation of local plans, so far as relating to a strategic matter. A strategic matter is defined in Section 33A(4) as: (a) sustainable development or use of land that would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and (b) sustainable development or use of land in a two-tier area if the development or use is a county matter (i) or has or would have a significant impact on a county matter (ii).

5. The DtC requires the Council to engage constructively, actively and on an on-going basis in relation to the preparation of local plan documents so far as relating to a strategic matter (in order to maximise the effectiveness of plan preparation).

6. Paragraph 25 of the National Planning Policy Framework (the Framework) states that strategic policy-making bodies should collaborate with one another, and engage with their local communities and relevant bodies, to identify the relevant strategic matters which they need to address in their plans. Paragraph 26 is clear that effective and on-going joint working between strategic policy making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. In particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

7. Whilst Section 19 of the Act requires the Council to identify its strategic policies, the Courts have held that issues such as what would amount to strategic planning matters are all matters of judgement that are highly sensitive to the facts and circumstances of the case.

8. A large site in the district (the Radlett site) has planning permission for a Strategic Rail Freight Interchange (SRFI), but is proposed for housing in the Plan as the Park Street Garden Village (PSGV) Broad Location. The SRFI is not identified as a strategic matter by the Council. It is argued that this is because it is not a proposal included in the Plan. The proposed alternative development of PSGV has the effect of precluding the SRFI. On this basis, the Council considers that it did not need to cooperate in relation to this matter, since once the SRFI ceased to be a strategic site promoted under the Plan, it was no longer required to engage in the DtC discussions.

9. However, national policy and guidance is clear that unmet needs, and how they could be met elsewhere, are a key issue to be considered through the DtC. The Guidance (paragraph 022 Reference ID: 61-022-20190315) advises that strategic policy making authorities should explore all available options for addressing strategic matters within their own

planning area, unless they can demonstrate to do so would contradict policies set out in the Framework. If they are unable to do so they should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their plans for examination.

10. It seems to us that it is illogical to argue that the DtC applies only to proposals in the Plan, since by their very nature, approaches to unmet needs will not be included in the Plan (as there is no provision to address them there). In our view, the SRFI is a strategic matter for the purposes of the DtC, as are allocations for housing development to meet identified housing need. Thus, the use of the land at the Radlett site, whether as a SRFI or a housing allocation, is a strategic matter which the Council should have been engaging and cooperating with neighbouring authorities about.

11. It is not evident from the Council's Duty to Cooperate Compliance Statement (CD028) or Matter 2 hearing statement (neither of which mention the SRFI) how the Council has engaged with other LPAs or interested parties on this matter. There is nothing before us to demonstrate that other nearby authorities have been approached in terms of the possibilities of accommodating either the SRFI, or the housing now proposed on the site (in order to safeguard the SRFI permission). Indeed, The Council's note at ED31 indicates that following the site's identification for PSGV the DtC discussions focussed on that housing scheme, rather than the loss of the SRFI.

12. Both the site promoter and Network Rail raise objections to the Plan under the DtC. Whilst the Council referred to verbal conversations with senior members of staff at MHCLG who were aware of the approach to the SRFI in the Plan, a lack of objections from MHCLG is not an indication that the DtC has been met.

13. Overall, there is no evidence of effective joint working or cooperation on this important strategic cross boundary matter regarding a nationally significance infrastructure scheme. We cannot be content that the Council has explored all available options to address this strategic matter within its own planning area or engaged with others in an attempt to secure its provision elsewhere or that it has reached the conclusion not to provide for it in the Plan in the full knowledge of neighbouring authorities' views on this.

14. For these reasons, we are not satisfied that the Council has provided evidence to demonstrate on-going, active and constructive engagement regarding the SRFI. Whilst the Council's decision not to pursue the allocation of the SRFI in the Plan does not in itself indicate a failure to comply with the DtC, the Council has not engaged or cooperated with other bodies (including other LPAs) with regard to this issue. This includes in relation to the reasons why it no longer considers it necessary to include the SRFI as an allocation in the Plan, or why housing is now proposed there. Thus, the effectiveness of the Council's plan preparation has not been maximised in this regard.

15. The Council's approach to the Green Belt is also of concern to us in relation to the DtC. The Plan proposes substantial Green Belt boundary alterations to enable land to come forward for development. Paragraph 137 of the Framework requires that before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic planning authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. It has not been demonstrated that the Council's approach to the Green Belt has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through a statement of common ground (SoCG), in accordance with paragraph 137(c) of the Framework.

16. Paragraph 1.4 of ED25C refers to on-going dialogue with neighbouring authorities throughout 2013-2016 and 2017-2019 to see if they could accommodate any of the Council's housing need. The Council refers to the June 2018 Planning Policy Committee (PPC) report which finds the DtC discussions with adjoining and nearby authorities currently show no reasonable prospect of the district's housing need being met elsewhere at this point in time. ED25C also refers to the DtC Compliance Statement (CD028) as evidence of this.

17. However, the meetings with nearby authorities referred to in CD028 took place for the most part between May and August 2018 and the notes of these indicate that the Council intended to meet all its housing needs within its boundary. Whilst we appreciate that neighbouring authorities are likely to have their own Green Belt constraints and housing pressures, there is no mention of the question being asked as to whether any of the neighbouring authorities could take any of St Albans' need (that would otherwise require the release of Green Belt land). This is another example of a lack of on-going, active and constructive engagement in relation to an important strategic matter.

18. Paragraph 27 of the Framework indicates that in order to demonstrate effective and on-going joint working, strategic policy making authorities should prepare and maintain one or more SoCGs, documenting the cross boundary matters being addressed and progress in cooperating to address these. These should be produced using the approach set out in the Guidance and be made publicly available throughout the plan-making process to provide transparency.

19. The Guidance indicates that a SoCG is a written record of the progress made by strategic policy making authorities during the process of planning for strategic cross boundary matters. It documents where effective cooperation is and is not happening throughout the plan making process and is a way of demonstrating at examination that plans are deliverable over the plan period. The Guidance is clear that a SoCG also forms part of the evidence required to demonstrate that the Council has complied with the DtC. The Council has provided a SoCG relating to the emerging Joint Structure Plan (JSP) but not in relation to this Plan. There are no SoCGs with any of the neighbouring or nearby LPAs or any of the DtC

bodies.

20. Although a joint Dacorum Borough Council and St Albans City and District Council Duty to Cooperate Updated Position Statement (January 2020) (ED32) has been provided, this is not a SoCG. It summarises the progress made to date to resolve the strategic planning matters between the Council and Dacorum. It states that since December 2019 discussions between the two Councils have continued at pace and both agree that they consider sufficient progress has been made on the principles of the strategic planning matters pertinent to the DtC. However, the DtC concerns cooperation prior to the submission of the Plan (which was in March 2019). The Updated Position Statement sets out a package of arrangements that will be put in place, the principles for which will be expanded upon and precise details given in a SoCG, a draft of which is anticipated in May 2020.

21. As such, contrary to the advice in the Guidance, there are no SoCGs before us to demonstrate that the Council has complied with the DtC. Consequently, we are not convinced that the Council has met the terms of the Guidance and cannot be assured that it has fulfilled its DtC duty in maximising the effectiveness of plan preparation by engaging constructively, actively and on an on-going basis with other bodies that are subject to the DtC.

22. A failure to meet the DtC cannot be remedied during the examination since it applies to plan preparation which ends when the Plan is submitted for examination. Section 20(7A) of the Act requires that the examiners must recommend non-adoption of the Plan if they consider that the Council has not complied with the DtC. As previously indicated and set out in more detail below, whilst our concerns are substantial, we will not make an absolute final decision as to whether or not the DtC has been met until the Council has had the chance to respond to this letter.

Statement of Community Involvement (SCI)

23. Each LPA is required to prepare a SCI setting out their policy for involving persons with an interest in the development of the area when preparing and revising their local plans. Amongst other things, the SCI should explain how the authority intends to go about publicising the Plan and undertaking consultation on it.

24. Section 19(3) of the Act states that in preparing local development documents the authority must comply with their SCI. The Council's SCI Update 2017 (Doc SCI 001) states that its purpose is to set out, amongst other things, how and when the community and other stakeholders will be consulted on the preparation and revision of documents that will make up the Plan.

25. Section 2 of the SCI considers consultation on the Plan and discusses the different stages in its preparation. Tables 1 and 2 detail the consultation techniques that may be used at each stage of the DPD and SPD preparation process. Paragraph 2.14 explains that the stages may vary

between different types of planning document and be subject to review over time. Even so, Figure 2 refers to Issues and Options/Preferred Options, and paragraph 2.17 refers to a Preferred Options stage.

26. Moreover, paragraph 2.22 of the SCI states that consultation will initially seek the views of specific and general consultation bodies to identify Issues and Options as part of on-going engagement after Regulation 18, and that wider consultation with these bodies, local communities and businesses and other interested parties and individuals will take place as 'preferred options' are identified. Table 1 includes a specific row for a Preferred Options consultation stage, that is separate and distinct from the Issues and Options stage, with a consultation period of a minimum of 6 weeks.

27. We consider that the wording of the SCI sets up a reasonable expectation that the Council would undertake a Preferred Options consultation on the Plan prior to its submission. However, this did not happen. The Plan progressed from Issues and Options in January/February 2018 to the Publication Draft Plan in September/October 2018 (with no Preferred Options stage). This being so, notwithstanding the flexibility allowed by paragraph 2.17 of the SCI, the Plan has not been prepared in compliance with the SCI and there has been a breach of Section 19(3) of the Act.

28. That said, a key issue in relation to this matter is whether any affected party has suffered any prejudice as a result of the breach, and if so whether any such prejudice can be remedied during the examination. If the examination were to continue, an assessment would need to me made as to whether the expectation which arose from the SCI of consultation on Preferred Options (and the omission of that stage) has prejudiced the interests of any parties. Consideration as to whether this could be resolved during the examination would also be necessary. Given our findings in relation to the DtC, we have not come to a view on this matter but raise it in the context of the Council's future plan making activities.

Soundness

29. In addition to the legal compliance matters identified above, we also have a number concerns in relation to the soundness of the Plan. Whilst we have not reached final conclusions on these issues and they may be matters which could potentially be resolved through the examination if it were able to continue, we believe it is helpful to highlight these points to you at this stage if only to assist your plan making in the future

Green Belt

30. Paragraph 136 of the Framework sets out that, once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. The Council's approach to the Green Belt is set out in Policy S3 and clarified in the response to our Initial Question 16 and in the subsequently produced Green Belt Topic Paper (ED25C). Further information has been

provided in the Council's hearing statement and via the hearings.

31. The Green Belt Review Purposes Assessment (November 2013) was prepared jointly for the Council with Dacorum and Welwyn Hatfield Councils by SKM (GB004). This Stage 1 of the review identified large parcels of land across the three authorities. Those areas contributing least to the Green Belt were determined and a number of strategic sub areas in St Albans were identified for further investigation. These were taken forward to Stage 2 where SKM undertook a review and detailed assessment of those strategic sub areas in the Green Belt Review Sites and Boundaries Study (February 2014) (GB001).

Scale of unmet need

32. Whilst the Council indicated at the hearings that the 2013 Green Belt Review was not done with any level of development need or target in mind, it was prepared around the time that the Council was working on the previous SLP. At that time housing requirements were 8,720 (or 436 per annum) and so much lower than the current objectively assessed need (OAN) of 14,608 homes over the plan period. However, the Green Belt Review was not re-visited in the context of the much higher scale of unmet need which could only be met by Green Belt release that was subsequently identified in the Plan.

Strategic and smaller sites

33. GB004 identifies a number of strategic sub-areas along with some small scale sub-areas which are recommended to be considered for further assessment. The 8 strategic sub-areas are then considered in GB001 which identifies sites for potential Green Belt release. However, the small scale sub-areas identified in GB004 as making no or little contribution to the Green Belt purposes were not considered further and were deemed to fall outside the scope of the subsequent GB001 study.

34. In 2018, the Council undertook its strategic site selection work to review the sites identified by SKM and to seek further potential sites to make up the shortfall. In determining the extent of this shortfall the Council estimated that the total capacity of the 8 SKM sites, combined with the identified non-Green Belt capacity in the district falls well short of the 14,608 homes required (ED25C paragraph 1.19).

35. Strategic scale sites were defined as those capable of accommodating residential development of a minimum of circa 500 dwellings or 14 hectares (ha) of developable land. Using this threshold, 70 sites were evaluated using a Red Amber Green (RAG) system over three stages. After Stage 3, the 8 strategic sub-areas identified in GB001 were the only sites to score green (low impact) and were taken forward (the ninth site is the employment site at East Hemel Hempstead). Additionally, four amber (medium impact) sites were identified at South East Hemel Hempstead, North Hemel Hempstead, PSGV and North East Redbourn.

36. The Council indicates that all of the 8 green sites, and 3 of the 4 amber sites were required to meet local housing need. The advantages of the three selected amber sites at South East Hemel Hempstead, North Hemel Hempstead, and PSGV were considered by the PPC to be greater than that for the non-selected site at North East Redbourn.

37. This approach raises a number of concerns. As part of the fundamental approach stemming from 2013/14, smaller sites (less than 500 dwellings or 14ha) have been excluded from the Green Belt Review and site selection process. This includes the smaller scale areas of land identified in GB004 as contributing least to Green Belt purposes. Paragraph 8.1.5 of GB004 is clear that the small-scale sub areas identified in that study may not be exhaustive. It also recognises that it is possible that additional potential small-scale boundary changes that would also not compromise the overall function of the Green Belt might be identified through a more detailed survey. Thus, the capacity from such smaller sites could be much higher than that estimated by the Council.

38. Additionally, a number of sites were submitted to the process which are not small, but do not meet the agreed threshold. These are identified in Table 2 to Appendix 1 of the May 2018 PPC report. Although they are between 10.5 and 14ha and/or a capacity of 375 to 500 dwellings they were considered to fall sufficiently below the overall scale and dwelling capacity not to be assessed. These are nonetheless large sites which could potentially deliver a good number of homes.

39. The withdrawn SLP identified the potential for small scale Green Belt greenfield sites to be looked at in more detailed in the then envisaged subsequent detailed Local Plan. Thus, at that time there was an anticipation that such sites would be included in the Council's overall housing strategy, alongside the larger strategic sites/ Broad Locations. However, in developing the Plan now being examined, it seems that that any consideration of the potential of such smaller sites has been overlooked.

40. In light of the large number of homes that would need to be accommodated, the Council decided that only strategic scale Green Belt sites would be taken forward in the Plan. The advantages of strategic scale sites over smaller ones was an explicit evaluative choice made by the Council. It was based on a judgement that the strategic scale sites offer infrastructure and community benefits in way that small sites do not and in light of points raised in the pubic consultation responses to the Plan.

41. In looking at Green Belt releases we have concerns about the narrow focus that has been placed on only strategic sites. This has ruled out a number of sites that have already been found to impact least on the purposes of the Green Belt. It may well also have ruled out other non-strategic sites with limited significant impacts on the Green Belt which may have arisen from a finer grained Green Belt Review.

42. Whilst the Council indicates in the May 2018 PPC report that small sites in the Green Belt are not needed (and so have not been assessed) this position appears at odds with the context of the identified shortfall situation. Moreover, the decision to discount all smaller sites in the Green Belt was made in 2013/14 and not in light of the higher levels of need for housing that are now being faced by the district. In terms of the contribution they make to Green Belt purposes, it has not been demonstrated whether a range of smaller sites would be preferable to the shortfall sites selected.

43. Additionally, we see no reason why the identification of some smaller sites would unacceptably spread the adverse impacts of development on Green Belt purposes. Whilst this would extend the impact of development over a wider geographic area, the extent of the resultant impacts would be likely to smaller given the more limited scale of the sites (in comparison to the cumulative impact on the Green Belt purposes of developing large adjoining strategic sites, such as to the east of Hemel Hempstead as proposed).

44. We accept that large scale urban extensions would provide significant amounts of new infrastructure which both the new and already established communities would benefit from. On the other hand, a range of sites including smaller sites could also provide benefits. For example, they could be delivered more quickly without requiring additional infrastructure, provide choice and flexibility in the housing market and secure affordable housing more immediately.

45. Overall, although previously recognised as a source of housing to be identified at some stage, smaller sites have been disregarded as part of the plan making process. It is our view that this approach has ruled out an important potential source of housing that may have been found to have a lesser impact on the purposes of the Green Belt than the sites selected without sufficient justification.

Previously developed land (PDL)

46. Paragraph 138 of the Framework states that where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously developed and/or is well served by public transport.

47. GB004 does not consider PDL or apply any specific focus on PDL. At paragraph 5.2.20 it indicates that the fifth national purpose of the Green Belt to assist urban regeneration has been screened out. This explains that assisting urban regeneration, by encouraging the recycling of derelict and other urban land is considered to be more complex to assess than the other four purposes because the relationship between the Green Belt and recycling or urban land is influenced by a range of external factors.

48. Furthermore, as a result of the site selection process outlined above, any PDL site or site in a sustainable location well served by public transport in the Green Belt below the size threshold has been discounted for

consideration. This is so regardless of its impact on Green Belt purposes. This approach fails to give first consideration to PDL land and/or that which is well served by public transport in the Green Belt, and the required process of prioritisation is not evident.

Methodology for the assessment of sites

49. We also have concerns regarding the strategic site selection process. At Stage 1 a high number of sites were immediately discounted from further assessment on the basis of their Green Belt Review evaluation (and were rated red). The 4 identified amber sites all had only 1 or zero effects on the Green Belt Purposes (as identified for the relevant parcels in the 2013 Green Belt Review). However, representors refer to a number of sites that were rejected at Stage 1 despite also having zero or only 1 significant impact on Green Belt purposes (in the same way as the amber and green rated sites).

50. The 8 strategic sub-areas shortlisted in the 2013 study and carried forward were already the subject of a detailed Green Belt assessment. The amber rated sites were assessed by officers and this is evident from the additional text in the Site Evaluation Forms at Appendix 3 of the May 2018 PPC report. However, unless they had been considered as small sub-scale areas in the 2013 Green Belt Review, the red rated sites are subject only to an additional brief standardised paragraph of text. Whilst the Council confirms that these are the assessments upon which it relies, no reason is given as to why they were not subject to a detailed assessment in the same way as the green and amber sites. Without these, it is difficult to see why the amber sites were found to perform better.

51. Another anomaly is that in re-assessing the 4 amber sites, the impact they would have on the Green Belt seems to have decreased compared to the situation in 2013. This is the case for PSGV where the 2013 assessment of parcel GB30 found 3 significant effects to the Green Belt purposes, but the re-assessment (on the basis of a limited area south of the A414) finds it to have only one significant effect.

52. Thus, the significant effects of the smaller parcel of land on Green Belt purposes have reduced in comparison to that of the wider parcel. However, such an assessment of smaller parts of other discounted strategic parcels has not been undertaken. As a result, the impact of smaller sites as opposed to the larger parcels has not been consistently reviewed across the board to allow informed decisions on Green Belt release to be made.

53. Additionally, there are issues with the site evaluation forms. For example, although Stage 1 of the PSGV site evaluation form acknowledges the existing significant permission of the SRFI, this makes no changes to the site's amber rating. Additionally, under Stage 2 (suitability) it is found to be green with no overriding constraints to development (despite the permitted SRFI). Furthermore, under Stage 3 (availability), notwithstanding the planning permission for the SRFI, it is recorded that

there are no overriding constraints to development for housing in terms of land ownership, restrictive covenants etc (and a green score is given). This does not seem a fair or credible assessment of the site and calls into question its overall amber rating. It also casts some doubts as to the reliability of the overall assessment process.

Compensatory improvements

54. Paragraph 138 of the Framework sets out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land. The Council refers to Policy S6 and the requirements set out under each of the Broad Locations. It also anticipates that further compensatory improvements will emerge through the forthcoming masterplans for the Broad Locations and refers to the provisions of Plan Policy L29.

55. However, we have concerns as to whether such compensatory improvements have been identified in relation to all the Broad Locations, and if they would in fact be on land remaining in the Green Belt or on land within the Broad Locations themselves. There is also a lack of clear evidence to demonstrate that the developer or the Council owns or controls the land that would be needed in each instance.

56. Additionally, the Council confirmed at the hearings that the costs of the required improvements has not been specifically factored into the viability work for each of the Broad Locations. In the absence of the identification of particular schemes of improvement or any estimation of their likely costs, it is difficult for us to be satisfied that that the headroom in the viability of the Broad Locations would be sufficient to cover the required improvements as suggested by the Council. In light of all these factors, it is not clear to us how this important requirement of the Framework would be met.

Conclusion on the Green Belt

57. Paragraph 137 of the Framework states that before concluding that exceptional circumstances exist to justify changes to the Green Belt boundaries, the Council should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. For the reasons set out above, we cannot be satisfied that this has been demonstrated. Nor can we agree with the statement in Policy S2 that the exceptional circumstances required for Green Belt release for development only exist in the Broad Locations.

58. The Council indicates at paragraph 1.3 of ED25C that the Plan process built on the earlier draft SLP work, in an updated context. However, the Green Belt Review was not re-visited in this updated context. If the examination were able to continue, a new Green Belt Review would need to be undertaken in accordance with the advice in the Framework and the Guidance and to address the concerns we have identified in this part of our letter.

Sustainability Appraisal

59. The Sustainability Appraisal (SA) of the Plan was carried out by TRL and the resulting report and appendices and Non-Technical Summary were published in September 2018 for consultation alongside the Plan. A subsequent SA Addendum was published in March 2019. This was prepared to report on the sustainability appraisal activities undertaken from the time of the representations on the Publication Plan in September/October 2018, up to the Submission of the Plan in March 2019.

60. The SA addendum report covers four main areas; analysis and responses to the representations made during the consultation on the Publication Plan and its accompanying SA; assessment of proposed Minor Modifications to the Plan; assessment of the proposed SRFI; and updates to the information in the SA Report (September 2018). These reports follow on from earlier SA work carried out to inform the previous SLP.

61. The 2018 SA is based on a previous strategy arrived at in 2014. Following an assessment of 4 different development strategy options, this found option 1a mixed location/scale development to be the most favourable. This was principally because the Council considered this option would provide the greatest social and economic benefits. Option 1b mixed location/scale development with smaller, but more sites, was another option considered and scored. The commentary in relation to this option indicates that "This would necessitate more work on detailed Green Belt Boundaries to see what might be appropriate as smaller scale alternatives in some of the selected locations".

62. As set out above, this additional Green Belt Review work has not been undertaken. Yet in table 5 (paragraph 73, Appendix E, Volume 2 of the 2018 SA), option 1a scores higher than option 1b in relation to the SA objectives; sustainable location, equality social, sustainable prosperity and revitalise town. It is difficult to see how these scores were reached objectively without the knowledge of where the smaller sites might be under option 1b. For example, they may have been on the edge of St Albans or Harpenden which to our minds could have scored at least the same if not higher in some or all of these categories than option 1a.

63. The SA generally makes optimistic assumptions about the benefits of option 1a and correspondingly negative assumptions about option 1b, without the evidence to support them. Consequently, these assessments lack the necessary degree of rigour and objectivity and are therefore unreliable.

64. This approach led to only the consideration of sites of more than 14ha and or 500 homes. This decision was underpinned to a large degree by the findings of the Green Belt Review and the strategic site selection work which we have expressed our concerns about above. Moreover, this threshold and strategy was conceived in the context of a different set of circumstances, such as a much lower housing requirement and at a time

when there was also no planning permission for the SRFI.

65. The assessment of development strategy options established in 2014 has not been properly reassessed to consider if the Plan's strategy is still an appropriate one, taking into account the material changes in circumstances between 2014 and 2018. Indeed, the Council's Regulation 18 consultation SA Working Note (January 2018) states in paragraph 4.3.3.3 "At this new Regulation 18 stage in the development of the Local Plan there has been no new assessment of sites or wider Broad Locations. This work will be undertaken during the SA that is undertaken as part of the development of the Publication Local Plan". However, this did not appear to happen in a transparent and objective manner, if at all.

66. In May 2018 a significant number of sites were submitted to the Council for consideration following a call for sites. These ranged in size enormously. However, only 12 were evaluated in detail and 11 of those were included in the Plan, the rest were disregarded. As recognised by the Council, the small sites that have been discounted from the strategic site selection process are not in all cases much smaller than 14ha. Some are of a considerable size and only just below the threshold. This is of particular concern given that the Plan contains two Broad Locations that are expected to accommodate less than 500 homes (S6 (ix) West of London Colney – 440 dwellings, and S6 (x) West of Chiswell Green – 365 dwellings).

67. As considered above, even when assessing the sites of 14ha and or 500 homes or more, those that scored red were given this score based on the 2013 Green Belt Review and the decision was taken not to revisit whether that was still appropriate. Importantly, some of the sites assessed through the RAG system were extremely large, in some cases hundreds of hectares in size. No consideration was given to whether parts of those sites would score better in Green Belt terms and therefore make them competitors for other sites scoring green or amber.

68. Leading on from this, there appears to have been no analysis of reasonable alternative sites that could accommodate less than 500 homes that may have scored better both in terms of the Green Belt purposes and/or sustainability objectives. This is despite references in the Framework for the need to plan for a variety of sites. For example, paragraph 68 indicates that, small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly. Whilst there is a list of 'small' sites in appendix 5 of the Plan, they do not amount to the 10% referred to in paragraph 68a of the Framework. There is also little information about whether these include, for example, replacement dwellings.

69. Although the Council contends that sites of less than 500 homes and or 14ha will come forward as windfall sites, given that the majority of the undeveloped or unallocated land in the district is in the Green Belt, any such proposals would need to demonstrate "very special circumstances".

However, the Courts[1] have found that ""exceptional circumstances" is a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which requires "very special circumstances"". Therefore, it is unlikely that sites, other than those allocated in the Plan or small infill or redevelopment sites in existing towns and villages, would come forward for residential development. Importantly paragraph 136 of the Framework advises that the time for altering Green Belt boundaries is through the preparation or updating of plans.

70. Whilst smaller sites may come forward in Neighbourhood Plans (NP), the Plan does not apportion any development to NPs and any changes to Green Belt boundaries have to be established through strategic policies, as set out in paragraph 136 of the Framework.

71. As set out above, PSGV has planning permission for a SRFI. Despite this, the SRFI is deemed by the Council not to be a reasonable alternative for housing. We have serious concerns that the Council had clearly made up its mind on this matter of great importance before carrying out the SA or the SA addendum work. Twice the SA addendum states that "the view of the Council is that the SRFI is not a 'reasonable alternative' for that site and therefore it was not assessed in the SA. However, for purposes of completeness the principle of developing an SRFI on the same site as that allocated for PSGV has now been assessed as part of this SA report addendum".

72. The Council argues that the SRFI is not a reasonable alternative since the Government's approach has a primary focus on housing. However, that is not what the Framework says. When read as a whole it identifies a number of priorities for sustainable development including both housing and large scale transport facilities (amongst other things).

73. The SA tables take no account of displacing the SRFI. If they did, North East Redbourn would be likely to attract a positive score as it would allow the SRFI to be provided, and the PSGV housing site would be reasonably expected to receive a negative score as it would lead to the non-provision of the SRFI. Moreover, the SA addendum fails to properly consider the SRFI and appropriately weight its environmental advantages. It underscores the positive effect that it would have on greenhouse gas emissions and fails to acknowledge the benefits to the local economy of the additional jobs that would arise.

74. Another serious flaw in the SA process is that the PSGV site scores are changed in relation to some objectives in the SA addendum when it is tested against the SRFI. The objectives in relation to 'use of brownfield land' and 'historic environment' change from a question mark in the 2018 SA to a cross in the SA addendum. However, the Council has not gone

[1] Compton Parish Council, Julian Cranwell and Ockham Parish Council v Guildford Borough Council, Secretary of State for Housing Communities and Local Government, Wisley Property Investments Ltd, Blackwell Park Ltd, Martin Grant Homes Ltd and Catesby Estates Plc [2019] EWHC 3242 (Admin)

back and looked at the effect of the re-scoring in relation to the ruling out of the North East Redbourn site in the 2018 SA (a site which was considered more favourably in terms of the Green Belt Review).

Conclusion on the SA and SA addendum

75. On the basis of our concerns set out above, we consider that there are a number of obvious and seemingly credible reasonable alternatives that have not been considered. This being so, we are not convinced that either the SA or the SA addendum has considered and compared reasonable alternatives as the Plan has evolved, including the preferred approach, and assessed these against the baseline environmental, economic and social characteristics of the area and the likely situation if the Plan were not to be adopted.

76. Therefore, the SA has not demonstrated that the spatial distribution of development is the most appropriate strategy given the reasonable alternatives available. The discrepancies in the scoring of the sites as highlighted also undermines the robustness of the assessment and calls into question the objectiveness of that process. Moreover, the Council does not appear to have approached the SA or the SA addendum with an open mind and in our view should have consulted on the SA Addendum.

77. Thus, with criterion b of paragraph 35 of the Framework in mind, we cannot find that the Plan is justified since it fails to be an appropriate strategy taking into account the reasonable alternatives and based on proportionate evidence. If the examination were able to continue we would need to explore the extent to which these concerns could be satisfactorily addressed through the examination.

<u>Meeting the area's objectively assessed needs</u>

78. Paragraph 11 of the Framework indicates that plans and decisions should apply a presumption in favour of sustainable development. For plan making this means that plans should positively seek opportunities to meet the development needs of their area and be sufficiently flexible to adapt to rapid change (a). Strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas.

79. Paragraph 20 of the Framework advises that strategic policies should set out an overall strategy for the pattern, scale and quality of development and make sufficient for infrastructure for transport (b). Paragraph 104 (e) states that planning policies should provide for any large scale transport facilities that need to be located in the area (footnote 42 clarifies that examples of these include interchanges for rail freight). In doing so they should take into account whether such development is likely to be a nationally significant infrastructure project and any relevant national policy statements. Additionally, paragraph 104 (c) requires planning policies to identify and protect, where there is robust evidence, sites and routes which could be critical in developing relevant infrastructure.

80. The National Policy Statement for National Networks (December 2014) (NPS) stresses the importance of SRFIs. It confirms that there is a compelling need for an expanded network of SRFIs. Paragraph 258 notes the limited number of suitable locations for SRFIs and the particular difficulties in provision to serve London and the south east.

81. As considered above, the Framework provides that planning policies should provide for any SRFIs that need to be located in the area taking into account the NPS for nationally significant infrastructure projects. SRFIs have extremely exacting locational requirements including the need for very large, unfragmented and flat sites close to the strategic rail freight and road networks and the conurbations they serve (NPS paragraph 2.45).

82. A planning application was submitted for a SRFI in Slough but refused and dismissed on appeal (a Secretary of State decision) and another in the Dartford area was also unsuccessful. Network Rail supports the creation of the SRFI in St Albans and it is clear that it has proved extremely problematic to find sites for one, especially in the south east, as recognised by the NPS. Indeed, it seems that the Radlett site in St Albans is the only realistic option and there is robust and compelling evidence to demonstrate that the SRFI needs to be located there.

83. As considered previously, in 2014 the Council was working on the basis of lower housing figures and the Broad Locations were found to be sufficient to meet the need for housing alongside the need for the SRFI, which was included in the Regulation 18 Plan as a commitment. However, in the re-evaluation of the strategy that followed, the Council did not consider whether it could continue to meet the needs of both the SRFI and the increased housing numbers or look at options as to how this could be achieved. Instead, the Council adopted an either/or position in relation to the SRFI and housing.

84. We have fundamental concerns about this approach and consider that the Council should have looked to accommodate both the SRFI and the required housing in the first instance. The requirement for the SRFI, an important piece of national infrastructure, is long established and specific to the Radlett site. Whilst the provision of housing is also an important requirement and a focus and priority recognised in the Framework, it is not fixed in location in the same way as the SRFI. In this instance there are compelling reasons to look to provide both, and we are not convinced that the two requirements should be regarded as competing.

85. Another shortcoming of the Plan's strategy is its reliance on PSGV to meet its housing requirement, given the possibility that the SRFI could proceed on the site on the basis of the existing planning permission. The site promotors indicate that development has commenced. Whilst it seems that this is disputed by the Council, notwithstanding a disagreement over the requested fee, a lawful development certificate has been submitted to deal with this matter.

86. Bringing these matters together, we consider that the Plan does not meet the development needs of the area and fails to make sufficient provision for infrastructure for transport in conflict with paragraphs 11 and 20 (b) of the Framework. Contrary to paragraph 104 (e) of the Framework, the policies in the Plan fail to provide for a large scale transport facility that needs to be located in the area (the SRFI) and have not taken into account what is a nationally important infrastructure project or had regard to the requirements of the NPS.

87. As set out at paragraph 35 of the Framework, plans must be positively prepared (criterion a). In omitting to provide for the SRFI (and in doing so to look elsewhere to meet its housing needs, either within the district or in neighbouring areas), the Plan does not provide a strategy which, as a minimum, seeks to meet the area's objectively assessed needs and is informed by agreements with other authorities. Furthermore, it has not been demonstrated that the plan is deliverable over the plan period and based on effective joint working on cross boundary strategic matters that have been dealt with rather than deferred, or that it aligns with national policy. This is at odds with paragraph 35 of the Framework which requires plans to be effective (criterion c) and consistent with national policy (criterion d).

Evidence Base

88. The Framework indicates at paragraph 31 that the preparation and review of all policies should be underpinned by relevant and up to date evidence. This should be adequate and proportionate, focussed tightly on supporting and justifying the policies concerned, and take into account relevant market signals. There are number of key documents missing from the evidence base.

89. There is no Heritage Impact Assessment as required by Historic England in relation to the Broad Locations. Work is still on-going with the 2019 AMR. Furthermore, it became apparent at the hearing session where we touched on the Council's reliance on windfalls as part of its housing strategy that they Council do not have the requisite historic windfall data available to support their reliance on them for future supply.

90. The Broad Locations are not supported by a Transport Impact Assessment even though it was evident from our site visits that most of them would be likely to require significant road improvements as many are currently accessed via relatively narrow roads. Hertfordshire County Council (HCC) recognises that the level of growth proposed within the Plan will require significant transport improvements at both a local and strategic level to enable to the transport network to function. This being so, HCC is concerned that there is no definitive identification of what strategic infrastructure is required to deliver the development at the proposed Broad Locations and and how that development would contribute towards any required mitigation. We share these concerns.

91. Although we understand that the Council has commissioned an updated Strategic Housing Market Assessment this has not yet been published. As

a result there is no up to date understanding of how many homes are needed and of what type, including the different sizes and types of affordable housing that may be required. Additionally, the Council rely on the brownfield register for its 10% smaller sites, but this is also not published. This list is not exhaustive, but it gives a flavour of the extent of missing documents that are critical to the examination of the Plan.

Overall Conclusions

92. In accordance with paragraph 35 of the Framework, we have assessed whether the Plan has been prepared in accordance with the legal and procedural requirements and whether it is sound. We have not been persuaded that the DtC has been satisfactorily discharged by the Council and if this is the case the failure cannot be rectified during the examination. We have also found legal compliance issues in relation to the SCI. Additionally, whilst we cannot reach a final conclusion on these matters at this stage in the examination, we have substantial soundness concerns with elements of the Plan as described above.

Next Steps

93. As set out in our letter of the 27 January 2020 and above, we will not reach an absolute or final position until you have had chance to consider and respond to this letter. However, in light of our serious concerns regarding the DtC, we consider it a very strong likelihood that there will be no other option other than that the Plan is withdrawn from examination or we write a final report recommending its non-adoption because of a failure to meet the DtC.

94. We have sought to be pragmatic in our approach to the examination but this cannot extend to ignoring a legal compliance failure with the Plan which cannot be rectified during the examination. We also appreciate how disappointed you will be with our findings but confirm that we have only come to this view following a great deal of thought and after hearing relevant evidence from both the Council and representors.

95. The Council will need some time to consider the contents of this letter and to decide on a response and we entirely understand that this may take longer than might otherwise be the case because of the current very difficult circumstances with regard to Covid 19. We are also happy to provide any necessary clarification to the Council via the Programme Officer. Responses from other parties to this letter are not invited and we do not envisage accepting them.

Louise Crosby and Elaine Worthington
Examining Inspectors

The Planning Inspectorate

Appeal Decisions

Hearing Held on 22 June 2021
Site visit made on 25 June 2021

by G D Jones BSc(Hons) DipTP DMS MRTPI

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

Decision date: 28th July 2021

Appeal A - Ref: APP/J1725/W/20/3265860
Land East of Newgate Lane East, Fareham

- 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 Bargate Homes Ltd against the decision of Gosport Borough Council.
- The application Ref 19/00516/OUT, dated 27 November 2019, was refused by notice dated 27 July 2020.
- The development proposed is described as cross boundary outline application, with all matters reserved except for access, for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane (part of access in Gosport Borough).

Appeal B - Ref: APP/A1720/W/21/3269030
Land East of Newgate Lane East, Fareham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Bargate Homes Ltd against Fareham Borough Council.
- The application Ref P/19/1260/OA, is dated 27 November 2019.
- The development proposed is described as cross boundary outline application, with all matters reserved except for access, for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane (part of access in Gosport Borough).

Decisions

1. **Appeal A** is allowed and outline planning permission is granted for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane at Land East of Newgate Lane East, Fareham in accordance with the terms of the application, Ref 19/00516/OUT, dated 27 November 2019, subject to the conditions contained within the relevant Schedule at the end of this decision.

2. **Appeal B** is allowed and outline planning permission is granted for the construction of up to 99 residential dwellings, landscaping, open space and associated works, with access from Brookers Lane at Land East of Newgate Lane East, Fareham in accordance with the terms of the application, Ref P/19/1260/OA, dated 27 November 2019, subject to the conditions contained within the relevant Schedule at the end of this decision.

Preliminary Matters

3. Although there are two planning applications and two pursuant appeals, they relate to a single proposed development at the same site. The two applications and appeals are a consequence of the site extending across the boundary of two different local planning authorities, those of Fareham Borough Council (FBC) and Gosport Borough Council (GBC). Roughly 98.3% of the 4.1ha site lies within Fareham Borough, with the remaining portion standing within Gosport Borough.

4. Appeal A was made following GBC's decision to refuse planning permission. Appeal B was made some time later but before FBC had determined that planning application. FBC has subsequently resolved that had this appeal not been made it too would have refused planning permission. In light of the submission of two legal agreements made under section 106 of the Town and Country Planning Act 1990 (as amended) both dated 6 July 2021 (the Planning Obligations), FBC has confirmed its putative reasons for refusal (f) to (n) inclusive have now been satisfactorily addressed.

5. Both appeal applications are for outline planning permission with access only to be determined at this stage and with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the appeals scheme, I have treated the submitted details relating to these reserved matters as a guide as to how the site might be developed.

6. After the hearing closed and before the decision was issued, a revised version of the National Planning Policy Framework (the Framework) was published. I gave the appellant, FBC and GBC each the opportunity to comment in response to its publication and I have taken into account any resulting submissions when making my decision.

Main Issues

7. In view of the foregoing matters, the main issues are:
   - Whether the proposed development would conflict with the area's adopted strategy for the location of new housing;
   - Its effect on the character and appearance of the area, including in terms of the 'Strategic Gap'; and
   - Its effect on best and most versatile agricultural land.

Reasons

Strategy for the Location of New Housing

8. The strategy for the location of new development in Fareham Borough, including housing, is set out in the development plan for the Borough[1], notably for the purposes of these appeals in Policies CS2 (Housing Provision), Policy CS6 (The Development Strategy), CS14 (Development Outside Settlements) and CS22 (Development in Strategic Gaps) of the Fareham Local Development Framework Core Strategy 2011 (the LP1), and Policies DSP6 (Residential development outside settlement boundaries) and DSP40 (Housing Allocations) of the Fareham Local Plan Part 2: Development Sites and Policies Plan (the LP2).

[1] No development plan conflict in respect to Gosport Borough has been suggested by the main parties and I have found none

9. PL1 Policy CS2 states that, in delivering housing, priority should be given to the reuse of previously developed land within the urban areas, while Policy CS6 states that development will be focussed in a series of identified development areas, including within existing settlements and at strategic allocations. Although the appeals site abuts the settlement edge of Bridgemary, Gosport, it is farmland located in the countryside beyond any designated settlement boundary.

10. It is within such out-of-settlement locations that LP1 Policy CS14 states that development will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Similarly, LP2 Policy DSP6 has a presumption against new residential development outside the defined urban settlement boundaries. While these Policies do allow for some forms of development they are limited in scale and kind, and do not include new housing of the type proposed.

11. The site is also within the Stubbington/Lee-on-the-Solent and Fareham/Gosport Strategic Gap (the Strategic Gap), which LP1 Policy CS22 states will be treated as countryside where development will not be permitted either individually or cumulatively where it significantly affects the integrity of the Gap and the physical and visual separation of settlements.

12. Consequently, the appeals proposals are at odds with Fareham Borough's strategy for the location of new housing in terms of its relationship with LP1 Policies CS2, CS6 and CS14, and LP2 Policy DSP6. Nonetheless, in circumstances where FBC cannot demonstrate a five-year supply of deliverable housing sites, as is currently the case, LP2 Policy DSP40 provides that additional sites for housing outside the urban area boundary, within the countryside and strategic gaps, may be permitted where they meet a number of criteria.

13. It is common ground between the main parties that the key criteria of Policy DSP40 for the appeals development are whether the proposal:

    ii. Is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;

    iii. Is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the Countryside and the Strategic Gaps; and

    v. Would not have any unacceptable environmental … implications.

14. I deal with each of these criteria of LP2 Policy DSP40, along with LP1 Policies CS14, CS17 (High Quality Design) and CS22 principally in the following subsection concerning character and appearance[2]. Before doing so, it is worth taking a moment to consider the relationship Policy DSP40 has with the other development plan policies cited above as well as the weight they currently carry.

15. The criteria of DSP40 offer flexibility and are not as restrictive as the requirements of those other policies, including CS14, CS22 and DSP6. As another Inspector recently concluded when considering two other nearby

[2] Criterion (v) is dealt with in the subsequent subsection in respect to best and most versatile agricultural land

appeals[3] (the Peel Common Inspector), *it follows that in circumstances where the DSP40 contingency is triggered, the weight attributable to conflicts with those more restrictive Policies* [LP1 Policies CS14 and CS22 and LP2 Policy DSP6] *would be reduced and would be outweighed by compliance with LP2 Policy DSP40*.

16. That Inspector went on to identify that, because the LP1 pre-dates the Framework, Policy CS2 does not represent an up-to-date Framework compliant assessment of housing needs, nor has the housing requirement of the development plan been reviewed within the last 5 years, and applying the Standard Methodology generates a higher housing need figure. In these circumstances, I agree with his conclusion that LP1 Policies CS2 and CS6 are out-of-date in the terms of the Framework and that against this background, the weight attributable to conflicts with Policies CS14 and CS22 of the LP1 and LP2 Policy DSP6 is reduced to the extent that they derive from settlement boundaries that in turn reflect out-of-date housing requirements. I return to matters of weight in the Planning Balance section later in my decision.

Character & Appearance

17. The appeals site is mainly made up of two fairly flat arable fields, separated by a hedgerow. It also includes a small part of Brookers Lane to its southeast, where a new vehicular access is proposed that would link the developed site to the predominantly residential area of Bridgemary to the east, which has a pleasant, if unremarkable suburban character and appearance.

18. Although it is a conventional residential street to the east, to the south of the site Brookers Lane is not accessible to powered vehicles and is lined on both sides by reasonably mature thick planting, which help give it a more rural character in contrast to the suburban feel in Bridgemary. A recreation ground lies to its south, opposite the appeals site.

19. Newgate Lane East, a fairly recently constructed 'relief road', runs immediately to the west of the site. It bypasses the small settlement of Peel Common and Old Newgate Lane to its west, allowing more direct movement between Fareham and Gosport through the Strategic Gap. A substantial timber acoustic fence and new hedgerow/tree planting largely separate the site from the new road. Although there is a break in the fence to accommodate access to the northern field, views into the site from Newgate Lane East to the west and south are very largely obstructed by the fence.

20. The acoustic fence ends towards the site's northern boundary, such that fairly open views are available from Newgate Lane East to the north of the site. These views extend across the site to the backdrop of mature planting to the site's eastern boundary, and also offer filtered glimpses of the dwellings beyond on the western fringes of Bridgemary and of Woodcot, the suburb to the north. Immediately to the north of the site there is further farmland, beyond which lies the playing fields of HMS Collingwood.

21. Consequently, the site has a reasonably strong relationship with the adjoining urban area to the east, while the surrounding landscape is influenced by manifestations of the nearby urban uses, including the relief road, recreation ground and playing fields. Nonetheless, the site reads very much as a part of

[3] Appeal Refs APP/A1720/W/20/3252180 & 3252185

the farmed countryside between Peel Common and Bridgemary/Woodcot through which Newgate Lane East passes, which has a predominantly open rural character and appearance. That the site is undeveloped also contributes to the sense of openness and separation within the Strategic Gap.

22. All three main parties have submitted evidence, including their contributions to the discussion at the hearing, regarding the proposed development's potential effects on the character and appearance of the area, including in terms of the Strategic Gap. This evidence included reasonably detailed assessments of landscape and visual impact produced for FBC and the appellant. I have taken all of this evidence into account, along with what I observed when I visited the area. Having done so, while I do not entirely agree with all of FBC's evidence on this matter, the assessment and conclusions contained in the Lockhart Garratt Statement of Evidence document produced for FBC more closely align with my own conclusions than do those of the appellant.

23. Of particular relevance to my assessment in this regard is the rather uncharacteristic extent to which the settlement edge of Bridgemary/Woodcot would protrude westward into the countryside as a result of the development and the degree to which this would be experienced in the area surrounding the site, particularly from the north along Newgate Lane East and from Brookers Lane to the south.

24. Consequently, the appeals development would have a harmful effect on the character and appearance of the area contrary to LP1 Policies CS14 and CS17. Nonetheless, such harm does not necessarily lead to conflict with criteria (ii) or (iii) of Policy DSP40 of the LP2 and there is also the effect on the Strategic Gap to consider.

25. It is common ground that the appeals site is well located in terms of its proximity to services and facilities, and its eastern boundary is adjacent to Bridgemary/Woodcot. Moreover, with careful consideration of the reserved matters, I see no reason why the appeals development would not be well integrated with the neighbouring settlement in a functional sense. Consequently, in those respects it accords with criterion (ii) of Policy DSP40.

26. However, I also see no reason why criterion (ii) should not also be considered from a landscape and visual perspective. Consequently, for the landscape and visual impact assessment reasons outlined above, particularly given the extent to which it would project from the existing settlement boundary out into the countryside, the proposed development could not be said to be well related to the existing settlement boundary and well integrated with the neighbouring settlement in the terms of Policy DSP40 (ii).

27. Policy DSP40 (iii) requires that proposals are sensitively designed to reflect the character of the neighbouring settlement and any adverse impact on the countryside and / or the Strategic Gap to be minimised. Notwithstanding the issues I have outlined above, I see no reason why the reserved matters could not result in a detailed design that reasonably reflects the character of Bridgemary/Woodcot provided that the development is limited to dwellings of no more than two storeys, given the prevailing scale of development in those neighbouring suburbs[4].

[4] I make this particular point regarding the number of storeys given that the illustrative material that accompanied the planning applications, including the Design and Access Statement, refer to 2½ storey elements

28. Regarding the interpretation of 'minimise' in the context of criterion (iii), I note what the Peel Common Inspector recently wrote on the matter. In summary, he explained that the aim of Policy DSP40 is to facilitate housing in the countryside relative in scale to the five-year housing land supply shortfall, and went on to say that any new housing in the countryside would be likely to register some adverse landscape and visual effect such that it would be reasonable to take 'minimise' to mean limiting any adverse impact, having regard to factors such as location, scale, disposition and landscape treatment. I broadly agree with his approach because otherwise the Policy would be likely to become self-defeating in terms of failing to reasonably respond to a housing delivery shortfall which it is, in part, designed to address.

29. Given the extent to which the proposed development would extend into the countryside and the Strategic Gap, particularly in the northwest portion of the site where it would be most removed from the existing settlement boundary and most discernible when experienced from the north along Newgate Lane East, the identified adverse effects on the character and appearance of the area would not be minimised in the terms of the Policy. Consequently, the appeals development would also conflict with Policy DSP40 (iii) in that regard.

30. Beyond its effect in the context of Policy DSP40, there remains the scheme's effect on the Strategic Gap, particularly in terms of LP1 Policy CS22. In summary and insofar as it applies to the appeals development, Policy CS22 prevents development that would either individually or cumulatively significantly affect the integrity of the Gap and the physical and visual separation of settlements.

31. Given the relatively modest size of the development proposed relative to the overall scale of the Strategic Gap along with the site's location on the outer edge of the Gap adjacent to the settlement boundary, there would not be a significant effect on the integrity of the Gap, be it individually or cumulatively. Nor would the built form extend fully to the settlement to the west, maintaining a degree of separation such that coalescence would not occur. Consequently, Peel Common would continue to be understood as mostly comprising a small, isolated ribbon of development.

32. The development would, however, reduce the physical and visual separation between Peel Common and Bridgemary/Woodcot at roughly its most narrow point. This effect would be mitigated to an extent by the proposed setting back of the built form, away from the western boundary thereby leaving a modest gap to the side of Newgate Lane East, and by the visually contained nature of the southern part of the site resulting from the existing planting around its southern boundary and the acoustic fence along the relief road. Nonetheless, due to the extent of narrowing at this already fairly narrow point between settlements, the effect of the appeals development on the physical and visual separation of settlements would be reasonably significant. In this respect it would conflict with Policy CS22 of the LP1.

33. In summary therefore, the proposed development would harm the character and appearance of the area, including in terms of the Strategic Gap, contrary, in that regard and to the extents identified, to LP1 Policies CS14, CS17 and CS22 and PL2 Policy DSP40 (ii) and (iii).

Agricultural Land

34. Approximately 76% of the site is made up of Grade 3a agricultural land, which is identified as being 'best and most versatile' (BMV). As this land would be lost as a result of the appeals development, it would also be contrary to LP1 Policy CS16 insofar as it seeks to prevent the loss of such land. Nonetheless, given the large amount of BMV land in Fareham Borough relative to the comparatively small amount that would be lost, its loss would not represent an *unacceptable environmental implication* in the terms of LP2 Policy DSP40 (v).

Other Matters

Planning Obligations

35. In the event that planning permissions were to be granted and implemented the Planning Obligations would secure the provision of on-site affordable housing at a rate of 40%, and of open space and a play area along with measures for their future maintenance; payments towards education provision, pedestrian/cycling improvements at the Brookers Lane crossing of Newgate Lane East, safety improvements at Brookers Lane/Tukes Avenue/Carisbrooke Road, local accessibility improvements on routes to Woodcot Primary School and Tukes Avenue Local Centre, Holbrook Primary School and Bridgemary School and Nobes Avenue Local Centre, and parking restrictions on Brookers Lane in the vicinity of the site access; measures to secure and support the implementation of a Travel Plan; footway widening works to support pedestrian access to Peel Common Nursery, Infant School and Junior School; and measures to mitigate the effects on European Sites, as discussed in the following subsection.

36. FBC has submitted a detailed statement (the CIL Statement), which addresses the application of statutory requirements to most of the Planning Obligations and also sets out the relevant planning policy support / justification. I have considered the Planning Obligations in light of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so, I am satisfied that the obligations therein would be required by and accord with the policies set out in the CIL Statement. Overall, I am satisfied that all of those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.

Appropriate Assessment

37. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) as competent authority I am required to undertake an Appropriate Assessment of the appeals development on the basis of its Likely Significant Effects on European Sites in respect to:

    - Loss of functionally linked habitat (alone and in-combination);
    - Nutrient outputs during occupation (alone and in-combination); and
    - Recreational disturbance during occupation (alone and in-combination).

38. A suite of mitigation is proposed to address these effects, which following consultation with Natural England I consider would adequately mitigate the

effects of the proposal so that there would be no adverse effect upon the integrity of any European Sites. Moreover, the mitigation would be secured and managed via a combination of the Planning Obligations, as outlined above, and of planning conditions.

39. In summary, the mitigation measures would include:

- Contribution to the Solent Recreation Mitigation Strategy, to be secured by planning obligations;
- The implementation of a Construction Environmental Management Plan, to be secured via planning condition;
- A planning condition to cap water consumption to a maximum of 110 litres per person per day and open space management to ensure the development will not result in a positive nitrogen output; and
- Implementation of a Wintering Bird Mitigation Strategy to achieve favourable management of off-site land in respect of Brent Geese and Waders, to be secured by planning obligations.

Other Considerations

40. In addition to the decision letter referred to above concerning two recently determined appeals at land to the west of Newgate Lane East, the evidence refers to a range of decision letters in respect to other planning appeals as well as to other planning decisions made locally. I am mindful of the need for consistency in decision making, particularly in respect to appeals casework. Nonetheless, while I am not familiar with all of the circumstances of those other cases, they do appear to differ in notable respects to the appeals development. Moreover, each application for planning permission must be determined on its individual merits. Consequently, none of those other cases have had a significant bearing on my decision.

41. In addition to the main issues, concern has been expressed locally including in respect to there being adequate other sources of housing without this development; setting a precedent for other development, including in the Strategic Gap; infrastructure, services and facilities as existing and proposed, including an unfair impact on Gosport as Council Tax from residents of the development would go to FBC; highway safety, access arrangements, congestion, rat-running, car-dependency and parking; living conditions in the area, including in respect to air quality, noise, light pollution, loss of light and privacy; the effects of the development on security, biodiversity, climate change, health / well-being, and the local economy including on the Solent Enterprise Zone; availability of employment opportunities; drainage and flooding; design and layout; the affordability of the proposed housing; the cumulative effect of the development with other development; the site should be put to a community use and/or become a woodland; and it would be prejudicial to and premature in terms of the development plan-making process.

42. These matters are largely identified and considered within the FBC officer's report on the appeals development. They were also before FBC when it prepared its evidence and when it submitted its case at the hearing and are largely addressed in its evidence and in the statements of common ground. Other than as set out above, although GBC took a somewhat broader approach to its objections, FBC as the local planning authority responsible for over 98% of the site did not conclude that they would amount to reasons to justify

withholding planning permission. I have been provided with no substantiated evidence which would prompt me to disagree with FBC's conclusions in these respects subject to the Planning Obligations and the imposition of planning conditions.

43. I also note that representations have been made in support of the proposed scheme. While I have also taken them into account, they have not altered my overall decision on either appeal.

Planning Balance

44. For the reasons outlined above, the appeals development would be at odds with the area's adopted strategy for the location of new housing, including in terms of LP2 Policy DSP40 (ii) and (iii), cause harm to the character and appearance of the area, including in terms of the Strategic Gap, and lead to the loss of BMV land. As a consequence, it conflicts in these respects with LP1 Policies CS2, CS6, CS14, CS16, CS17 and CS22, and LP2 Policies DSP6 and DSP40.

45. FBC cannot currently demonstrate a Framework compliant supply of housing land. Although the main parties have differing views on the extent of the housing delivery shortfall, FBC and the appellant agree that supply lies in the range of 0.95 to 3.57 years. Although it seems likely to be lower based on the evidence before me, I have used FBC's figure of 3.57 years as a benchmark to assist in making my decision. On that basis, the fact that the appeals development would be at odds with the area's strategy for the location of new housing and conflict, in that regard, with the development plan, including with LP1 Policies CS2, CS6 and CS14, and LP2 Policy DSP6, currently carries limited weight.

46. Although the weight attributable to the wider conflicts with LP1 Policies CS14 and CS22 is reduced, there would nonetheless be harm caused to the character and appearance of the area, including in terms of the Strategic Gap. LP2 Policy DSP40 criteria (ii) and (iii), however, carry greater weight, albeit that the evidence indicates that the balance they strike between other interests, including character / appearance and the Strategic Gap, and housing supply may be unduly restrictive given that the housing supply shortfall has persisted for a number of years in spite of this Policy. For the purposes of making my decision I have treated PL1 Policy CS17 as carrying full weight.

47. On this basis, given the extent of harm identified in the relevant subsection above, the detrimental effect that the appeals development would have on the character and appearance of the area, including in terms of the Strategic Gap, and the associated development plan policy conflict carry significant weight against the appeals proposals.

48. In respect to BMV land, the evidence indicates that Fareham Borough has a large amount of such land. Accordingly, given the comparatively small amount of BMV land within the site, its loss and the associated development plan conflict carry no more than limited weight.

49. Further to the absence of a five years' supply of housing land, the Local Plan, while aiming to plan for Fareham Borough's housing needs to 2026, predates the Framework such that it is out of step with the current housing requirement for the area. While there has been much activity in terms of attempting to

bring forward a replacement Local Plan, including the recent publication of a Regulation 19 consultation Plan, there can be no certainty regarding when a replacement Plan might be adopted.

50. In these circumstances, the so-called tilted balance, as set out in para 11 of the Framework, applies to the determination of planning applications. It provides that planning permission should be granted unless 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.

51. The appeals development would bring a range of benefits, most notably the delivery of a reasonably substantial amount of housing[5] in an accessible location with good access to a range of services and facilities. In the context of the area's current issues with housing delivery, the benefits together carry, at the least, considerable weight in favour of the appeals development.

52. The harm to the character and appearance of the area, including in terms of the Strategic Gap, and the associated development plan policy conflict carry significant weight. Nonetheless, when combined with the more limited weight carried by the other matters that weigh against the appeals development, the collective weight of the adverse impacts would not significantly and demonstrably outweigh the considerable benefits, when assessed against the policies in the Framework taken as a whole. Accordingly, while perhaps not an ideal form of development, it would be sustainable development in the terms of the Framework for which there is a presumption in its favour, such that the site is a suitable location for housing.

Conditions

53. The two main Statements of Common Ground between each Council and the appellant contain a list of suggested conditions for each appeal. They include the standard time limit / implementation conditions. I have considered these in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly.

Appeal B - Conditions

54. In order to provide certainty in respect to the matters that would not be reserved for future consideration, a condition requiring that the development would be carried out in accordance with the approved plans would be necessary. For that reason and to protect the character and appearance of the area, a condition limiting the number of dwellings permitted would also be necessary as would a condition to ensure that the development proceeds in general conformity with the illustrative masterplan.

55. Conditions to control the formation of the proposed access and associated works would be necessary in the interests of highways safety and to ensure that the development would be served by an appropriate means of access. A condition to limit the maximum height of the proposed dwellings to two-storeys would be necessary to ensure that the development remains consistent with

[5] I note that it is the appellant's intention to develop the site as a 100% affordable housing scheme. Nonetheless, as 40% only would be secured as affordable housing via the Planning Obligations, there can be no guarantee that more than 40% would be delivered as part of the development. I have, therefore, assessed the scheme on that basis

the character of Bridgemary/Woodcot and to limit its prominence, particularly when experienced from the north in order to protect the character and appearance of the area.

56. Conditions would be necessary to secure biodiversity and arboricultural mitigation to protect the character and appearance of the area, as well as wildlife and their habitat. Conditions to control the details of surface and foul water drainage, would also be necessary to reduce flood risk, to control surface water run-off and in the interests of public health. A condition would also be necessary to ensure that features of archaeological interest would be properly examined, recorded and, where necessary, preserved.

57. A condition requiring adequate remediation of any contamination affecting the site would be necessary to safeguard the health and well-being of future occupiers. A condition would also be necessary to ensure that the living conditions of occupiers of the development would not be unacceptably affected by noise. In the interests of highway safety, to safeguard residents' living conditions and to protect wildlife and their habitat, a condition would also be necessary to ensure that the construction works proceed in accordance with a Construction Environmental Management Statement.

58. A condition to control site levels, including ground floor levels of the permitted buildings, would be necessary to help the development harmonise with its context. To promote sustainable modes of transport, a condition to secure the installation of charging points for electric vehicles would be necessary. As outlined above, a condition to limit water consumption per resident per day would be necessary in the interests of biodiversity. To help the creation of a mixed and sustainable community, a condition would be necessary to control lettings of any affordable housing to be provided on-site beyond the 40% that would be secured via the Planning Obligations.

Appeal A - Conditions

59. Again, in order to provide certainty in respect to the matters that would not be reserved for future consideration, a condition requiring that the development would be carried out in accordance with the approved plans would be necessary. In the interests of highway safety, to safeguard residents' living conditions and to protect wildlife and their habitat, a condition would also be necessary to ensure that the construction works proceed in accordance with a Construction, Transport and Environment Management Plan.

60. A condition would also be necessary to ensure that features of archaeological interest would be properly examined, recorded and, where necessary, preserved. A condition would be necessary to secure arboricultural mitigation, to protect the character and appearance of the area, and wildlife and their habitat. A condition to secure the re-provision of on-street parking spaces, would also be necessary to ensure adequate parking facilities would be provided and in the interests of highway safety.

Conclusion

61. In conclusion, the proposed development would be at odds with the area's strategy for the location of new housing, cause significant harm to the character and appearance of the area, including in terms of the Strategic Gap, and lead to the loss of BMV land in conflict with the development plan.

However, in the current circumstances the combined adverse impacts would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. On that basis, the appeals scheme would represent sustainable development in the terms of the Framework, which is a material consideration that, in the particular circumstances of the case, outweighs the conflict with the development plan as a whole.

62. Accordingly, subject to the identified conditions, **Appeals A and B are allowed**.

G D Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Boyle	Of Queen's Counsel
Trevor Moody	Planning - Pegasus Group
Jeremy Gardiner	Planning - Pegasus Group
James Atkin	Landscape - Pegasus Group
Tom Alder	Solicitor - Lester Aldridge LLB

FOR GOSPORT BOROUGH COUNCIL:

Mark Bridge	Development Management, GBC
Jayson Grygiel	Planning Policy, GBC

FOR FAREHAM BOROUGH COUNCIL:

Jane Parker	Planning - Adams Hendry Consulting Limited
Ian Dudley	Landscape - Lockhart Garratt Ltd

INTERESTED PERSONS:

Alison Roast	Lee Residents' Association
Cllr Stephen Philpott	Gosport Borough & Hampshire County Councillor
Bob Marshall	Fareham Society

APPEAL A - REF APP/J1725/W/20/3265860 - SCHEDULE OF CONDITIONS:

1) The development hereby permitted shall be begun either before the expiration of three years from the date of the grant of this Outline planning permission, or the expiration of two years from the final approval of the Reserved Matters, or in the case of approval on different dates, the final approval of the last such Matter to be approved whichever is the later date.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: SLP-01 Rev D; ITB13747-GA-004 Rev F.

3) a) No development hereby permitted shall commence until a Construction, Transport and Environment Management Plan, to include (but not be limited to) details of: a method statement for control of dust and emissions from construction and demolition; an assessment and method statement for the control of construction noise for the site specifying predicted noise levels, proposed target criteria, mitigation measures and monitoring protocols, working hours, the timing of deliveries; the provision to be made on site for contractor's parking, construction compound, site office facilities, construction traffic access, the turning and loading/off-loading of delivery vehicles within the confines of the site, wheel wash facilities, lorry routeing from the strategic road network and a programme of works, has been submitted to and approved in writing by the Local Planning Authority.

   b) The development shall be carried out in accordance with the approved Construction, Transport and Environment Management Plan for as long as construction is taking place at the site.

4) a) Development shall not commence until:

   i) A Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority; and

   ii) The implementation of a programme of archaeological assessment and mitigation in accordance with the Written Scheme of Investigation approved pursuant to part a) i) of this condition has been approved in writing by the Local Planning Authority and has been secured.

   b) The development shall, unless otherwise approved in writing by the Local Planning Authority, be carried out in accordance with the approved programme of archaeological assessment and mitigation.

   c) The development shall, unless otherwise approved in writing by the Local Planning Authority, not be occupied until a report interpreting the results of the archaeological fieldwork has been produced in accordance with an approved programme, including where appropriate post-excavation assessment, specialist analysis and reports, publication and public engagement.

5) a) Development shall not commence until the tree protection measures set out in Arboricultural Assessment & Method Statement (Barrell Tree Consultancy, 27 November 2019 (19225-AA3-DC)) and identified on Tree Protection Plan 19225-BT3 have been provided.

   b) The tree protection measures shall be retained until the development is substantially complete, or their removal is approved in writing by the Local Planning Authority.

6) a) The access hereby permitted shall not be brought into use by residential traffic, until alternative parking spaces to replace those lost on Brookers Lane have been provided in accordance with a detailed scheme that shall have been submitted to and approved in writing by the Local Planning Authority.

b) The replacement parking spaces shall be retained for public use thereafter.

APPEAL B - REF APP/A1720/W/21/3269030 - SCHEDULE OF CONDITIONS:

1) Reserved matters Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

   The reserved matters shall include the provision of five publicly available parking spaces to be maintained in perpetuity by the developer (unless dedicated as public highway) in the area highlighted yellow on Image 2.1 in the Technical Note (SJ/MC/GT/ITB13747-010): Additional transport information note dated 13 May 2020).

2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than one year from the date of this permission. The development hereby permitted shall commence not later than one year from the date of approval of the last of the reserved matters.

3) The development hereby permitted shall be carried out in accordance with the following approved plans: SLP-01 Rev D; ITB13747-GA-004 Rev F.

4) No development shall commence on site until an amendment to The Hampshire (Various Roads Newgate Lane Area, Fareham and Gosport) (Prohibition of Driving) (Except for Access) Order 2018 has been approved in accordance with drawing ITB13747-GA-018 Rev A to allow vehicular access to the site. The development thereafter shall not commence until the access has been constructed in accordance with plan No ITB13747-GA-004 Rev F or a subsequent plan approved in writing by the Local Planning Authority (LPA), and made available for use unless an alternative construction access arrangement has been approved in writing by the LPA and has been implemented. Where an alternative construction access arrangement has been approved by the LPA, the development may commence, but shall not be occupied prior to completion of the access in accordance with drawing ITB13747-GA-004 Rev F.

5) The development hereby permitted shall be carried out in general accordance with plan Ref CMP-01 Rev C and shall include:

   a) Two pedestrian and cycling links at the southern boundary of the site to the Brookers Lane cycle link in the vicinity of the existing pedestrian accesses to Brookers Lane Playing fields;

   b) A suitable and direct internal path linking the north of the application site to the vehicular site access via the eastern boundary of the site;

   c) A pedestrian and/or cycle link to Heron Way to the east of the site;

   d) A single point of vehicular access to the development via Brookers Lane. No alternative or additional vehicular access points or links shall be provided. The internal site layout shall be designed to restrict the potential for any alternative or additional vehicular access points or links; and

   e) Suitable land up to the site boundary safeguarded for pedestrian and cycle only connections to the north as shown indicatively on masterplan drawing CMP-01 Rev C, only to be implemented should development on land to the

north come forward. This land shall be dedicated as public highway if practicable.

In the event that the pedestrian and cycle only connections, as set out in e) above, are required to be implemented, plans shall be submitted to and approved in writing by the Local Planning Authority to upgrade (surface and light) the pedestrian and cycle only connections to the north. Construction of the pedestrian and cycle only connections shall be completed within 6 months of approval of the plans. The pedestrian and cycle only connections shall be available for public use in perpetuity and maintained by the developer in perpetuity (unless dedicated as public highway).

Details of a) – e) to be approved at the reserved matters stage and the development shall be carried out as approved.

6) Notwithstanding the illustrative parameter details submitted with the planning application, including the Design and Access Statement, the buildings hereby permitted shall be limited to no more than two storeys.

7) The development hereby permitted shall not exceed 99 dwellings.

8) None of the dwellings hereby permitted shall be occupied until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved LEMP (unless otherwise approved in writing by the Local Planning Authority) which shall include (but shall not necessarily be limited to):

   a) A description, plan and evaluation of ecological features to be retained, created and managed such as grasslands, hedgerows, attenuation ponds and treelines;

   b) Details of a scheme of lighting designed to minimise impacts on wildlife, in particular bats, during the operational life of the development;

   c) A planting scheme for ecology mitigation areas;

   d) A work schedule (including an annual work plan);

   e) The aims and objectives of landscape and ecological management;

   f) Appropriate management options for achieving aims and objectives;

   g) Details of the persons, body or organisation responsible for implementation of the plan; and

   h) Details of a scheme of ongoing monitoring and remedial measures where appropriate.

9) No development hereby permitted shall commence until a detailed surface water drainage strategy for the site, based on the principles within the Flood Risk Assessment, has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include the following details:

   a) Updated surface run-off calculations for rate and volume for pre and post development using the appropriate methodology;

b) The detailed design of Sustainable Drainage Systems (SuDS) to be used on the site in accordance with best practice and the CIRIA SuDs Manual C753 as well as details on the delivery, maintenance and adoption of those SuDS features;

c) Detailed drainage layout drawings at an identified scale indicating catchment areas, referenced drainage features, manhole cover and invert levels and pipe diameters, lengths and gradients;

d) Detailed hydraulic calculations for all rainfall events, including those listed below. The hydraulic calculations shall take into account the connectivity of the entire drainage system, including the connection with the watercourse. The results shall include design and simulation criteria, network design and result tables, manholes schedule tables and summary of critical result by maximum level during the 1 in 1, 1 in 30 and 1 in 100 (plus an allowance for climate change) rainfall events. The drainage features shall have the same reference as the drainage layout;

e) Evidence that runoff exceeding design criteria has been considered. Calculations and exceedance flow diagram/plans shall show where above ground flooding might occur and where this would pool and flow;

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

g) Information evidencing that the correct level of water treatment exists in the system in accordance with the CIRIA SuDS Manual C753; and

h) The condition of the existing watercourse(s) within the application site shall be investigated and any required improvement shall be carried out. Evidence of this, including photographs shall be submitted before any connection is made.

The scheme shall be fully implemented and subsequently maintained, in accordance with the scheme's timing/phasing arrangements, or within any other period as may subsequently be approved in writing by the Local Planning Authority.

10) Prior to commencement, details of the maintenance and management of the sustainable drainage scheme approved by Condition 9 shall be submitted to and approved in writing by the Local Planning Authority. Those details shall include a timetable for its implementation, and a management and maintenance plan, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime. The sustainable drainage system shall be managed and maintained in accordance with the approved details for the lifetime of the development.

11) Prior to commencement, a scheme for the disposal of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. This shall include a timetable for implementation and details of the measures which shall be undertaken to protect the public sewers and shall be carried out in accordance with the approved scheme.

12) Prior to commencement, the developer shall secure the implementation of a programme of archaeological assessment in accordance with a Written Scheme of Investigation that has been submitted to and approved in writing by the Local Planning Authority. The assessment shall take the form of trial trenches located across the site to ensure that any archaeological remains encountered within the site are recognised, characterised and recorded. Prior to commencement, the developer shall secure the implementation of a programme of archaeological mitigation based on the results of the trial trenching, in accordance with a Written Scheme of Investigation that has been submitted to and approved in writing by the Local Planning Authority. Following completion of archaeological fieldwork, a report shall be produced in accordance with the approved programme submitted by the developer and approved in writing by the Local Planning Authority setting out and securing post-excavation assessment, specialist analysis and reports, publication and public engagement.

13) Prior to commencement, a detailed Arboricultural Impact Assessment and Tree Protection Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The arboricultural works shall be carried out in accordance with the approved details and may only be fully discharged subject to satisfactory written evidence of contemporaneous supervision and monitoring of tree protection throughout construction by the appointed arboriculturist.

14) Development shall cease on the site, if during any stage of the works, unexpected ground conditions or materials which suggest potential contamination are encountered, unless otherwise approved in writing by the Local Planning Authority. Works shall not recommence before an investigation and risk assessment of the identified material/ground conditions has been undertaken and details of the findings along with a detailed remedial scheme, if required, has been submitted to and approved in writing by the Local Planning Authority. The remediation scheme shall be fully implemented and shall be validated in writing by an independent competent person as approved in writing by the Local Planning Authority prior to the occupation of the unit(s).

15) The reserved matters to be submitted pursuant to Condition 1 shall be accompanied by a Noise Mitigation Scheme following the principles established in the Noise Assessment (November 2019) prepared by WYG including how mitigation shall be maintained for the lifetime of the development. Prior to the construction of any dwelling, the submitted Scheme shall have been approved in writing by the Local Planning Authority and no dwelling shall be first occupied until the relevant mitigation measures in respect of that dwelling have been provided in full, in accordance with the approved Scheme. The mitigation measures shall thereafter be retained at all times unless otherwise approved in writing by the Local Planning Authority.

16) No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall provide for:

    a) The parking of vehicles of site operatives and visitors and turning provision on the site;

    b) Loading and unloading of plant and materials;

c) The routing of lorries, including restriction of the use of The Drive, Gosport and details for construction traffic access to the site;

d) Programme of construction;

e) Storage of plant and materials used in constructing the development;

f) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

g) Wheel washing facilities including measures for cleaning Brookers Lane to ensure that it is kept clear of any mud or other debris falling from construction vehicles;

h) Measures to control the emission of dust and dirt during construction;

i) Delivery and construction working hours;

j) A method for ensuring that minerals that can be viably recovered during the development operations are recovered and put to beneficial use;

k) A scheme of work detailing the extent and type of piling proposed;

l) Protection of pedestrian routes on Brookers Lane during construction;

m) Temporary lighting;

n) A construction-phase drainage system which ensures all surface water passes through three stages of filtration to prevent pollutants from leaving the site; and

n) Safeguards for fuel and chemical storage and use, to ensure no pollution of the surface water leaving the site.

The approved CEMP shall be adhered to throughout the construction period for the development.

17) No development shall commence until details of the internal finished floor levels of all of the proposed buildings and proposed finished external ground levels in relation to the existing ground levels on the site and the adjacent land have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

18) No development shall take place beyond damp proof course level until details of the specification of Electric Vehicle charging points have been submitted to and approved in writing by the Local Planning Authority, including how and where Electric Vehicle charging points shall be provided at the following level:

a) At least one Electric Vehicle charging point per dwelling with allocated parking provision; and

b) At least one Electric Vehicle charging point in shared/unallocated parking areas per 10 dwellings with no allocated parking provision. The development shall be carried out in accordance with the approved details with the charging point(s) provided prior to first occupation of the dwelling to which it serves.

19) No development shall commence until details of water efficiency measures to be installed in each dwelling have been submitted to and approved in writing by the Local Planning Authority. These water efficiency measures shall be designed to ensure potable water consumption does not exceed a maximum of 110 litres per person per day. The development shall be carried out in accordance with the approved details.

20) Any additional affordable housing to be provided on the site beyond the 40% identified as part of the s106 shall not be occupied until a community lettings plan has been approved in writing by the Local Planning Authority. Thereafter any additional affordable housing to be provided on the site beyond the 40% identified as part of the associated legal agreement made under section 106 of the Town and Country Planning Act 1990 (as amended) dated 6 July 2021 shall be occupied in accordance with the approved Community Lettings Plan.

Neutral Citation Number: [2011] EWHC 606 (Admin)

Case No: CO/6882/2010

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 March 2011

Before :
Mr Justice Collins
- -
Between :

(1)Save Historic Newmarket Ltd **(2) Tattersalls Ltd** **(3) Unex Group Holdings Ltd** **(4) Jockey Club Estates Ltd** **(5) Newmarket Trainers' Federation** **(6) Godolphin Management Company Limited** **(7) Darley Stud Management Company Ltd**	Claimants
- and -	
(1) Forest Heath District Council	Defendants
-and-	
(2) Secretary of State for Communities & Local Government	
-and-	
Edward Richard William Stanley, 19th Earl of Derby ("Lord Derby")	Interested Party

- -
- -

Mr David Elvin, Q.C. & Mr Charles Banner (instructed by **Ashurst LLP**) for the **Claimants**
Mr Mark Lowe, Q.C. & Mr Michael Bedford (instructed by **the Solicitor to the Council**) for the **First Defendant**
Mr Jonathan Karas, Q.C. (instructed by **Lawrence Graham**) for the Interested Party

Hearing dates: 22 & 23 February 2011
- -

Judgment

Mr Justice Collins:

1. This claim is brought pursuant to s.113 of the Planning and Compulsory Purchase Act 2004. It seeks to quash to the extent the court considers appropriate the Forest Heath Core Strategy (FHCS) which was adopted by the first defendant on 12 May 2010. The policies in the FHCS which are under attack relate to what is described as an urban

extension to the north-east of Newmarket for approximately 1200 dwellings as part of a mixed use development. That development is intended to take place over 20 years.

2. The claimants' main concern is that the development will have a seriously adverse effect on the horse racing industry. Newmarket is recognised as being what is described as the capital of the horse racing industry in national and international terms. Apart from the presence of the Jockey Club and Tattersalls and the National Stud, both outside and within the town limits there are many training establishments and so movements of valuable race horses inevitably clash with those of vehicles. Thus any increase in traffic generated by a development may have serious effects. Some 20% of residents are employed in the horse racing industry and any damage to it would be disastrous. This, to be fair to the Council, is recognised in the Core Strategy, but the concern of the claimants, all of whom have an interest and are persons aggrieved, is that the urban extension will have a seriously adverse effect on the industry.

3. Since it is and has always been recognised that the bulk of the proposed development will be on land known as Hatchfield Farm owned by the Interested Party, he applied to be and was joined in these proceedings on 15 September 2010. He supports the first defendant in resisting this claim.

4. Under the 2004 Act, a Development Plan comprises a Regional Spatial Strategy (RSS) and a Local Development Framework (LDF). The LDF itself has a number of components. The relevant one is the Core Strategy. This, like all LDF documents, must be in general conformity with the RSS. It is what is described as a Local Development Document (LDD) within the meaning of s.17 of the 2004 Act. By s.17(3) a local planning authority's LDDs 'must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area'. The definition of a Core Strategy and its designation as an LDD document is achieved by Regulation 6 of the Town and Country Planning (Local Development)(England) Regulations 2004 (SI 2004 No.2204).

   Regulation 6(3) provides that a document of the description in Paragraph (1)(a) is to be referred to as a Core Strategy. Regulation 6(1)(a) refers to any document containing statements of –

   > "(i) the development and use of land which the local planning authority wish to encourage during any specified period;
   >
   > (ii) objectives relating to design and access which the local planning authority wish to encourage during any specified period;
   >
   > (iii) any environmental, social and economic objectives which are relevant to the attainment of the development and use of land maintained in paragraph (i);
   >
   > (iv) the authority's general policies in respect of the matters referred to in paragraphs (i) to (iii) …"

5. As their title suggests and the definition in regulation 6(1) indicates, Core Strategies are intended to contain more general policies looking to objectives rather than site specific developments. In PPS12, which discusses local spatial planning, guidance is given in the following terms:-

   > "4.5. It is essential that the Core Strategy makes clear spatial choices about where developments should go in broad terms. This strong direction will mean that the work involved in the preparation of any subsequent DPDs is reduced. It is also means that decisions on planning applications can be given a clear steer immediately.
   >
   > 4.6. Core strategies may allocate specific sites for development. These should be those sites considered central to achievement of the strategy. Progress on the Core Strategy should not be held up by inclusion of non strategic sites."

In 4.7 the point is made that the Core Strategy looks to the long term and in general will not include site specific detail. It may be preferable for a site area to be delineated in outline rather than detailed terms and the detail can be dealt with in subsequent planning documents which do deal with the particular in the light of the general approach set out in the RSS and the Core Strategy.

6. The present system is due to be changed. However, until that happens, it has to be followed. Furthermore, even when the system is changed the Core Strategy will still exist as a development plan within the meaning of s.38 of the 2004 Act. S.38(6) provides that if regard is to be had to any development plan, any determination must be made in accordance with that plan unless material considerations indicate otherwise. Whatever the future holds, until amended, it will inevitably remain as a material consideration.

7. The challenge is brought on two grounds. First it is said that there was a failure to comply with the relevant EU Directive and the Regulations made to implement it in that the strategic environmental assessment (SEA) did not contain all that it should have contained. This if established would render the policy made in breach unlawful whether or not the omission could in fact have made any difference. That, as is common ground, is made clear by the decision of the House of Lords in *Berkeley v SSE* [2001] 2AC 603. Although *Berkeley* concerned an EIA, the same principle applies to a SEA. To uphold a planning permission granted contrary to the provisions of that Directive would be inconsistent with the Court's obligations under European Law to enforce Community rights. The same would apply to policies in a plan.

8. The second ground asserts that there was a procedural defect. It is said that some technical documents, in particular a Transport Impacts Study, a strategic flood risk and water cycle study and an affordable housing viability study were produced after the consultation period prior to the examination held before an inspector to decide whether the Core Strategy should stand as the Council proposed or should be modified. This meant that persons who might have been concerned if they had seen those studies were deprived of the opportunity of commenting on them. Since only those who had made representations during the consultation exercise were permitted to appear at the examination, some may have wanted to but been unable to appear at and call evidence before the inspector.

9. S.113(3) of the 2004 Act enables a person aggrieved to make an application to this court in respect of a relevant document on the ground that

> "(a) the document is not within the appropriate power;
>
> (b) a procedural requirement has not been complied with."

S.113(6) enables the court to quash the relevant document wholly or in part and generally or as it affects the property of the applicant if the court is satisfied

> "(a) that a relevant document is to any extent outside the appropriate power;
>
> (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement."

There is thus no need to show prejudice to the applicant if s.113(6)(a) applies, but it is required if there is a procedural failure. Since the claimants accept that they had the documents in question and were able to deal with them at the examination the question whether they have suffered substantial or indeed any prejudice has obviously to be considered.

10. I shall consider first the claim that there was a breach of the Directive and the Regulations. The Directive in question is 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment. This has been transposed into domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No.1633)(the 2004 Regulations). The Directive in paragraph (4) of the preamble identifies the importance of environmental assessment as a tool for integrating environmental considerations into the adoption of certain plans and programmes. That the Directive and the Regulations apply to the preparation of a Core Strategy is recognised by all parties. Paragraphs (14) & (15) of the preamble provide as follows:-

> "(14) Where an assessment is required by this Directive, an environmental report should be prepared containing relevant information as set out in this Directive, identifying, describing and evaluating the likely significant environmental effects of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme; Member States should communicate to the Commission any measures they take concerning the quality of environmental reports.
>
> (15) in order to contribute to more transparent decision making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion."

11. The objectives are spelt out in Article 1. It provides:-

> "The objective of the Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to permitting sustainable development, by ensuring that, in accordance with the Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment."

Article 2(b) defines an environmental assessment to mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9. Since the urban extension in question is likely to have significant environmental effect and comes within Annex II to Directive 85/337/EEC as amended which applies to the assessment of all public and private projects which are likely to have significant effect on the environment, there is no doubt, and the contrary is not argued, that the requirements set out in the 2004 Directive had to be fulfilled. Article 5 is of central importance since it sets out what an environmental report must contain. It provides:-

> "1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex 1.
>
> 2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

> 3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex 1.
>
> 4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report."

The information required by Annex 1 includes the likely significant effects on the environment, the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme and, most importantly, by (h):-

> "an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information."

12. Article 12(2) requires Member States to ensure 'that environmental reports are of a sufficient quality to meet the requirements of this Directive …'. Quality involves ensuring that a report is based on proper information and expertise and covers all the potential effects of the plan or programme in question. In addition, since one of the purposes of the Directive is to allow members of the public to be consulted about plans or programmes which may affect them, the report should enable them to understand why the proposals are said to be environmentally sound. To that end, the report must not only be comprehensible but must contain the necessary information required by the Directive. The Directive by Article 6(2) requires that the public likely to be affected must be given an effective and early opportunity within appropriate time frames to express their opinion on the plan or programme and the accompanying environmental report before the adoption of the plan or programme. As must be obvious, a Core Strategy will develop over a period of time. The usual practice, which was followed in this case, would be to consult on various draft proposals until the LPA was able to decide what it wanted to put in place.

13. In this case, the process commenced in March 2005. I shall have to refer to the relevant documentation in due course. It was not until March 2009 that the council put forward its final proposals which were to go before an inspector. These were put to any member of the public who wished to make representations and who might want to appear before the inspector. His decision would be final in the sense that he could approve or modify the Core Strategy. If he decided any modifications were needed, the council could either implement the Core Strategy as modified or decide not to implement it in which case the process would have to start again.

14. The 2004 Regulations largely follow the language of the Directive. Regulation 5 requires the carrying out of an environmental assessment where the first formal preparatory act of a plan or programme to which the Regulations apply is on or after 21 July 2004. Regulation 13(1) requires that every draft plan or programme for which an environmental report has been prepared and its accompanying environmental report must be made available for the purposes of consultation to all those whom the LPA considers are or are likely to be affected by or have an interest in the decisions involved in the assessment and adoption of the plan. This can be and was done by use of the Council's website. Regulation 12 sets out what the assessment must contain. It must identify the likely significant effects on the environment of implementing the plan or programme and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme (Regulation 12(2)(a) and (b)). It must also contain the information set out in Schedule 2, which reflects Annex 1 to the Directive (Regulation 12(3)). Paragraph 6 of Schedule 2 sets out a comprehensive list of the various significant effects which must be identified. It reads:-

> "The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues such as-

(a) Biodiversity;

(b) population;

(c) human health;

(d) fauna;

(e) flora;

(f) soil;

(g) water;

(h) air;

(i) climatic factors;

(j) material assets;

(k) cultural heritage, including architectural and archaeological heritage;

(l) landscape; and

(m) the inter-relationship between the issues referred to in sub-paragraphs (a) to (l)."

15. In its guidance on implementation, the EU Commission said this in paragraphs 4.6 and 4.7:-

> "4.6 If certain aspects of a plan or programme have been assessed at one stage of the planning process and the assessment of a plan or programme at a later stage of the process uses the findings of the earlier assessment, those findings must be up to date and accurate for them to be used in the new assessment. They will also have to be placed in the context of the assessment. If these conditions cannot be met, the later plan or programme may require a fresh or updated assessment, even though it is dealing with matter which was also the subject of the earlier plan or programme.
>
> 4.7 It is clear that the decision to reuse material from one assessment in carrying out another will depend on the structure of the planning, the contents of the plan or programme, and the appropriateness of the information in the environment report, and that decisions will have to be taken case by case. They will have to ensure that comprehensive assessments of each element of the planning process are not impaired, and that a previous assessment used at a subsequent stage is placed in the context of the current assessment and taken into account in the same way. In order to form an identifiable report, the relevant information must be brought together: it should not be necessary to embark on a paper-chase in order to understand the environmental effects of a proposal. Depending on the case, it might be appropriate to summarise earlier material, refer to it, or repeat it. But there is no need to repeat large amounts of data in a new context in which it is not appropriate."

As the second half of 4.7 makes clear, the final report may rely on earlier material but must bring it together so that it is identifiable in that report. This is consistent with the requirement that members of the public must be able to involve themselves in the decision-making process and for that purpose receive all relevant information. It cannot be assumed that all those potentially affected would have read all or indeed any previous reports (in the context of this claim previous environmental assessments).

16. The process adopted is in the planning jargon described as iterative. Thus it is open to an authority to reject alternatives at an early stage of the process and, provided that there is no change of circumstances, to decide that it is unnecessary to revisit them. That is what the Council did in this case. But the claimants submit that it has not in any of the SEAs which it produced given its reasons for deciding to reject the alternatives and that in any event it has failed properly to refer to the necessary information so as to enable the person affected to find it. In addition, initially when the alternatives were rejected the proposal was for 500 dwellings over a 15 year timescale but this was subsequently increased to 1000 and then 1200 when the housing provision was extended over a further 10 year period. That at any rate was what I was told. While the extension of time may explain the increase, the effect of 1200 as the end result will be greater than that of 500 and the effect of 500 could be considered and would be likely to be material in deciding whether any increase was desirable in environmental terms.

17. It is clear from the terms of Article 5 of the Directive and the guidance from the Commission that the authority responsible for the adoption of the plan or programme as well as the authorities and public consulted must be presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option (See Commission Guidance Paragraphs 5.11 to 5.14). Equally, the environmental assessment and the draft plan must operate together so that consultees can consider each in the light of the other. That was the view of Weatherup J in the Northern Irish case *Re Seaport investments Ltd's Application for Judicial Review* [2008] Env. LR 23. However that does not mean that when the draft plan finally decided on by the authority and the accompanying environmental assessment are put out to consultation before the necessary examination is held there cannot have been during the iterative process a prior ruling out of alternatives. But this is subject to the important proviso that reasons have been given for the rejection of the alternatives, that those reasons are still valid if there has been any change in the proposals in the draft plan or any other material change of circumstances and that the consultees are able, whether by reference to the part of the earlier assessment giving the reasons or by summary of those reasons or, if necessary, by repeating them, to know from the assessment accompanying the draft plan what those reasons are. I do not think the *Seaport* case, which turned on its own facts including the lapse of time of over a year between the assessment and the draft plan, can provide any further assistance.

18. It is accordingly necessary to follow the documentation, bearing in mind that the required information must be contained in the environmental assessment which accompanies the draft plan. In its statement of Community Involvement produced in October 2004 (although entitled a draft statement, there was no other and so it was treated as final) the Council described how it would conduct the necessary consultative process. It stated (p 7 of the Statement):-

> "Consultation methods
>
> When we submit a development plan document for independent examination to the Secretary of State we will publish a notice and invite representations to be made within a specified period of six weeks. We will also send two copies of the development plan document and the following documents to the Planning Inspectorate:
>
> - The final report of the sustainability appraisal
> - Any supporting technical documents such as the urban capacity study and housing needs surveys
> - A copy of the Statement of Community Involvement
> - A statement of compliance, which should also indicate how we have addressed the main issues raised in representations received."

The sustainability appraisal included the environmental assessment.

19. The first draft document was produced in March 2005. It described itself as Initial Strategic Environmental Assessment Report and Sustainability Appraisal and Scoping Report Consultation Draft. In paragraph 1.3, its approach is described thus:-

> "The requirement to carry out a Sustainability Appraisal and a Strategic Environmental Assessment are distinct. However, Government guidance states that it is possible to satisfy both through a single appraisal process. This is the approach the District Council intends to take with the Forest Heath LDF. This document is both a sustainability appraisal and a strategic environmental assessment, but hereafter it will be referred to simply as a 'sustainability appraisal' on the basis that this is the more comprehensive and inclusive term."

In 1.4 it is described as the first stage of the sustainability assessment (SA) of the emerging Local Development Framework. This includes the Core Strategy. In Paragraph 19, the national and international importance of Newmarket is recognised. In Paragraph 36, under the heading 'unique heritage of Newmarket' it is noted that Newmarket is the only place in the world which still has horseracing stables operating in and around the town centre. Thus, one of the purposes of the LDF will be to safeguard 'the unique character of Newmarket and historic racecourse racing grounds'.

20. Since this was a scoping report, it indicated what in general terms was the scope of the issues that needed to be addressed. It recognised the need to protect the unique character of Newmarket as the centre of the horseracing industry and the numerous stables and training establishments in and around the town. It also recognised that there would be a need to take some greenfield sites to meet the future increase in housing which would be required.

21. Between March and July 2005 the Council prepared an issues and options paper together with an associated SA. This was published in September 2005. The question posed was where new development should go. The key question was whether most new development should go to Newmarket or whether it should be spread more evenly between Brandon and Mildenhall, the two other market towns within the Council's area. Further, should new development be allocated for the larger villages which were identified? Should other villages be included? Further, and specifically to Newmarket, an issue identified was to ask what role it should have in accommodating the demand for new development. Five options for a Core Spatial Strategy were identified. They were:-

> 1. Should the majority of new developments be directed to Newmarket because it is the most sustainable settlement in the District?
>
> 2. Should there be a more even spread of development between the three market towns of Brandon, Mildenhall and Newmarket?
>
> 3. Should development be spread between the three market towns and some or all of the sustainable villages?
>
> 4. Should development be spread between the three market towns and some or all of the sustainable villages plus other villages?
>
> 5. Should the vast majority of development be concentrated on a single new settlement … with very limited development in any of the towns or sustainable villages?

There was also raised as an issue whether residential development on greenfield sites should be preferred if the national and regional target of 60% brownfield development was not being met in the District.

22. Under Housing, issue 17 asked what number/proportion of new dwellings should go to the three towns and what number/ proportion in the villages. One question not asked was

how the total number of new dwellings required should be split between the individual towns or villages depending on which of the alternatives 1 to 5 set out above was chosen.

23. The accompanying SA was in a form which was used in every SA produced in the iterative process. A matrix set out the various options which were then given a score from 1 to 5. 1 represented the option considered most in line with sustainable development, 5 the least. Reasons for the various choices were said to be given. The best option (given 1) for the location of main development was that it should be spread between the three market towns and sustainable villages. This was because it would be most in line with the RSS objective. Question 28 asked whether the established use of horse racing land/buildings in Newmarket should be protected in order to produce the unique character and economy of the town. The public response to those issues was to prefer the option of spreading new development mainly to the three market towns and to agree that the horse racing land and buildings must be protected.

24. Following consideration of the responses, in August and September 2006, the Council published an SA of the preferred options. The SA set out in Table 1 how it was said there was compliance with the requirements of the Directive as to what had to be contained in an SEA. It was said that the likely significant effects on the environment, the measures envisaged to offset possible significant adverse effects and 'an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information' were all in Section 6 of the document. This was a table which set out against each policy the number of objectives upon which that policy would have an impact ranging from a major positive impact through to a major negative impact. In addition, if the impact was neutral or unknown, that was recorded.

25. Policy 23 was the relevant policy in the Table, headed 'Scale and Location of Housing provision: Whole Policy'. Overall, as the comments stated, the policy was said to be 'slightly beneficial but some uncertainty and negatives relate to environmental objectives …'

26. Table 17 (part of the 2006 SEA) set out the proposed number of dwellings in each location deemed appropriate. Newmarket's allocation was 500 altogether of which 400 were to be on 'land east of Fordham Road at Hatchfield Farm'. In answer to the question whether the housing should be spread more or less equally between the 4 main settlements (in addition to the 3 market towns a settlement at Red Lodge could take a considerable number of new dwellings) it was said that 41% to Newmarket with 33% to Red Lodge, 15% to Mildenhall and 11% to Brandon reflected the sustainability of the biggest settlement, Newmarket and the aspirations of the Red Lodge masterplan.

27. The preferred options paper stated that as Newmarket was the most self sufficient and hence the most sustainable town in the District, the priority would be to allocate as much new development at Newmarket as possible, balanced by the need to protect its unique character and its landscape setting. Preferred Policy 2 was to direct the majority of new development to the three market towns. Preferred policy 22 (referred to in the SA as 23) proposed the development of 5,341 dwellings between 2006 and 2021. The allocation for Newmarket was to be about 700 dwellings and, in addition, more specifically, 'a Greenfield urban extension to the north east of Newmarket (500 dwellings) as part of a mixed use development, subject to highway improvements to the A141/A142 junction'. It was said that at least 60% of the overall allocation in the District would be on previously developed land.

28. Under the heading 'Alternative approaches considered (Paragraph 3.4.5) this is said:-

> "The District's housing requirement is decided by the RSS. The District Council supported the draft requirement at the examination in public (EIP) but indicated that this was considered to be the upper limit of what could be delivered sustainably. At the issues and options consultation broadly supported this approach. Issues such as the windfall and non-implementation allowances are based on past evidence.

> The broad locational aspects of policy 22 are based on policy 2 and the alternatives considered at the issues and options stage are outlined in the policy 2 section. The approach taken in policy 22 needs to be in general conformity with higher level plans, particularly RSS14, and to take account of the local evidence base, particularly the urban capacity study. The following key factors have been influential in rejecting alternative approaches.
>
> - Of all the settlements Newmarket has the best range of services/facilities and employment opportunities. However, there are limited opportunities for further development without a Greenfield urban extension to the development boundary.
>
> - The urban capacity study (UCS) demonstrates that Red lodge could accommodate a significant proportion of dwellings within the existing development boundary. This is based on implementing previous allocations in the existing Local Plan which had planned on Red Lodge being regenerated to become a key service centre.
>
> - Table 2 shows that the key service centres are providing a higher proportion of dwellings from unimplemented planning permissions than the towns. If overall (between 2001-2021) the majority of dwellings are to be accommodated in the towns, than there needs to be a high proportion of allocations in the towns to redress the balance."

29. Those reasons are not in the SEA. The alternatives considered under Policy 2 are the five set out in paragraph 21 above. I should add that the need to protect the horse racing industry is emphasised in the document.

30. In July and August 2008 the Council produced what are entitled its final policy options and an accompanying SA. Option CS2 provided that Greenfield land would be allocated as an urban extension to the north west (sic) of Newmarket for approximately 1000 dwellings as part of a mixed use development subject to highway improvements to the A14/A142 junction to be built between 2010 and 2020". What had previously been described as land to the north east in proposed policy 22 of the September 2006 document was the same as that now said to be the north west of the town. The adopted plan refers to the land as being to the north east. Thus the reference in option CS2 was erroneous, which is unfortunate. The whole of CS2 was new and had not been the subject of consultation. The increase from 500 to 1000 is obviously material since the result is taken to 2020. This seems to be the year before the total of 500 was earlier supposed to be met and so the explanation that the increase was to meet an increase in the years over which the target was to be met does not seem to be correct. Whichever it be, there was, as I have said, on any view a material change of circumstances which should have been addressed in the SA. However, policy CS7 allocated for greenfield development 500 between 2010 and 2015 and 500 between 2015 and 2020.

31. In March 2009 the Council produced its policies which it proposed to submit to the inspector together with a SA. Policy CS1.7 stated:-

> "Greenfield land will be allocated as an urban extension to the north east of Newmarket to approximately 1200 dwellings as part of a mixed use development subject to any necessary highway improvements along Fordham Road to the High Street and improvements to the A14/A142 junction to be phased between 2010 and 2031."

As can be seen, this differed from what had been in CS2 in the 2008 "final" options in an increase from 1,000 to 1,200, an extension of the period from 2020 to 2031 and required improvements to Fordham Road. Policy CS7, which dealt with overall housing provision, indicated a minimum provision in the district of 6,400 dwellings and a further 3,700

between 2021 and 2031. For Newmarket on the Greenfield sites (i.e. that in question in this case) there were proposed 500 between 2010 and 2015, 500 between 2015 and 2020 and 200 in each of the periods 2020 to 2025 and 2025 to 2031.

32. The accompanying SA, should have contained all the material required by the Directive and the Regulations. The appraisal methodology is described in Paragraph 2 and in 2.1 we find this:-

> "Stage B: Developing and refining options and assessing effects
>
> The draft Core Strategy was developed in 2005 and a Sustainability Appraisal (SA) undertaken of five alternative approaches. In September 2005 the draft Core Strategy and SA were published for consultation. The results of these consultations have assisted the development of a set of preferred options.
>
> During 2006 the Preferred Options for the Core Strategy and the Site Specific issues and Options were prepared. The Preferred Options have been subject to an SA/SEA and both documents were consulted on in October 2006.
>
> In 2008 the Core Strategy Final Policy Option document was published. The Final Policy Option was subject to an SA/SEA which was consulted on in August/September 2008."

The documents referred to were on the Council's website and could, it is said, have been brought up by any interested consultee. It is to be noted that under Stage E, the Council said that it would consult on the documents 'and deal with appraising significant changes'.

33. As to the previous SA, it is said that all required information is to be found in Section 6. At the outset of Table 1, which is headed 'Compliance with requirements of the SEA Directive', this is stated as a requirement of the Directive:-

> "Preparation of an environmental report in which likely effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and geographical scope of the plan or programme, are identified, described and evaluated."

In the column headed 'Compliance' against this are the words 'This report'. Thus any consultee would expect the report to contain all that was cited above. But nowhere does it identify or evaluate reasonable alternatives or explain why they are rejected in favour of what is proposed.

34. Section 6 contains Table 4 headed 'Appraisal Summary of Core Strategy Policies'. It is in the same form as that contained in the 2008 SA. Nothing is said under housing (Policy 7) about alternatives, nor is it explained why the increase in numbers from 500 to 1,000 to 1,200 had been decided and whether the effect, which is obviously greater, would make any difference in the evaluation carried out in the SA.

35. In responding to the consultation, the Interested Party asked that the plan should identify Hatchfield Farm as the strategic allocation to the north east. Internal Council reports dealing with this are relied on by Mr Elvin. The response suggested by a report of the Strategic Directive to the Local Development Working Group of 8 July 2009 was that the 'expansion north east of Newmarket should be kept as a broad location rather than allocated as a strategic site.

The response continued:-

> "For it to be identified as a strategic site it would need to have been tested against all other reasonable alternatives. The Council would also need to

> include the specific infra-structure requirements of any strategic sites which are allocated which again has not been done in absolute detail. Any change to promote land north east of Newmarket as a strategic site would lead to the holding up of the Core Strategy, as the further testing of alternatives and the preparation of a specific infrastructure requirement were undertaken. This would conflict with the requirements of PPS 12 that progress on the core strategy should not be held up by the inclusion of non strategic sites. The approach adopted has been agreed with the Government Office."

36. In fact, when the Interested Party made the point that Hatchfield Farm should be specified as the site for the urban development, the officers took the view that Go-East should be asked for its advice. On 22 December 2008 Marie Smith, who is the Forward Planning Manager employed by the Council, e-mailed Go-East. In it, she said this:-

> "Due to the nature of Newmarket which is constrained/protected almost entirely by the horse racing policies, the only suitable site which could reasonably come forward is Hatchfield Farm.
>
> With this in mind, the Council would like to pursue a Strategic Site rather than a broad location which will eventually form a site within the Site Specific Allocations anyway. However, I am conscious that I have not consulted on 'Strategic Sites' throughout the issues and options stage. Would the Council be able to pursue such a proposal coming forward in the proposed submission consultation following the Final Policy Option consultation and the representations received?
>
> If I cannot pursue this option, do I use PPS 12 Paragraphs 4.6 and 4.7 which further state that a Core Strategy can allocate Strategic Sites as long as it does not delay the Core Strategy process?"

37. In her witness statement, Ms Smith says (paragraph 86) that she did not receive a written reply but was telephoned and (although she made no notes of the conversation at the time) she recalled that 'the discussions related to the detailed evidence that would be needed to support a site allocation, which would delay the submission of the Core Strategy, rather than to any alleged inadequacies in the existing SA/SEA work'. She also says that saying Hatchfield Farm was the only suitable site was not accurate because it 'overlooked the existence of other land in the vicinity which would also be part of the urban extension (such as the George Lambton Playing Fields) and it ignored the fact that not all of the Hatchfield Farm site might be needed'. She says that the reference cited in Paragraph 35 above to the need for testing against reasonable alternatives was not a reference to testing the principle of urban extension against reasonable extensions which had, she says, been done as part of the SA/SEA work in 2005 and 2006. It was a reference to whether the site eventually allocated should be all or some parts only of Hatchfield Farm with other land in the vicinity.

38. Mr Elvin argued that because the Council had initially and indeed in answer to the interested party's representations indicated a wish to refer to Hatchfield Farm by name, the reason for its removal was because it was believed that it avoided a need for the SA to include an assessment of alternatives. I see no reason to doubt Ms Smith's evidence that that was not the position. However, there is a degree of artificiality in the way the Council have dealt with this since the area (which includes Hatchfield Farm) proposed for the development is very close to being specific. Certainly if not the whole a large part of Hatchfield Farm will be used. Thus the need for a proper consideration of any alternatives and of the effects of the increases in the number of dwellings is all the more important.

39. In her statement (Paragraphs 88 and 89), Ms Smith asserts that the increase in the scale of residential development did not alter the principle as to the choice of the proposed location compared to reasonable alternatives. She and other officers did consider the implications of the changes but concluded that there were no realistic alternatives to the spatial strategy that had already been identified. While that view may have been justified, it should have been dealt with and reasons given in the SA why it had been taken,

40. In my judgment, Mr Elvin is correct to submit that the final report accompanying the proposed Core Strategy to be put to the inspector was flawed. It was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified in the final report. There was thus a failure to comply with the requirements of the Directive and so relief must be given to the claimants.

41. The second ground can be dealt with more briefly. I will assume because I do not need to decide that the need for a Transport Study should have been appreciated by the Council so that it was at fault in not obtaining one earlier. I make it clear that I am not deciding that there was any fault. But albeit it came later it was dealt with by the claimants in the course of the examination. Thus there was no direct prejudice to them in the failure to put it in the general consultation before the hearing.

42. It is submitted that there was prejudice because others who did not see it might, if they had, have wished to make representations and so were unable to involve themselves in the examination. I am prepared to accept the possibility of prejudice to a party who has failed to succeed before an inspector where others have been prevented by a procedural defect from appearing. However, it is impossible to see how there would be any prejudice where the matter not put to consultation has been dealt with by the party unless there is something which could have been put by whoever was unable to appear, which was unknown to the party in question and which might have affected the result.

43. In this case, there is no evidence that anyone might have wanted to appear nor that there could have been any additional matter which was not dealt with by the claimants and which could have been advanced. Certainly there can be no sensible suggestion that there was any additional material which might have affected the result. Thus there was no prejudice and so the procedural defect (if there was one: it is very doubtful that there was) cannot avail the claimants. The second ground I reject.

44. However, the claimants succeed on their first ground. I shall hear counsel on the order I should make as a result.

Neutral Citation Number: [2014] EWHC 406 (Admin)

Case No: CO/3796/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/02/2014

Before :

THE HONOURABLE MR JUSTICE SALES

- -

Between :

Ashdown Forest Economic Development Llp	**Claimant**
- and -	
(1) Secretary of State for Communities and Local Government **(2) Wealden District Council** **(3) South Downs National Park Authority**	**Defendants**

- -
- -

David Elvin QC & Charles Banner (instructed by **King Wood Mallesons LLP**) for the **Claimant**
Richard Kimblin (instructed by **the Treasury Solicitor**) for the **First Defendant**
James Pereira & David Graham (instructed by **Wealden District Council**) for the **Second and Third Defendants**

Hearing dates: 4/2/14-5/2/14

- -

Judgment

Mr Justice Sales :

Introduction

1. This is a claim under section 113 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") to quash, in whole or in part, the Wealden District Core Strategy Local Plan ("the Core Strategy"). The Core Strategy forms part of the statutory development plan for the administrative areas of both the Second Defendant, Wealden District Council ("WDC"), and the Third Defendant, South Downs National Park Authority ("SDNPA"). WDC had the main role in preparing the Core Strategy for adoption. It was adopted by WDC and SDNPA jointly on 19 February 2013.

2. The Claimant is an umbrella organisation representing the interests of a number of major landowners in the area covered by the Core Strategy, whose property interests are affected by the Core Strategy. In particular, the Core Strategy places limits on building development in the general area covered by it and also specific restrictions in relation to building development in an area within 7 km of the boundary of Ashdown Forest, which is a protected site within the area covered by the Core Strategy. The landowners would like greater opportunities to develop their land by building on it than the Core Strategy allows for.

3. Ashdown Forest is designated as a Special Area of Conservation under the Habitats Directive (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) and the Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations"). It is also designated as a Special Protection Area under the Birds Directive (Directive 2009/147/EC on the conservation of wild birds) and the Habitats Regulations.

4. The Core Strategy was adopted by WDC and SDNPA after an extensive iterative process of consultation and refinement, including an examination in public before an Inspector (Mr Moore, appointed by the Secretary of State, the First Defendant), at hearings in January and February 2012 and on 6 September 2012. The Inspector's Report on the Core Strategy pursuant to section 20 of the 2004 Act was issued on 30 October 2012. It made certain recommendations, subject to compliance with which the Inspector found the Core Strategy to be "sound" and cleared it for adoption by WDC and SDNPA.

5. In order to protect Ashdown Forest to the level required by the Habitats Directive, the Birds Directive and the Habitats Regulations, the draft Core Strategy submitted for examination by the Inspector WDC included an overall housing requirement for the area covered by the Core Strategy of 9,600 in the period to 2030 and proposed measures of particular control in relation to new development close to the Forest in the form of a prohibition on new development within 400m of the edge of the Forest (to limit predation by domestic cats and so forth) and a requirement that for new development within 7 km of the Forest suitable alternative natural green space ("SANG") should be provided. The purpose of the proposed SANG requirement was to limit housing development in proximity to the Forest, with a view to limiting

recreational visits to the Forest to a level which would not place excessive strain on the bird wildlife in the Forest.

6. The overall housing requirement figure of 9,600 in the draft Core Strategy was a considerable reduction below the then current figure of 11,000 contained in another planning document, the South East Plan. The South East Plan was the regional spatial strategy for the South East which had been promulgated under the 2004 Act prior to the removal of the layer of regional strategy planning by amendment of that Act by the Coalition Government. The Government announced in July 2010 that regional strategy plans were to be revoked. However, the South East Plan was only formally revoked with effect from March 2013, after adoption of the Core Strategy in issue in these proceedings.

7. Although the Inspector found that the figure of 11,000 for the overall new housing requirement in the South East Plan remained the appropriate figure for new housing needs in the area, he considered that the lower figure proposed by WDC for inclusion in the Core Strategy was justified by reason of environmental constraints in relation to the need to protect Ashdown Forest from the detrimental effects of traffic pollution associated with increased density of population in the area. For separate reasons which are not the subject of challenge he reduced WDC's proposed figure of 9,600 to 9,440. The Inspector also considered that the 7 km SANG zone and 400m development exclusion zone were appropriate, and required that they be promoted from discussion in explanatory text in the draft Core Strategy to be incorporated into a formal policy statement in the approved version of the Strategy, in policy WCS12 (Biodiversity).

8. The Claimant challenges the lawfulness of the adoption of the Core Strategy on four grounds:

   i) Ground One: In relation to the statement of overall housing requirement in the Core Strategy as adopted, the Inspector reached an irrational and illogical conclusion, contrary to the approach he should have adopted in compliance with national policy guidance as to his role in examining a development plan, that the lower figure of 9,440 was justified. He erred in accepting WDC's contention that a risk of environmental damage to Ashdown Forest arising from the impact of nitrogen and nitrogen oxide pollution from traffic ("nitrogen deposition") associated with housing development at a higher figure meant that the objectively assessed need for 11,000 new homes in the relevant period could not be met. He should have found that WDC had not carried out sufficient investigations to determine whether in fact the higher, objectively assessed housing requirement figure could have been accommodated without undue risk of environmental damage to the Forest. He should have required WDC to undertake further work to see whether an overall new housing requirement of up to 11,000 could be accommodated and included in the Core Strategy, and until that work was done should have treated the draft Core Strategy as unsound and not properly capable of adoption. The unlawfulness in the approach and conclusion of the Inspector

prevented the adoption of the Core Strategy by WDC and SDNPA from being lawful. Mr Kimblin appeared for the Secretary of State to defend the Inspector against this allegation of unlawfulness in his approach and Mr Pereira, for WDC and SDNPA, adopted his submissions in relation to this Ground;

ii) Ground Two: Again in relation to the statement of overall housing requirement in the Core Strategy, the steps taken by WDC to investigate whether the figure of 9,440 was justified were inadequate to comply with its obligations under Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ("the SEA Directive") and the domestic regulations which implement that Directive, the Environmental Assessment of Plans and Programmes Regulations 2004 ("the Environmental Assessment Regulations"), which required it to examine reasonable alternatives to the plan which it chose to adopt and to explain its choice;

iii) Ground Three: Again in relation to the statement of overall housing requirement in the Core Strategy, WDC failed to carry out an appropriate assessment as required by regulation 61(1)(a) of the Habitats Regulations and the Habitats Directive regarding the impact on Ashdown Forest of nitrogen deposition; and

iv) Ground Four: In relation to the 7 km SANG zone, the adoption of Policy WCS12 was contrary to the SEA Directive and the Environmental Assessment Regulations, in that there was no assessment of the relative environmental impacts of a different radius or of alternative means of mitigating the additional recreational pressure on Ashdown Forest arising from new development.

9. Mr Pereira presented the submissions for WDC and SDNPA in relation to Grounds Two, Three and Four. The Secretary of State made no submissions in relation to those Grounds, since they were not directed against the Inspector (even though, presumably, in theory they might have been, as further grounds on which it might have been said that the Inspector ought to have found that the Core Strategy had not been lawfully prepared and was unsound).

Legal Framework

(i) The 2004 Act

10. The Core Strategy qualifies as a "development plan document" for the purposes of the 2004 Act. Once such a core strategy is adopted by a local planning authority, it becomes part of the statutory development plan of that authority. This has the result that planning applications must be determined in accordance with the core strategy, as in relation to other parts of the statutory development plan, unless material considerations indicate otherwise: section 38(6) of the 2004 Act.

11. A core strategy also sets the framework for drawing up other, lower level and more detailed parts of the statutory development plan of a local planning authority. Here, the relevant local planning authority is WDC.

12. The Secretary of State has given policy guidance in relation to this process in the National Planning Policy Framework issued in March 2012 ("the NPPF"), which replaced a range of previous policy guidance documents. The NPPF includes a presumption in favour of sustainable development. Paragraph 47 of the NPPF requires local planning authorities (amongst other things) to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with a view to boosting significantly the supply of housing. The extent of identification of deliverable sites required by this paragraph depends on the size of the housing requirement identified in a local planning authority's core strategy. One effect of the incorporation of the lower housing requirement figure in the Core Strategy, therefore, is that WDC will work to identify a lower level of specific deliverable sites in its other plan documents, which has a negative effect on the ability of local landowners to obtain planning permission for new developments on their land.

13. The NPPF includes the following guidance at paragraphs 158-159:

> "*Using a proportionate evidence base*
>
> 158. Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals
>
> *Housing*
>
> 159. Local planning authorities should have a clear understanding of housing needs in their area. …"

14. At the time when the Core Strategy was drawn up, subjected to examination in public and adopted, the 2004 Act required a local planning authority to have regard to the regional strategy for its area in drawing up its own development plan documents: section 19(2)(b). Section 24(1)(a) provided that such local development documents "must be in general conformity with" the regional strategy. Hence WDC was required to have regard to the South East Plan when drawing up the Core Strategy and the Core Strategy was required to be "in general conformity" with the South East Plan. The South East Plan identified the housing requirement for WDC's area for the period to 2030 as 11,000 homes.

15. The notion of "general conformity" of local development plans with a regional strategy imports a limited degree of latitude for local plans to depart from what is set

out in a regional strategy: see *Persimmon Homes (Thames Valley) Ltd v Stevenage B.C.* [2005] EWCA Civ 1365; [2006] 1 WLR 334.

16. Section 20 of the 2004 Act provides for independent examination of development plan documents. A local planning authority must submit every development plan document, when it believes it is ready, to the Secretary of State for independent examination. The examination is carried out by an inspector appointed by the Secretary of State. Section 20(5) provides in relevant part as follows:

> "(5) The purpose of an independent examination is to determine in respect of the development plan document–
>
> (a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;
>
> (b) whether it is sound …"

17. The inspector may make recommendations for modifications to a development plan document to make it sound.

18. Paragraph 182 of the NPPF provides as follows:

> "*Examining Local Plans*
>
> 182. The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:
>
> - *Positively prepared* – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
>
> - *Justified* – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
>
> - *Effective* – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities;

> - *Consistent with national policy* – the plan should enable the delivery of sustainable development in accordance with the policies in the [NPPF]. …"

19. Under Ground One, the Claimant submits that the Inspector failed properly to follow the guidance in the NPPF in arriving at his conclusion that the Core Strategy as ultimately adopted was sound, and that his conclusion was illogical and irrational.

20. Section 113 of the 2004 Act provides in relevant part as follows:

> **"113 Validity of strategies, plans and documents**
>
> (1) This section applies to–
>
> …
>
> (c) a development plan document; …
>
> (2) A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section.
>
> (3) A person aggrieved by a relevant document may make an application to the High Court on the ground that–
>
> (a) the document is not within the appropriate power;
>
> (b) a procedural requirement has not been complied with.
>
> (4) But the application must be made not later than the end of the period of six weeks starting with the relevant date.
>
> (5) The High Court may make an interim order suspending the operation of the relevant document–
>
> (a) wholly or in part;
>
> (b) generally or as it affects the property of the applicant.
>
> (6) Subsection (7) applies if the High Court is satisfied–
>
> (a) that a relevant document is to any extent outside the appropriate power;
>
> (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement.
>
> (7) The High Court may—

(a) quash the relevant document;

(b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.

(7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.

(7B) Directions under subsection (7A) may in particular—

(a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;

(b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;

(c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);

(d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

(7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—

(a) wholly or in part;

(b) generally or as it affects the property of the applicant.

…

(10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document.

(11) References to the relevant date must be construed as follows–

…

> (c) for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be); …"

21. In *Blyth Valley BC v Persimmon Homes (North East) Ltd* [2008] EWCA Civ 861; [2009] JPL 335 the Court of Appeal held that the ground of challenge in section 113(3)(a) "in effect amounts to an assertion that the adoption of the document in question was ultra vires, and it brings into play the normal principles of administrative law" (per Keene LJ at [8]).

22. It is common ground that the Claimant has proper standing to bring this challenge and that the challenge is brought within time.

(ii) The Habitats Directive, the Birds Directive and the Habitats Regulations

23. The Habitats Directive and the Birds Directive have been implemented in domestic law by the Habitats Regulations. The Directives and the Regulations provide for development plans and projects to be screened before adoption to determine whether they might pose a risk of harm to protected sites, and if it is determined that they may create a risk of harm an "appropriate assessment" of the extent of the harm and whether it is acceptable or can be mitigated is required before the plan or project is adopted.

24. The relevant provision in the Habitats Regulations is regulation 61, which provides in relevant part as follows:

> "**61. Assessment of implications for European sites and European offshore marine sites**
>
> (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—
>
> (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
>
> (b) is not directly connected with or necessary to the management of that site,
>
> must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.
>
> (2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of

> the assessment or to enable them to determine whether an appropriate assessment is required.
>
> (3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.
>
> (4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.
>
> (5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).
>
> (6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given. …"

25. Regulation 61 applies in relation to the adoption of the Core Strategy. As described in greater detail below, WDC carried out a screening exercise in relation to the relevant policies proposed for the Core Strategy and determined that at a stipulated housing requirement figure of 9,600 the increase in traffic from development in its area would not pose a significant risk of harm to the Ashdown Forest protected site. WDC also assessed that with the protective measures including the 7 km SANG zone, additional impact from recreational visitors to the Forest from new development in its area would be kept within reasonable bounds and would not create significant additional risk to the protected site. As a result of the screening exercise, therefore, WDC determined that it was not necessary to carry out an "appropriate assessment" under regulation 61 in relation to its proposals for the Core Strategy.

26. On the other hand, if a higher housing requirement figure were included in the Core Strategy, there would have been a risk of harm arising from nitrogen deposition associated with increased levels of traffic in relation to development in the area and it would have been necessary to proceed to carry out an "appropriate assessment" before a policy with such higher level of housing requirement was included in the Plan.

27. Regulation 61 is directly relevant to Ground Three. The Claimant maintains that WDC acted in breach of that regulation and the Habitats Directive in the way in which it carried out the screening exercise, in that it failed to have regard to the

cumulative effect of the Core Strategy in combination with other plans, which the Claimant says would have shown a decline in nitrogen deposition rates which would have permitted accommodation of a higher housing requirement figure in the Core Strategy.

(iii) The SEA Directive and the Environmental Assessment Regulations

28. The SEA Directive was promulgated to supplement and extend effective protection of the environment beyond that achieved by the Environmental Impact Assessment ("EIA") Directive (Directive 85/337/EEC). The SEA Directive, requiring environmental assessment of strategic development plans, is designed to ensure that there is an environmental assessment in relation to adoption of such plans, that is to say, at a planning stage before site specific applications are made and decided in the context of constraints which may be imposed as a result of such strategic plans. As the European Commission has pointed out, the EIA Directive and the SEA Directive "are to a large extent complementary: the SEA is 'up-stream' and identifies the best options at an early planning stage, and the EIA is 'down-stream' and refers to the projects that are coming through at a later stage" (*Report on the Effectiveness of the Directive on Strategic Environmental* Assessment, 2009, section 4.1).

29. The recitals in the SEA Directive include the following:

> "Whereas:
>
> (1) Article 174 of the Treaty provides that Community policy on the environment is to contribute to, *inter alia*, the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources and that it is to be based on the precautionary principle. Article 6 of the Treaty provides that environmental protection requirements are to be integrated into the definition of Community policies and activities, in particular with a view to promoting sustainable development. …
>
> (4) Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.
>
> (5) The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in

which to operate by the inclusion of the relevant environmental information into decision making. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.

(6) The different environmental assessment systems operating within Member States should contain a set of common procedural requirements necessary to contribute to a high level of protection of the environment. …

(9) This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.

(10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna, are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local level or are minor modifications to the above plans or programmes, they should be assessed only where Member States determine that they are likely to have significant effects on the environment. …

(14) Where an assessment is required by this Directive, an environmental report should be prepared containing relevant information as set out in this Directive, identifying, describing and evaluating the likely significant environmental effects of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme. Member States should communicate to the Commission any measures they take concerning the quality of environmental reports

> (15) In order to contribute to more transparent decision making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion. …
>
> (17) The environmental report and the opinions expressed by the relevant authorities and the public, as well as the results of any transboundary consultation, should be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.
>
> (18) Member States should ensure that, when a plan or programme is adopted, the relevant authorities and the public are informed and relevant information is made available to them. …"

30. The operative part of the SEA Directive includes the following provisions:

> "*Article 1*
>
> **Objectives**
>
> The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain and programmes which are likely to have significant effects on the environment.
>
> *Article 2*
>
> **Definitions**
>
> For the purposes of this Directive:
>
> (a) 'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government and

- which are required by legislative, regulatory or administrative provisions;

(b) 'environmental assessment' shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

(c) 'environmental report' shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;

(d) 'The public' shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

Article 3

Scope

…

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC. …

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set

out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive. …

7. Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public. …

Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. …

Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure. …

Article 9

Information on the decision

1. Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed and the following items are made available to those so informed:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and

(c) the measures decided concerning monitoring in accordance with Article 10.

2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the Member States. …"

31. Annex I to the SEA Directive, which sets out the information to be included in the environmental report, provides as follows:

"The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the content, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental

importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;

(e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;

(f) the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings."

32. As usual with EU legislation, a purposive approach is to be taken to the interpretation of the SEA Directive: *Walton v Scottish Ministers* [2012] UKSC 44; [2013] PTSR 51 at [20]-[21] per Lord Reed JSC. The Directive is implemented in domestic law by the Environmental Assessment Regulations. The Regulations closely follow the drafting of the SEA Directive and are to be interpreted in conformity with it, in accordance with usual *Marleasing* principles (Case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentación SA* [1992] 1 CMLR 305).

33. Guidance in relation to the precautionary principle, in light of which the SEA Directive is to be interpreted, is provided in a number of judgments: see e.g. Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee* [2005] 2 CMLR 31, para. 44.

34. Regulation 12 corresponds to Article 5 of the Directive. It provides in relevant part as follows:

> "**12.— Preparation of environmental report**
>
> (1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.
>
> (2) The report shall identify, describe and evaluate the likely significant effects on the environment of–
>
> (a) implementing the plan or programme; and
>
> (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.
>
> (3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of–
>
> (a) current knowledge and methods of assessment;
>
> (b) the contents and level of detail in the plan or programme;
>
> (c) the stage of the plan or programme in the decision-making process; and
>
> (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.
>
> …
>
> (5) When deciding on the scope and level of detail of the information that must be included in the report, the responsible authority shall consult the consultation bodies. …"

35. Schedule 2 to the Environmental Assessment Regulations is in material respects in the same terms as Annex I to the Directive.

36. Regulation 13(1) corresponds to Article 6 of the Directive. It provides that every relevant draft plan prepared pursuant to regulation 12 "and its accompanying environmental report" shall be made available for the purposes of consultation.

37. Regulation 16 makes provision in relation to the procedures to be followed after a plan has been adopted. It corresponds to Article 9 of the Directive. It requires publication of the plan as adopted, its accompanying environmental report and various information.

Factual Background

38. In May 2009, the South East Plan was promulgated as the relevant regional strategy for the South East. It included statements of housing requirements for the South East for the period to 2030. The housing requirement for the area of WDC was set at 11,000 homes. The South East Plan included the following policy NRM5, "Conservation and Improvement of Biodiversity":

> "Local planning authorities and other bodies shall avoid a net loss of biodiversity, and actively pursue opportunities to achieve a net gain across the region.
>
> i. They must give the highest level of protection to sites of international nature conservation importance (European sites). Plans or projects implementing policies in this RSS are subject to the Habitats Directive. Where a likely significant effect of a plan or project on European sites cannot be excluded, an appropriate assessment in line with the Habitats Directive and associated regulations will be required.
>
> ii. If after completing an appropriate assessment of a plan or project local planning authorities and other bodies are unable to conclude that there will be no adverse effect on the integrity of any European sites, the plan or project will not be approved, irrespective of conformity with other policies in the RSS, unless otherwise in compliance with 6(4) of the Habitats Directive.
>
> iii. For example when deciding on the distribution of housing allocations, local planning authorities should consider a range of alternative distributions within their area and should distribute an allocation in such a way that it avoids adversely affecting the integrity of European sites. In the event that a local planning authority concludes that it cannot distribute an allocation accordingly, or otherwise avoid or adequately mitigate any adverse effect, it should make provision up to the level closest to its original allocation for which it can be concluded that it can be distributed without adversely affecting the integrity of any European sites.
>
> iv. They shall avoid damage to nationally important sites of special scientific interest and seek to ensure that damage to county wildlife sites and locally important wildlife and geological sites is avoided, including additional areas outside the boundaries…"

39. In July 2009 WDC issued a consultation document on spatial development options for the Core Strategy. It was premised on a housing requirement of 11,000 homes, as stated in the South East Plan. Various options for the distribution of this requirement in WDC's area were canvassed.

40. Alongside this, WDC issued a Sustainability Appraisal drawn up by its environmental consultants in relation to the spatial development options for the Core Strategy. A Sustainability Appraisal is a form of assessment required in the plan development process which also qualifies as the environmental report required by the SEA Directive and Regulations. Chapter 6 reviewed the likely predicted impacts of the housing distribution options under review.

41. At about the same time, WDC conducted some preliminary screening work for the purposes of the Habitats Directive and Regulations and noted that it appeared that an "appropriate assessment" would be required in relation to the impact of the Core Strategy on Ashdown Forest. The possible impacts were noted to be increased recreational pressure on the site from new housing development in the north of WDC's area, where the Forest is located, and nitrogen deposition associated with increased traffic movements close to the Forest arising from such development.

42. In early 2010, WDC's environmental consultants did some preliminary work on an appropriate assessment report under the Habitats Directive and Regulations. On 8 June 2010 there was a meeting between WDC and its consultants and representatives of Natural England, one of the statutory consultee bodies in relation to the development of the Core Strategy. Natural England said that it considered that new development in WDC's area up to 7 km from Ashdown Forest, in combination with new housing development elsewhere, had the potential to affect adversely the integrity of the protected site through disturbance of the bird species there, so that the precautionary principle required the implementation of mitigation measures comprising a development exclusion zone within 400m of the boundary of the Forest and a requirement that any net increase in dwelling numbers within 7 km of the Forest would require the provision of SANGs (it was noted that it might be acceptable to have one or two large SANGs to cover a number of developments, rather than requiring a separate SANG for each development in that area). Natural England also noted the issue of nitrogen deposition associated with a housing requirement of 11,000 dwellings, and said that mitigation measures would be required in relation to that as well.

43. In mid-2010, the Government announced that it intended to revoke the layer of regional strategy plans in the planning system, which would entail revocation of the South East Plan. However, the formal legal revocation of the South East Plan did not occur until March 2013, shortly after adoption of the Core Strategy. WDC therefore remained obliged to ensure that its Core Strategy, as adopted, was in general conformity with the South East Plan. The announcement of the revocation of the South East Plan served as a spur to WDC to do further work to update the evidence base in relation to the requirement for new homes in its area.

44. On 21 September 2010, Natural England published a report it had commissioned on data analysis of a visitor survey at Ashdown Forest. The analysis modelled visitor levels set against the distribution of the protected birds present on the site. The report did not seek to explore breeding success. It noted, "Additional development surrounding the site is likely to result in increases in visitor rates to the site", and gave predictions of the number of additional visits arising from development in different locations around the site. The report stated, "It is not possible to determine whether or not an increase in visitor rates may result in impacts on the [protected] bird species for which the site is designated." The analysis compared Ashdown Forest with studies of disturbance at other protected sites, in particular the Thames Basin Heaths and the Dorset Heaths. In relation to those sites, a 5 km protective zone had been operated. The analysis indicated that Ashdown Forest had lower densities of protected species (nightjar, woodlark and Dartford Warbler) than the Thames Basin Heaths and (save in relation to woodlarks) Dorset Heaths, while it had much lower densities of visitors than the Thames Basin Heaths but slightly higher on average than the Dorset Heaths. The report reviewed studies which showed links between human disturbance and negative effects on all three species.

45. Chapter 8 of the report discussed the implications of the evidence for site management, spatial planning and mitigation. The report stated that "whilst birds [in Ashdown Forest] are not being displaced from breeding habitat as a result of recreation, it cannot be conclusively determined that current levels of recreational pressure are not affecting the breeding success of birds exposed to recreational pressure" (para. 8.8) and "The level at which recreational pressure will be such that birds will begin to be displaced is not known. Given the evidence from other sites, there is the potential that, were access levels to increase, there may be avoidance of otherwise suitable habitat and there may be impacts on breeding success" (para. 8.9). It was noted that mitigation strategies, along with long term monitoring, were in place in relation to the Thames Basin and Dorset Heaths to counteract the effects of increasing levels of housing in their vicinity (also para. 8.9). The report referred to the principle of taking a precautionary approach (para. 8.12) and advised that a similar approach to protection of other heathland sites should be taken, but with adjustment for the specific features of Ashdown Forest (paras. 8.13-8.15).

46. The report recommended adoption of a 400m exclusion zone in which residential development is avoided, on the basis that at such short distances it is difficult to provide alternative sites for use and residents would be likely to use the Forest for their local recreational needs, such as the daily dog walk, and so as to minimise other urban effects, such as cat predation (paras. 8.16-8.17). It also analysed the extent of a "Wider Zone of Influence", by assessing "how far people travel to visit Ashdown and where new housing will result in a definite increase in visitor pressure to the [protected site] and where these visits are of a type that will have an impact on the site" (distinguishing, for example, daily recreational visits to walk the dog from visits once or twice a year to see the view) (para. 8.18). The report noted that 5 km zones had been established around the protected sites at the Thames Basin and Dorset Heaths in which it was recognised that new development had the potential to result in increased use of the heaths so that mitigation measures needed to be established (para.

8.19). The report then reviewed data from visitor surveys in relation to Ashdown Forest and the Thames Basin and Dorset Heaths; noted that visitors to the Forest appeared to travel further than in relation to the other sites; and modelled the visitor rates to be expected at the Forest from development of specific numbers of houses at specific locations, highlighting how the effect of additional housing near it would lead to a much higher increase in visitors than an equivalent sized development much further from it, thereby putting increased pressure on the protected species at the Forest.

47. The effect of the analysis in the report was to identify that people were willing to travel greater distances by car to get to Ashdown Forest than in relation to the Thames Basin and Dorset Heaths, with the result that one should expect to establish a wider protective zone in relation to the Forest in which mitigation measures would be required (the measure considered appropriate was use of SANGs) than in relation to the other sites reviewed, in order to offset its greater attractive force and the likely additional visitor numbers which would be generated by residential development in its vicinity. In due course, a 7 km zone was chosen to reflect these points. In my view, this zone was appropriately based on the available evidence and the advice of Natural England, the expert statutory consultees on environmental issues.

48. On 16 September 2010 WDC officers met with representatives of Natural England to discuss the issue of nitrogen deposition in relation to Ashdown Forest. Natural England explained its view that if the estimated annual average daily traffic ("AADT") flows would be increased by 1,000 cars or more on any road in or adjacent to the Forest, that would represent a material increased risk to the environmental integrity of the protected site and would trigger the need for a detailed "appropriate assessment" to be carried out pursuant to the Habitats Directive, Birds Directive and the Habitats Regulations. Conversely, if the estimated AADT flows for cars were less than 1,000, there would be no material increase in risk and a detailed appropriate assessment would not be required.

49. There is no challenge to the use of the 1,000 AADT flow figure as the relevant threshold to trigger the need for a detailed appropriate assessment of the impact of increased nitrogen deposition on Ashdown Forest. Mr Elvin QC, for the Claimant, however, emphasises that if the 1,000 AADT flow increase threshold were exceeded because of the extent of housing development in the vicinity of the Forest, it would not necessarily follow that such development could not be permitted because of the operation of the Habitats Directive, Birds Directive and the Habitats Regulations. If a detailed appropriate assessment were carried out, as required by that legislation, it might reveal that the possible environmental harm posed by more extensive development was in fact within acceptable limits and that such development could safely proceed.

50. In February 2011, WDC issued a Proposed Submission Core Strategy. This was a draft of the Core Strategy document which it would in due course have to submit to the Secretary of State for the purposes of independent examination, issued for the purposes of consultation before the final submission version of the Core Strategy was

drawn up. In the Proposed Submission Core Strategy, in accordance with advice which had by this stage been received from Natural England, WDC included a proposal for a 400m development exclusion zone around Ashdown Forest together with a 7 km zone within which any development would have to be accompanied by mitigation measures in the form of provision of SANGs (see, in particular, para. 3.32). Proposed policy WCS12 (Biodiversity) stated, among other things, that WDC would prevent a net loss of biodiversity, ensure a comprehensive network of habitats and work with partners to maximise opportunities to ensure that habitats etc. are maintained, restored and enhanced (but it did not include specific text relating to the 400m exclusion zone and 7 km protective zone around the Forest). WDC also included a proposed policy WCS1 (Provision of Homes and Jobs 2006-2030) which used the figure of 9,600 additional dwellings to be provided in the period, rather than the 11,000 figure included in the South East Plan.

51. In conjunction with the Proposed Submission Core Strategy, WDC also issued a Sustainability Appraisal of it, again for the purposes of consultation before final submission to the Secretary of State. This Sustainability Appraisal was proposed as the document which would cover the matters required to be examined in an environmental report for the purposes of the SEA Directive and the Environmental Assessment Regulations. It included a discussion of six strategic spatial housing options which had been reviewed at the outset of WDC's consideration of the Core Strategy and explained in chapters 1 and 6 the reasons why three of them had not been taken forward for more detailed consideration, while the other three (identified as Scenarios A, B and C) had been. Chapter 8 set out the sustainability appraisal of the selected three plan alternatives.

52. Scenario A reflected the overall number (11,000) and distribution (7,000 in the south of WDC's area and 4,000 in the north) of additional dwellings as allocated to WDC in the South East Plan. Scenario B also reflected the overall 11,000 figure in the South East Plan, but provided for 6,000 to be allocated to the south of WDC's area and 5,000 to the north (where Ashdown Forest is located), to accommodate infrastructure constraints in the south. It was noted that in terms of environmental impact on Ashdown Forest, Scenario A would be better than Scenario B, because it involved less new development close to the Forest.

53. Scenario C involved a departure from the overall 11,000 figure for new dwellings in the South East Plan in favour of a figure of 9,600. It was described as having emerged as a result of the sustainability appraisal of Scenarios A and B, which ran into infrastructure capacity constraints (both Scenario A and Scenario B, but in particular in relation to Scenario A) and environmental constraints (both Scenario A and Scenario B, but in particular Scenario B in relation to Ashdown Forest, by reason of its higher distribution of new homes in the north of WDC's area). WDC stated: "Scenario C seeks to maximise housing delivery within acknowledged capacity constraints …" (para. 8.13).

54. At para. 8.40 and in Table 8.8 WDC explained its reasons for not proceeding with Scenario A and Scenario B, and for selecting Scenario C for detailed sustainability

review, in order to comply with Article 5(1) of and paragraph (h) of Annex I to the SEA Directive. The main reasons given for rejecting Scenarios A and B related to infrastructure constraints which had nothing to do with the need to protect Ashdown Forest, but an additional reason given for rejecting Scenario B was that the distribution of new development under it did not reflect environmental constraints including in relation to the protected site at Ashdown Forest. In relation to Scenario C, WDC stated:

> "Scenario C distributes growth in line with acknowledged infrastructure capacity and is realistic in terms of the likelihood of the provision of new infrastructure to support growth. This distribution places less pressure on resources both environmental and social and enables a more realistic balance of housing growth with employment provision. Broadly in line with Parish responses to requirements for new growth [part of the further work done after the announcement that the South East Plan was to be revoked] it should meet the needs of local communities. The predicted environmental effects for this Scenario are less adverse than for Scenario A or B and the selection of this option is therefore more likely to achieve the vision for Wealden of protecting the essential rural character and high quality environment."

55. Alongside this Sustainability Appraisal, WDC issued a report by itself and East Sussex County Council (the relevant highways authority) for the purposes of the Habitats Regulations, which assessed, among other things, the impact on the increase in traffic resulting from WDC's Proposed Submission Core Strategy on the Ashdown Forest protected site. This report explained the methodology behind choosing an increase of 1,000 AADT flows on any road in or within 200m of the Forest as the relevant threshold for assessing whether a detailed appropriate assessment under the Habitats Regulations would be required or not, and contained an assessment of the traffic impacts flowing from WDC's proposed Core Strategy (Scenario C). The additional AADT flows on all relevant roads were assessed to be below the 1,000 level (albeit, in the case of one road, at a figure of 950, which did not leave much headroom). This meant that a detailed appropriate assessment was not required under the Habitats Regulations in relation to Scenario C.

56. After further consultation on these documents, in August 2011 WDC drew up and submitted to the Secretary of State for independent examination final submission versions of the draft Core Strategy, the related Sustainability Appraisal and the related assessment under the Habitats Regulations. This latter document was entitled simply, "Assessment of the Core Strategy under the Habitats Regulations" ("the Habitats Regulations Assessment"), and was in relevant parts in the form of a screening assessment to explain why no detailed "appropriate assessment" was required in relation to Ashdown Forest under the Habitats Regulations; but in some places in the submission version of the Core Strategy and the Sustainability Appraisal it was referred to as the "Appropriate Assessment". The Sustainability Appraisal

constituted the "environmental report" required by the SEA Directive and the Environmental Assessment Regulations.

57. The submission Core Strategy and Sustainability Appraisal were in relevant respects closely similar to the draft versions of February 2011, with the Sustainability Appraisal amplifying the reasoning set out in the draft version. It was again explained why Scenario C had been chosen as the Core Strategy. Policy WCS12 was included in the same terms, together with para. 3.32 in relation to the 400m exclusion zone and 7 km protective zone around Ashdown Forest. Policy WCS1, with a requirement for 9,600 additional dwellings, was repeated.

58. Chapter 8 of the Sustainability Appraisal again identified infrastructure constraints in relation to Scenario A (para. 8.6). In addition, it noted that Scenario A performed poorly in relation to general environmental objectives (not restricted to the issue of protection of Ashdown Forest), and although it was noted that it would have benefits in terms of impact on Ashdown Forest as compared with Scenario B, it was stated that the distribution figures for new homes in relation to both these scenarios "would result in mitigation requirements for impacts on the Ashdown Forest [protected site], as highlighted by the Habitat Regulations Assessment" (para. 8.7).

59. Infrastructure objections to Scenario B were identified (para. 8.9). In addition, it was noted that it performed poorly in relation to general environmental objectives, and these were assessed to be worse than for Scenario A since more development would be directed in proximity to Ashdown Forest and it would, "on a precautionary basis, require mitigation to prevent additional nitrogen deposition and prevent an adverse effect on the integrity of [the protected site]", which would require measures to restrict additional traffic journeys across the local strategic road network, which would have inherent difficulties in terms of implementation and reliability (para. 8.11).

60. Paragraph 8.13 of the Sustainability Appraisal again explained that Scenario C emerged from work which revealed infrastructure capacity and environmental constraints in relation to Scenarios A and B, and stated that Scenario C would be more beneficial overall in sustainability terms, "as it places less pressure on environmental resources, on infrastructure and on communities and is evidence-based at a local level using the most up to date evidence [sc. on housing requirements]".

61. Table 8.2 set out a comparison of Scenarios A, B and C against the Sustainability Appraisal framework. Against the objective of ensuring "that everyone has the opportunity to live in a good quality, sustainably constructed and affordable home", the greater new housing numbers in Scenarios A and B (11,000), as against only 9,600 in Scenario C, were noted. But for Scenario A it was noted that constraints under the Habitats Regulations would prevent delivery in the south of WDC's area, for Scenario B it was noted that constraints under the Habitats Regulations would prevent delivery in the north of the area (by reference to the Habitats Regulations Assessment for Ashdown Forest) and also to a lesser extent in the south of the area (by reference to the Habitats Regulations Assessment for the Pevensey Levels), while

for Scenario C it was noted that "This scenario allows delivery of the maximum amount of housing the District can accommodate focusing on the areas where affordable housing is needed the most."

62. Mr Elvin criticised this statement in relation to Scenario C as a false explanation, because WDC had not carried out a detailed appropriate assessment under the Habitats Regulations in relation to Ashdown Forest to examine whether the higher housing figures and distributions under Scenarios A or B might in fact be accommodated. If WDC had done that work - although clearly this was a matter of speculation - it might have been discovered that the development in Scenario A or Scenario B could have been accommodated without breach of the obligations under the Habitats Directive, Birds Directive and Habitats Regulations to protect Ashdown Forest.

63. I do not consider that this criticism is fair. Unlike for Scenario C, the need for an "appropriate assessment" of the environmental impact on Ashdown Forest under those Directives and Regulations had not been screened out in relation to Scenarios A and B by the assessment work in relation to nitrogen deposition. It is common ground, therefore, that WDC could not lawfully have adopted either Scenario A or Scenario B on the evidence then available. As discussed below, there were good reasons why WDC had not carried out a detailed "appropriate assessment" in relation to those scenarios. Thus, in the circumstances which applied in August 2011, WDC was entitled to state as its assessment that Scenario C allowed delivery of the maximum amount of housing the district could accommodate.

64. Again in stated compliance with Article 5(1) of and paragraph (h) of Annex I to the SEA Directive, para. 8.40 and Table 8.9 (renumbered from Table 8.8 in the draft submission version) of the Sustainability Appraisal explained the reasons for selecting or rejecting alternatives, why Scenario C had been selected for full sustainability appraisal and why Scenarios A and B had not been so selected in terms which were essentially the same as those in the draft submission version (see paras. [53] and [54] above).

65. At para. 9.15 of the Sustainability Appraisal, in relation to the topic of conservation and enhancement of the biodiversity in WDC's area, WDC noted:

> "The broad locations for development have been chosen with biodiversity implications in mind and on a strategic level 'least worst options' in terms of impact on biodiversity were progressed. There is still uncertainty over the specific impacts on biodiversity from the spatial policies and strategies and these will be explored and understood further at the Site Allocations Stage. The Core Strategy has two policies that will have significant beneficial effects for biodiversity, WCS12 and WCS13 aim to put biodiversity central to considerations when planning and designing development areas and this should help

> to mitigate overall impacts on biodiversity on a district wide level."

66. Para. 9.34 of the Sustainability Appraisal noted that the Habitats Regulations Assessment had identified the need for mitigation and avoidance measures in relation to impacts from air quality and recreational pressure, and referred to the 400m development exclusion zone and 7 km protective zone around Ashdown Forest, which it said was outlined in the Core Strategy "and will be developed in subsequent [development plan documents]".

67. The Habitats Regulations Assessment was by expert consultants, UE Associates Ltd, appointed by WDC. The Assessment reviewed a number of protected sites in WDC's area, including Ashdown Forest. It explained the issue of nitrogen deposition in relation to the Forest and again set out the methodology and screening assessment based on the additional 1,000 AADT flow figure, essentially repeating the previous information (see para. [55] above). It noted analysis which had been carried out which showed that "the nitrogen deposition load [at the centre of the Forest] is significantly exceeded beyond the ability of habitats to withstand deleterious effects, even without implementation of the Core Strategy" and that the "situation is likely to be more severe in closer proximity to busy road corridors" (p. 18 and Table 5.1).

68. The Habitats Regulations Assessment also reviewed the visitor analysis in relation to the Forest (para. [46] above), referred to the advice from Natural England on 19 February 2010 and 8 June 2010 (para. [42] above) and in light of this material and in accordance with the precautionary principle stated that avoidance and mitigation measures were required, including the 400m exclusion zone and 7 km protective zone within which SANGs would be required to balance any development. Adoption of these measures would mean that effects connected with increased recreational pressure on the Forest from new development could be "satisfactorily avoided and reduced." No further detailed "appropriate assessment" would be required under the Habitats Regulations.

69. The Inspector held examination in public hearings between 17 January and 2 February 2012 and on 6 September 2012 and issued his Report on 30 October 2012.

70. The Inspector concluded that, with certain limited modifications, the Core Strategy was "sound" (in compliance with section 20(5) of the 2004 Act) and was in general conformity with the South East Plan (in compliance with sections 24(1) and 20(5) of the 2004 Act).

71. The Inspector was not persuaded by WDC's case that new work on the level of housing requirement in its area meant that the assessment in the South East Plan of a requirement of 11,000 new homes could be treated as superseded. Therefore, justification for the lower figure of 9,600 in the Core Strategy had to rely on other factors in the South East Plan and the NPPF (para. 15 of the Inspector's Report). He found that although the difference between the 9,600 and the 11,000 figures was significant and would, if taken alone, have meant that the Core Strategy was not in

general conformity with the South East Plan (para. 16), nonetheless the Core Strategy could be found to be in general conformity with the South East Plan and to comply with the NPPF by reason of the infrastructure and environmental constraints highlighted by WDC, read against Policy NRM5 in the South East Plan, as follows:

> "17. SEP [South East Plan] Policy NRM5 indicates that when deciding on the distribution of housing allocations local planning authorities should consider a range of alternative distributions within their area and should distribute an allocation in such a way that it avoids adversely affecting the integrity of European sites. In the event that the planning authority concludes that it cannot distribute an allocation accordingly, or otherwise avoid or adequately mitigate any adverse effect, it should make provision up to the level closest to its original allocation for which it can be concluded that it can be distributed without adversely affecting the integrity of any European site. The supporting text states that where provision is less than in the RS [regional strategy] the Council will need to demonstrate at independent examination that this is the only means of avoiding or mitigating any adverse impacts on European sites. This will involve clearly showing that they have attempted to avoid adverse effects through testing different distribution options and that the mitigation of impacts would be similarly ineffective.
>
> 18. Policy NRM5 therefore places the onus on the local planning authority to show that there are circumstances that mean that the RS provision cannot be met. As such, if the Council can demonstrate that the approach in the policy has been achieved, the CS [Core Strategy] would be in general conformity with the SEP in this respect. In this context, the Council has sought to justify the lower level of provision principally on the basis that in its view:
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> - In south Wealden there is an infrastructure constraint relating to the capacity of the Hailsham North and Hailsham South waste water treatment works (WWTWs) which discharge into the Pevensey Levels – a Ramsar Site and candidate Special Area of Conservation (cSAC). These currently operate to the highest environmental standards and cannot be improved. Accordingly development above this existing limited headroom for these works cannot be accommodated until a new solution has been devised. While there are various options, the work to explore these has only just commenced. Such an approach is supported by other SEP policies, such as CC7 which indicates that the scale and pace of development will depend on

> sufficient capacity being available in existing infrastructure to meet the needs of new development.
>
> - In north Wealden levels of development beyond those proposed would have a significant effect on the Ashdown Forest SAC in terms of nitrogen deposition.
>
> 19. The presumption in favour of sustainable development in the Framework [the NPPF] does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined. The Framework cross refers to the guidance on the statutory obligations for biodiversity set out in Circular 06/2005 with the greatest protection being given to designations of international importance. In that context, the factors relevant to SEP Policy NRM5 are also those that in terms of the Framework may lead to housing provision being restricted against the assessed needs. …"

72. At paras. 20-25 of his Report, the Inspector reviewed the infrastructure constraints in relation to waste water treatment in the south of WDC's area before turning to the issue of nitrogen deposition in relation to Ashdown Forest, as follows:

> "*Nitrogen deposition*
>
> 26. Nitrogen emissions from traffic can increase acid deposition and eutrophication, potentially to the detriment of the Ashdown Forest and Lewes Downs SACs. The Design Manual for Roads and Bridges (DMRB) provides a methodology for a scoping assessment for air quality. This initially requires the identification of roads which are likely to be affected by development proposals. There are several criteria that are used to identify an affected road but the key one here is whether traffic flows will change by 1,000 AADT (annual average daily traffic flow) or more. As applied by the Council in its Habitats Regulations Assessment (HRA) the DMRB shows no roads in the Ashdown Forest SAC (or Lewes Downs SAC) that would be affected by the development proposed in the CS. This conclusion is supported by Natural England (NE).
>
> 27. I am satisfied that the DMRB methodology is the correct approach to a scoping assessment of air quality and that, as concluded in the HRA, the scale and distribution of development proposed in the CS is acceptable in this regard.

28. Based on the DMRB results, one section of the A26 would have an additional AADT of 950, indicating very little headroom for development beyond that proposed without further assessment to determine whether there would be a likely significant effect on the Ashdown Forest SAC. This work has not been done. However, the best available evidence on the existing nitrogen deposition load toward the centre of the SAC is that it significantly exceeds the ability of habitats to withstand deleterious effects. Deposition is likely to be more severe close to road corridors. Furthermore, I am mindful that the traffic modelling does not take account of possible traffic impacts of growth in neighbouring authorities. Although heathland management may have some part to play in mitigating the effects of nitrogen deposition, in the context of these other factors there is sufficient evidence at this point on a precautionary basis to restrict further development in north Wealden beyond that in the CS. On this basis there is not the scope to transfer SEP housing provision from the Sussex Coast Sub Region in the context of SEP Policy SCT5.

29. It has been concluded that in relation to the [waste water treatment] issue an early review of the plan is required. Air pollution relating to Ashdown Forest SAC could in the future restrict further planned development which might otherwise be acceptable. To ensure that the housing and other needs of the area are being addressed in the context of the Framework, for the review it would be important to establish more accurately the current extent and impact of nitrogen deposition at Ashdown Forest, the potential effects of additional development on the SAC and the possibility of mitigation if required, working collaboratively with other affected authorities. I therefore include an appropriate modification to this effect (MM63).

30. While the strategic development proposed in the CS would be achievable, concern has been expressed during the examination that windfall developments which might otherwise be acceptable in planning terms are being refused on the basis of the nitrogen deposition concern. The Framework requires that local planning authorities should look for solutions rather than problems and work proactively to secure developments that improve the economic, social and environmental conditions of the area. It supports economic growth in rural areas. In this context, the Council should not await commencement of the formal review before beginning the more detailed investigation of this matter. …"

73. In the context of the present case, paras. 28 and 29 of the Report deserve emphasis. The Inspector there explained why he accepted WDC's contention that there were important environmental constraints arising by reference to the Ashdown Forest protected site which, in conjunction with other constraints, meant that development at the level of 11,000 new homes in WDC's area would not be viable. The Core Strategy had been screened to show that there was not a need to carry out a detailed "appropriate assessment" under the Habitats Regulations in relation to its new homes figure and proposed distribution, but in light of the precautionary principle and the low headroom for screening clearance of the Core Strategy it could not be said that a higher housing figure (such as was included in Scenarios A and B) – and the likely increased traffic pressure on the road network in the vicinity of the Forest that would result - would not have significant detrimental effects on the Forest. Indeed, there was already evidence of deleterious effects on the Forest from nitrogen deposition, so that there was a real prospect that increased nitrogen deposition load from significantly increased traffic flows associated with new housing development at the higher figure would indeed be found to have a material detrimental effect if further and more detailed investigations of the issue were undertaken. Moreover, full examination of the issue would need to take account of possible traffic impacts of growth in neighbouring authorities and would require collaborative work with those other authorities – whereas the background to the examination of WDC's Core Strategy, as Mr David Phillips for WDC explained to the Inspector on 19 January 2012 at the session of the examination in public dealing with environmental issues, was that other neighbouring authorities were some way behind WDC in working up their relevant development plans so this sort of full examination of the issue would not be possible for some time. At the same session, Natural England stated that it agreed with WDC's approach, which struck an appropriate balance between pragmatism and the precautionary approach. In those circumstances, WDC had made out a sufficient case on the currently available evidence to warrant restricting the new homes number in its area to 9,600, and was not found to have failed to make out its case by reason of the absence of further and more detailed work. The appropriate course, in the circumstances, was to approve the Core Strategy (with all the co-ordination advantages and benefits for coherent planning which would be associated with having a Core Strategy plan in place) while at the same time requiring WDC to undertake further review work in the future to supplement the existing evidence base.

74. The Inspector then went on at paras. 31-33 of his Report to deal with issues relating to phasing and the supply of housing land and previously developed land, before continuing to set out his conclusions on Issue 1 (whether the Core Strategy is in general conformity with the South East Plan, and whether the scale and distribution of housing provision has been justified and is consistent with the NPPF) and Issue 2 (whether the Core Strategy is sound), as follows:

> "*Conclusions on the amount and distribution of housing development*
>
> 34. The CS has not established the full, objectively assessed housing needs of the District but it has demonstrated on the

currently available evidence that there are at present restrictions on the overall scale of housing development that can be accommodated. However, the CS should be positively prepared and every effort made to meet the housing needs of an area. The Framework aims to boost significantly the supply of housing. It is therefore important to ensure that new homes are brought forward as quickly as possible.

35. The CS should make provision up to the level closest to its original SEP allocation for which it can be concluded that it can be distributed without adversely affecting the integrity of any European site. The proposed phasing modifications and the level of housing need mean that development could come forward more quickly than anticipated in the CS, providing greater flexibility in the land supply. The Framework indicates that local plans should be drawn up over an appropriate timescale, preferably a 15-year time horizon, taking account of longer term requirements. In this case, having regard to the significant infrastructure and environmental uncertainties beyond the scale of growth proposed by the Council, I consider that the plan period should be limited to 15 years, bringing the end date forward from 2030 to 2027 and the rate of new housing development closer to that in the SEP. There is insufficient evidence on the rate at which the SDAs could be delivered to justify bringing the end date even further forward.

36. If the CS provision of 9,600 dwellings related to the period 2006 to 2027 this would amount to an annual average of about 460 – some 17% short of the RS requirement. The deletion of the SDA at Heathfield (see below) would reduce this provision by 160 to 9,440 or an annual average of about 450 new homes between 2006 and 2027. Based on the distribution provided by the Council at paragraph 12, the SEP housing provision for the 'Rest of Wealden' would be achieved but that for the 'Sussex Coast Sub Region' would still be some 29% short, giving an overall District shortfall of over 18% compared with the RS. A series of modifications are necessary to achieve these changes to the time period and amount of new housing (MM1, MM3, MM7 to MM13, MM15, MM16, MM18, MM19, MM22 to 24, MM27, MM54). Taken with the earlier modifications on phasing they would enable provision to the level closest to the SEP requirement having particular regard to the waste water infrastructure issues in the south of the District.

Overall conclusion

37. In the light of the above considerations and modifications I conclude that the CS is in general conformity with the SEP and that the scale and distribution of housing provision has been justified and is consistent with the Framework. The CS is therefore both sound and legally compliant in this regard.

Issue 2 – Whether the overall special strategy is soundly based, presenting a clear spatial vision for the District in accordance with national and regional policies.

38. The CS contains a vision for the District and a series of spatial planning objectives. The spatial strategy derives from and broadly reflects the vision and objectives. In turn, subject to specific concerns and main modifications identified and discussed elsewhere in this report, the CS policies also broadly reflect the vision and objectives.

39. The methodology and process by which the CS has been produced is recorded in Background Paper 1: Development of the Core Strategy (BP1) and the consultation process in the Council's Regulation 30(1)(d) Statement – BP8. Initial consultation took place on issues and options in 2007 which embraced consideration of alternative locations for development. In 2009 there was further consultation on the vision and the strategic spatial housing and employment options. The Strategic Housing Land Availability Assessment (SHLAA) was used to identify potential housing sites which were assessed in accordance with sustainability objectives.

40. BP10: Sustainability Appraisal of the Core Strategy (SA) includes consideration of both the strategic options and the alternative broad locations for growth at the main settlements. In the light of the High Court judgement on *Save Historic Newmarket Ltd and Others v Forest Heath District Council and Others* (2011) [[2011] JPL 1233] the Council has indicated that it is satisfied that the sustainability appraisal undertaken adequately assesses alternatives and sets out the reasons why they were rejected. The alternative growth locations are considered in more detail below. However, overall, reasonable alternatives to the spatial strategy have been considered and the audit trail by which it has been arrived at, as set out in the evidence base, is sufficiently clear.

41. Having regard to my conclusions on the scale of development in the first main issue and the main modifications

> recommended elsewhere in this report, I conclude that the overall spatial strategy is soundly based, presenting a clear spatial vision for the District in accordance with national and regional policies."

75. In the event, for further reasons which are not called in question in these proceedings, the Inspector reduced the new homes figure of 9,600 to 9,440 and modified the relevant period in relation to this from 2006-2030 to 2006-2027. He required Policy WCS1 in the Core Strategy to be modified accordingly.

76. The Inspector also required modification of Policy WCS12 in the Core Strategy, to promote the explanatory text in para. 3.32 regarding the need for a 400m development exclusion zone and a further 7 km protective zone around Ashdown Forest into the body of the Policy itself. This reflected an amendment to the Core Strategy proposed by WDC. The Inspector considered the justification for these measures at paras. 53 to 55 of his report, as follows:

> "**Issue 5 – Whether the Core Strategy makes appropriate provision for the protection of the natural environment and other environmental assets and for sustainable construction.**
>
> *Ashdown Forest Special Protection Area*
>
> 53. The HRA has addressed the impacts of possible additional disturbance and urbanising effects from residential development on the Ashdown Forest Special Protection Area (SPA) where there are breeding populations of Dartford warbler and nightjar. It indicates that it cannot be concluded that the CS would not lead to adverse effects on the ecological integrity of the SPA. Avoidance and mitigation measures are required including a 400m zone around the SPA where residential development will not be permitted, a 7km zone where new residential development will be required to contribute to Suitable Alternative Natural Greenspaces (SANGs), an access strategy for the Forest and a programme of monitoring and research. The measures are regarded as critical infrastructure in the Infrastructure Delivery Plan (IDP). This approach is supported by Natural England (NE). I am satisfied that it is justified by the evidence base, including the 7km zone which is broader than those used elsewhere but supported by local factors, including the distance visitors to the Forest are willing to travel.
>
> 54. The main impact of these measures would be on the towns of Crowborough and Uckfield and villages and rural areas within the buffer zones. I have seen evidence that there is a

> reasonable expectation that suitable SANGs could be provided relating to the SDAs at the towns. There is a large supply of open spaces within the District, many under the ownership or management of town or parish councils. NE is confident that SANGs can be delivered. However, for windfall planning applications and smaller sites where SANGs cannot be provided on site there is the possibility that otherwise acceptable development might be delayed while suitable SANGs are identified and brought forward.
>
> 55. The CS does not refer to these measures in a policy but includes text suggested in the HRA in supporting justification. The Council has proposed a modification (MM62) to the plan that would include a policy reference to them being taken forward in subsequent DPDs. The Strategic Sites DPD is not expected to be adopted until Summer 2014 and the Delivery and Site Allocations DPD in Autumn 2015. To avoid otherwise acceptable development being delayed it is important that, with appropriate partners, the Council proactively identifies suitable SANGs and develops an on-site management strategy for the Forest as soon as possible in accordance with the conclusions of the HRA. While accepting the general thrust of the Council's approach, for the CS to be effective I am including a further modification to the policy to reflect this (MM63)."

77. The addition which the Inspector required to be made to WCS12 was as follows:

> "In order to avoid the adverse effect on the integrity of the Ashdown Forest Special Protection Area and Special Area of Conservation it is the Council's intention to reduce the recreational impact of visitors resulting from new housing development within 7 kilometres of Ashdown Forest by creating an exclusion zone of 400 metres for net increases in dwellings in the Delivery and Site Allocations Development Plan Document and requiring provision of Suitable Alternative Natural Green Space and contributions to on-site visitor management measures as part of policies required as a result of development at SD1, SD8, SD9 and SD10 in the Strategic Sites Development Plan Document. Mitigation measures within 7 kilometres of Ashdown Forest for windfall development, including provision of Suitable Alternative Natural Green Space and on-site visitor management measures will be contained within the Delivery and Site Allocations Development Plan Document and will be associated with the implementation of the integrated green network strategy. In the meantime the Council will work with appropriate partners to identify Suitable Alternative Natural Green Space and on-site

> management measures at Ashdown Forest so that otherwise acceptable development is not prevented from coming forward by the absence of acceptable mitigation.
>
> The Council will also undertake further investigation of the impacts of nitrogen deposition on the Ashdown Forest Special Area of Conservation so that its effects on development can be more fully understood and mitigated if appropriate."

78. WDC and SDNPA accepted these and other modifications set out by the Inspector in his Report and adopted the Core Strategy, as so modified, on 19 February 2013.

Legal Analysis

Ground One: the Inspector reached an irrational conclusion that the Core Strategy could be approved as sound and capable of adoption based on the housing requirement figure of 9,440

79. The assessment by the Inspector in relation to soundness of the Core Strategy (section 20(5)(b) read with the guidance in the NPPF) and its general conformity with the South East Plan (section 24(1) of the 2004 Act) is one involving evaluative judgments in relation to the planning merits and other matters which are primarily for the Inspector. The test on judicial review in relation to this Ground is a *Wednesbury* rationality test (see generally *Persimmon Homes (Thames Valley) Ltd v Stevenage BC* [2005] EWCA Civ 1365; [2006] 1 WLR 334).

80. In my view, the Inspector's reasoning on this part of the case is rational and compelling. He was entitled to conclude that WDC had produced sufficient evidence in relation to the risk of environmental harm to Ashdown Forest to justify the use of the smaller 9,600 housing figure in the Core Strategy, that the possibility that further work on the issue of nitrogen deposition would show that a higher housing figure could be accommodated was so speculative and likely to be so delayed as not to warrant holding up the approval of the Core Strategy, and that this possibility would be more appropriately accommodated by requiring further investigatory work to be carried out after the adoption of the Core Strategy and when other neighbouring authorities were more advanced in producing their own development plans.

81. Similarly, I consider that WDC acted in a rational and lawful way in making the examination of the nitrogen deposition issue which it did and in not seeking to undertake any further or more detailed investigation before deciding to submit and then to adopt the Core Strategy. WDC had taken reasonable steps to inform itself about relevant matters in respect of that issue and it was not irrational for it to choose not to pursue further investigations before proceeding to decide that it was appropriate to select Scenario C for assessment under the SEA Directive and to adopt a Core Strategy based on a figure for new homes derived from Scenario C: cf *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014, 1065B; *Cotswold DC v Secretary of State for Communities and Local Government*

[2013] EWHC 3719 (Admin), [57]-[61]; and *R (Khatun) v Newham LBC* [2004] EWCA Civ 55; [2005] QB 37, [34]-[35]. WDC's assessment was that any housing development above that in the Core Strategy would exceed the 1,000 AADT flows threshold and require a detailed "appropriate assessment" (which, given the low headroom below that figure even for the number of new homes in the Core Strategy, was plainly a rational view); and it was informed by environmental consultants and Natural England that a full detailed "appropriate assessment" of the impact of proposals for development above the 1,000 AADT flows threshold would require traffic modelling on a co-ordinated approach between planning authorities (see, in particular, paragraphs 32, 92 and 124 of Marina Brigginshaw's first witness statement for WDC). The Inspector did not err in concluding that WDC had properly made out its case for deciding to proceed with Scenario C without further examination at the plan making stage of the nitrogen deposition issue.

82. There is nothing in the guidance in the NPPF which indicates that the Inspector proceeded in an illogical or irrational way, or in a way which conflicted with that guidance. In particular, he was entitled to conclude, in conformity with paragraph 158 of the NPPF, that WDC had produced sufficient objective evidence to justify its adoption of the figure of 9,600 (later reduced to 9,440), rather than 11,000, for new homes.

83. I therefore dismiss the challenge under Ground One.

Ground Two: The investigatory steps taken by WDC in relation to deciding to adopt the figure of 9,440 for new homes in the Core Strategy were inadequate and in breach of WDC's obligations under the SEA Directive and the Environmental Assessment Regulations

84. The Inspector found that reasonable alternatives to the spatial strategy in the Core Strategy (i.e. Scenario C) had been considered and that the audit trail by which it had been arrived at, as set out in the evidence base, was sufficiently clear: para. 40 of the Inspector's Report, set out above. I agree with him.

85. As I understood Mr Elvin's submissions, he criticised WDC under this Ground on two fronts. First, he contended that WDC had not done sufficient work as required under the SEA Directive and the Environmental Assessment Regulations to identify reasonable alternatives for consideration, because of WDC's omission to investigate in greater detail - including by commissioning what would have been the necessary "appropriate assessment" under the Habitats Directive and the Habitats Regulations - whether 11,000 new homes might in fact be accommodated in WDC's area without causing environmental harm to the Ashdown Forest protected site. Secondly, he criticised the adequacy of the reasons given in the Sustainability Appraisal (the environmental report for the purposes of the SEA Directive) for choosing Scenario C and maintained that they were insufficient to meet WDC's obligations under Article 5 of the Directive (regulation 12 of the Environmental Assessment Regulations). In addition, at paragraph 22 of his written submissions in reply, sent after the end of the oral hearing, Mr Elvin submitted for the first time that since the environmental report published under Article 5 must be subjected to consultation under Article 6, it is the

February 2011 environmental report (i.e. Sustainability Appraisal) which had to include the contents required by Article 5; the August 2011 documents were not relevant because they were published after the consultation had concluded.

86. I do not accept either of the criticisms of WDC advanced by Mr Elvin. Nor do I accept his new submission in reply. I deal with this latter point first.

87. The thrust of Mr Elvin's argument in opening was that the court should apply the legal analysis set out by Collins J in *Save Historic Newmarket Ltd v Forest Heath District Council* [2011] EWHC 606 (Admin); [2011] JPL 1233, in which at [40] Collins J accepted the submission by counsel for the claimant (Mr Elvin again) "that the final report [i.e. the sustainability appraisal] accompanying the proposed Core Strategy to be put to the inspector was flawed", in that it failed to comply with the council's obligations under the SEA Directive and the Environmental Assessment Regulations. Thus the analysis drawn from *Save Historic Newmarket Case Ltd* involved a focus on the August 2011 documents – the draft Core Strategy submitted for independent examination, the final version of the Sustainability Appraisal and the Habitats Regulations Assessment. The Claimant's pleaded case (see paragraph 41 of the Particulars of Claim) relied upon this analysis based on *Save Historic Newmarket Ltd* and focused on "the environmental report accompanying the final draft of the plan [i.e. the August 2011 Sustainability Appraisal accompanying the submission draft of the Core Strategy]", as did Mr Elvin's skeleton argument (paragraph 40). There was no reference to an alternative argument such as he sought to introduce in his written submissions in reply. Mr Pereira (as was clear from his written and oral submissions) and I understood that the Claimant's case, as presented by Mr Elvin, was focused on the compliance of the August 2011 documents with the SEA Directive and the Environmental Assessment Regulations. Mr Elvin did not seek to correct Mr Pereira on that score while Mr Pereira was presenting his submissions.

88. In my judgment, the Claimant required permission to introduce this new argument in reply, to the effect that the August 2011 documents are irrelevant to the analysis in relation to the SEA Directive. Mr Elvin did not seek permission from the court to introduce it and, had he done so, I would have refused it, since it would have required the case to be re-argued. It would have required far greater elaboration by Mr Elvin than a single short paragraph in his reply submissions to develop and make good the point, and then full submissions from Mr Pereira.

89. I would add that I am far from being persuaded that there is anything in this new argument in any event. Collins J in *Save Historic Newmarket Ltd* and Ouseley J in *Heard v Broadland BC* [2012] EWHC 344 (Admin); [2012] Env. LR 23 at [13] (where he set out para. [40] of Collins J's judgment as providing a useful summary of the law) both had no difficulty in accepting that the focus for analysis under the SEA Directive is properly upon the final form documents submitted to the Secretary of State for independent examination. The Inspector in the present case investigated the same documents for compliance with the SEA Directive, specifically by reference to *Save Historic Newmarket Ltd*. I was not shown any document or evidence to suggest that the Claimant or anyone else in the course of the examination in public suggested

that this focus on the August 2011 documents was wrong as a matter of law. The SEA Directive does not itself make provision for an independent examination in public by an Inspector. That is a procedure adopted in the United Kingdom as part of its planning regime into which the requirements of the SEA Directive have been introduced and with which they have been aligned. As Ouseley J explains in *Heard v Broadland DC* at [11], the SEA Directive permits a national authority to integrate compliance with the Directive into national procedures. The procedures involved in independent examination of a plan by an inspector, including by examination in public, appear to me to be a consultation process which is capable of fulfilling the consultation requirement under Article 6 of the Directive. If that is so, then Mr Elvin's new submission in reply falls away. I emphasise again, however, that I have not heard argument on this issue so this view must be regarded as provisional.

90. I turn, then, to Mr Elvin's two criticisms of what was done by WDC. As to the substance of the work to be done by a local planning authority under Article 5 in identifying reasonable alternatives for environmental assessment, the necessary choices to be made are deeply enmeshed with issues of planning judgment, use of limited resources and the maintenance of a balance between the objective of putting a plan in place with reasonable speed (particularly a plan such as the Core Strategy, which has an important function to fulfil in helping to ensure that planning to meet social needs is balanced in a coherent strategic way against competing environmental interests) and the objective of gathering relevant evidence and giving careful and informed consideration to the issues to be determined. The effect of this is that the planning authority has a substantial area of discretion as to the extent of the inquiries which need to be carried out to identify the reasonable alternatives which should then be examined in greater detail.

91. These points are similarly relevant to interpretation of the SEA Directive and the standard of investigation it imposes as under ordinary domestic administrative law: see, e.g., the review of the authorities by Beatson J (as he then was) in *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), [71]-[78]. The Directive is of a procedural nature (recital (9)) and the procedures which it requires involve consultation with authorities with relevant environmental responsibilities and the public, with a view to them being able to contribute to the assessment of alternatives (recitals (15) and (17); Articles 5 and 6). The relevant aspect of the obligation in Article 5 is to identify and then evaluate "reasonable alternatives" to the plan in question. Under the scheme of the Directive and Environmental Assessment Regulations it is the plan-making authority which is the primary decision-maker in relation to identifying what is to be regarded as a reasonable alternative (and see *Heard v Broadland BC* at [71] per Ouseley J: part of the purpose of the process under the Directive is to test whether a preferred option should end up as preferred "after a fair and public analysis of what the authority regards as reasonable alternatives"). In respect of that decision, the authority has a wide power of evaluative assessment, with the court exercising a limited review function.

92. This interpretation is reinforced by the scope for involvement of the public and the environmental authorities in commenting on the proposed plan and to make counter-

proposals to inform the final decision by the plan-making authority. The Directive contemplates that the plan-making authority's choices may be open to debate in the course of public consultation and capable of improvement or modification in the light of information and representations presented during that consultation, and accordingly recognises that the choices made by the plan-making authority in choosing a plan and in selecting alternatives for evaluation at the Article 5 stage involve evaluative and discretionary judgments by that authority which may be further informed by public debate at a later stage.

93. The interpretation is also supported by the limited nature of the information which the plan making authority is obliged to provide to explain the selection of the "reasonable alternatives" which are selected for examination. It is only "an outline of the reasons" for selecting those alternatives which has to be provided (paragraph (h) of Annex I; language which is similar to that used in paragraph (a), "an outline of the contents, main objectives of the plan or programme [etc]"), directed to equipping the public to participate in debate about the plan proposed, not a fully reasoned decision of a kind which might be appropriate for a more intrusive review approach or exercise of an appellate function on the part of the court.

94. As Mr Pereira submitted, paragraph (h) of Annex I (replicated in Schedule 2 to the Environmental Assessment Regulations) is to be contrasted with the language in the text of the equivalent paragraph of the draft of the SEA Directive which was originally proposed for adoption. The corresponding paragraph in the draft Directive (paragraph (f)) referred to "any alternative ways of achieving the objectives of the plan or programme which have been considered during its preparation (such as alternative types of development or alternative locations for development) and the reasons for not adopting these alternatives". This was a more demanding standard in relation to the level of reasons which would be required to be given at the Article 5 stage which the legislator chose to reject in favour of an obligation to provide only "an outline of the reasons" for selecting the alternatives to be subjected to full comparative appraisal.

95. The European Commission has issued guidance in relation to the SEA Directive: *Implementation of Directive 2001/42 on the Assessment of the Effects of Certain Plans and Programmes on the Environment*. Paragraph 5.6 emphasises the importance of review of alternatives under Article 5: "The studying of alternatives is an important element of the assessment and the Directive calls for a more comprehensive review of them than does the EIA Directive." Paragraphs 5.11 to 5.14 and 5.28 deal with the assessment of alternatives, as follows:

> "**Alternatives**
>
> 5.11 The obligation to identify, describe and evaluate reasonable alternatives must be read in the context of the objective of the Directive which is to ensure that the effects of implementing plans and programmes are taken into account during their preparation and before their adoption.

5.12 In requiring the likely significant environmental effects of reasonable alternatives to be identified, described and evaluated, the Directive makes no distinction between the assessment requirements for the draft plan or programme and for the alternatives [footnote: Compare Article 5(3) and Annex IV of the EIA Directive which require the developer to provide an outline of the main alternatives studied and an indication of the main reasons for his choice taking into account the environmental effects]. The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. The requirements in Article 5(2) concerning scope and level of detail for the information in the report apply to the assessment of alternatives as well. It is essential that the authority or parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. The information referred to in Annex I should thus be provided for the alternatives chosen. This includes for example the information for Annex I (b) on the likely evolution of the current state of the environment without the implementation of the alternative. That evolution could be another one than that related to the plan or programme in cases when it concerns different areas or aspects.

5.13 The text of the Directive does not say what is meant by a reasonable alternative to a plan or programme. The first consideration in deciding on possible reasonable alternatives should be to take into account the objectives and the geographical scope of the plan or programme. The text does not specify whether alternative plans or programmes are meant, or different alternatives within a plan or programme. In practice, different alternatives within a plan will usually be assessed (e.g. different means of waste disposal within a waste management plan, or different ways of developing an area within a land use plan). An alternative can thus be a different way of fulfilling the objectives of the plan or programme. For land use plans, or town and country planning plans, obvious alternatives are different uses of areas designated for specific activities or purposes, and alternative areas for such activities. For plans or programmes covering long time frames, especially those covering the very distant future, alternative scenario development is a way of exploring alternatives and their effects. As an example, the Regional Development Plans for the county of Stockholm have for a long time been elaborated on such a scenario model.

> 5.14 The alternatives chosen should be realistic. Part of the reason for studying alternatives is to find ways of reducing or avoiding the significant adverse environmental effects of the proposed plan or programme. Ideally, though the Directive does not require that, the final draft plan or programme would be the one which best contributes to the objectives set out in Article 1. A deliberate selection of alternatives for assessment, which had much more adverse effects, in order to promote the draft plan or programme would not be appropriate for the fulfilment of the purpose of this paragraph. To be genuine, alternatives must also fall within the legal and geographical competence of the authority concerned. An outline of the reasons for selecting the alternatives dealt with is required by Annex I (h). …"
>
> "*(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.*
>
> 5.28 Information on the selection of alternatives is essential to understand why certain alternatives were assessed and their relation to the draft plan or programme. A description of the methods used in the assessment is helpful when judging the quality of information, the findings and the degree to which they can be relied upon. An account of the difficulties met will also clarify this aspect. When appropriate, it would be helpful to include how those difficulties were overcome."

96. It is open to the plan-making authority, in the course of an iterative process of examination of possible alternatives, "to reject alternatives at an early stage of the process and, provided there is no change of circumstances, to decide that it is unnecessary to revisit them"; "But this is subject to the important proviso that reasons have been given for the rejection of the alternatives, that those reasons are still valid if there has been any change in the proposals in the draft plan or any other material change of circumstances and that the consultees are able, whether by reference to the part of the earlier assessment giving the reasons or by summary of those reasons or, if necessary, by repeating them, to know from the assessment accompanying the draft plan what those reasons are": *Save Historic Newmarket Ltd v Forest Heath District Council*, [16]-[17]. It may be that a series of stages of examination leads to a preferred option for which alone a full strategic assessment is done, and in that case outline reasons for the selection of the alternatives dealt with at the various stages and for not pursuing particular alternatives to the preferred option are required to be given: *Heard v Broadland DC*, [66]-[71]. As Ouseley J put it in *Heard*, in this sort of case "The failure to give reasons for the selection of the preferred option is in reality a

failure to give reasons why no other alternatives were selected for assessment or comparable assessment at that stage" ([70]).

97. A plan-making authority has an obligation under the SEA Directive to conduct an equal examination of alternatives which it regards as reasonable alternatives to its preferred option (interpreting the Directive in a purposive way, as indicated by the Commission in its guidance: see *Heard v Broadland DC* at [71]). The court will be alert to scrutinise its choices regarding reasonable alternatives to ensure that it is not seeking to avoid that obligation by saying that there are no reasonable alternatives or by improperly limiting the range of such alternatives which is identified. However, the Directive does not require the authority to embark on an artificial exercise of selecting as putative "reasonable alternatives," for full strategic assessment alongside its preferred option, alternatives which can clearly be seen, at an earlier stage of the iterative process in the course of working up a strategic plan and for good planning reasons, as not in reality being viable candidates for adoption.

98. In my judgment, that is the position in the present case, by contrast with the position in *Heard v Broadland DC*. In *Heard*, the plan-making authority failed to explain in outline its reasons for the selection of the alternatives dealt with at the various stages, and failed to explain why ultimately only the preferred option was chosen to go forward for full assessment (see [66] and [70]-[71]). In this case, however, WDC has made rational and lawful choices in narrowing down a field of six options, initially to three (Scenarios A, B and C), and then in choosing only to take Scenario C forward for full detailed strategic assessment. It has explained its reasons for doing so at each stage in some detail in, respectively, chapter 6 and chapter 8 of the Sustainability Appraisal.

99. I have already explained above that WDC made a rational and lawful choice in deciding that a detailed "appropriate assessment" should not be carried out under the Habitats Regulations in relation to Scenarios A and B. It was speculative whether an "appropriate assessment" would ever really show that more extensive housing development could actually take place in the vicinity of Ashdown Forest without nitrogen deposition effects from increased traffic flows having a detrimental effect on the Forest, which was already significantly affected by such deposition, as the Habitats Regulations Assessment made clear. As explained in the Sustainability Appraisal (paras. [58]-[61] above), there were other and more prominent reasons why WDC had decided that it would not be appropriate to take Scenarios A and B forward for more detailed examination, none of which were subject to challenge. Accordingly, it was unlikely that a detailed "appropriate assessment" would make a significant difference to the selection of the reasonable alternatives required by Article 5 - in this regard, it should be noted that the Inspector's discussion at paragraphs 28 and 29 of his Report was directed to the question whether the Core Strategy was in general conformity with the South East Plan, not to the question whether selection of Scenario C but not Scenarios A and B for detailed examination had been reasonable for the purposes of the SEA Directive. Moreover, a full examination of the environmental effects from new residential development beyond that in Scenario C would require information about the development plans proposed by neighbouring

authorities who were well behind WDC in getting to a position where they could make a useful contribution to such an examination. In these circumstances a decision to proceed to examine Scenario C and not to do further work in relation to Scenarios A and B was well within the discretionary area of judgment allowed to WDC under the SEA Directive and the Environmental Assessment Regulations.

100. As to the Claimant's challenge to the adequacy of the reasons given by WDC in the Sustainability Appraisal for selecting Scenario C, but not Scenarios A or B, for full strategic assessment, I consider that it fails. WDC was only obliged to give an "outline of the reasons for selecting the alternatives dealt with", which in my view it undoubtedly did in chapters 6 and 8 of the Sustainability Assessment. In giving "outline reasons" it was entitled to focus, as it did, on the main reasons why particular alternatives (in particular, Scenarios A and B) were not considered to be viable or attractive having regard to the full planning context– and hence were not "reasonable alternatives" - without descending into great detail to set out each and every aspect of the case or of impediments to adoption of such alternatives.

101. Mr Pereira submitted that since paragraph (h) requires only an outline of the reasons for selecting the alternatives dealt with, it was open to WDC to amplify the reasons set out in the Sustainability Appraisal for selecting the alternatives dealt with, if it was necessary to do so to meet a rationality or other challenge directed against the merits of the choices it had made. I agree with this. It is implicit in the idea of a statement of "outline reasons" that fuller reasons may underlie the outline reasons which are set out, and where necessary to do so to meet a challenge to the merits of the decisions it has made it is open to a plan-making authority to amplify the outline reasons it has given, provided that it does not seek to rely ex post facto on entirely different or wholly new reasons for the choices made: compare *R (Wall) v Brighton and Hove City Council* [2004] EWHC 2582 (Admin); [2005] 1 P & CR 33, [59] per Sullivan J (as he then was).

102. In my view, the outline reasons given by WDC in the Sustainability Appraisal for selection of Scenario C and rejection of Scenarios A and B without further full assessment either under the Habitats Directive and Regulations or under the SEA Directive and the Environmental Assessment Regulations are compatible with and cover the detailed reasons explained by the Inspector and by WDC in these proceedings why those further assessments of Scenarios A and B were not taken forward. The objectives of the SEA Directive to contribute to more transparent decision-making and to allow contributions to the development of a strategic plan by the public have been fulfilled in the circumstances of this case. The Sustainability Appraisal and the accompanying Habitats Regulations Assessment were made available to the public, from which they could see why a detailed "appropriate assessment" under the Habitats Regulations was not thought to be necessary in relation to Scenario C and could see that no detailed "appropriate assessment" had been thought to be required in relation to Scenarios A and B. Members of the public were in a position to challenge each of those assessments during the examination of the proposed Core Strategy, should they wish to do so.

103. In fact, it does not appear that any significant criticism or sustained argument was directed to those matters in the course of the procedures leading up to adoption of the Core Strategy. That in turn reinforces my view that WDC could not be criticised for irrationality in choosing not to pursue a detailed "appropriate assessment" in relation to Scenarios A or B.

104. For the reasons given above, I dismiss the challenge under Ground Two.

Ground Three: Failure to carry out a detailed "appropriate assessment" in respect of the Core Strategy in relation to nitrogen deposition, in breach of regulation 61(1)(a) of the Habitats Regulations

105. In my judgment, this Ground of challenge must be dismissed as misconceived. I accept the primary submission made by Mr Pereira, namely that WDC had carried out an appropriate screening assessment in relation to the Core Strategy (which adopted Scenario C), as set out in the Habitats Regulations Assessment, and had determined in that screening assessment that adoption of the Core Strategy was not likely to have a significant effect on the Ashdown Forest protected site. Therefore, by this work, WDC had properly established that there was no obligation on it under regulation 61(1)(a) of the Habitats Regulations to proceed to make a detailed "appropriate assessment" of the implications of adoption of the Core Strategy for Ashdown Forest.

Ground Four: Breach of the SEA Directive and the Environmental Assessment Regulations by failing to consider alternatives to the protective 7 km SANG zone

106. I also dismiss this Ground of challenge. As the Commission guidance at para. 4.7 and the court in *Save Historic Newmarket Ltd* at [15] and in *Heard v Broadland DC* at [12] explain is permissible, the Habitats Regulations Assessment was issued with and incorporated by reference into the Sustainability Appraisal and hence into the environmental report required under the SEA Directive and the Environmental Assessment Regulations; and in the Sustainability Appraisal itself, WDC made clear that it adopted the protection recommendations set out in the Habitats Regulations Assessment. Chapter 6 of the Habitats Regulations Assessment contained a detailed discussion of the issue of disturbance of wildlife at Ashdown Forest through increased recreational pressure associated with new residential development in its vicinity. The protective 7 km SANG zone was stated by WDC's expert environmental consultants to be required to avoid harm to the Ashdown Forest protected site from increased residential development, and this was also the advice of Natural England.

107. The basis for this requirement was set out in the Habitats Regulations Assessment. It noted that increased recreational visitors associated with new housing in the vicinity of the Forest might have a negative effect on protected bird species, and that the closer a residential development to the Forest the more likely its inhabitants are to visit on a regular basis. It specifically referred to the protective 5 km SANG zone around the Thames Basin Heaths protected site as a relevant precedent, based on an identified study, which "sought to draw a reasonably precautionary conclusion from the variety of potential methods proposed for determining SANG provision" and

explained that "The 5km threshold aims to 'capture' around three quarters of all visitors to the heaths, including 70% of drivers and all pedestrians" (section 6.4, p. 31). The Assessment referred to the comparative visitor survey and analysis which had been conducted in relation to Ashdown Forest and concluded that the protective SANG zone around the Forest should be set at 7 km, since "This is considered to be sufficient to capture a similar proportion of visitors to Ashdown Forest, as compared to the avoidance measures adopted in relation to the Thames Basis Heaths SPA" (section 6.4, p. 32). The Assessment included a map showing what a 7 km protective zone would look like, and which main centres of population would be within it, and what a 15 km protective zone would look like, and an analysis of what additional visits might be associated with new development in that wider zone (section 6.4 and table 6.1, pp. 31-33).

108. Accordingly, in my view, the principled reasoning and evidence base which justified the selection of a protective zone set at 7 km were clearly set out in the relevant environmental report. Indeed, on a fair reading of the Habitats Regulations Assessment/environmental report I think one could say that three alternatives had been canvassed (a 5 km zone in accordance with the precedent at the Thames Basin Heaths; a 15 km zone; and a 7 km zone), and that clear reasons had been given for selecting the 7 km solution chosen to be included in the Core Strategy, namely that the Thames Basin Heaths protective zone was considered to provide a good model for controlling increased visitor numbers to the precautionary level considered appropriate by experts and that an extension of the protective zone around Ashdown Forest to 7 km was assessed to be necessary to provide the same level of protection. Read in this way, I think that the Habitats Regulations Assessment did in fact include a comparative assessment to the same level of detail of the preferred option (a 7 km zone) and two reasonable alternatives, a 5 km zone and a 15 km zone.

109. But even if one does not read the Habitats Regulations Assessment in that way, but rather just as a principled set of reasons for choosing a 7 km protective zone, in line with Mr Pereira's submissions, the reasons given explain clearly why that solution was chosen and, by clear implication, why other solutions were not chosen. Adjusting para. [70] of Ouseley J's judgment in *Heard v Broadland DC* for the circumstances of this case, the reasons given for selecting the 7 km protective zone as the relevant mitigation measure were in substance the reasons why no other alternatives were selected for assessment or comparable assessment. No other alternative would achieve the objectives which the 7 km zone would achieve. Again, the objectives of the SEA Directive to contribute to more transparent decision-making and to allow contributions to the development of a strategic plan by the public have been fulfilled in the circumstances of this case. WDC had explained the reasons for choosing a 7 km zone and members of the public were in a position to challenge those reasons and WDC's assessment during the examination of the proposed Core Strategy, should they wish to do so.

110. Mr Elvin sought to suggest that WDC should have commissioned further work to assess other possible options which might have resulted in equivalent visitor densities in relation to bird population density as between Ashdown Forest and the Thames

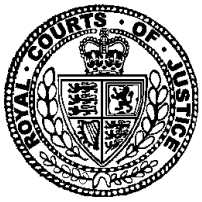
Basin or Dorset Heaths. I do not accept this suggestion. As the Habitats Regulations Assessment made clear, it was largely unknown exactly how and to what extend increased recreational visits might affect the protected bird populations, and any attempt to marry up visitor densities and bird densities in such a precise way would have been a spurious and potentially misleading exercise, which would not have met the points made by WDC's expert environmental advisers and Natural England. Neither of them suggested that there was any alternative which might be suitable and which should be examined further. A decision-maker is entitled, indeed obliged, to give the views of statutory consultees such as Natural England great weight: see *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), at [72]. No-one else raised any sustained or developed argument in the course of the iterative process of development of the Core Strategy in favour of a different solution. WDC was entitled to proceed to adopt the solution proposed by both Natural England and its own expert advisers without seeking to cast around for other potential alternatives to examine. To have done so would have been a completely artificial exercise in the circumstances.

111. In examining the Claimant's complaint under this Ground, it is also telling, I think, to compare the position in relation to the 400m development exclusion zone, which was part of the package of measures recommended by UE Associates Ltd and Natural England adopted by WDC in the Core Strategy. The Claimant makes no challenge to the lawfulness of adoption of this zone. Yet the position in relation to consideration and adoption of this part of the Core Strategy is closely similar to that in relation to the protective 7 km SANG zone. A reasoned explanation for choosing the 400m development exclusion zone was set out, and there was no distinct examination of alternatives (say, a 300m zone or a 500m zone). In my view the Claimant was right not to challenge the lawfulness of the selection of this zone. The reasons why it was chosen were fully explained and open to comment or criticism by the public, and in view of the reasons given in relation to it, it would have been completely artificial to have conducted separate assessments of notional different sized exclusion zones.

112. In these proceedings, the Claimant has adduced evidence from Karen Colebourn, an ecological consultant, giving her opinion about possible mitigation measures "which may be suitable at Ashdown Forest", including decreasing car park capacity or increasing the cost of parking, creation of special dog exercise areas, provision of information and education for dog owners and improvement of strategic walking routes. This is opinion evidence put forward not in the context of the iterative process resulting in adoption of the Core Strategy, but well after the event. No concrete, worked through proposals are set out and there is no evidence to suggest that such measures would actually work by themselves. I accept Mr Pereira's submission that it cannot sensibly be contended on the basis of Ms Colebourn's evidence that no reasonable planning authority would have failed to identify these as "reasonable alternatives" so as to be obliged to assess such ideas or their efficacy in the Sustainability Appraisal. I am fortified in this view by the fact that the Inspector did not consider that further assessment work was required in relation to this part of the Core Strategy.

Conclusion

113. For the reasons given above, this challenge is dismissed on all Grounds. It follows that it is not necessary or appropriate to consider issues regarding the exercise of the court's discretion in relation to remedy, which would only have arisen if any of the Grounds of challenge had been made out.



Neutral Citation Number: [2020] EWHC 3204 (Admin)

Case No: CO/1290/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/11/2020

Before :

THE HON. MR JUSTICE HOLGATE

- -

Between :

Flaxby Park Limited	**Claimant**
- and -	
Harrogate Borough Council	**Defendant**
-and-	
(1) Secretary of State for Communities and Local Government **(2) Oakgate Yorkshire Limited** **(3) CEG Land Promotions III (UK) Limited**	**Interested Parties**

- -
- -

Christopher Katkowski QC & Richard Moules (instructed by **Town Legal LLP**) for the **Claimant**
Paul Brown QC (instructed by **Harrogate Borough Council**) for the Defendant
Christopher Young QC & James Corbet Burcher (instructed by **Walker Morris LLP**) for the 2nd Interested Party
James Strachan QC (instructed by **Walton & Co**) for the 3rd Interested Party
The 1st Interested Party did not appear and was not represented

Hearing dates: 27-29 October 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII.
The date and time for hand-down is deemed to be 10:00am on 25.11.2020

Mr Justice Holgate

Introduction

1. Policy DM4 of the Harrogate District Local Plan ("the Local Plan") provides for a new settlement within a "broad location for growth" in the Green Hammerton/Cattal area, lying to the east of the A1(M). The claimant, Flaxby Park Ltd ("FPL") brings this challenge under s. 113 of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") to quash that policy and other references in the Local Plan to that location for the new settlement. The local planning authority for the district is the defendant, Harrogate Borough Council ("HBC"), which adopted the Local Plan on 4 March 2020.

2. The Local Plan covers the period 2014 to 2035. Policy GS1 makes provision for a minimum of 13,377 new homes over the Plan period. To help meet this requirement, Policy GS2 states that growth will be focused in the district's main settlements, settlements on the key public transport corridors and "a new settlement within the Green Hammerton/Cattal area". Policy GS2 adds:-

> "A broad location for growth is identified in the Green Hammerton/Cattal area, as shown on the key diagram. Within this area a site for a new settlement will be allocated through the adoption of a separate Development Plan Document (DPD). The DPD will be brought forward in accordance with the development principles outlined in policy DM4."

3. Policy DM4 states *inter alia*:-

> "Land in the Green Hammerton/Cattal area has been identified as a broad location for growth during the plan period and beyond. The boundary, nature and form of a new settlement within this broad location will be established in a separate New Settlement Development Plan Document (DPD)."

Policy DM4 also requires the DPD to address a number of principles for the design, development and delivery of the new settlement, including the provision of at least 3,000 dwellings of an appropriate mix to provide a balanced community (A), about 5 hectares of employment land (B), and appropriate public transport services and infrastructure to serve the new settlement including the improvement of two existing rail stations (F).

4. FPL is the owner and promoter of land focused on the former Flaxby Golf Course, Harrogate, which broadly lies along the western side of the A1(M). FPL has promoted the development of a new settlement on this site since 2016, through the Local Plan process and an outline planning application, submitted in November 2017 and refused by HBC on 14 October 2020.

5. Oakgate Yorkshire Limited, the second Interested Party ("IP2"), is a property development company that is promoting land in the vicinity of Cattal which forms part of the Policy DM4 location. It has been promoting a new settlement here since 2016.

6. CEG Land Promotions III (UK) Limited, the third Interested Party ("IP3"), is a property development company that is promoting land in the vicinity of Green Hammerton which forms part of the Policy DM4 location. It has been promoting a new settlement here since 2013.

7. FPL, IP2 and IP3 have all participated actively in the preparation and examination of the Local Plan by making written and oral representations throughout the process. It is important to record at this point that the issues raised in these proceedings do not involve any challenge to HBC's decision that the Local Plan should contain a policy promoting a new settlement with at least 3,000 houses. The issues are solely concerned with the lawfulness of the decision to include policies identifying Green Hammerton/Cattal as a broad location for that new settlement.

8. FPL's claim mainly relates to the requirements of Directive 2001/42/EC ("the Directive"), as transposed into domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633) ("the 2004 Regulations"), for what is often referred to as strategic environmental assessment ("SEA"). The three grounds of challenge may be summarised as follows:-

    (1) The Council's Members failed to consider the reasonable alternative of allocating a new settlement in the broad location of Flaxby in breach of the Directive as implemented by the 2004 Regulations. The Inspector had required assessment of that alternative, but the fruits of that additional sustainability work were never put before Members. Instead Council officers decided whether the further sustainability work justified any change to the "finely balanced" decision regarding the location of the proposed new settlement;

    (2) The Council failed to assess the reasonable alternative of a new settlement in the broad location of Flaxby on an equal basis as it was required to do by the 2004 Regulations as interpreted by the English courts; and

    (3) The Council and the Inspector had insufficient evidence about, and made insufficient enquiry into, the viability and deliverability of the Green Hammerton/Cattal broad location despite FPL expressly putting those matters in issue and providing evidence calling the viability and deliverability of this proposed broad location into question.

9. Grounds 2 and 3 are concerned with whether there was a failure to address particular considerations in the SEA process and the examination of the draft Local Plan. On the other hand, ground 1 is concerned with identifying which body or person was required to consider the comparison of broad locations in the SEA, irrespective of the outcome of grounds 2 and 3. In the circumstances it is convenient to deal with grounds 2 and 3 before going on to consider ground 1.

10. I would like to express my gratitude for the way in which this case was presented by all parties, both in their skeleton arguments and at the hearing. There was good co-operation in the production of an agreed statement of facts, the refining of the issues needing to be decided and the production of electronic bundles complying with the protocols and guidance on remote hearings. Such good practice greatly assists the work of the Planning Court for the benefit of its users.

11. The remainder of this judgment is set out under the following headings:

Witness statements

12. FPL relied upon a lengthy witness statement by Mr. Neil Morton of Savills, who acted as their planning consultant in the Local Plan process. This document set out the history of that process and FPL's involvement in it. However, for the most part, it simply duplicated material which was already contained in the claimant's Statement of Facts and Grounds. There were a few short sections in the witness's evidence which added to that Statement, but there appears to be no reason why that additional material could not have been set out in the latter document. A Statement of Facts and Grounds is required to set out the facts relied upon and be verified by a statement of truth (CPR 8.2, 22, 54.6, and PD54A paragraph 5.6). Ultimately, FPL's case at the hearing did not depend upon Mr Morton's witness statement except for a small section relevant to ground 3.

13. Similar criticisms apply to much of the material contained in the witness statements of Mr Procter and Mr McBurney on behalf of IP2 and IP3 respectively. Fortunately, HBC did not find it necessary to submit a witness statement.

14. It is necessary to add a few observations about witness statements in proceedings in this court.

15. First, I should re-emphasise the principle that witness statements should not provide a commentary on documents exhibited or make points which are essentially a matter for legal submission or argument (*JD Wetherspoon plc v Harris* [2013] 1 WLR 3296; *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government* [2020] PTSR 993 at [66]-[70]).

16. Second, "evidence" of this kind is also objectionable because firstly, costs are incurred unnecessarily, not only by a claimant but also by opposing parties in having to consider whether to respond to that material and secondly, court time is taken up in considering that material needlessly. It is also a waste of time to have to compare such a witness statement with the statement of facts and grounds to identify the extent to which, if at all, the statement adds anything of substance.

17. Third, a defendant and interested party may feel under pressure to file a witness statement responding to the claimant's "evidence" in order to avoid a forensic point, as was made in this case, that the material has gone unchallenged. So the unnecessary proliferation of material continues. The simple point is that in so far as the claimant's evidence offends the principle in *Wetherspoon*, it should not call for an answer in the form of an opposing witness statement. In general, the defendant and interested

parties should respond to legal argument and submissions advanced by a claimant in the Summary Grounds of Defence and in the Detailed Grounds of Defence, supplemented by any additional documentary evidence upon which they rely, together with any witness statement to cover points which could not be addressed in, or are not apparent from, those documents. Factual matters may be dealt with in an Acknowledgment of Service but must be verified by a statement of truth (CPR 22.1(1)(d) and 54.1(2)(e)).

18. Fourth, lengthy witness statements are normally unnecessary because of the general principles governing the admissibility of fresh evidence in judicial or statutory review. Except for certain cases of procedural error or unfairness or perhaps irrationality, judicial or statutory review generally proceeds on the basis of the material which was before the decision-maker together with the decision itself (*R v Secretary of State for the Environment ex parte Powis* [1981] 1 WLR 584; *Newsmith Stainless Limited v Secretary of State for the Environment* [2017] PTSR 1126 at [9]; *R (Network Rail Infrastructure Limited) v Secretary of State for the Environment, Food and Rural Affairs* [2017] PTSR 1662 at [10]).

19. In *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at [37]-[41] the Divisional Court discussed the limited circumstances in which expert evidence may be admissible in a public law challenge based upon irrationality to explain technical matters which the court *would not otherwise be able to understand*. But the court sounded a warning that if that material "is contradicted by a rational opinion expressed by another qualified expert, the justification for admitting *any* expert evidence will fall away" ([41] emphasis added). The resolution of disputed factual or expert evidence generally falls outside the proper scope of proceedings for judicial or statutory review.

20. Fifth, it must be borne in mind that a party is not entitled to rely upon expert evidence without the court's permission (CPR 35.4) and that that rule cannot be circumvented by presenting evidence of expert opinion in a witness statement as to fact.

Statutory Framework

Planning and Compulsory Purchase Act 2004

21. Section 13(1) of PCPA 2004 requires the authority to keep under review matters which may be expected to affect the development of their area or the planning of its development. Those matters include the principal physical, economic, social and environmental characteristics and the size, composition and distribution of the population of the area (s.13(2)).

22. Section 17(3) of PCPA 2004 requires a local planning authority to set out its policies relating to the development and use of land in their area in local development documents, such as the Local Plan in this case. The authority must keep under review their local development documents having regard to the results of any reviews under s.13 (s.17(6)). In general, a local development document must be adopted by resolution of the local planning authority (s. 17(8)).

23. Section 19(1A) to (1C) provide as follows:-

> "(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.
>
> (1B) Each local planning authority must identify the strategic priorities for the development and use of land in the authority's area.
>
> (1C) Policies to address those priorities must be set out in the local planning authority's development plan documents (taken as a whole)."

24. Section 19(2)(a) requires that in the preparation of a local development document the local planning authority must have regard to "national policies and advice contained in guidance issued by the Secretary of State".

25. Section 19(5) provides that:-

> "The local planning authority must also-
>
> (a) carry out an appraisal of the sustainability of the proposals in each development plan document;
>
> (b) prepare a report of the findings of the appraisal."

In this case the Local Plan is a "development plan document" (s.37(3) and s.38(3)).

26. PCPA 2004 does not say any more about what a sustainability appraisal and report ("SA") is required to address. The Act received Royal Assent on 13 May 2004. The 2004 Regulations were made on 28 June 2004 and came into force on 20 July 2004. I agree with Ouseley J in *Heard v Broadland District Council* [2012] Env.L.R. 23 at [11] that s. 19(5) integrates the requirements of the Directive and the 2004 Regulations with the statutory process for the preparation and examination of development plan documents. This solution is authorised by Article 4(2) of the Directive. In practice the sustainability appraisal produced for s 19(5) must satisfy the requirements in the 2004 Regulations for an "environmental report".

27. The local planning authority must submit a draft development plan document to the Secretary of State for independent examination (s.20(1)) before adoption may be considered under s.23. Before submitting a draft plan, the authority must comply with a number of requirements in The Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012 No. 767) ("the 2012 Regulations"), including consultation on proposals for a draft plan, publicity for the plan submitted for examination, and the procedure allowing representations to be made on that submitted version. Any such representations must be forwarded to the Secretary of State with the submitted plan and must be taken into account by the Inspector who carries out the examination under section 20(4) (regulations 18 to 23 of the 2012 Regulations).

28. The authority must not submit a draft development plan document to the Secretary of State unless "they think the document is ready for independent examination" (s.20(2)(b)).

29. The purpose of the examination is *inter alia* to determine whether the submitted plan satisfies the requirements of s.19 and the 2012 Regulations (s.20(5)(a)) and "whether [the plan] is sound" (s.20(5)(b)).

30. The legislation does not define what is meant by "soundness". However, paragraph 182 of the National Planning Policy Framework ("NPPF") 2012 (which applied to this Local Plan pursuant to the transitional arrangements in paragraph 214 of the NPPF 2019) set out a number of criteria which included a requirement for a plan to be:-

> "Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on *proportionate* evidence" (emphasis added)

31. If the examining Inspector considers that the authority has complied with the duty under s.33A of PCPA 2004 to co-operate with other planning authorities and the requirements referred to in s.20(5)(a) and that the plan is "sound", he must recommend that the document be adopted by the authority (s.20(7)). Where he considers that one or more of those requirements is not satisfied, he must recommend to the authority that the plan is not adopted (s.20(7A)). However, subject to being satisfied that the authority has complied with the duty to co-operate under s.33A, the Inspector must recommend "main modifications" to the draft plan so as to make it "sound" or otherwise compliant, if requested to do so by the plan-making authority (s.20(7B) and (7C)).

32. The Inspector must give reasons for his or her recommendations (s.20(7) and (7A)). The authority must publish the Inspector's "recommendations and the reasons" (s.20(8)).

33. By virtue of s. 23(2) to (4) the local planning authority may adopt a local plan only if the Inspector has recommended that outcome, whether in relation to the plan as submitted for examination or with any main modifications to make that plan sound and/or satisfy the requirements referred to in s.20(5)(a). If the authority wishes to adopt the plan, it can only do so in accordance with the terms of the recommendations made by the Inspector, along with any other modifications that do not "materially affect" the policies in the plan (sometimes referred to as "minor modifications"). However, if the Inspector has recommended against the adoption of the plan (s.20(7A)) the authority cannot adopt that plan.

34. If the Inspector recommends adoption, the authority has only a binary choice as to whether to adopt the local plan in accordance with the terms of that recommendation, or to withdraw the plan. After the examination of a local plan has been concluded by the production of the Inspector's final report, the local planning authority cannot seek to adopt the plan with any modifications which the Inspector has not recommended (other than ones which do not materially affect those policies already set out in the plan together with any main modifications). I therefore accept the submission of Mr Katkowski QC that the motion put forward by one councillor at the meeting of the full Council on 4 March 2020 that the Local Plan be *adopted* with the new settlement

policy but without endorsing the broad location at Green Hammerton/Cattal was not something which HBC could lawfully agree to.

35. Section 23(5) provides that a development plan document can only be adopted by "resolution of the authority", which Mr Brown QC accepted refers to the full Council.

36. It follows from this analysis of the 2004 Act, that if the Inspector decides that it would not be reasonable to conclude that the requirements of s.19(5) have been satisfied, which in effect refers to the SEA requirements in the 2004 Regulations, he must recommend that the local plan is not adopted, unless he is asked by the authority to recommend main modifications which would satisfy the relevant requirements. This procedure reflects the general principle in the case law that SEA is an iterative process, which may allow a defect at one stage to be cured by steps taken subsequently (see e.g. *Cogent Land LLP v Rochford District Council* [2003] 1 P & CR 11; *No Adastral New Town Limited v Suffolk Coastal District Council* [2015] 1 Env LR 551; *R (Plan B Earth) v Secretary of State for Transport* [2020] PTSR 1446 at [144]).

37. It also follows that it is a pre-requisite for the adoption of a plan that the Inspector should judge it to be sound. In *Barratt Development Limited v City of Wakefield Metropolitan District Council* [2011] J.P.L 48 at [11] Carnwath LJ (as he then was) said that although local authorities and Inspectors must have regard to NPPF policy on "soundness", that is only advisory and not prescriptive. Ultimately it is they who are the judges of "soundness". At [33] he said:-

> "soundness was a matter to be judged by the Inspector and the Council, and raises no issue of law, unless their decision is shown to have been "irrational", or they are shown to have ignored the relevant guidance or other considerations which were necessarily material in law." (emphasis added).

38. Section 113(3) enables an "aggrieved person" to apply to the High Court for statutory review of *inter alia* a development plan document on the grounds that (a) it is not within the powers conferred by Part 2 of PCPA 2004 or (b) a "procedural requirement" has not been complied with. The High Court may only intervene if either (a) the document "is to any extent outside the appropriate power" or (b) "the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement" (s.113(6)). It is common ground that non-compliance with the 2004 Regulations is a ground upon which the court may intervene under s. 113.

The SEA Directive

39. Directive 2001/42/EC deals with 'the assessment of the effects of certain plans and programmes on the environment'. Recital (4) states:

> "Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and

> programmes are taken into account during their preparation and before their adoption."

40. Recital (9) states that the Directive "is of a procedural nature".

41. Article 1 provides: -

> "The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment"

42. Article 2b, defines "environmental assessment":-

> "'environmental assessment' shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9."

43. Article 3(1) provides:-

> "An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects."

44. Article 4(1) provides:

> "The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure"

45. Article 5(1) addresses the content of an environmental report:-

> "Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I."

The information required under Annex 1 includes in paragraph (h) "an outline of the reasons for selecting the alternatives dealt with".

46. Article 5(2) provides-

> "The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

47. Thus, the information to be included is that which may "reasonably be required", taking into account *inter alia* "the contents and level or detail in the plan" and "its stage in the decision-making process" and "the extent to which certain matters are more appropriately assessed at different levels in that process". In the present case, the new settlement policies in the Publication Draft and Submission Draft of the Local Plan were of a strategic rather than detailed nature, based upon high-level analysis, even at the stage when HBC was proposing to identify a "site" rather than a "broad location" in the plan.

48. Articles 6 and 7 deal with the consultations required to be carried out. Article 8 deals with decision-making:-

> "The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure"

49. Article 9 requires the publication of information when a plan is adopted including:-

> "(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, ……"

The 2004 Regulations

50. It is common ground that the Local Plan was a plan for which SEA was required under the 2004 Regulations (see regulation 8(1)).

51. Regulations 8(2) and (3) provide:-

> "(2) A plan or programme for which an environmental assessment is required by any provision of this Part shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before–

> (a) ……;
>
> (b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.
>
> (3) The requirements of this paragraph are that account shall be taken of–
>
> (a) the environmental report for the plan or programme;
>
> (b) opinions expressed in response to the invitation referred to in regulation 13(2)(d);
>
> (c) opinions expressed in response to action taken by the responsible authority in accordance with regulation 13(4); and
>
> (d) the outcome of any consultations under regulation 14(4).”

Regulation 8(3)(b) and (c) refers to the responses to the consultations required with specified agencies and with the public.

52. Regulation 12 deals with the preparation of an “environmental report”. Sub-paragraphs (1) to (3) provide:-

> “(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.
>
> (2) The report shall identify, describe and evaluate the likely significant effects on the environment of–
>
> (a) implementing the plan or programme; and
>
> (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.
>
> (3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of–
>
> (a) current knowledge and methods of assessment;
>
> (b) the contents and level of detail in the plan or programme;
>
> (c) the stage of the plan or programme in the decision-making process; and

> (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

53. For most purposes, the term "responsible authority" is defined as "the authority by which or on whose behalf [a plan or programme] is prepared" (regulation 2(1)).

Delegation of functions for the preparation of plans

54. Section 101(1) of the Local Government Act 1972 ("LGA 1972") contains a general power for a local authority to delegate any of its functions to one of its committees or officers, subject to any express provision in that Act or any statute passed subsequently. It is under this provision that authorities have delegated many planning functions.

55. Part 1A of the Local Government Act 2000 ("LGA 2000"), which was inserted by the Localism Act 2011, introduced revised arrangements for the governance of English local authorities. In broad terms, s.9B requires such authorities to operate under either "executive arrangements" or "a committee system". The latter expression applies where the authority does not operate executive arrangements. Those "arrangements" provide for the creation and operation of the authority's executive and for certain of the authority's functions to be the responsibility of the executive (s.9B(4)). By s.9C an executive comprises the elected mayor of the authority or a councillor elected as leader of the executive, plus two or more councillors. In effect, the executive forms what is generally referred to as a cabinet. HBC operates an executive or cabinet system with an elected leader, and not a "committee system".

56. Sections 9D and 9DA, together with the regulations made thereunder, are central to defining the extent to which the functions of a local authority are made the responsibility of its executive or remain with that authority (see ss. 9D(1) and 9DA(1)).

57. Section 9D(3) authorises the Secretary of State to make regulations to define any function of a local authority which:-

> (a) is *not* to be the responsibility of its executive; or
> (b) *may* be the responsibility of its executive under the arrangements made by the authority (and which must therefore be addressed by the authority's "executive arrangements" - see s.9D(4)); or
> (c) *to the extent* specified by the regulations, either is or is not the responsibility of its executive.

There is a fourth category. Section 9D(2) provides that any function of a local authority which is *not* specified in such regulations is to be the responsibility of the authority's executive in accordance with the "executive arrangements" it makes.

58. Section 9DA(2) provides that any function which is the responsibility of an executive of a local authority is to be regarded as exercisable on behalf of that authority. Section 9DA(3) prevents any such executive function from being exercisable by the authority itself and disapplies s.101 of LGA 1972 so that that function may not be delegated by the authority to a committee or to an officer. Instead, the functions which are the

responsibility of the executive may be delegated (e.g. to a committee or an officer) by the executive, or by the leader or a member of the executive, in accordance with s. 9E.

59. The effect of section 9DA(4) is that any function which is not made the responsibility of an authority's executive is to be discharged in any way which would otherwise be permissible or required. So those functions may be exercised by the authority or delegated under s.101 of LGA 1972 to a committee or officer, subject to any regulations made under s.9DA(5).

60. The relevant regulations are the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 2000 No. 2853) ("the 2000 Regulations"). These regulations were made under s.13 of the LGA 2000, before that part of the statute was replaced in England by the relevant provisions of the Localism Act 2011. However, the 2000 Regulations continue to have effect as if made under ss.9D and 9DA (see s.17(2)(b) of the Interpretation Act 1978).

61. Regulation 2 and schedule 1 of the 2000 Regulations set out functions which are *not* to be the responsibility of an authority's executive. Part A of schedule 1 lists a wide range of planning functions, including the determination of planning applications. Such functions are therefore to be discharged by the authority itself, unless delegated under s. 101 of LGA 1972 to a committee or to an officer.

62. Regulation 3 and schedule 2 of the 2000 Regulations deal with the functions which *may be*, but need not be, the responsibility of an authority's executive, and therefore are to be addressed under the authority's executive arrangements. Although schedule 2 identifies some planning and environmental functions, none relate to any aspect of the local plan process.

63. Regulation 4 and schedule 3 deal with functions which are *not* to be the sole responsibility of an authority's executive.

64. By regulation 4(1), the formulation or preparation of a development plan document is not to be the responsibility of the executive as regards any of the "actions" described in regulation 4(3). Those actions are therefore matters to be dealt with by the local authority, subject to any permissible delegation under s.101 of LGA 1972. They include the approval of a draft local plan for submission to the Secretary of State for examination under s.20 of PCPA 2004 and the adoption of the plan, with or without modifications. As we have seen, s.23(5) of PCPA 2004 precludes delegation by an authority of the decision to adopt. By virtue of regulation 4(8)(a), the decision on whether or not to approve the draft of the local plan for submission to examination cannot be delegated under s.101 of LGA 1972.

65. However, by regulation 4(2) the function of formulating or preparing a development plan in all respects other than the approval of a draft plan for submission to examination and the adoption of the plan is made the responsibility of the authority's executive.

66. The effect of regulation 4(4) (so far as is material) is that an authority's executive is expressly made responsible for the specified functions of amending, modifying, revising, varying, withdrawing or revoking a local plan, in so far as the taking of such action is recommended by the Inspector in his or her report on the examination. The

executive's responsibility would therefore include a decision on whether to accept a recommendation that "main modifications" be made to a local plan (see s. 23(2A) of PCPA 2004). But the responsibility for those specified functions in all other respects lies with the authority, not the executive (regulation 4(4)(b)). In the present case, it was the responsibility of HBC's Cabinet's to decide whether to modify the local plan in accordance with the Inspector's report before the full Council could decide whether to adopt it as so modified.

67. Regulation 4(8)(b) has the effect of disapplying s.101 of LGA 1972 in relation to any function described in regulation 4(4) to the extent that it is *not* made the responsibility of the executive. So, the functions described in that provision of amending, modifying, revising, varying, withdrawing or revoking a local plan, in so far as they are the responsibility of the authority, may only be exercised by the full Council and cannot be delegated.

68. The position may be summarised as follows:-

(i) The effect of regulation 4(1) to (3) of the 2000 Regulations is that any function in connection with the formulation and preparation of a development plan document, including a local plan, is the responsibility of the executive, save for the approval of a draft plan for submission for examination and the adoption of the plan following that examination, both of which are the responsibility of the local planning authority;

(ii) The functions in (i) above of the *authority* cannot be delegated (regulation 4(8)(a)), but those functions of the *executive* may be (s.9E);

(iii) The functions of amending, modifying, revising, varying, withdrawing, or revoking any development plan document is the responsibility of the executive in so far as that action is recommended by the Inspector carrying out the examination under s.20, but are otherwise the responsibility of the local planning authority (regulation 4(4) and see also s.9D(4)). The executive, but *not* the authority, may delegate the functions referred to in this paragraph for which it is responsible (s. 9E of the 2000 Act and regulation 4(8)(b));

(iv) Any other function involved in the statutory process leading to the adoption of a local plan which is not expressly specified in the 2000 Regulations is the responsibility of the executive (s.9D(2)) and may be delegated under s.9E. These functions would include a request to the Inspector under s. 20(7C) of PCPA 2004 to consider recommending "main modifications". That "request" does not itself amount to a variation or modification of the plan. Any such alteration would only come about if firstly, the Inspector were to recommend in his report on the examination that it be made and secondly, the executive were then to accept that recommendation when considering the report.

Factual background

69. It is necessary to set out the evolution of the Local Plan policy for a new settlement in some detail.

70. HBC began its plan-making process in 2014. It issued a scoping report and made an initial call for interested parties to notify sites with potential to be allocated for development.

The Issues and Options consultation document - 2015

71. In July 2015 HBC published the Local Plan: Issues and Options consultation document. The accompanying Draft Sustainability Appraisal: Interim Report assessed 11 growth strategies, from which HBC selected 5 for consultation. Option 5 was for "creating a new settlement within the A1(M) corridor to accommodate up to 3,000 new homes", with the remaining housing requirement being met in the main urban areas of Harrogate, Knaresborough, Ripon, market towns and villages. The SA referred at p. 206 to an area of search running broadly north/south for about 3 miles either side of the A1(M).

72. The SA included a comparative assessment based upon 16 objectives, which was subsequently carried forward in later SA work during the local plan process. Under the heading "10. A transport system which maximises access while minimising detrimental impacts", HBC identified proximity to the motorway encouraging commuting by car as a disadvantage, while seeing the scope for improvements to public transport as an advantage, depending on the location of the site within the A1(M) corridor. It was also recognised from the outset that a new settlement would be a long-term option going beyond the plan period, given the need to secure land assembly.

Consultation draft Local Plan - October 2016

73. HBC published a Draft Local Plan in October 2016 for consultation between 11 November and 23 December 2016. Policy GS2 set out a growth strategy to 2035. The opening words of the policy stated:-

> "The need for new homes and jobs will be met as far as possible in those settlements that are well related to the key public transport corridors."

74. Paragraph 3.12 stated:-

> "Those settlements within, or located in close proximity to, the key public transport corridors have the best access to public transport and therefore also a wide range of jobs, services and facilities within the district but also further afield."

75. Because there were insufficient sites within existing settlements to meet housing needs in full, the plan proposed a "major new strategic allocation for housing with associated employment and supporting services and facilities" which would "take the form of a new settlement". This was intended to help meet housing needs during the plan period and beyond (paragraph 3.15).

76. Two potential locations were identified:-

- land at Flaxby, adjacent to the A59/A1(M), known as Site FX3; and

- land in the Hammerton area, Green Hammerton/Kirk Hammerton/Cattal, known as Site GH11.

FX3 had an area of 196.6 ha and GH11 an area of 168.1 ha. Paragraph 10.10 stated that the final version of the plan would include only one new settlement.

77. Paragraph 5.6 of the accompanying draft SA stated:-

> "An initial sustainability assessment of these two new settlement options is included in Appendix 8a. Further work will now be undertaken to inform which option for a new settlement is taken forward and included at the Formal Publication Stage consultation in July 2017."

78. The SA assessed 6 potential locations. One site at Cattal, referred to as CA4, was discounted at this point because, taken in isolation, it could provide only 1,000 homes and so was below what was considered to be the threshold for a new settlement. The SA noted that there are two rail stations near GH11 offering the potential for non-car journeys, whereas in the case of FX3 there were "significant transport/accessibility problems …", an "aspiration to deliver a rail station … no detailed work undertaken" and "limited scope for non-car travel from site". The relative proximity of FX3 to Knaresborough was also identified as a disadvantage. But at that stage the appraisal said that FX3 was an "option for further consideration".

79. During the consultation on the 2016 draft Local Pan two additional sites were put forward, one of which was also at Cattal, CA5. This site included part of CA4 and was larger than that site.

Additional Sites Plan - 2017

80. Between 14 July and 25 August 2017, HBC undertook consultation on an Additional Sites Plan dated July 2017. At this stage GH11 became HBC's preferred location for a new settlement. Paragraph 7.1 stated:-

> "….. a new settlement is being proposed which will help to meet the need within the plan period and beyond. Last year HBC consulted on two options, one at Flaxby and one in the Hammerton area. It was made clear in the consultation document that HBC would only identify one of the options for inclusion in the draft plan. Following a review of both of these options, together with options at Malt Kiln village (Cattal) and an option at Deighton Grange (Kirk Deighton) HBC has concluded that land at Green Hammerton is the preferred location for a new settlement. HBC has prepared a separate New Settlement Report that sets out the reasons for this choice".

Paragraph 7.2 identified HBC's objectives for the new settlement, including that it should "be designed to integrate into and enhance the local public transport network, maximising public transport use", "be designed to have its own identity and sense of place and create a new focus for growth" and "have the propensity to grow in the future".

81. The New Settlement Report was published in July 2017. Its purpose was explained at paragraph 1.5:-

> "to provide detail on HBC's rationale for including a new settlement as part of the Local Plan growth strategy and to make an assessment of a preferred new settlement location to be taken forward and included in the Publication Local Plan".

HBC's objectives for the new settlement remained as previously stated (paragraph 3.13).

82. The Report contained a like for like comparison of four sites, CA5, FX3, GH11 and OC5. In Chapter 5 "Constraints and Opportunities" FX3 was assessed for accessibility by rail as follows:-

> "there is currently no direct access to the Leeds-Harrogate-York line. As the rail line runs to the south west of the site there may be the potential to develop a new station stop, preferably to the north of the A59 so as to be within walking/cycling distance of the majority of the site. The former Goldsborough station site lies to the southwest of the site although outside of the site boundary shown in the draft Local Plan. The development promoter has undertaken initial investigations on the feasibility of reopening a station in this location to serve the new settlement. This could be a potentially complex solution and without certainty: as it currently stands, a station and rail service are not in place. Knaresborough and Cattal rail stations, the nearest existing stations, are outside of walking distances but potentially accessible by improved bus services."

By contrast the report's appraisal of GH11 on this subject was:-

> "the site benefits from two operational stations within walking distance of the whole site offering choice."

83. The "comparative analysis" was brought together in chapter 6. Under accessibility it was stated that "CA5 and GH11 have additional benefit of access to rail stations within or immediately adjoining the sites".

84. The conclusions of the Report were set out in chapter 7. Site OC5 was rejected because it lay outside all of the key transport corridors identified in the draft Local Plan (paragraph 7.2). the document then turned to address the three other sites:-

> "7.3 Of the remaining three sites, they all share similar constraints in terms of landscape, ecological and heritage impacts and the need to upgrade physical infrastructure (Junction 47, A1M) and utilities). However, the comparative assessment has not identified these to be showstoppers and the assessment indicates that these should be capable of site specific mitigation, although this may be more challenging for some sites.
>
> 7.4 *Maximising public transport use* is one of HBC's objectives for the new settlement and sites *CA5 and GH11 are best placed to achieve this with direct access to train stations. Whilst the promoters of site FX3 have indicated that provision of a new station is possible there is no evidence that this could be delivered during the plan period, if at all.* Sites CA5 and GH11 also offer a greater opportunity to grow in the longer term, beyond the current plan period and, therefore, have more potential to support a wider range of services and jobs whereas site FX3 is more restricted by virtue of its proximity to the A1(M) and Knaresborough to the west.
>
> 7.5 Sites CA5 and GH11 share many similarities. This is due largely to their close proximity to one another: indeed an area of land to the east of Station Road between the A59 and the rail line is included within the boundaries of both sites. However, the larger part of site GH11 is within reasonable walking distance (800m) of the services and facilities available in Green Hammerton (school, shop, GP) than is the case with site CA5, where only the very eastern edge of the site is within reasonable walking distance of the services and facilities in Kirk Hammerton (school). Accessibility to services that can meet the day to day needs of residents, and by sustainable modes, in the early stages of the development is considered to be a distinct advantage of site GH11.
>
> 7.6 On balance, it is concluded that site GH11 should be the preferred option for a new settlement location for inclusion in the Publication version of the Harrogate District Local Plan." (emphasis added)

85. Paragraph 7.3 indicates that in relation to general planning considerations there was not much to choose between the three sites. Nonetheless, HBC reached a clear conclusion about which site they preferred so that they could advance their Plan. At this stage they selected GH11. Paragraph 7.4 is of crucial importance to that judgment. Some two years after the Issues and Options consultation there was still no evidence that a new station to serve FX3 could be delivered within the plan period running to 2035, if at all. CA5 and GH11 were best placed to maximise public transport use because of their direct access to existing railway stations.

86. HBC also identified the "greater opportunity" offered by CA5 and GH11 to provide for growth in the longer term beyond the plan period. HBC's judgment was that FX 3

was more restricted because of proximity to the A1(M) (which according to the SA involved issues about the effect of noise from traffic) and proximity to Knaresborough to the west (which had raised issues about the need for separation and how far the settlement could expand in that direction).

87. Mr Katkowski QC rightly accepted that HBC's judgment was that GH11 was preferable to CA5, but both were preferable to FX3, for the reasons summarised in paragraph 7.5.

New Settlement Background Paper and Publication Draft Local Plan - January 2018

88. In January 2018 HBC issued its Publication Draft Local Plan for consultation under regulation 19 of the 2012 Regulations. In order to explain its "final preferred approach" in the draft plan on a new settlement, in November 2017 HBC had already published its New Settlement Background Paper (see paragraph 1.2).

89. On the subject of connections to the railway system, the Background Paper said this with regard to FX3:-

> "A new station at Green Hammerton could bring opportunities for an interchange and improved parking in a central location within the site. However, adding a new station anywhere is problematic and would present logistical issues (updating of signalling system and decommissioning of older stations) and would be costly with a long lead in time. As Flaxby is located on a fast section of the line, a new station in this location would impact on journey times. A case to limit stops elsewhere on the line could not currently be put forward without updating the signalling system (not currently scheduled or funding available) and increasing the number of stations on the line may make it more difficult to secure improvements. Improving existing stations would on balance be preferable to delivering a new station because of uncertainty over delivery."

90. In the summary and conclusions in chapter 8 HBC explained why it continued to prefer the Green Hammerton location over Flaxby, but considered that the local plan should identify a broad location comprising areas CA4/CA5 and GH11/GH12 within which a site would be identified in a subsequent Development Plan Document ("DPD") (see paragraph 8.8), rather than allocate a defined site in the Local Plan:-

> "8.3 The consideration of alternative locations in Section 7 has highlighted that, for the majority of the sites, the consideration between alternative sites is finely balanced and that there are few differences in the opportunities and constraints for each site and the performance of the sites when assessed against sustainability objectives. All of the sites, with the exception of Sites DF7 and OC5 'fit' with the Local Plan growth strategy being located in a key public transport corridor, although sites CA4/CA5, FX3 and GH11/GH12 have the additional advantage over Site OC11 of being located in the rail corridor to the east of Knaresborough.

8.4 Throughout the evolution of the Local Plan the council has considered the various options put forward. At the Draft Local Plan stage the council considered that, based upon a comparative consideration of the alternatives put forward, the preferred options were either Flaxby or Green Hammerton. At the Additional Sites Consultation stage, a preference was given for the Green Hammerton proposal. The council has now had the opportunity to review all the very latest evidence (including additional material provided by the various site promoters) alongside wider consultation feedback, and considers that the optimum approach to ensure the best possible place making solution for the future would be to continue to focus on the Green Hammerton option, but introduce additional flexibility to enable full consideration of adjoining land which has also been promoted as a new settlement (Maltkiln). The key reasons for the selection of this site over the other options includes:

- The area has direct and convenient access to the Leeds Harrogate York rail corridor providing opportunities for sustainable travel via two operational rail stations. The scale of development would support the improvement and enhancement of existing rail facilities and services, realising substantial positive environmental, social and economic benefits.
- The area is also located with convenient access onto the A59 for local bus services as well as providing accessibility to the highways network. It is sufficiently far enough away from the A1(M) to not suffer from noise or disturbance from that corridor.
- The area provides greater scope to deliver funding for infrastructure and wider planning obligations to support the creation of a quality place.
- A large area of land has been promoted for development providing scope to define the best possible site boundary and inclusion of necessary infrastructure through future comprehensive master planning.
- The site is located close to existing village settlements which provide some local services. These could assist in the very early phases of development to provide for day to day A362 New Settlement Background Paper 2017 Harrogate Borough Council 69 Summary and Conclusions 8 needs of new residents (albeit over time the new settlement will be expected to address its needs through the provision of a comprehensive range of new services and facilities).

8.5 A new settlement represents an unprecedented scale of development in the district and the council is mindful of the need to ensure the effective and successful planning and delivery of a new settlement including achieving a step change

> in the quality of place making. In considering the evidence and key issues raised during the Additional Sites consultation, the council considers that to achieve this, a broad location for a new settlement in the Green Hammerton area should be identified in the Local Plan rather than allocation of an individual site or landownership defined boundary that has been promoted to date. This approach offers a number of potential benefits:
>
> - Consideration of the optimum boundary for a new settlement taking account of all key factors including land ownership, infrastructure and masterplanning matters;
> - Provides for further consideration of the provision of key infrastructure, for example to ensure the most appropriate long term solution to improvements to the A59 and local rail facilities;
> - Provides a further opportunity to consult on the most appropriate spatial and place making approach (such as creation of a new settlement in accordance with Garden City principles), a site specific boundary, disposition of key land uses and relationship with existing neighbouring villages; and
> - It does not result in a delay to the adoption of the Local Plan or meeting local housing requirements within the plan period.
>
> 8.6 Map 8.1 is the broad area for growth. It generally includes Sites CA4/CA5 and GH11/GH12 previously considered albeit boundaries will be defined through subsequent planning policy development. The exact boundary will seek to best exploit the existing railway line and optimise the delivery of the necessary improvements to the A59 in the longer term. It will also further reflect on the relationship to existing communities."

91. Three points can be seen from chapter 8 of the Background Paper. First, HBC continued to take the view that for most of the planning considerations which had been assessed, there was little to choose between the majority of the sites, including Flaxby and Green Hammerton/Cattal. Second, HBC continued to identify as key reasons for preferring the Green Hammerton/Cattal location, its direct access to the rail corridor through two operational rail stations, the absence of significant noise constraints from the A1(M), and proximity to existing settlements providing local services assisting new residents in the early phases of development. Third, the paper also referred to the broad location as providing scope for selecting an optimum site boundary in the future.

92. At meetings in November and December 2017 HBC's cabinet and the full Council received a report by officers on the process which had been followed and an analysis of issues raised in consultation, as well as the Background Paper and what became published in January 2018 as the latest iteration of the SA. On that basis they

considered and approved the Publication Draft Local Plan. Paragraphs 5.15 to 5.18 of the officers' report stated:-

> "5.15 Whilst the housing and employment need figure has increased, it is still considered appropriate to identify a single new settlement in order to meet identified needs. At the Additional Sites consultation stage the Council identified the Green Hammerton option as its preferred location. Following submissions to this consultation, officers have reviewed all the very latest evidence (including material provided by the various promoters) alongside wider consultation feedback and consider that the focus should remain on the Green Hammerton option but introduce additional flexibility to enable a full consideration of adjoining land which has also been promoted as a new settlement (known as Maltkiln).
>
> 5.16 In order to achieve this it is proposed that a broad location for a new settlement in the Green Hammerton area should be identified in the Local Plan rather than allocation of an individual site or landownership defined boundary that has been promoted to date. This approach offers a number of potential benefits:
>
> - Consideration of the optimum boundary for a new settlement taking account of all key factors including land ownership, infrastructure and masterplanning matters
> - Provides for further consideration of the provision of key infrastructure, for example to ensure the most appropriate long-term solution to improvements to the A59 and local rail facilities
> - Provides a further opportunity to consult on the most appropriate spatial and placemaking approach, a site-specific boundary, disposition of key land uses and relationship with existing neighbouring villages and
> - It does not result in a delay to the adoption of the Local Plan or meeting local housing requirements within the plan period.
>
> 5.17 A New Settlement Background Paper is attached at Appendix 3 that draws together relevant information from the Local Plan evidence base, sets out the consideration of the alternative options and proposals, explains the decision making process and rationale behind the choices made including the final preferred approach, which has been included in the Publication Local Plan.
>
> 5.18 Whilst the District Local Plan will provide the strategic policy context for development of a new settlement the detailed site boundaries and detailed planning of the new settlement will

> be taken forward through the preparation of a separate Development Plan Document (DPD). ….."

93. It follows that the Cabinet and full Council approved the decision to discard alternatives to the Green Hammerton proposal and, having reached that decision decided that that proposal should be taken forward as a "broad location" extending to 604 ha, within which the optimum site boundary would be identified in a future DPD.

94. The Publication Draft Local Plan (dated January 2018) included draft policy DM4: Green Hammerton/Cattal Broad Location for Growth. It is common ground that this policy was in very similar terms to policy DM4 in the draft of the plan submitted by HBC in August 2018 to the Secretary of State for examination and in the version adopted on 4 March 2020. Paragraph 10.15 of the Publication draft relied upon the Background Paper to identify the "broad location" for the new settlement (ie. areas CA4/CA5 and GH11/GH12). The new settlement is to provide at least 3,000 homes, of which at least 1,000 are expected to be built by 2034/35 (paragraph 10.21).

95. The draft SA (January 2018) that accompanied the Publication Draft Local Plan did not assess any other broad location for growth. It compared the policy DM4 broad location with a number of *sites* including FX3. This provided a record for the public and consultees as to how those sites had been assessed as the SA continued to evolve during the local plan process. The SA plainly states that in the local plan documents produced in 2017 and 2018 FX3 was not identified as a new settlement option for further consideration, in contrast to the position in 2016. In other words, FX3 had been "sieved out". According to HBC, there continued to be significant transport/accessibility problems with FX3 (p. 223 of draft SA).

96. In March 2018 FPL made representations on the Publication Draft of the Local Plan objecting to the fact that the Draft SA had not assessed any other "broad locations" or areas of search for growth apart from the preferred location. All the comparisons made had been between the policy DM4 broad location and other *sites* such as FX3. The consultants said that Flaxby should be assessed in the SA as a broad location, that is as a wider area of search extending beyond the boundaries of FX3.

97. In June 2018, HBC's consultants, AECOM, prepared a Sustainability Appraisal Health Check. It appears that a number of consultees, and not simply FPL, had raised issues to do with "reasonable alternatives". AECOM advised that there were numerous approaches that could be taken. They then summarised four options with varying degrees of risk of legal challenge, acknowledging the delays to the local plan process that could occur and the constraints of the timetable for adoption of the plan. It was in this context that AECOM pointed out that, given the iterative nature of the SEA process and in accordance with case law, any deficiencies found to exist in the SA could be rectified during the examination. Specifically on the objections which had been raised by FPL on HBC's treatment of Flaxby, AECOM advised:-

> "The change in approach is not fundamental to the selection of a new settlement. The choice is still the same with regards to Green Hammerton or Flaxby. However, within Flaxby, there are no 'sub options' to consider. Appraisal of a broad area of search at Green Hammerton versus a broad area of search at

> Flaxby would reveal very similar findings to the appraisal of site options that have already been undertaken."

Submission of Local Plan for examination - August 2018

98. HBC submitted the Local Plan for examination on 31 August 2018. Policy DM4 retained the broad location for growth at Green Hammerton/Cattal. The SA continued to compare the merits of that broad location with other sites, not broad locations.

99. On 14 November 2018, HBC's Cabinet received a report from officers recommending the grant of delegated powers to deal with issues that were likely to arise in the course of the examination. It was explained that during the examination officers would be expected to provide information in response to requests from the Inspector and views on possible amendments to policies. The delegation would enable the examination to proceed efficiently, but any proposed modifications to the plan resulting from the process would require the agreement of the Council before adoption. The Cabinet approved the following resolution: -

> "That Cabinet delegates authority to the Executive Officer Policy and Place for the duration of the Examination, in consultation with the Cabinet Member for Planning to:
> a. provide formal responses to questions from the Inspector alongside other supporting statements and documentation as requested by the Inspector; AND
> b. to agree to modifications to the plan through the examination period in order to make the plan sound."

Mr Katkowski QC rightly accepted that the reference to "soundness" made it clear that the second part of the delegation related to potential "main modifications" (see ss. 20(7C) and 23(2A) of PCPA 2004). But it is also clear that the delegation was only to last for the duration of the examination and required the Executive Officer to consult with the Cabinet Member for Planning.

100. The examination hearings took place between 15 January and 13 February 2019. A number of documents were submitted by FPL and by HBC dealing with the SEA issues regarding the proposals for a new settlement. FPL submitted that the SA was flawed because HBC had not assessed any alternative "broad location" for the settlement, including Flaxby. FPL also claimed that such a defect could not subsequently be cured through the SEA/local plan process and that a fresh environmental report would have to be prepared before the examination commenced. FPL did not pursue that argument in the hearing before me.

101. In an undated document (but apparently supplied on 14 January 2019) HBC responded to FPL's submissions, stating that no further SEA was required comparing alternative broad locations. The Council's reasoning included the following extracts from Table 1 and paragraph 3.4:-

> "The change in approach is not considered to be fundamental to the decision making process with regards to the selection of a new settlement. All reasonable alternatives for a new settlement have been tested in the SA (as discussed at section 7 of the SA

> Report). Following this process, the Council identified that the new settlement option sites in the Green Hammerton / Cattal area were emerging as a preferred location for growth. However, it was considered that a broad area of search should be identified to allow for detailed issues and opportunities in this area to be explored in more detail (to help determine an appropriate boundary for a new settlement).
>
> *At this stage, other new settlement options had been discounted in favour of the options in the Green Hammerton/Cattal area. It was therefore considered unnecessary to identify additional 'broad areas of search' to compare to the Green Hammerton / Cattal location. The choice of location had been made but the exact boundary was to be determined.*" (emphasis added)
>
> "The legal opinion goes on to suggest at para 21 that the failure to do this meant that the Flaxby site was not treated equally. It is accepted that appraisal of a broad area of search is not exactly on a like-for-like basis with an assessment of individual site options (i.e. it allows for greater flexibility to address impacts). However, there had already been an assessment of new settlement options across the district which was carried out on a like-for-like basis and which provided an understanding of the issues and opportunities in key locations such as Flaxby, Green Hammerton/Cattal. *Flaxby was not taken forward as the preferred location based on that assessment and not as a result of a comparison with the assessment of the broad location. This process helped to inform the identification of a broad area of search, which is only necessary in order to determine the optimum boundary of the new settlement.*" (italics added)

FPL did not raise any issue about the factual accuracy of that italicised summary of the basis upon which HBC had reached its decision.

Sustainability Appraisal Addendum 2 - 2019

102. On 11 March 2019, the Inspector issued a letter to HBC stating:-

> "Having considered the submissions from Flaxby Park and Keep the Hammertons Green, along with HBC's additional submission in relation to Matters 1 and 12, it seems to me that the issue of whether additional SA work in relation to broad locations for growth for a new settlement is needed is finely balanced. This being so, I consider that it would be sensible for HBC to undertake additional work in this regard. In short, for it to assess broad locations around each of the proposed potential sites. I may comment further on the matter of the proposed new settlement in due course, if I deem it necessary in light of the additional work."

103. On 14 March 2019, HBC's Executive Officer Policy and Place wrote to the claimant's planning consultant referring to the Inspector's letter:-

> "As you will see he is asking the Council to undertake additional Sustainability Appraisal (SA) work, to assess broad locations around each of the new settlement options that had been promoted and considered by the Council.
> The broad location for growth around Green Hammerton/Cattal was identified on the basis of known available land. The Council will look to identify a broad location around the other new settlement options on the same basis, i.e. based on known available land. Where there is no additional land available the sustainability appraisal will be limited to the extent of the land that you have previously promoted as a new settlement. The reason for this is on the grounds of deliverability.
> You submitted the attached land for consideration (FX3). I would be grateful, if you could confirm the extent of land that you consider to be available. If you propose new land over and above that previously promoted then I would need you to provide confirmation from the landowners that they are willing to have their land considered and/or details of any option agreements that secure control of the land. *The Council is aware of other land promoted around FX3 (shown on the attached plan) and will be writing to those promoters separately to confirm availability.*
> In order that the Council can progress this work in a timely manner I would appreciate a response by Friday 22 March. Should I not hear from you by that date I shall proceed on the basis that the extent of land available is as you have previously promoted.
> If you have any questions then please get back to me." (emphasis added)

104. On 22 March 2019 the claimant's planning consultant responded as follows:-

> "…… I can confirm on behalf of Flaxby Park Ltd that all of the land identified as FX3 on your plan is available (it is all owned and controlled by FPL).
> In addition, your plan excludes land at the former Goldsborough Station which is owned by FPL (title plan attached) and forms part of their outline planning application. As you know, the outline planning application proposes to re-open the station alongside a park and ride and this should be added to the FX3 site.
> Please could you keep me informed on the progress of this work."

On the same date, HBC responded:-

> "Thank you for getting back to me. We will amend the area accordingly."

105. In May 2019 HBC produced a draft "Sustainability Appraisal 2: Broad Locations of Growth" dated May 2019 ("SAA2") which included an assessment of a broad location at Flaxby (site OC16), two other broad locations, Dishforth (OC18) and Kirk Deighton (OC19), and the DM4 broad location (OC12). The OC16 location significantly expanded FX3 by including additional land identified through the exercise in March 2019, ie. land extending northwards along the A1(M), westwards towards Knaresborough, to the south of the A 59 and to the east of the A1(M).

106. Paragraph 1.6 of draft SAA2 stated:-

> "Sites CA5, FX3 and GH11 lie within the public transport corridor to the east of Knaresborough. However, maximising public transport is one of the council's objectives for the new settlement and sites CA5 and GH11 were best placed to achieve this with direct access to train stations. Whilst the promoters of site FX3 indicated that provision of a new station was possible there was no evidence that this could be delivered during the plan period, if at all. Sites CA5 and GH11 also offered a greater opportunity to grow in the longer term, beyond the current plan period and, therefore, had more potential to support a wider range of services and jobs whereas site FX3 was more restricted by virtue of its proximity to the A1(M) and Knaresborough to the west. For these reasons FX3 was discounted in 2017."

This confirms that FX3 had been rejected not only on the grounds of accessibility to public transport, but also because it offered a lesser opportunity for growth in the long term, as had previously been explained in the New Settlement Report in November 2017.

107. Draft SAA2 was subject to a "targeted consultation" between 8 and 30 May 2019. HBC consulted 12 parties interested in the location of a new settlement, including FPL, landowners within the Green Hammerton/Cattal broad location, and an environmental amenity group (Keep the Hammertons Green) which was opposed to a new settlement at the DM4 broad location. FPL submitted representations in response to this consultation on 30 May 2019. They contended *inter alia* that there had not been a proper opportunity for landowners in the vicinity of the FX3 site to put forward additional land as part of a broad location or area of search. HBC resisted that contention in their response.

108. In July 2019 HBC published a revised version of the draft SAA2, taking into account comments received in the targeted consultation exercise. The scoring analysis was updated to correct errors which had been identified and accepted.

109. The overall conclusions were set out in paragraphs 4.2 and 4.3:-

> "4.2 Whilst the broad locations all produced a red score against one or more sustainability appraisal criteria, it should be acknowledged that any new settlement would have negative impacts mainly through development scale and the impact that scale has on, for example, the surrounding landscape or

existing settlement. From the above assessments it is clear that all the broad locations achieve similar ratings but there are key points of difference between them which are as follows:

- A key part of the Local Plan growth strategy is locating development in areas that have good public transport links. Maximising public transport is one of the council's objectives for the new settlement. Significant long term positive effects in relation to sustainability objectives transport (10), climate change (11) and local needs met locally (9) will be met in those locations where there is good access to public transport, especially where there are existing bus and rail services which can be enhanced. OC18 and OC19 do not sit in the defined public transport corridor, albeit that there may be scope to expand a bus service into OC19; this would be less likely in relation to OC18. OC12 includes within it two operational rail stations that allows direct and convenient access to the Leeds-Harrogate-York rail line, providing sustainable transport options from the earliest phases of development. Whilst OC16 includes the former Goldsborough Station, there is no substantive evidence to suggest that this can be delivered in the medium to long term, and certainly would not be available from the earliest phases of development. This leaves the provision of an operational rail station as uncertain and certainly as a less favourable position than a location that has within it operational stations that can be used by residents from day one.
- With the exception of OC19, all of the remaining options are of sufficient scale to deliver a minimum of 3,000 dwellings as required by Local Plan policy DM4. The propensity to grow in the future is limited in respect of OC18. In terms of known available land there is sufficient land within either OC12 and OC16, to enable future expansion. In respect of OC16, any expansion would limit effective place making by virtue of either linear expansion alongside the A1(M) and/or development crossing the A1(M). The extent to which any new settlement at this location could expand in a westerly direction is limited by the fact that Knaresborough lies only a short distance from the area

.

4.3 In conclusion it is considered that:

- OC12 should be selected as the preferred Broad Location for growth. It sits within the key public transport corridor and offers the added advantage of having two operational rail stations. The area of land promoted offers significant scope to define the optimum boundary and deliver effective place making, alongside delivery of necessary infrastructure

- OC16 should not be selected as it does not offer the same locational advantages as OC12. It is currently not served by a key bus service (albeit it is considered that there is scope to extend existing services), it does not have an operational rail station nor any surety that one can be provided and the extent of available land makes effective place making more difficult.
- OC18 should not be selected as it does not fit with the identified public transport corridor, and would deliver a limited amount of development within the Plan period.
- OC19 should not be selected as it is not of sufficient scale to deliver the minimum number of homes needed to meet policy DM4 and is not a best fit with the identified public transport corridor."

110. Thus, according to the authors of SAA2, the comparison of broad locations at the high level of analysis involved in this environmental assessment process, which (apart from the limited points raised under grounds 2 and 3) is not the subject of legal challenge, showed very much the same outcome as HBC's earlier comparison of *sites* using the same assessment criteria (which was considered by the full Council). The broad locations achieved similar overall ratings against HBC's 16 objectives subdivided into 58 headings. The authors then went on to distinguish the *broad locations* by relying on the same factors which had caused both the Cabinet and the full Council to decide to select GH11 and discard FX3, comparing the *sites* in the suite of documents in 2017 leading up to the Publication Draft Local Plan. Those factors continued to be regarded as decisive.

111. Between 26 July and 20 September 2019 HBC consulted on SAA2 and a schedule of Main Modifications to the Local Plan. It is common ground that the Main Modifications do not affect the issues raised by this challenge.

112. FPL made written representations on 20 September 2019. FPL advanced a number of detailed criticisms of some of the evaluations and scoring in SAA2, both in relation to OC12 and OC16. They also criticised what they considered to be the illogical boundary which HBC had selected for OC16, which had resulted in it being rejected as a broad location because effective place-making would be limited by linear expansion alongside the A1(M) and/or crossing that road. FPL referred to other landowners in the area who wished to promote their land as part of a new settlement, but who had not been aware of the additional assessment work being undertaken by HBC before the publication of SAA2. In response to the consultation on that document those parties had identified additional land at Flaxby in the order of 630 ha, which would result in a much more logical broad location. FPL also criticised SAA2 for failing to compare the relative deliverability and viability of the broad locations. They suggested that the infrastructure costs for OC12 had been grossly under-estimated and if corrected would make the scheme non-viable. FPL submitted that this should be addressed in an evidence-based, public examination along with the other issues raised. They also expressed "disappointment" that the conclusions of SAA2 and criticisms of that work had not been considered by elected members of the Council. I should record that although there were suggestions in the representations on behalf of FPL that the assessment by officers in SAA2 had been carried out in a

predetermined, biased or unfair manner, those allegations were rejected by the Inspector in his report (see below) and were not pursued in this challenge.

113. In October 2019 HBC provided a summary response explaining that it had not been able to include land in the broad locations which it had not known to be available. HBC said that there had been no unfairness because landowners in the vicinity of OC16 had been able to put forward additional land throughout the local plan process. They added:-

> "FPL has known throughout the process that the potential for expansion was one of the reasons why the Council had preferred OC12. If FPL considered there was additional land which should be considered as part of their proposal, it was at all times open to them to gather information from adjoining landowners as to their willingness to make land available."

114. With regard to the additional area of land at Flaxby of 630 ha HBC said this:-

> "The Council has assessed a broad location around Flaxby, thereby carrying out a like for like assessment with the broad location at Hammerton/Cattal. The additional land that has been submitted to the Council is largely agricultural land; in many ways very similar to the land already considered. The land in question may provide the opportunity to overcome some of the issues around place making and expansion, however it does not provide a better locational advantage to the Hammerton/Cattal option with respect to access to operational rail stations to the extent that this option would be chosen. Given the similarity of the land to that already considered it will perform in a similar way, the one area where it might perform differently is in respect of ecology where conceivably this new land may score red due to proximity to Hay-a-park SSSI in light of Natural England's recent request to discuss cumulative impact on the SSSI from development. In light of this a full and detailed assessment has not been undertaken."

115. HBC's representations concluded by saying that the preference in SAA2 for OC12 was in line with the decision taken by the full Council on 13 December 2017.

116. On 14 October 2019 the Inspector wrote to FPL refusing to re-open the hearing sessions.

Inspector's report on the examination - January 2020

117. On 30 January 2020 the Inspector issued his report.

118. In his assessment of the "soundness" of the Local Plan, the Inspector said at IR 16:-

> "I deal only, and proportionately, with the main matters of legal compliance and soundness. I do not respond to every point

> raised by the Council or by representors, nor do I refer to every policy, policy criterion or allocation."

119. The Inspector considered the proposal for a new settlement under Issue 1 at IR 24 to 28:-

> "24 The Council has made a balanced planning judgement (informed by both the SA and a, careful and considered, comparative assessment of potential new settlement locations) that a new settlement is an appropriate response to accommodating the borough's longer-term housing needs. The conclusion in relation to the most suitable (broad) location for that new settlement necessarily involves matters of planning judgement, including consideration of 'fit' with the overall Growth Strategy. The process is not just a box ticking exercise. I consider it to be sound.
>
> 25. This is not to say that there are no potential constraints to development in the broad location identified. These are recognised by policy DM4 and its supporting text (although in the interests of efficacy, MM161 is necessary to clarify that the nursery within the broad location may not need relocating).
>
> 26. Based on all that I have read, heard and seen, these constraints are not necessarily (individually or cumulatively) incompatible with new development. They may, however, restrict the number of dwellings which can appropriately be accommodated, particularly given the Council's fully justified expectations in terms of exemplary design and layout. Nonetheless, I conclude that there is a reasonable prospect that a new settlement in this broad location could make a significant contribution towards the delivery of homes by the end of the plan period and in the longer term. Should the case prove otherwise, the matter can be addressed during a plan review (notably as delivery from the new settlement is not needed to support the Council's five-year housing land supply).
>
> 27. Policy DM4 will provide an appropriate framework for the production of a New Settlement Development Plan Document (NSDPD), which itself will provide more detailed policy guidance in relation to the precise location, design and delivery of the new settlement. It will also need to address very carefully the implications of the new settlement for nearby villages, having regard to the degree to which the new settlement is just that, rather than being merely an extension of an extant settlement.
>
> 28. I do not consider that there is sufficient evidence at this stage for the plan formally to allocate specific pieces of land effectively. Indeed, such an approach could fetter the NSDPD's ability to ensure high-quality, comprehensive development,

> having regard to the key issues (as set out in DM4) that it will need to address."

120. Under issue 10 the Inspector considered "Whether or not the plan is soundly based in terms of economic viability issues and its delivery and monitoring arrangements":-

> "188. A whole plan viability assessment was carried out by the Council in line with the advice in national planning policy and guidance. It was scrutinised as part of this examination in relation to other policy matters, noted above. I am satisfied that a robust assessment of viability has been undertaken such that scale of obligations and policy burdens will not prevent development being delivered in a timely manner.
>
> 190. I find that the plan is soundly based in terms of economic viability issues and its delivery, monitoring and contingency arrangements."

121. The Inspector dealt with the lawfulness of the SEA process at some length in IR 191 – 206:-

> "191. An extensive body of Sustainability Appraisal (SA) work was undertaken in connection with the preparation of the plan and the formulation of the main modifications to it. A consistent framework of objectives has been used to assess the emerging plan throughout all of these documents. These are relevant and appropriate to the scope of the plan, local context and national policy.
>
> 192. The SA process was reviewed by independent and experienced assessors (EXOTH009a), who made a number of recommendations. These were addressed by the Council as deemed necessary. I am satisfied that this overall approach is adequate.
>
> 193. Some specific criticisms with regard to the legality of the SA were made by representors at various stages of the examination. The Council responded in turn, in detail, to such criticisms. Having considered the body of representations and responses, I address the substantive points arising below.
>
> 194. There is a legal duty set out in Article 2(b) of the SEA Directive, which requires (in this case) the Council to take into account in its decision making the results of the consultations. It may be that a summary of representations or an explanation of how they have been taken into account would be helpful, but neither is a requirement of law. Nor is there is any requirement that a summary or explanation is set out within the SA itself. Indeed, the only duty upon the Council is to summarise the main issues arising from the representations, not to deal with every point raised by every representor.

195. I am satisfied that the Council's Key Issues report (CD08) addresses this duty and that, in any case, there is sufficient evidence (EXOTH009b and EXOTH002 (Table 1)) that the Council took relevant representations into account.

196. It is suggested that the SA overall contains material errors of fact in relation to the Flaxby Park site, such that it is legally flawed, specifically in relation to ecology/biodiversity, noise, agricultural land classification, potential for expansion and provision of a railway station. I do not consider, however, that this argument withstands much scrutiny:

- The information relied upon by Flaxby Park in relation to ecology/biodiversity and railway station provision was supplied to the Council after the initial SA process was complete, in the context of a planning application. In any case, it did not (and still does not) appear to provide any greater certainty about future station provision (which contrasts with the presence of extant stations proximate to the Green Hammerton/Cattal broad area. There remains dispute between the Council and Flaxby Park on these matters but this is, ultimately, a difference of opinion and judgement, rather than any error of fact that would undermine the integrity of the SA process;
- Whether the site has potential for expansion, in an appropriate and logical direction, and to an appropriate and logical extent, is a matter of planning judgement;
- Flaxby Park is next to a major road and, as such, was scored appropriately in line with the approach taken to sites GH11 and CA5;
- The minor error in relation to the amount of the Flaxby Park site that is best and most versatile agricultural land is, in the grand scheme of things, neither here nor there (notwithstanding that it can be corrected, in any case). The Council's overall conclusion that Green Hammerton/Cattal would be a better location for a new settlement does not turn on this point. It is derived from consideration of a wide range of factors.

197. The argument that the SA did not assess broad areas of search as reasonable alternatives to that at Green Hammerton/Cattal was not without merit. To this end, although it maintains that it was not legally required to do so, the Council undertook, at my request, additional SA work. I am satisfied that this addresses any shortcomings in relation to broad areas of search, which may be perceived to have existed in the original SA.

198. Others disagree, suggesting that the outcome of the additional work, which still supports Green Hammerton/Cattal

as the broad location, was predetermined. It is difficult to see, however, how the Council could ever overcome such an assertion without going out of its way to reach a different decision about where the broad location for growth should be. I am also mindful that the broader locations in question are not so different from the more specific sites originally considered that one would necessarily expect a different conclusion to be reached.

199. Case law would also appear to support the Council's view that SA is an iterative process, such that any defect can be remedied, and that the ability to cure a defect is not limited to situations where that defect is simply the failure to explain, or to provide reasons for, a decision that has already been taken.

200. It was further suggested that in deciding to allocate sites, which it had initially rejected, in a second wave around extant settlements, the Council should have reviewed its decision that a new settlement was part of the most appropriate strategy for the area.

201. It does not seem to me, however, that the latter is a necessary corollary of the former. The Council took the view early on that a new settlement was an appropriate response to delivering the borough's housing needs over the long term. There is no compelling reason why that judgement should have been revisited when it became apparent that the borough's OAN had increased, and that additional sites were required. The only decision that needed taking was how best to accommodate the additional dwelling numbers within the spatial framework that had already been established.

202. There are sites around extant settlements, which were rejected as allocations, which the SA scores the same or less than the new settlement. I do not consider that they should have been allocated instead of the new settlement. This point fails to address the likely cumulative impacts of allocating such sites or to consider the implications of seeking constantly to grow existing settlements beyond the point at which it is feasible or desirable to do so, for a range of reasons.

203. In addition, it is reasonable for the Council to conclude that sites which are likely to have many positive impacts, but one significant adverse effect, should not be allocated in the plan, while one that has a number of adverse effects but one significant beneficial effect should be allocated. Furthermore, it is not unusual that some reasonable alternatives are found to have very similar effects as the chosen site allocations.

204. SA is intended to inform plan preparation, not to direct it or to provide definitive answers. In practise, there is an almost

> limitless number of combinations of comparative assessments that could be undertaken across the full breadth of options for a plan's overall spatial strategy, for broad locations for growth and for site allocations. That such appraisal work could, in theory, be undertaken does not mean that it is necessary in order for the SA to be legally compliant.
>
> 205. That people disagree with the assessment of specific effects, and decisions about specific sites (or, indeed, broad locations), is completely unsurprising. I would go so far as to suggest that it is inevitable given that, although supported by relevant technical or expert evidence, many of the SA conclusions involve a significant element of planning judgement. I am satisfied that the conclusions reached are reasonable ones and that any omissions, errors or inconsistencies that may exist do not result in the SA being fundamentally, or even substantially, flawed.
>
> 206. Overall, I conclude that the SA proportionately and adequately assesses reasonable alternatives to the policies and allocations included in the plan. The SA work undertaken in connection with the plan is adequate."

122. Thus, the Inspector concluded that the SEA carried out by HBC complied with the 2004 Regulations and therefore with s. 19(5) of PCPA 2004.

Adoption of the Local Plan – March 2020

123. HBC's Cabinet considered the adoption of the Local Plan on 3 March 2020. HBC formally adopted the Local Plan on 4 March 2020.

Legal Principles

General principles for legal challenges to a local plan

124. The Court's jurisdiction under s.113 is confined to conventional public law principles for judicial review and statutory review (*Solihull Metropolitan Borough Council v Gallagher Homes Limited* [2014] EWCA Civ 1610 at [2]; *Blyth Valley Borough Council v Persimmon Homes Limited* [2009] J.P.L 335 at [8]). The parties acknowledge that s. 113 does not provide an opportunity to re-run the planning merits on any issue before HBC or the Inspector.

125. In relation to an allegation that a decision-maker has failed to take a material consideration into account, the following principles are now well-established:-

> "In *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] PTSR 221 the Supreme Court endorsed the legal tests in *Derbyshire Dales District Council* [2010] 1 P & CR 19 and *CREEDNZ Inc v Governor General*

> [1981] 1 NZLR 172, 182 which must be satisfied where it is alleged that a decision-maker has failed to take into account a material consideration. It is insufficient for a claimant simply to say that the decision-maker did not take into account a legally relevant consideration. A legally relevant consideration is only something that is not irrelevant or immaterial, and therefore something which the decision-maker is empowered or entitled to take into account. But a decision-maker does not fail to take a relevant consideration into account unless he was under an obligation to do so . Accordingly, for this type of allegation it is necessary for a claimant to show that the decision-maker was expressly or impliedly required by the legislation (or by a policy which had to be applied) to take the particular consideration into account, or whether on the facts of the case, the matter was so "obviously material", that it was irrational not to have taken it into account."

See *Oxton Farm v Harrogate Borough Council* [2020] EWCA Civ 805 at [8] and *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] PTSR 221 at [30]-[32].

126. Where the judgment is that of an expert tribunal such as a Planning Inspector, the threshold for irrationality is a difficult one for a claimant to surmount; it is "a particularly daunting task" (*Newsmith Stainless Limited v Secretary of State for Environment, Transport and the Regions* [2017] PTSR 1126). Furthermore, there is an enhanced margin of appreciation afforded to the judgments of such decision-makers on technical and predictive assessments (*R (Mott) v Environment Agency* [2016] 1 WLR 4338 ; *R (Spurrier) v Secretary of State for Transport* [2020] PTSR 240; *R (Plan B Earth v Secretary of State for Transport* [2020] PTSR 1446 at [68], [71] and [176-7]).

127. The tests for the adequacy of the reasons given in an Inspector's report on the examination of a plan is that laid down in *South Bucks v Porter (No.2)* [2004] 1 WLR 1953. The crucial question is whether the Inspector's reasons give rise to a substantial doubt as to whether he has committed an error of public law. But such an inference will not readily be drawn. In a planning appeal the reasons need only refer to the main issues in dispute and not to every material consideration ([36]). Reasons are addressed to a "knowledgeable audience" familiar with the material before the examination and they may be briefly stated (*CPRE Surrey v Waverley Borough Council* [2019] EWCA Civ 1896 at [71]-[76]. In the CPRE case Lindblom LJ added at [75]:-

> "Generally at least, the reasons provided in an inspector's report on the examination of a local plan may well satisfy the required standard if they are more succinctly expressed than the reasons in the report or decision letter of an inspector in a section 78 appeal against the refusal of planning permission. As Mr Beglan submitted, it is not likely that an inspector conducting a local plan examination will have to set out the evidence given by every participant if he is to convey to the "knowledgeable audience" for his report a clear enough

> understanding of how he has decided the main issues before him."

Public law challenges to SEA and the handling of "reasonable alternatives"

128. In *Plan B Earth* the Court of Appeal held that the court's role in ensuring that an authority has complied with the requirement of Article 5 and Annex 1 when preparing an environmental report must reflect the breadth of the discretion given to it to decide what information "may reasonably be required", taking into account current knowledge and methods of assessment, the contents and level of detail in the plan, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at other levels in that process in order to avoid duplication of assessment. The authority is left with a wide range of autonomous judgment on the adequacy of the information provided ([136]) :-

> "The authority must be free to form a reasonable view of its own on the nature and amount of information required, with the specified considerations in mind. This, in our view, indicates a conventional "Wednesbury" standard of review – as adopted, for example, in *Blewett*. A standard more intense than that would risk the court being invited, in effect, to substitute its own view on the nature and amount of information included in environmental reports for that of the decision-maker itself. This would exceed the proper remit of the court." (referring to *R (Blewett) v Derbyshire County Council* [2004] Env. L.R. 29)

129. In *Spurrier* the Divisional Court drew a distinction between the failure by an authority to give any consideration at all to a matter which it is expressly required by the 2004 Regulations to address, namely whether there are reasonable alternatives to a proposed policy, which may amount to a breach of those regulations, as opposed to issues about the non-inclusion of information on a particular topic, or the nature or level of detail of the information provided to or sought by the authority, or the nature or extent of the analysis carried out. All those latter matters go to the quality of the SEA undertaken and are for the judgment of the authority, which may only be challenged on grounds of irrationality (see *Plan B Earth* at [130] and [141]-[144]; *R (Khatun v Newham London Borough Council* [2005] QB 37 [35] and *Flintshire County Council v Jayes* [2018] EWCA Civ 1089; [2018] E.L.R. 416).

130. The consideration of alternatives under the SEA Directive is to be contrasted with the way in which that subject is treated under the Habitats Directive (92/43/EEC). In the latter case the tests in the legislation operate to determine the outcome of a proposal. There, the rules regarding alternatives are substantive in nature. But as the Divisional Court pointed out in *Spurrier* at [332] :-

> "……the requirements of the SEA Directive for the content of an environmental report and for the assessment process which follows are entirely procedural in nature. Thus, the requirement to address "reasonable alternatives" in the environmental report (or AoS under section 5(3) of the PA 2008) is intended to facilitate the consultation process under article 6 (and section 7 of the PA 2008). The operator of Gatwick and other parties

> preferring expansion at that location would be expected to advance representations as to why the hub objective should have less weight than that attributed to it by the Secretary of State or that, contrary to his provisional view, the Gatwick 2R Scheme could satisfy that objective. The outputs from that exercise are simply taken into account in the final decision-making on the adoption of a plan, but the SEA Directive does not mandate that those outputs determine the outcome of that process"

(see also the Court of Appeal in *Plan B Earth* at [109]-[113] and Hickinbottom J (as he then was) in *R (Friends of the Earth England, Wales and Northern Ireland Limited) v The Welsh Ministers* [2016] Env. LR 1 at [88(i)]). Furthermore, the process of SEA is iterative. It is not confined to a single environmental report. There may well be several iterations as work on the plan progresses *(Cogent Land LLP v Rochford District Council* [2013] 1 P & CR 11)

131. The identification and treatment of reasonable alternatives is a matter of "evaluative assessment" for the authority *(Friends of the Earth* at [87]-[89] and *Ashdown Forest Economic Development LLP v Wealden District Council* [2016] PTSR 78 at [42] subject to review only on public law grounds. An enhanced margin of appreciation should be given to decisions which involve, for example, the expert evaluation of a wide variety of complex technical matters or scientific, technical, or predictive assessments (see [126] above).

132. Accordingly, the identification of reasonable alternatives and the nature of the assessment to be carried out are matters of judgment for the local planning authority, and in due course for the Inspector who conducts the examination of the draft local plan. It is in this context that the principle of equal or comparable treatment as between alternative options needs to be considered. As Ouseley J recognised in *Heard* at [71] the principle is not explicitly stated in the Directive, or in the Regulations. He said that although there may be a case for the examination of a preferred option in greater detail, the aim of the directive would more obviously be met by, and best interpreted as requiring, "an equal examination of the alternatives which it is reasonable to select for examination". But it should be noted that the lack of equivalence in that case was fundamental. It related to the absence of any reasons for the authority's selection of its preferred option and rejection of alternatives (see [68]-[71] and *Spurrier* at [426])

133. Although in his summary of legal principles in *Friends of the Earth* at [88(viii)], Hickinbottom J stated that reasonable alternatives have to be assessed in a "comparable way", that appears to have been derived from the decision in *Heard* (see [87]) and did not form the basis for the court's resolution of the issues in that case. The main part of the court's reasoning in *Friends of the Earth* was concerned with a complaint that the authority had failed to identify certain alternatives to the proposal, a challenge which was unsuccessful.

134. In *Ashdown Forest* the Court of Appeal referred at [10] to the proposition stated by Ouseley J in *Heard* at [71]. However, it was unnecessary for the Court to apply that principle. Instead, the case simply turned on the fact that the local authority had not applied its mind at all to the question of "reasonable alternatives" ([42]).

135. From a review of the authorities I do not consider that the equal or comparable treatment of alternatives is a hard-edged question for the court to determine for itself. It goes to the quality of an SEA. In so far as this subject is a matter for judicial review, the test is whether the approach taken by the plan-making authority is irrational or can be impugned on public law grounds. That is the approach which the courts take to a challenge to an authority's decision on which options to treat as "reasonable alternatives" (see e.g. *Friends of the Earth* at [88(iv)] and there is no logical justification for taking any different approach to an issue about comparable treatment of such alternatives.

136. In *Heard* Ouseley J qualified the notion of comparable treatment in an important way. At [67] he stated:-

> "I accept that the plan-making process permits the broad options at stage one to be reduced or closed at the next stage, so that a preferred option or group of options emerges; there may then be a variety of narrower options about how they are progressed, and that that too may lead to a chosen course which may have itself further optional forms of implementation. It is not necessary to keep open all options for the same level of detailed examination at all stages. But if what I have adumbrated is the process adopted, an outline of the reasons for the selection of the options to be taken forward for assessment at each of those stages is required, even if that is left to the final SA, which for present purposes is the September 2009 SA."

137. In his summary of legal principles in *Friends of the Earth* Hickinbottom J made the same point at [88(vii)], but he also suggested that in some circumstances a plan-making authority might need to reassess alternatives which it had previously discarded:-

> "However, as a result of the consultation which forms part of that process, new information may be forthcoming that might transform an option that was previously judged as meeting the objectives into one that is judged not to do so, and vice versa. In respect of a complex plan, after SEA consultation, it is likely that the authority will need to reassess, not only whether the preferred option is still preferred as best meeting the objectives, but whether any options that were reasonable alternatives have ceased to be such and (more importantly in practice) whether any option previously regarded as not meeting the objectives might be regarded as doing so now. That may be especially important where the process is iterative, i.e. a process whereby options are reduced in number following repeated appraisals of increased rigour. As time passes, a review of the objectives might also be necessary, which also might result in a reassessment of the "reasonable alternatives". But, once an option is discarded as not being a reasonable alternative, the authority does not have to consider it further, unless there is a material change in circumstances such as those I have described."

It is necessary to emphasise, however, that such considerations are matters of judgment for the authority or their executive or delegatee (as appropriate).

138. Mr Katkowski QC placed some emphasis upon [88(v)] of *Friends of the Earth* which should be read together with [88(vi)]:-

> "(v) Article 5(1) refers to "reasonable alternatives *taking into account the objectives… of the plan or programme…* " (emphasis added). "Reasonableness" in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an "alternative" to the preferred plan, is not a "reasonable alternative". An option which will, or sensibly may, achieve the objectives is a "reasonable alternative". The SEA Directive admits to the possibility of there being no such alternatives in a particular case: if only one option is assessed as meeting the objectives, there will be no "reasonable alternatives" to it.
>
> (vi) The question of whether an option will achieve the objectives is also essentially a matter for the evaluative judgment of the authority, subject of course to challenge on conventional public law grounds. If the authority rationally determines that a particular option will not meet the objectives, that option is not a reasonable alternative and it does not have to be included in the SEA Report or process."

139. So although Mr Katkowski QC is right to point out that at one stage HBC had certainly regarded FX3 as a "reasonable alternative", in the sense that it might sensibly achieve the authority's objectives, it does not follow that the authority remained obliged to carry on treating Flaxby in that way. Where an authority considers that only one proposal may go forward, it is entitled to assess how well each alternative performs against its objectives and to discard any that do not meet those objectives or perform sufficiently well. Even if circumstances subsequently change, the authority may judge that its earlier decision, and the reasons upon which it was based, make it unnecessary for a discarded option to be reassessed or to be included in any different SEA work.

Ground 2 – failure to include an additional 630ha of land in the assessment of Flaxby as a broad location

140. At the hearing Mr Katkowski QC confirmed that FPL is pursuing only one point under this ground, namely that HBC failed to compare the broad locations of Flaxby and Green Hammerton/Cattal on an equal basis because it did not include in the SA the additional 630 ha of land which had been identified by the consultees in response to SAA2 issued in July 2019. This area of land was not assessed in SAA2. The claimant submits that HBC should have issued an additional call for land which went beyond the exercise carried out between 14 and 22 March 2019 and then included in the SA the additional 630ha of land that would have been revealed.

Discussion

141. There is no merit in this complaint.

142. As far back as July 2017 HBC made it clear publicly that it had rejected site FX3 because its potential for growth was more restricted than in the case of GH11 and CA5, given its proximity to Knaresborough to the west and the A1(M) to the east (see also p.29 of the New Settlement Report). Thereafter, HBC adhered to that view. From November 2017 it was also known publicly that HBC was promoting a broad location for the new settlement within which the boundaries would be determined through a DPD. That location comprised CA4/CA5 and GH12 in addition to GH11. HBC's position was carried forward in the Publication Draft Local Plan (January 2018) and the Submission Draft Local Plan (August 2018), together with the accompanying SAs.

143. FPL was well aware of these matters. In March 2018 its consultants made representations to HBC complaining about a lack of comparison between the Council's preferred locations and other broad location, in particular Flaxby. They sought to argue that HBC had not given adequate reasons for preferring Green Hammerton or its "broad location" approach. But in my judgment the Council's reasons were clear enough. In reality, there was simply a clash of opinions.

144. Despite HBC having clearly stated its view that FX3 lacked potential for expansion, neither FPL nor any of the landowners sought to put forward the 630 ha in response to HBC's documents published in November 2017. That remained the case even when the draft Local Plan was submitted for examination in August 2018. The Court was told that this substantial area was only put forward for consideration in the consultation between 26 July and 20 September 2019. This was some 2 years after HBC had identified its reasons for rejecting Flaxby as the location for the new settlement. No explanation has been given for this delay, which is all the more surprising given the obvious importance of the local plan process being handled in an efficient and timely manner, not only for the local planning authority, but also for developers and all others interested in progressing that plan through to adoption.

145. Not surprisingly therefore, HBC pointed out that landowners had been able to bring forward land throughout the local plan process, so that it could not be said that any unfairness had occurred ([113] above). Officers had already given their views on the broad location at Flaxby identified by the Council. Essentially, this location was rejected for the same reasons as had been identified in 2017 (see [109]-[110] above). In October 2019 they went on to give their opinions on the additional 630 ha (see [114] above). They accepted that it might provide the opportunity to overcome *some* of the issues relating to place-making and expansion, but it did not provide a better locational advantage compared to Green Hammerton/Cattal as regards access to public transport. In addition, it was thought that the additional land might score red (according to the Council's "traffic light" system of assessment) as regards effects on ecological interests. They therefore concluded that a full and detailed assessment of the additional area of 630ha was not justified.

146. On 14 October 2019 the Inspector refused FPL's request to reopen the examination ([116] above). That was a procedural issue for his determination. His decision is hardly surprising given the late stage in the examination at which this substantial area of land was put forward and the lack of any justification from FPL, or any of the other

landowners involved, for the delay which had occurred. Certainly, none was put before the Court at the hearing.

147. The Inspector concluded that the additional work which had been undertaken on the SA to compare broad locations addressed any "perceived shortcomings" in the earlier SA (IR 197-199).

148. Having examined all the material before the court, I have reached the firm conclusion that neither the response of HBC nor that of the Inspector to the suggested addition of the 630 ha of land at Flaxby could be criticised as irrational (see *Khatun* and *Plan B Earth*) or in any way unlawful. I also note that the officers were acting well within the scope of their delegated authority (see [99] above). FPL's argument does not begin to get off the ground.

149. It also follows that FPL's complaint under ground 2 cannot lend any support to ground 1, in particular the failure of the full Council to consider SAA2 and consultation responses before adopting the Local Plan.

150. For all these reasons, ground 2 must be rejected.

Ground 3 – insufficiency of information or enquiry about the viability and deliverability of Green Hammerton/Cattal

151. Mr Katkowski QC referred to paragraph 173 of the NPPF (2012) which required development plans to be "deliverable" and careful attention given to viability and costs in plan-making so that development sites identified do not become subject to obligations and policy burdens which threaten the ability to develop them viably. But it should be noted that the focus of ground 3 is not on whether the requirements of the Local Plan were excessive so as to render any site non-viable. Rather the claimant, as the promoter of a rival scheme at Flaxby, was arguing before the Inspector that a new settlement at the Green Hammerton/Cattal location would not be commercially viable and therefore would not be deliverable.

152. As noted in [30] above, paragraph 182 of the NPPF (2012) stated that local plans should be "justified" on the basis of evidence which is "proportionate".

153. More detailed assistance was given in paragraph 004 of the National Planning Practice Guidance on "viability and plan-making"; in particular:-

> "Evidence should be proportionate to ensure plans are underpinned by a broad understanding of viability. Greater detail may be necessary in areas of known marginal viability or where the evidence suggests that viability might be an issue – for example in relation to policies for strategic sites which require high infrastructure investment."

154. The issue of whether viability should be addressed in terms of a "broad understanding" or in "greater detail" is a matter of judgment initially for the local planning authority. But the inspector conducting the examination of the draft plan may also address the adequacy of the information provided, in so far as he or she judges that to be necessary or appropriate to assess the soundness of the plan. But

judgments made by a local planning authority and the Inspector on, for example, the range of matters covered by a viability assessment, or the depth of the analysis, or whether further information should be sought, are not open to challenge in this Court unless shown to be irrational (see e.g. *Khatun* and [129] above). That is a difficult hurdle to surmount (see [126] above). Furthermore, viability appraisal is a technical matter for assessment by planning authorities and Inspectors, which attracts an enhanced margin of appreciation.

155. The Inspector reached his overall conclusions on viability in IR 188 and 190 (see [120]) above. He specifically addressed the deliverability of the new settlement in policy DM4 in IR 25 and 26 (see [119] above).

156. The focus of the challenge under ground 3 is on the Inspector's conclusions. Mr Katkowski QC submits that either:

i) It was perverse for the Inspector to reach his conclusions on viability on the basis of the material before the examination; or

ii) It was perverse for the Inspector not to call for the confidential information on viability which IP2 and IP3 had provided to HBC.

Acknowledging the high hurdle which must be overcome, Mr Katkowski QC did not put ground 3 in the forefront of the claimant's case.

157. In his witness statement Mr Morton referred to an expert viability appraisal submitted on behalf of FPL in March 2018 as part of its representations on the Publication Draft Local Plan. He said that this had suggested that infrastructure costs for GH11 would be £125m as compared with £46m for FX3 and that the outcome would be negative viability of £73m for the GH11 site and a positive viability of £33m for the FX3 site. He also refers to the rival interests and schemes of the main developers involved in promoting Green Hammerton/Cattal, IP2 and IP3, which, he says, called into question the deliverability of a new settlement at that location. The claimant submitted representations in the examination process in May and September 2019 which briefly stated that there had been a lack of comparative assessment of viability as between different locations. It was said that this work ought to have been included in the SA.

158. It is necessary to bear in mind that policy DM4 of the Local Plan only identified a *broad* location for a new settlement. The New Settlement DPD (which has subsequently been prepared and is the subject of consultation until 22 January 2021), will address matters such as the site boundary, the quantum and mix of uses, a concept plan, highway and access arrangements, public transport, and housing types and tenures including affordable housing. There is no legal challenge to that approach. Accordingly, any viability appraisal prior to the adoption of the Local Plan was bound to have been of a high-level, strategic nature, looking into the future over a long time span. The Local Plan does not expect all 3,000 of the dwellings at the new settlement to be provided during the plan period. It goes no further than to say "at least 1,000 dwellings" are expected to be provided by 2034/35 (paragraph 10.17). Each of the alternatives which have been considered would require very substantial investment in various kinds of infrastructure, the detail of which is still to be addressed. Accordingly, it is self-evident that any viability assessment for broad locations for a new settlement would be highly sensitive to *assumptions* about what infrastructure

would be required for each alternative, the future costs of such infrastructure and other development works, future land values and sale values, and finance costs. These assumptions are likely to fluctuate over time and be subject to substantial uncertainty, irrespective of the authorship of any assessment.

159. The New Settlement Background Paper (November 2017) summarised HBC's assessment of viability and deliverability (see e.g. paragraph 5.62 *et seq*). This was based upon material which each of the developers, including FPL, had submitted about their own schemes and HBC's Whole Plan Viability Study (2016) and Infrastructure Capacity Study. Paragraphs 5.106, 5.108 and 5.109 of the Background Paper confirmed that the developers of CA4/CA5 and FX3 had provided confidential viability assessments for their own sites and the developers of GH11/GH12 had provided a deliverability statement which included the costs of providing key infrastructure. On the basis of the viability assessment undertaken in the Infrastructure Capacity Study, paragraphs 7.3, 7.18 and 7.25 stated that CA4/CA5, FX3 and GH11 could all generate sufficient "headroom", or value, to meet critical infrastructure costs. HBC stated that because of the large infrastructure costs and the challenges faced, the viability for *each* site was in the "marginal" category, meaning that the residual land value exceeded "existing" or "alternative" use value, but *might* not generate any *further* uplift for the landowners involved. But the Council expected that to be the case for a project of this scale and type. It estimated that on a "net developable basis" residual values would be "well over £400,000/ha in all cases" (paragraph 5.66).

160. The Background Paper also summarised why HBC was satisfied that the promoters of CA4/CA5, GH11/GH12 and FX3 had sufficient control over land needed for the delivery of a new settlement.

161. In the examination of the draft plan, HBC relied upon the appraisal work which had been undertaken and said that it was satisfied that a viable scheme could be delivered at the policy DM4 location. The issue had been examined at the hearing session on "matter 12" and IP2 and IP3 had confirmed that viable schemes were deliverable there.

162. Mr Brown QC also referred to the "Whole Plan Viability Assessment" (September 2016) and the "Infrastructure Capacity Study". The information covered *inter alia* infrastructure costs and residual land values. The analysis showed the sensitivity of both Green Hammerton and Flaxby to assumptions about the scale of affordable housing and other developer contributions, such as the Community Infrastructure Levy, which may be required. The work carried out in 2016 was updated in May 2018. These documents recognised that the delivery of *any* large site would be challenging, not least because of the infrastructure and mitigation measures required. Having said that, significant land values would be generated.

163. Officers explained during the examination that the position on land ownership and availability within the Green Hammerton/Cattal broad location would not compromise the delivery of a new settlement there. Mr Procter and Mr McBurney reiterate points made at the examination that it is in the interests of both IP2 and IP3 to collaborate on the delivery of the new settlement in the DM4 location. Each has already invested many millions of pounds in the promotion of the new settlement,

initially on GH 11, but since late 2017 on the "broad location", in the firm belief that the project is viable and deliverable.

164. From this brief review of the material before the Inspector, I conclude that there was evidence which was legally sufficient to support his conclusions on viability and deliverability. It cannot be said that those conclusions were irrational, or that it was perverse for him not to call for more information, such as the confidential material submitted to HBC by developers. Bearing in mind that the Inspector's function was to examine the soundness of policy DM4 by considering whether it was justified by a proportionate evidence base, and not to resolve every contested issue raised by participants in the examination, it is plain that he considered the material before him to be adequate for that purpose.

165. For all these reasons ground 3 must be rejected.

Ground 1 – failure by the Council to consider environmental assessment of alternative "broad locations"

A summary of the submissions

166. Mr Katkowski QC submits that in order for SEA to be conducted lawfully, the plan-making authority must carry out an appraisal which compares its preferred policy proposal with reasonable alternatives in an equivalent manner. In the present case, FPL makes no legal complaint about the way in which alternative *sites* for a new settlement were compared up to and including the Additional Sites Plan and the New Settlement Report published in July 2017. The sites were compared on a like for like basis.

167. When in November 2017 HBC decided that the Local Plan should identify a "broad location" rather than a "site" for the new settlement, FPL complained that the Council had ceased to make a like for like comparison. Green Hammerton was assessed as a "broad location" comprising about 604ha, whereas Flaxby continued to be assessed as a "site" of 196ha, up to and including the submission of the Local Plan for examination. Mr Katkowski said that the inclusion of Flaxby in this exercise meant that it was judged by HBC to be capable of meeting the Council's objectives for a new settlement and that had not ceased to be the position when in 2017 Green Hammerton/Cattal was chosen as HBC's preferred option. Accordingly, it still remained a "reasonable alternative" for the purposes of the 2004 Regulations.

168. He then submitted that the Inspector had accepted that the sustainability appraisal for the new settlement policy should include a comparison between HBC's preferred option and alternatives, all as broad locations. Alternatively, he said, that exercise was carried out and consulted upon and it informed the Inspector's conclusion that the requirements of the 2004 Regulations had been satisfied, specifically in relation to the new settlement policy. SAA2 had become part of the environmental report for the purposes of Regulation 8(3). It was not therefore open to HBC to say now that this further work had been unnecessary in order to satisfy the 2004 Regulations.

169. Mr Katkowski QC submitted that there had been a failure to comply with regulation 8(3) because the full Council was required to take into account the further sustainability appraisal work, SAA2, together with the consultation responses and had

not done so. This obligation could not be discharged by officers acting under the delegated power granted on 14 November 2018 or by the Inspector's examination of the material and his conclusion that the requirements of the 2004 regulations had been satisfied. The judgment reached by the Inspector was not that of the full Council. The members were required to apply their own minds to the SEA material referred to in regulation 8(3).

170. FPL claimed that this was an important point because HBC's documents had said that the choice between the alternative sites was "finely balanced" (see e.g. paragraph 8.3 of the New Settlement Background Paper, November 2017). It was only proximity to existing rail stations and the greater potential for expansion which had led HBC to prefer the Green Hammerton site (GH 11). FPL contend that the decision to adopt a "broad location" approach in DM4 meant that it was necessary to revisit the "reasonable alternatives", including Flaxby, to re-assess (a) their potential for expansion, and (b) the scoring under the 16 sustainability objectives. The weight to be given to those factors was a matter of planning judgment, but it was ultimately for the members of the Council to decide how to weigh those aspects and the relative weight to give to proximity to existing rail stations. That would involve balancing a number of considerations and there was at least a real possibility that members, presented with the SAA2 exercise, might draw different conclusions to those reached by the officers (working with the Cabinet member) and the Inspector.

171. Mr Katkowski QC also submitted that the obligation on the members of the Council to consider a comparison of broad locations for a new settlement had applied not only when they decided to adopt the Local Plan, but also when they resolved that the draft plan should be submitted to the Secretary of State for examination. There is no evidence to show that that was done. He submitted that a Local Plan is supposed to contain the policies of the authority, that is its members rather than the officers. The requirement that only the members may take the decisions at these key stages of a plan carries with it an obligation that they consider the SEA work, which is to inform the preparation as well as the adoption of a plan. At the point of adoption, the members have only a binary choice, to adopt the plan with any main modifications, or to decide not to adopt the plan, in which case the whole plan falls away. The Council cannot make any fresh modifications at that point.

172. Mr Brown QC, supported by Mr Young QC and Mr Strachan QC for IP2 and IP3 respectively, pointed to the absence of any legal challenge to the SEA carried out up to and including July 2017. The decisions taken then were endorsed by the full Council. At that stage HBC had decided to discard FX3 as a reasonable alternative. It is permissible for a local planning authority to sieve sites or options at one stage in the process and thereafter not to carry out any further SEA work on sites which had been discarded. That is what happened in the present case. HBC's decision in November 2017 to base the settlement policy on a "broad location" did not oblige the Council to revisit sites which had been rejected, including FX3, or to include them in a comparison of broad locations. FX3 had been rejected for reasons which did not require Flaxby to be considered any further because of that particular change of approach.

173. In any event, at the Inspector's request, HBC did carry out a comparison of the broad locations. The outcome was only "finely balanced" in relation to general planning considerations, but not the two factors which HBC regarded as decisive.

174. Ultimately, the content or quality of the SEA is only criticised under grounds 2 and 3. Ground 1 raises a separate issue as to *who* was required to consider the environmental information (including the comparison of broad locations) in order to satisfy the 2004 Regulations. The delegation to officers dated 14 November 2018 is not challenged. That resolution allowed officers to agree main modifications to the draft plan as part of its examination by the Inspector, as well as to provide information requested by the Inspector. Mr Brown QC submitted that this delegation must have carried with it the carrying out of supplemental work on the SEA, consulting on that material and taking the product of that consultation into account. The delegation therefore allowed officers to deal with SAA2 and the consultation responses received, so as to satisfy the requirements of the 2004 Regulations. He submitted that this delegation was therefore a complete answer to ground 1. There was no legal requirement for the comparison of the Green Hammerton/Cattal broad location with other broad locations to have been considered by the full Council, whether in March 2020 at the adoption stage or, indeed, in August 2018 at the submission stage.

175. Mr Brown QC submitted that, in any event, on a proper reading of the 2004 Regulations, regulation 8(3) was not required to be satisfied at the adoption stage. That regulation should not be conflated with s.23(5) of PCPA 2004. It could be satisfied prior to adoption and therefore be addressed by officers acting under delegated powers. He sought to reinforce this submission by pointing out that once a draft Local Plan is submitted for examination, the outcome of the process is entirely dependent on the conclusions reached by the Inspector in his final report, including any main modifications to the plan which he or she decides should be made in order to render the plan sound and compliant with relevant legal requirements. These requirements include s.19(5) and the satisfaction of the 2004 Regulations. Accordingly, it was legally sufficient that by the time the Inspector's report and the plan came before the full Council, the Inspector had concluded that the requirements of the 2004 Regulations had been satisfied.

176. Mr Young QC and Mr Strachan QC also emphasised the procedural nature of the SEA Directive. The consideration of alternatives does not dictate any result but is to do with the obtaining of information to improve the quality of decision-making. That is part of the legal context for the interpretation of the delegation to officers and supports the submission that they were empowered to address the consultation responses on SAA2.

177. The parties' submissions give rise to the following main questions for the court to determine:-

(i) Whether a comparison of broad locations was required by the 2004 Regulations;

(ii) Who was required to comply with Regulation 8(3) and when;

(iii) The legal consequences if HBC ought to have considered alternative broad locations before submitting the Local Plan for examination.

Whether a comparison of broad locations was required by the 2004 Regulations

178. In July 2017 HBC published the Additional Sites Plan and the New Settlement Report. In my judgment it is plain that at that stage the Council concluded that GH11 should be taken forward as the preferred location and that FX3 should cease to be considered. There were two key reasons for that decision (paragraph 7.4 of the Report).

179. First, the sites GH11 and CA5 were best placed to maximise the use of public transport because of direct access to two rail stations. By contrast there was no evidence that there would be a new rail station to serve FX3 during the plan period to 2035, if at all.

180. Second, GH11 and CA5 offered a greater opportunity for growth in the longer term beyond 2035, whereas FX3 was more restricted in this respect because of its proximity to the A1(M) to the east and Knaresborough to the west. The claimant does not suggest that HBC was not entitled to take into account this potential for further growth in the future, or that its conclusions on that subject at that stage were unlawful. This second reason reflected HBC's previously stated objectives for a new settlement, namely that it should "have the propensity to grow in the future" as well as "be designed to have its own identity and sense of place and create a new focus for growth" (see paragraph 7.2 of the Additional Sites Plan – July 2017). The officers' report in November 2017 makes it plain that these matters and the SA were considered by the full Council on this basis.

181. If in policy DM4 of the Submission Draft Local Plan HBC had continued to identify a *site* for the new settlement and had chosen GH11 as that site, it would not have been obliged to make any further comparison with FX3. It would unquestionably have been entitled to treat that site as discarded. FX3 ceased to be a "reasonable alternative" for the purposes of the 2004 Regulations.

182. But in the New Settlement Background Paper (November 2017) and the Publication Draft Local Plan (January 2018), HBC decided to promote a "broad location" for a new settlement at Green Hammerton/Cattal (sites GH11, GH12, CA4 and CA5), rather than the GH11 site. Paragraphs 8.3 and 8.4 of the Paper summarised why HBC had preferred the Green Hammerton option to any other. It is incontrovertible that the Council's thinking remained unchanged as to why FX3 (and other sites) had been discarded and Green Hammerton selected.

183. Paragraph 8.5 then explained why HBC had decided to identify a broad location rather than a site at Green Hammerton. In particular, this was to enable the Council to consider the optimum boundary of the new settlement, and to give an opportunity to address "the most appropriate spatial and place making approach" at the location which had been chosen *after having discarded other alternatives*. A decision on the exact boundary of the site would seek to exploit the existing railway line and optimise the delivery of the necessary improvements to the A59 in the longer term. HBC's thinking was influenced by the important consideration that "a new settlement represents an unprecedented scale of development in the district".

184. It is important to note that HBC's rationale for the "broad location" approach did not involve any departure from, or questioning of, or implications for what it regarded as the key reasons for having decided to prefer GH11 and discard FX3, namely direct access to rail stations and the potential for future growth. That second reason had

distinguished Green Hammerton and Flaxby at a strategic or high-level of analysis, noise from the A1(M) and proximity to Knaresborough. The selection of those factors as a critical step in the plan-making process, and the weight given to them, were entirely matters for the judgment of the authority or its executive (as appropriate) and are not open to challenge.

185. In *City and District of St Albans v Secretary of State for Communities and Local Government* [2009] EWHC 1280 (Admin) Mitting J accepted that SEA envisages a process of decision-making in which options can be progressively removed and clarified. They can be "considered and discarded so that they do not need thereafter to be revisited or re-appraised or taken into account again as alternatives to more detailed proposals within a selected option" ([14]).

186. It is apparent that HBC decided to promote a larger area of land as a broad location within which detailed site boundaries could be drawn, but not in order to promote a different type of settlement. The concept for this development, included the key residential and employment components, remained the same. The broader area was simply chosen so that through more detailed work in a DPD the characteristics of the new settlement already selected for Green Hammerton/Cattal could be optimised. But none of the rationale for adopting this "broad location" approach impinged upon the reasons why the Council had rejected FX3 as the location for a new settlement.

187. The full Council considered and approved this change of approach in 2017. There is nothing in the papers before the Court to suggest that the Council changed its view on these matters before they agreed to submit the Local Plan for examination.

188. During the examination the claimant repeated to the Inspector representations it had previously made to HBC as to why it considered a fresh comparison needed to be carried out between different broad locations. The SA accompanying the Submission Draft Local Plan assessed the proposed broad location in policy DM4 against HBC's sustainability objectives for the new settlement, but only addressed other locations as the *sites* already assessed. HBC responded that it had been decided not to take Flaxby forward as the preferred location for the new settlement on the basis of the like for like analysis carried out up until July 2017 "and not as a result of a comparison with the assessment of the broad location" (see [101] above). Although the submissions made for FPL made wide-ranging criticisms of HBC's response, there was no challenge to this summary of the documentation on how the decision to prefer GH11 had been taken.

189. The decision to discard other options, the reasons for that conclusion, and the decision that there was no need for the preferred broad location to be compared with other broad locations based on sites that had already been rejected, were all matters for evaluative assessment by HBC. It cannot be said that HBC failed to take into account FPL's objections about the way in which it handled this issue or that any of its judgments on these matters was irrational. I find it impossible to conclude that the approach taken by HBC up until the beginning of March 2019 was in any way unlawful.

190. But matters did not stop there. In his letter dated 11 March 2019 the Inspector said that he found the issue to be "finely balanced" and so it would be "sensible" for broad locations around each of the proposed potential sites to be assessed and compared.

Despite the issue which had arisen between FPL and HBC, the Inspector was not prepared to express a firm judgment about this matter either way. That reinforces the conclusion I have already reached that HBC's view on the matter could not be criticised as irrational. It lay within the range of different evaluative assessments which different decision-makers could lawfully make. It also follows that if the Inspector had gone further in his letter and ruled that HBC had to carry out the additional comparative assessment, I very much doubt whether that judgment could have been criticised as irrational. At the end of the day, this was a matter of judgment for the Inspector about how the 2004 Regulations should be *applied* in practice to the issues before him, and not about, for example, the objective *meaning* of those Regulations.

191. HBC responded by producing SAA2 which did assess and compare a number of broad locations with HBC's preferred option. Public consultation was undertaken on that work as part of the statutory examination process and the output of that consultation was taken into account by HBC's representatives in the examination and by the Inspector.

192. It is a general principle of public law that even where there is no legal requirement for consultation to be undertaken, nevertheless where a process of consultation is in fact embarked upon, it must be carried out properly, that is, in accordance with established legal principles (*R v North and East Devon Health Authority ex parte Coughlan* [2001] QB 213 at [108]). This means *inter alia* that "the product of consultation must be conscientiously taken into account when the ultimate decision is taken" *(ibid* approved by the Supreme Court in *R (Moseley) v London Borough of Haringey* [2014] 1 WLR 3947). This principle aligns with the requirement in Regulation 8(3) of the 2004 Regulations that opinions expressed in response to the environmental report must be taken into account before the adoption of the plan. The legal consequence is much the same as where an environmental impact assessment is produced by a developer voluntarily for a development falling within schedule 2 to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 No.571). This engages the procedural requirements of the EIA regime (see regulation 5(1) and (2)).

193. I draw two conclusions from this analysis:-

(i) HBC cannot defeat ground 1 by arguing that a comparison of broad locations *never* fell within the scope of the SEA required by the 2004 Regulations. From the moment when SAA2 was published, that subject did fall within the 2004 Regulations, as well as falling within the scope of the examination of the draft Local Plan;

(ii) But prior to HBC deciding to produce SAA2, the Council was, as a matter of law, entitled to proceed on the basis that their environmental report need not make a comparative assessment of the DM4 location with broad locations for options which had previously been rejected as reasonable alternatives, including Flaxby.

Who was required to comply with Regulation 8(3) and when?

194. This case is concerned with the obligations of a local planning authority under the 2004 Regulations as they intersect with the statutory provisions leading to the adoption of the plan. But it is also necessary to have well in mind the legal framework which determines where responsibility lies as between the local authority and its executive under the 2000 Act and the 2000 Regulations. This has been summarised in [68] above.

195. Although s.17(3) of PCPA 2004 may give the impression that the local planning authority is entirely responsible for the policy content of a local plan, in the case of an authority with an executive that must give way to the constitutional arrangements put in place under the 2000 Act and the 2000 Regulations. The executive or cabinet is responsible for most of the local plan process from its inception. Even the function of deciding whether to modify or withdraw a plan in accordance with the recommendation of the examining Inspector is vested in the executive, before the plan can be considered by the authority for adoption (if that option remains open).

196. For the most part it is the executive, and not the full Council, which is in the "driving seat" during the local plan process and, to that extent, it is for the executive to decide whether to delegate particular responsibilities to a committee or to officers. Although it is for the full Council to decide whether to approve a draft plan for examination, once that step has been taken the executive is responsible for the authority's participation in the examination process through to the decision on whether to accept the Inspector's recommendations on, for example, adoption, or main modifications, or withdrawal of the plan. That responsibility includes the authority's initiation of and participation in the main modification procedure. These responsibilities also allow for delegation to officers under s.9E. Thus, the delegation authorised on 14 November 2018 lay well within the powers of HBC's Cabinet and HBC's officers were entitled to prepare an addendum to the environmental report (SAA2) and to undertake consultation on that document on behalf of HBC.

197. Regulation 5(1) requires "environmental assessment" to be carried out by the "responsible authority" which, for present purposes, refers to the authority by which or on whose behalf a plan is prepared (regulation 2(1)). The meaning of "responsible authority" is therefore consistent with the legal framework created by the 2000 Act for authorities with "executive arrangements".

198. The objective in Article 1 of the Directive, and hence the 2004 Regulations, is to promote the integration of environmental considerations into the preparation and adoption of plans. That indicates that the "environmental report(s)" and the product of consultation must be taken into account not only during the preparation of the plan but also in the decision whether it should be adopted. Plainly, that material must be taken into account by the person or body responsible at each relevant stage. Accordingly, both when a draft plan is submitted for examination and when it is finally adopted, it is the full Council which must take into account the "environmental assessment" as it then is. The functions of the full Council at these stages are non-delegable. At other stages the general position is that the environmental assessment is to be taken into account by the executive, or by any committee or officer to whom the executive's functions have lawfully been delegated.

199. I see no merit in HBC's submission that because regulation 8(3) indicates that the environmental assessment is to be taken into account *before* adoption, it does not have

to be considered by the full Council. The word "before" does not contain any suggestion that some body (or person) other than the entity responsible for taking the decision to adopt may discharge the requirements of regulation 8(3). Instead, that regulation is only laying down a straightforward requirement that a plan cannot be adopted unless the environmental assessment is taken into account in the decision to adopt, not afterwards. The objective of Article 1 of the Directive is clear, namely to integrate environmental considerations into the preparation and *adoption* of plans. Although the members of the full Council should be asked to consider the final SA, there is no requirement for them to consider all of the consultation responses to the SA one by one. There is often a good deal of overlap or repetition in such material and some of the points raised may not be significant. A proper summary and analysis of consultation responses and how they relate to the SA and the policies in the plan will normally suffice.

200. In any event, Mr Brown's submission does not assist the defendant on this part of ground 1. Adoption cannot be considered before the examination process is concluded by the Inspector sending his report to the authority. It is plainly essential for the environmental assessment to be considered alongside that report. It was the responsibility of HBC's Cabinet to take decisions on whether to accept recommendations in the report, other than the ultimate decision on whether the Local Plan should be adopted. Here it is accepted that the Cabinet did not consider the environmental assessment or any summary of it. Furthermore, the delegated power of officers conferred by the resolution of 14 November 2018, which would have included work on the iterations of the SA as a result of the Inspector's request on 11 March 2019, as well as consideration of the consultation responses, did not extend beyond the examination period.

201. The challenge relates solely to policy DM4 and related provisions dealing with the new settlement. HBC's failure at the adoption stage to comply with regulation 8(3) of the 2004 Regulations, in so far as the SEA was relevant to the new settlement policies, rendered unlawful the adoption in March 2020 of the Local Plan containing those policies. The SEA at that stage included SAA2 and the consultation responses to that document. This unlawfulness affected only the adoption stage of the Local Plan. The reasons I have given above are sufficient to determine ground 1.

The legal consequences if HBC ought to have considered alternative broad locations before submitting the Local Plan for examination?

202. But what if I had reached the conclusion, contrary to [193(ii)] above, that when HBC decided to identify a *broad location* rather than a *site* for the new settlement policy, it became obliged to make a fresh comparative assessment as between broad locations, including Flaxby? In the context of ground 1, it is said that when the full Council resolved to submit the draft Local Plan for examination they ought to have had regard at that stage to an SA which included that comparison, or at least a summary of that work. No such consideration took place.

203. It is a well-established principle that a defect in the SEA process at one stage may be cured by steps taken subsequently (see [36] above). Surprisingly, the claimant disputed that principle during the examination. However, rightly it did not persist in that argument in these proceedings.

204. Instead, Mr Katkowski QC submitted that a defect of this nature at the submission stage could not be cured by the full Council taking into account the comparative assessment of broad locations at the adoption stage. He said that this was because a local planning authority has only a limited choice at the adoption stage, either to adopt the plan with main modifications as recommended by the Inspector, or to withdraw or abandon the plan. As we have seen, the local planning authority cannot adopt the plan with any other modifications, unless they "do not materially affect the policies" in the plan (s.23(2) and (3)). Accordingly, if the members wished to substitute Flaxby for Green Hammerton/Cattal as the DM4 broad location, or to delete any reference in the plan to the location of the new settlement, they could not do so. They would only be able to give effect to that conclusion by deciding to abandon or withdraw the local plan and by restarting the process. Mr Katkowski QC submitted that these limitations on the authority's powers would inhibit proper consideration of that further comparative assessment by members of the full Council at the adoption stage, in contrast to the earlier stage when the Council approved the draft plan to be submitted for examination.

205. I do not accept this submission. It goes too far. It would mean that whenever the content of an SA suffers from a legal defect which is capable of affecting a policy or policies in a plan, and that defect is not corrected before the full Council considers the SA and approves the draft plan for submission for examination, it cannot be corrected thereafter. The curing of any such defect in the SA would always have to precede the submission of the plan for examination.

206. The claimant's submission is inconsistent with authority. For example, in *Cogent Land* the local planning authority published an addendum to its SA to address a legal defect in the environmental assessment accompanying the draft plan submitted for examination. They did so over one year after the submission of those documents to the Secretary of State. Singh J (as he then was) held that that step cured the failure to assess reasonable alternatives properly. His decision has been approved in *Spurrier* and *Plan B Earth* and more specifically in *No Adastral New Town Limited* at [53].

207. Those authorities reflect one of the objectives of the Directive, namely "to contribute to the integration of environmental considerations into the preparation and adoption of plans". The requirements of the Directive, which focus on consultation on the document or sequence of documents comprising the environmental report, are procedural in nature, not substantive. They are not intended to determine the outcome of the process.

208. I put to one side cases in which a substantial legal defect in the content of the environmental report is not addressed until after the examination process is concluded, where different considerations may or may not apply.

209. Here, "the broad locations" point was identified during the examination process, SAA2 was published and consulted upon and the consultation responses were taken into account by officers and by the Inspector. They had the responsibility for considering those matters during the examination stage. During that period, the environmental considerations arising from a comparison of broad locations were indeed integrated into the preparation of the plan during the process leading up to its adoption.

210. For present purposes, the examination process had essentially two possible alternative outcomes (ignoring in this case the possibility of a recommendation under s.20(7A)). First, an Inspector might have decided that the draft plan would be unsound unless DM4 was amended by a main modification substituting Flaxby for Green Hammerton/Cattal, or alternatively simply retaining the principle of a new settlement without identifying any location. No doubt FPL was aiming to achieve the former. HBC would then have been faced with the choice of deciding whether to adopt the plan subject to that and any other main modifications, or to withdraw the plan. Provided that the full Council took into account the final SA and the consultation responses, or at least a summary or analysis of that material, I do not see how, in the light of the authorities, it could be argued by any party that the earlier defect in the SEA would not have been cured by the publication of and proper consultation upon SAA2. So, if the Council had agreed with a recommendation by the Inspector to modify DM4 by identifying Flaxby as the broad location, I do not see how the promoters of the Green Hammerton/Cattal location, or an objector to Flaxby, could successfully have challenged the plan on the basis that the Council's failure to compare "broad locations" at the submission stage had not been cured because their consideration of the issues at the adoption stage was improperly inhibited by the binary nature of the decision which could then be taken.

211. The other possible outcome is that the Inspector would decide (as he did here) that policy DM4 should not be amended so as to delete the identification of Green Hammerton/Cattal as the broad location. Provided that the full Council had regard to the same SEA material, I do not see why a decision on their part to accept a recommendation by the Inspector that the plan be adopted without that modification would be any more open to legal challenge because the corrected SA had not been considered by the full Council at the submission stage and the legal nature of the adoption stage improperly inhibited a proper consideration of the issues. The legal analysis is no different according to who wins or loses the "merits" argument in the local plan process. Likewise, in either scenario the authority may decide not to accept the Inspector's recommendation on such an important topic with the consequence that the Plan has to be withdrawn.

212. On analysis, the only legal flaw in the procedure followed by HBC was that the full Council did not take into account the final SEA material and consultation responses, or a summary and analysis thereof, when they resolved to adopt the local plan. The claimant's focus on the binary or restricted nature of the decision on whether to accept the Inspector's recommendations on adoption or to withdraw the plan is irrelevant. The argument fails to take into account the local plan process as a whole.

Conclusion on ground 1

213. I uphold ground 1 of this challenge to the new settlement policies of the Local Plan, but only to a limited extent. The challenge relates solely to policy DM4 and related provisions dealing with the new settlement. HBC's failure at the adoption stage to comply with regulation 8(3) of the 2004 Regulations, in so far as the SEA was relevant to the new settlement policies, rendered unlawful the adoption in March 2020 of the Local Plan containing those policies. The SEA at that stage included SAA2 and the consultation responses to that document. I reiterate that this unlawfulness affected only the adoption stage of the Local Plan.

Conclusions

214. Grounds 2 and 3 of the challenge have been rejected. Ground 1 has been accepted but only to the limited extent identified in [213] above. Neither HBC nor IP2 or IP3 submitted that in the event of any ground succeeding, wholly or in part, relief should be refused by the court in the exercise of its discretion. They were right not to do so. On the material before the Court I could not have been satisfied that, if the full Council had taken into account the SEA material to which I have referred, it is *inevitable* that they would still have resolved to adopt the local plan with policy DM4 (and related policies) as it stands *(Simplex GE (Holdings) Limited v Secretary of State for the Environment* [2017] PTSR 1041*).* It is not for the Court to stray into the forbidden territory of evaluating for itself the substantive merits of the issues. These are matters for the Council to determine *(R (Smith) v North East Derbyshire Primary Care Trust* [2006] 1 WLR 3315*).*

215. The Court has a discretion as to what remedy should be granted under s.113(7) to (7C). Mr Katkowski QC accepted, rightly in my judgment, that it would not be appropriate for the Court to quash the Local Plan, not even if the Court had accepted FPL's three grounds of challenge in their entirety. A quashing order, even in relation to part of the Plan, would result in HBC having to repeat the whole of the local plan process in relation to any part of the Plan which is quashed. That would be wholly unjustifiable.

216. Instead, it is appropriate for the Court to exercise its statutory power to remit the Local Plan with directions as to the action to be taken by HBC in relation to the document. In principle the directions should be limited to rectifying the legal error I have accepted (see *Woodfield v. JJ Gallagher Limited* [2016] 1 WLR 5126). In my judgment there was no error in the local plan process up to and including the conclusion of the examination process.

217. I invite the parties to agree directions for dealing with the flaw I have identified in the decision to adopt the Local Plan (and, as appropriate, the decision by the Cabinet on 3 March 2020) and in default of agreement to exchange and file brief written submissions.

Addendum – Issues relating to the Court's order

218. There are three main issues arising from the parties' submissions on the terms of the Court's order.

The scope of the order to remit

219. In [216] I referred to the power to remit the Local Plan in s.113(7)(b) of PCPA 2004, without indicating at that stage the extent of any remitter.

220. Both limbs (a) and (b) of s.113(7) refer to "the relevant document", but s. 113(7C) provides that the powers to quash or remit are exercisable in relation to the whole or any part of the document. So, for example, in *Woodfield* [2016] 1 WLR 5126 Patterson J remitted only one policy in a local plan ([5]).

221. FPL submits that I should remit the whole of the Local Plan. I agree, but not for the reasons they give.

222. It is necessary to pay careful attention to two different but connected issues. The first issue is what steps need to be taken by HBC in order to remedy the error of law identified by the Court? The second is what needs to be remitted to HBC so that the authority has the necessary power to deal with those steps properly and in accordance with the law?

223. Unless and until the Court makes an order under s. 113 quashing or remitting the local plan, the plan-making authority is *functus officio* in relation to the plan-making process. It is the court's order which revives the authority's powers, but the extent of those powers will depend upon the order made.

224. Here FPL's challenge only related to the new settlement policies in the Local Plan and FPL's ground 1 was only concerned with the failure of HBC to consider SAA2 and the consultation responses thereto. It has never been suggested that this failure is linked to any other part of the Local Plan or that any other part of the plan ought to be reconsidered by HBC.

225. The Local Plan has not been challenged by any other party, whether in relation to the new settlement policies or any other part of the plan. For example, no one has suggested that the whole plan should be quashed or remitted because of the failure of the full Council to consider the SA at the adoption stage. The Local Plan is now immune from any such challenge by virtue of the ouster permissions in s.113(2) and (3) of PCPA 2004.

226. Accordingly, the purpose and wording of the Court's order should be tailored to fit with that analysis and the reasoning in this judgment. The essential requirement is that the Cabinet and the full Council should consider whether or not to accept the Inspector's recommendations with regard to the new settlement policies in the Local Plan and whether or not they wish the plan to be adopted containing those policies. That requires them to consider the SEA material (including consultation responses) in so far as it is relevant to that specific task. I note that no party has suggested that the SA needs to be further updated at this stage, but, in any event, that would be a matter for HBC.

227. It should be recalled that one potential option which the Court must leave open to HBC is the rejection of the Inspector's recommendation in favour of adopting the Local Plan with the new settlement policies. But in the event of the authority deciding that those policies should not be included in the Plan, or should be amended in some material way not addressed by the Inspector's main modifications, it could only give effect to that decision by not adopting (or withdrawing) the Plan (see above [33] to [34] and [204] et seq). Accordingly, I cannot accept the submission by HBC, IP2 and IP3 that the Court should only remit the new settlement policies. Unless the whole of the Local Plan is remitted, HBC's consideration of the relevant questions relating to the new settlement policies would be unlawfully constrained.

228. FPL also submits that a reasonable opportunity should be given to it and "anyone else" to submit written representations to the Cabinet and the full Council before they take their decisions in response to the Court's order, given the time that has elapsed

since the decisions taken on the 3 and 4 March 2020 and the possibility that circumstances may have changed materially since then. However, FPL has not identified any material change of circumstance of which it is aware. HBC, IP2 and IP3 oppose this suggestion on the basis that, applying *Woodfield*, relief should be limited to matters necessary to address the error at the adoption stage identified in the judgment; that is as far back as the matter should be remitted or "rewound".

229. It is not suggested by the FPL that this additional round of consultation stage forms part of the statutory scheme. There is no such requirement, for example, if a local planning authority were to take a year or so to decide on their response to an Inspector's report. HBC points out that the meeting of the full Council will be the subject of a published agenda and report by officers which will be made available to the public in the normal way. It will be open to FPL and any other interested party to send representations to HBC before the meeting, and even before that stage is reached. I do not think it would be appropriate for the Court to impose a consultation requirement in the circumstances of this case. That is a matter which should be left to HBC to consider.

230. FPL has also sought a direction from the Court that consultation on the New Settlement DPD should be paused until the outcome of the decisions by the Cabinet and the full Council on the Local Plan, so that those decisions are not "prejudged". FPL has not explained how s. 113 confers jurisdiction on the Court in a challenge against one plan to make an order directing the procedure to be followed for a different plan which is not (and could not be) the subject of that challenge. Section 113 does not authorise the authorise the making of such an order in order to remedy a legal flaw in the "relevant document" which is before the Court, or in the process which has led up to its adoption. The ouster provisions in s.113(2) and (3) should also be borne in mind as they apply to the DPD.

231. In any event, even if I have the power to make the direction sought, I decline to exercise it. I agree with HBC, IP2 and IP3 that it is necessary for the order to address the legal flaw in the local plan process identified in this judgment. It has not been suggested, let alone demonstrated, that the *legality* of the process *currently* being followed for the DPD is dependent upon the outcome of this challenge or the steps now required to be taken by HBC by the order the court will now make. If HBC were to decide against adoption of the Local Plan, that might have implications for the DPD, but that would be a matter for HBC to address. I do not see why allowing the consultation process to continue until the closing date for the receipt of representations would involve the Cabinet or the full Council prejudging its decisions on the local plan in response to this judgment. Finally, it would be confusing to the public for the consultation on the DPD now to be halted.

Costs of the claim

232. As between FPL and HBC the former submits that it should be paid all its costs by the latter. HBC submits that there should be no order as to costs or that FPL should only recover 10-20% of its costs. HBC submit that additionally two items of FPL's costs should be disallowed in any event.

233. The relevant principles relied upon by the parties are contained in CPR 44. Both sides place emphasis upon the extent to which they have been successful. HBC also raises issues as to the way in which the litigation has been conducted.

234. HBC has been successful in resisting grounds 2 and 3. They were weak grounds. They received no encouragement at all in the order of Sir Wyn Williams dated 12 August 2020 granting permission to apply for statutory review. Had they been successful,l the scope of the relief to which the FDL would have been entitled would have been wider, requiring the local plan process to be "rewound" to an earlier stage. So, it was important for HBC to succeed on those grounds and it had to incur costs in order to do so.

235. FPL has been successful in relation to ground 1, but as is apparent from the judgment, only in relation to a relatively small part of the argument. FPL mounted a much more ambitious, time-consuming and costly attack on the local plan process, which would have required SAA2 to have been produced and considered by the full Council prior to the submission of the Local Plan. They also argued that alleged defect could not be cured by steps taken subsequently. In effect FPL was seeing to have the plan "rewound" at least as far back as the submission stage, so that the examination of the new settlement policies would have to be repeated. They have failed in achieving what was plainly the main object or thrust of the challenge.

236. On the other hand, I do not accept HBC's submissions that there should be no order as to costs. During the process FPL did seek to have matters considered by members of the Council rather than simply by officers, specifically in relation to the "broad location" issue. HBC resisted that suggestion. It was necessary for FPL to bring proceedings, but they ought to have been on a much more limited scale. Taking into account also the unnecessary expenditure to which HBC has been put in order to resist the substantial parts of the claim where FPL was unsuccessful, FPL should be awarded only 15% of its costs, subject to what I say below.

237. Not surprisingly, there has been no real attempt by FPL to defend the size of the original claim bundle of around 11,000 pages. The helpful core bundles agreed between all the parties for the hearing, covering all three grounds and including material from opposing parties, ran to only 663 pages. During the hearing it was only necessary for relatively small additions to be made to those bundles. Plainly, HBC would have incurred costs unnecessarily through having to deal with the superfluity of material contained in the claim bundle.

238. The Court has repeatedly said that it will consider disallowing the costs of bundles and documents filed which are excessive, whether originating from a claimant or another party, in the exercise of its discretion, and also as a necessary sanction, having regard to the obligations of each party under CPR 1.3. Taking into account the costs which HBC would have been forced to incur unnecessarily, I conclude that the whole of the costs of the original claim bundle must be disallowed.

239. I have already explained why it was inappropriate for FPL to rely upon Mr Morton's witness statement, apart from one small section ([12] above). I commend the good judgment of HBC in deciding not to file a witness statement in reply to material of that kind. But they nevertheless incurred costs in having to consider this largely

inadmissible material. It is therefore appropriate for the Court to disallow the costs of Mr Morton's witness statement in its entirety.

240. In reaching these conclusions on costs, I have not double-counted any of the arguments advanced by HBC or their effect on the costs recoverable by FPL.

Costs relating to the joinder of IP2 and IP3

241. IP2 and IP3 applied to be joined as interested parties. That was resisted by FPL. The interested parties ask for an order that FPL pays their costs of making the application for joinder and of resisting that application on the grounds that FPL was unsuccessful and acted unreasonably. FPL resist the applications.

242. FPL rightly points out that under paragraph 4.1 of CPR PD 8C they were not required to serve the claim on the interested parties when it was first filed. The rule recognises that although a challenge to a local plan may affect the interests of many individuals, businesses and organisations, it is not practicable or necessary for everyone concerned about that challenge to be served or joined (see e.g. *IM Properties Development Limited v Lichfield District Council* [2015] EWHC 1982 (Admin) at [61] to [(63]). However, the Court has inherent jurisdiction to join an additional party so as to avoid injustice, albeit that that discretion is likely to be exercised rarely (see e.g. *George Wimpey UK Limited v Tewkesbury Borough Council* [2008] 1 WLR 1649 at [11] to [12], *R (Capel Parish Council) v Surrey County Council* [2008] EWHC 2364 (Admin) at [11]).

243. It follows that it was necessary for IP2 and IP3 to make an application to justify to the Court why exceptionally an order should be made joining them as interested parties. IP2 and IP3 were successful in their application and FPL was unsuccessful in its resistance. Mr Neil Cameron QC, sitting as a Deputy High Court Judge, made an order for joinder on 2 July 2020. In effect, FPL's arguments have sought to revisit the merits of that order, which was not appealed. This was inappropriate.

244. FPL's challenge sought to quash policies in the local plan for a new settlement on land in which IP2 and IP3 had substantial interests and for which they had invested large sums of money and effort over many years in order to promote a new settlement. The purpose of FPL's challenge was to advance their own rival site in substitution for that identified in the Local Plan. FPL did not seek any interim relief of the kind discussed in *IM*, but nevertheless, powerful reasons have been set out for the joinder of IP2 and IP3, which do not require to be recited here. It is not difficult to imagine what FPL's reaction would have been if the if "the boot had been on the other foot" and there had been opposition to their wish to participate in a claim challenging the identification by the local plan of Flaxby as the location for the new settlement.

245. Although an application for joinder was necessary, it ought to have been the subject of a straightforward consent order and a relatively inexpensive procedure. It was unreasonable for FPL to resist the application and in so doing it caused IP2 and IP3 to incur costs unnecessarily.

The Planning Inspectorate

Report to Guildford Borough Council

by Jonathan Bore MRTPI

an Inspector appointed by the Secretary of State

Date: 27 March 2019

Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

Report on the Examination of the

Guildford Borough Local Plan: strategy and sites

The Plan was submitted for examination on 13 December 2017

The examination hearings were held between 5 June 2018 and 5 July 2018 and on 12 and 13 February 2019.

File Ref: PINS/Y3615/429/11

Abbreviations used in this report

AGLV	Area of Great Landscape Value
AONB	Area of Outstanding Natural Beauty
CJEU	Court of Justice of the European Union
CHP	Combined Heat and Power
dpa	Dwellings per annum
ELNA	Economic Land Needs Assessment
HRA	Habitats Regulations Assessment
LEP	Local Enterprise Partnership
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively assessed need
ONS	Office for National Statistics
PPG	Planning Practice Guidance
R&D	Research and Development
RIS	Road Investment Strategy
SA	Sustainability Appraisal
SAC	Special Area of Conservation
SANG	Suitable alternative natural greenspace
SHMA	Strategic Housing Market Assessment
SPA	Special Protection Area
WMS	Written Ministerial Statement

Non-Technical Summary

This report concludes that the Guildford Borough Local Plan: strategy and sites provides an appropriate basis for the planning of the Borough, provided that a number of main modifications (MMs) are made to it. Guildford Borough Council has specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

The MMs were subject to public consultation over a six-week period and were subject to sustainability appraisal by the Council. Since that consultation took place MM2 has been revised, relating to Policy S2 *Planning for the Borough* with a reduced housing requirement of 562 dwellings per annum (dpa). This is discussed under issue 1. I have amended the wording of other MMs where necessary. I have recommended the inclusion of all but 5 MMs in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Modifications to the overall housing requirement and the annualised target taking into account the latest household projections and other relevant factors

- Modifications to give stronger encouragement towards town centre development to make the most effective use of brownfield land in accessible locations and to provide a range of uses including residential development

- Modifications to ensure that the plan promotes good urban design practice in accordance with the NPPF and Planning Practice Guidance

- Modifications to ensure that policies relating to Green Belt and Heritage are in accordance with the NPPF

- Modifications to ensure that the range of policies governing different categories of development are clear and effective

- Modifications to ensure that the impacts of various site allocations are adequately mitigated.

Introduction

1. This report contains my assessment of the Guildford Borough Local Plan: strategy and sites in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the Duty to Co-operate. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework 2012 (paragraph 182) makes it clear that, in order to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.

2. A new National Planning Policy Framework (NPPF) was published in July 2018 with revisions in February 2019. The new NPPF includes a transitional arrangement in paragraph 214 whereby, for the purpose of examining this Plan, the policies in the 2012 Framework will apply. Similarly, where the Planning Practice Guidance (PPG) has been updated to reflect the revised NPPF, the previous versions of the PPG apply for the purposes of this examination under the transitional arrangement. Unless stated otherwise, references in this report are to the 2012 NPPF and the versions of the PPG which were extant prior to the publication of the 2018 NPPF.

3. The starting point for the examination is the assumption that the local planning authority has submitted what it considers to be a sound plan. The Guildford Borough Local Plan: strategy and sites, dated and submitted in December 2017, is the basis for my examination. It is the same document as was published for consultation from 9 June to 24 July 2017.

Main Modifications

4. In accordance with section 20(7C) of the 2004 Act, the Council requested that I should recommend any main modifications [MMs] necessary to rectify matters that make the Plan unsound or not legally compliant and thus incapable of being adopted. My report explains why the recommended MMs are necessary. The MMs are referenced in bold in the report in the form **MM1, MM2, MM3** etc, and are set out in full in the Appendix.

5. Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out a sustainability appraisal (SA) of them. The MM schedule was subject to public consultation for six weeks between 11 September and 23 October 2018. I have taken account of the consultation responses in coming to my conclusions in this report.

6. At the end of the main modifications consultation period, the Council requested a revision to **MM2** (Policy S2: *Planning for the borough*) with a lower housing requirement of 562 dwellings per annum (dpa). This arose from the latest household projections, which were published during the consultation period for the main modifications. For the reasons set out under Issue 1 below, I am recommending the adoption of this revised version of MM2.

7. Further consultation and further sustainability appraisal in respect of revised MM2 are not necessary for two main reasons. Firstly, it has already received adequate publicity. The Council's supporting documents were added to the website in October 2018; statements were invited from interested persons from 20 December 2018 to 24 January 2019; about 30 statements were

received, some with detailed technical appendices; and the matter was discussed in two days of hearings on 12 and 13 February 2019 with many participants and observers. Secondly, the overall housing provision arising from this requirement falls within the range of options examined by the sustainability appraisal and the Plan's allocations remain essentially the same as in the submitted version, with relatively minor adjustments to take into account updated evidence. No-one is likely to be prejudiced as a result of this version of MM2 not having featured in previous participatory processes.

8. In the attached schedule of main modifications, the wording of MM6 relating to Policy H2 *Affordable homes* contains differences from the version consulted upon. This is to bring the thresholds for affordable housing into compliance with national policy for transitional plans, and is dealt with below under Issue 2. It does not significantly alter the content of the modification as published for consultation or undermine the participatory processes or sustainability appraisal that has been undertaken.

9. I am not recommending the adoption of five main modifications: four additional housing sites and a Green Belt boundary change. These are discussed under Issue 11.

Policies Map

10. The Council must maintain an adopted policies map which illustrates geographically the application of the policies in the adopted development plan. When submitting a local plan for examination, the Council is required to provide a submission policies map showing the changes to the adopted policies map that would result from the proposals in the submitted local plan. In this case, the submission policies map comprises the set of plans in Appendix H of the Plan.

11. The policies map is not defined in legislation as a development plan document. Its role is to illustrate geographically the application of policies in the plan. If the geographic illustration of a policy is flawed, the policy will be unsound. In such circumstances, therefore, the Council will need to draw up a proposed change to the submission policies map. This is the case for example in respect of the site of nature conservation interest in Policy A35 *Former Wisley airfield* (MM50) which is dealt with later under Issue 10; and certain other published MMs to the Plan's policies require corresponding changes to the policies map. These changes were published for consultation alongside the MMs. However, the Council's proposed change to the policies map in respect of the Green Belt boundary at West Horsley in **MM51** is not required for soundness and should not be adopted; this is addressed under Issue 11. The same applies to the changes to the Policies Map in respect of the additional site allocations that were included as MMs. These were Land at Aaron's Hill, Godalming (**MM39**: A61); Land at Hornhatch Farm, adjoining New Road, Chilworth (**MM43**: A62); Land west of Alderton's Farm, Send Marsh Road, Send (**MM44**: A63); and Land between Glaziers Lane and Strawberry Farm, Flexford (**MM45**: A64).

12. When the Plan is adopted, in order to comply with the legislation and give effect to the Plan's policies, the Council will need to update the adopted policies map to include all the changes proposed in the Guildford Local Plan:

strategy and sites and the further changes published alongside the MMs incorporating any necessary amendments identified in this report.

Assessment of Duty to Co-operate

13. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by section 33A in respect of the Plan's preparation.

14. The Council is a signatory to the Local Strategic Statement for Surrey, with its strategic objectives to support economic prosperity, meet housing needs, deliver infrastructure and support environmental sustainability, natural resource management and the conservation and enhancement of the character and quality of the countryside and Green Belt. It has engaged with the Strategic Spatial Planning Liaison Group.

15. The Council has worked with Waverley and Woking Councils to produce the West Surrey SHMA and produced a statement of common ground on housing delivery, and it has cooperated with Surrey County Council and a range of other authorities to assess the need for specialist housing and gypsy and traveller accommodation.

16. Guildford Borough sits within the Enterprise M3 Local Enterprise Partnership (LEP) which runs across parts of Hampshire and Surrey. The Local Plan has had regard to the LEP's Strategic Economic Plan and the EM3 LEP Growth Deal. The Council is a member of other Surrey-wide groups with the aim of cooperating on housing delivery, infrastructure and economic development and has worked with the other local authorities in the relevant Functional Economic Market Area to assess development needs. The Retail and Leisure Needs Study Update 2014 and its 2017 addendum also required cooperation with a number of different councils.

17. On transport matters, the Council has worked with the County Council, Highways England, Network Rail, the train operating companies and bus and community transport operators, and a range of local authorities and the Enterprise M3 LEP through an extensive number of working groups and stakeholder meetings.

18. A stakeholder forum was held to discuss the methodology and data used in the Green Belt and Countryside Study (GBCS) and this ensured that the broad methodology used was consistent with that used by other authorities in Surrey.

19. The Council has cooperated with the four neighbouring councils and the County Council in the preparation of the AONB Management Plan by the Surrey Hills AONB Board, and with Natural England and the Local Nature Partnerships in respect of biodiversity and it is a member of the Thames Basin Heaths Joint Strategic Partnership Board. It has worked closely with Natural England and has engaged with other authorities in respect of the provision of Suitable Alternative Natural Greenspace (SANG) to enable development to take place in the right places. The Council has worked closely with the

Environment Agency in preparing the flood risk evidence base that underpins the Plan.

20. Overall I am satisfied that where necessary the Council has engaged constructively, actively and on an on-going basis in the preparation of the Plan and that the Duty to Co-operate has therefore been met.

Assessment of Soundness

Main Issues

21. Taking account of all the representations, the written evidence and the discussions that took place at the examination hearings I have identified 11 main issues upon which the soundness of the Plan depends. Under these headings my report deals with the main matters of soundness and legal compliance rather than responding to every point raised by representors. Policies and designations that do not raise main issues and are considered sound have not been referred to in the report.

Issue 1 – Whether the Plan makes adequate provision for new housing

Calculating the housing requirement

22. Policy S2 *Planning for the borough – our spatial development strategy* in the submitted Plan made provision for at least 12,426 homes over the plan period which amounted to an annualised rate of 654 dwellings per annum (dpa) over 19 years, but on a stepped trajectory. The submitted Plan's housing requirement was based on the work of the West Surrey Strategic Housing Market Assessment (SHMA) Guildford Addendum Report 2017, which took into account the 2014-based Population and Household Projections and the 2015 Office for National Statistics (ONS) Mid-Year Population Estimates. The methodology included an adjustment for economic-led housing needs based on a 0.7% per annum jobs growth rate, and adjustments for affordability, the suppression of household growth among younger households, and the growth of the University of Surrey. Whilst the general methodology was sound (a matter I return to below), the stepped trajectory delivered housing at a low rate for several years from the date of adoption, thus falling short of addressing the borough's deteriorating housing affordability and housing needs in the early years of the Plan. Moreover there was no allowance for unmet need from Woking Borough.

23. During the course of the examination, in May 2018, the 2016 sub national population projections were released. Projected population growth was lower than the 2014 projections, with reduced international migration and a downward adjustment for natural change. Applying the same methodology to the 2016 population projections and the 2017 mid-year estimates, but using an employment growth figure of 0.8% per annum to better reflect the evidence of past employment growth, resulted in an OAN of 629 dpa. To boost the early supply of housing, the stepped trajectory of the submitted plan was abandoned and four additional housing sites were allocated in the main

modifications. An allowance of 42 dwellings per annum was added from 2019 to contribute towards meeting unmet housing needs in Woking Borough. The (now superseded) version of MM2 therefore established the housing requirement as 630 dpa for the first four years of the plan period, 2015/16 to 2018/19, rising to 672 dpa from adoption in 2019/20.

24. The position changed again in September 2018, after the public consultation on the main modifications had begun. The ONS 2016-based household projections were published and the Council were invited to consider their impact. Submissions were invited from interested persons and two days of hearings were held, on 12 and 13 February 2019, to discuss the matter. The Council reformulated the Borough's housing requirement using the 2016-based household projections as a starting point, employing the same methodology as the previous calculations (GBC-LPSS-033b). The outcome is a housing requirement of a minimum of 562 dpa, or 10,678 homes during the plan period to 2034. This is the housing requirement figure now incorporated into **MM2.** There is no stepped trajectory or allowance in the figure for unmet need from Woking, although the latter is capable of being accommodated within the headroom between the requirement and the overall level of provision, a point I return to later.

25. Before going on to look at how this figure has been arrived at, it is necessary to consider the appropriateness of using the 2016-based household projections as a starting point for the Guildford Borough Local Plan. On 20 February 2019 the Government updated the Planning Practice Guidance (PPG) to advise the use of 2014-based household projections when using the standard method for calculating local housing need. All participants to the examination were fully aware of the consultation that led to this revision, and the issues in respect of the 2014 and 2016-based household projections were comprehensively discussed at the hearings. However, as a transitional plan being examined against the 2012 NPPF, the housing requirement in the Guildford Borough Local Plan is not derived from the standard method. Moreover, the plan's housing requirement in MM2 is based on a methodology that makes a range of significant adjustments to allow for factors such as household formation rates, jobs-related growth and other local issues which are discussed in more detail below. As such, the Council's latest housing figure in MM2 is an up to date assessment of housing need based on several inputs, in accordance with the policy framework appropriate for transitional plans. In consequence it does not conflict with the letter or the spirit of the revised NPPF.

26. Turning to the detail, the latest household projections indicate that the demographically-based starting point for housing need is 313 dpa. This projection is based on data points in 2001 and 2011, whereas previous projections were based on a longer time series starting in 1971. Social conditions have changed since 1971 and it is generally better to use more recent data, but the latest projections are rooted in a time of acknowledged deterioration in housing affordability, which is likely to have had a potential impact on household formation rates among younger people. Whilst several factors influence household formation, including social behaviour, job prospects and the availability of credit, a fundamental factor is whether people can afford to buy or rent a home or whether an affordable home is available, and affordability in turn is influenced by the availability and growth of the housing stock. The Council's methodology recognises these issues by making

an adjustment to household formation rates for the 25 to 44 age groups, returning them to the levels seen in 2001. Applying this adjustment results in a demographic adjustment to 396 dpa. This is a sound approach, although it should be recognised that it does not provide a full adjustment for affordability, since the additional dwellings are available to all, not just the 25 to 44 age group, and it is unlikely to increase the stock sufficiently to have a significant effect on affordability on its own.

27. The Council's methodology then makes a further adjustment for jobs-related housing need, which raises the OAN to 539 dpa. Guildford, like other successful towns and cities, is a focus point for economic growth which generates a need for housing for those working there. The SHMA: Guildford Addendum Report 2017 considered workplace employment estimates for employment sectors; applied an average annual compound growth rate of 0.7% from three projections for the period 2015 to 2034, and considered economic participation rates and other relevant factors, with the conclusion that the economy could be expected to support higher in-migration. This was the approach that underlay the submitted plan's housing figure. The calculation underlying MM2 takes a similar approach but uses a growth rate of 0.8% pa which more closely reflects the known growth of 0.96% pa in Guildford over the last 16 years, rather than the 0.7% pa behind the housing requirement in the submitted Plan. The rate of 0.96% pa has been achieved over a period which includes notable shorter-term fluctuations in the economic cycle, including the recession which started in 2008/09, so the figure of 0.8% pa therefore appears robust and cautious in relation to that performance.

28. Planning needs to have regard to longer term population changes and business growth rather than short term cycles in the economy and it would be wrong of the plan to place undue weight on some of the current pessimistic short-term economic predictions. The Council's approach underpinning MM2 is based on well-founded and sound analysis; any divergent trends that become established can be picked up through monitoring, and if such trends affect housing affordability they will be addressed through the standard method calculation of local housing need when the plan is next reviewed.

29. From the figure of 539 dpa resulting from the assessment of jobs-led economic growth, the Council have made a further adjustment of 23 dpa for the growth of the student population based on analysis carried out in the SHMA addendum. Taking the University of Surrey's known aspirations for growth, it is estimated that the number of full-time Guildford-based students at the University will increase by 3,800 between 2015-34, resulting in additional migration to Guildford. Assuming that 45% would be accommodated in the wider housing market, and on the basis of an average 4 students per household, the SHMA Addendum calculates that this would equate to growth of 23 additional dwellings per annum. It has been argued that the 18 to 23 age group in the most recent population projections and mid-year estimates includes students; but this cannot be assumed to be the case, and by its nature Guildford is likely to be attractive to young people whether or not they are students. It is a sound step to add this allowance for students when considering the overall housing requirement, to ensure that there is not a significant incursion of students into the housing market which would diminish the supply available to others needing housing in the area.

30. The housing requirement of 562 dpa is the outcome of this methodology. The question arises as to whether there should be a further adjustment for affordability on top of the adjustments for jobs growth and students. Guildford's lower quartile housing affordability ratio stood at 12.76 in 2017, up from 10.9 in the 2015 SHMA. This represents a pressing affordability problem both in absolute terms and as a trend. However, the figure of 562 dpa (including students) amounts to a 79% uplift over the demographic starting point of 313 dpa and is a significant increase above historic housing delivery rates; it can be expected to improve affordability and will boost the supply of housing in accordance with Government policy.

31. As regards affordable housing need, the 2017 SHMA Addendum identifies that this amounts to 517 dwellings per annum across the plan period. When set against the proposed affordable housing requirement of 40%, the Council would need to deliver almost 1,300 dwellings per annum to meet affordable housing need in its entirety. It would not be practicable to seek the delivery of 1,300 homes a year or appropriate to increase the uplift above the starting point beyond 79%, but it is further evidence of a pressing housing need and it lends strong support to the figure of 562 dpa rather than a lower requirement.

32. In assessing housing need using several statistical sources and projections, it is inevitable that the output will be affected by the assumptions made. The figures can be influenced by different assumptions about economic activity rates, unemployment levels, net commuting, double jobbing, the age profile of additional migrants into the area, students, the proportion of working age people within the overall age profile and the ability of the wider labour force to support the anticipated level of jobs-related in-migration. Combinations of different assumptions producing lower figures have been submitted to the examination. Other assumptions produce higher figures.

33. But an examination of the wider context supports a housing requirement of 562 dpa. Guildford is an important employment centre within easy reach of London, with a big university, other significant higher education establishments, a successful science park, economic strength in growing sectors and a long record of economic growth. It is the largest town within the housing market area, one of four growth towns in the LEP's Strategic Economic Plan and continues to benefit from the EM3 LEP Growth Deals. The university is expanding and students have made a significant incursion into the housing market. These factors, together with the seriously poor and deteriorating housing affordability and the very high level of need for affordable housing make a compelling case for a supply of housing significantly above historic rates.

34. 562 dpa is also a realistic figure in comparison with the housing requirements of the two other authorities in the housing market area. Woking's requirement was 517 dpa in the 2015 SHMA, and its local housing need has been calculated at 409 dpa against the standard method (see below). The town has a strong business sector but has a smaller district than Guildford. Waverley, a larger district but with smaller towns than Guildford, has a requirement of 507 dpa plus an additional 83 dpa uplift for Woking's unmet housing need.

35. The housing requirement of 562 dpa in MM2 is therefore consistent with the characteristics of Guildford, its District and the wider context, and points

towards the soundness of the Council's methodology. A lower housing requirement such as the 361 dpa set out in NMSS/WAG REP 17457825-003 would not have regard to the reality of Guildford's characteristics or its context, would pose a risk to local economic prospects and plans, would not adequately address housing affordability or the availability of affordable housing, would potentially increase the rate of commuting, and would be inconsistent with the assessed housing need of the other authorities in the housing market area. A higher requirement would imply a scale of uplift which would start to become divorced from the demographic starting point and from the context of the housing market area described above.

36. Finally, in establishing the housing requirement, it is necessary to consider the issue of unmet housing need from Woking. The 2015 SHMA calculated Woking's housing need at 517 dpa, but Woking's Core Strategy made provision for 292 dpa leaving unmet need of 225 dpa. The adopted Waverley Borough Local Plan's housing requirement incorporates 83 dpa which, over the life of the Waverley Borough Local Plan (which is longer than Woking's Core Strategy) would meet 50% of Woking's unmet need as identified through the SHMA. The submitted version of the Guildford Borough Local Plan did not address Woking's unmet need, but the original version of MM2 accommodated a further 42 dpa.

37. On 18 October 2018, Woking Borough Council formally reviewed their Core Strategy and concluded that it did not need updating. They also re-calculated local housing need; using the standard method with 2014-based household projections, they consider this to be 409 dpa. The use of 2014-based figures for Woking is appropriate in the light of the Government consultation and response. Housing provision in the borough is unchanged at 292 dpa which reflects average delivery over the last few years, a result of limited land availability within the Borough's tightly drawn administrative area. The various plans in the housing market area are operating on different timescales which makes it more difficult to establish exact figures, but having regard to the difference between local housing need and provision in Woking, the probability is that there is still ongoing unmet need from Woking, not all of which is accommodated by the allowance in Waverley.

38. However, it is unnecessary to make a specific allowance in Guildford's housing requirement to help meet unmet need from Woking. That is because the likely residual amount of unmet need from Woking can be accommodated within the Guildford Borough Local Plan's headroom – the difference between the housing requirement of 562 dpa and the number of homes that can be delivered from all sources over the life of the plan. This is dealt with in the next section.

Delivering an adequate supply of homes

39. In the submitted plan, the combined effect of the stepped trajectory in Policy S2 together with the "Liverpool" methodology (in which the delivery shortfall accumulated over the first 4 years of the plan (2015/16 to 2018/19) is spread over the whole plan period), would have deferred a significant proportion of the housing requirement to the later years of the plan. Set against the (then higher) housing requirement, this would not have met the Government's objective to boost the supply of housing in the shorter term.

40. To address this, the earlier version of MM2 deleted the stepped trajectory, and to improve shorter term delivery (again in the context of a higher housing requirement) four additional site allocations were included as MMs. These were Land at Aaron's Hill, Godalming (**MM39**: A61); Land at Hornhatch Farm, adjoining New Road, Chilworth (**MM43**: A62); Land west of Alderton's Farm, Send Marsh Road, Send (**MM44**: A63); and Land between Glaziers Lane and Strawberry Farm, Flexford (**MM45**: A64).

41. The housing requirement is now lower, as set out in the current version of MM2 and, in consequence, neither a stepped trajectory nor the additional sites are required to maintain adequate delivery in the shorter term against the requirement. The housing trajectory in **MM46** *Appendix 1*, based on 562 dpa and the latest available delivery information, illustrates this point. Whilst housing delivery over the first 4 years of the plan period has been very low, and is still below the Plan's housing requirement in year 5, it grows strongly from 2020/21 and remains in excess of the housing requirement over the life of the Plan.

42. The housing trajectory indicates that there is potential to deliver 14,602 homes over the plan period. The difference between this and the total housing requirement of 10,678 homes has been raised during the examination in the context of whether there are exceptional circumstances to release land from the Green Belt. This is dealt with in more detail under Issue 5. But purely in terms of housing supply, there is enough headroom to ensure that the Plan remains robust in the event that there is slippage in the delivery of housing from the allocated or committed sites, avoiding the need to allocate reserve sites; and enough headroom to provide for the anticipated level of unmet need from Woking, bearing in mind that there would be a continuing level of undersupply over the period of Woking's newly reviewed plan. The overall plan provision would also provide more affordable housing and go further to address serious and deteriorating housing affordability.

43. The reduced housing requirement in MM2 enables the plan to proceed without the additional sites allocated by modifications MM39, MM43, MM44 and MM45, but it is not of an order that would justify the deletion of any of the strategic sites which, in addition to their substantial housing contributions, bring other significant benefits to the Borough through their critical mass and well-chosen locations. Again, this is discussed in more detail under Issue 5.

44. No further sustainability appraisal is required in respect of the requirement of 562 dpa because the overall housing delivery figure of 14,602 homes falls within the range of eight delivery scenarios that were considered as reasonable alternatives, ranging from 13,600 homes to 15,680 homes, and the housing allocations remain the same as in the submitted Plan except for Policy A60: White Lion Walk, added by MM32, a town centre retail and mixed use redevelopment including some 50 dwellings.

45. The trajectory indicates a 5 year housing land supply on adoption of 5.93 years rising to 6.74 years in year 5. The 5 year supply calculation includes a 20% buffer for past persistent under-delivery and uses the Liverpool method in recognition of the contribution made by the strategic allocations which typically have a longer lead-in time. These are the Council's figures and it is recognised that slippage could reduce this supply, but there is enough

flexibility built in to the trajectory to maintain a rolling 5 year housing land supply.

46. In conclusion, whilst the submitted plan's figure of 654 dpa is not sound because it does not reflect the most recent evidence, the Council's calculated housing requirement of 562 dpa, or 10,678 dwellings over the life of the plan, as set out in the revised version of MM2, is sound. It reflects the latest evidence and is based on sound analysis. The overall level of housing delivery, currently calculated at 14,602 homes, will ensure that an adequate 5 year supply of land will be maintained and will ensure that the plan is robust; it will deliver sufficient housing to help address the pressing issues of affordability and affordable housing need, and contribute towards addressing unmet housing need in the housing market area.

Issue 2 – Whether the plan adequately meets the identified housing needs of all the community

47. Policy H1: *Homes for all* establishes the Plan policy towards housing mix, the protection of the housing stock, accessible homes, specialist accommodation, student accommodation, gypsy, traveller and travelling showpeople pitches and plots, houses in multiple occupation and self-build and custom housebuilding.

48. As regards housing mix, the policy is not prescriptive but seeks a mix of tenure, types and sizes of dwelling, which the text indicates will be guided by the strategic housing market assessment. The policy also seeks an appropriate amount of accessible and adaptable dwellings and wheelchair user dwellings.

49. Policy H1(2) of the submitted plan resists the loss of all housing, which is justified given the Borough's housing need, but it also resists the loss of housing on the allocated sites. This is ineffective as a policy because it is not entirely clear whether this means the loss of the housing sites or a reduction in the number of dwellings on the site. **MM4** clarifies the position by stating that significant reductions from the approximate housing numbers or reductions from specific traveller accommodation provision and housing uses as set out in the site allocations will be resisted.

50. Policy H1(6) addresses the needs of gypsies, travellers and travelling showpeople and seeks provision for them on sites of 500 homes or more. This provision is incorporated as a requirement within strategic allocation policies A24, A25, A26 and A35, although the policies fail the test of effectiveness in requiring nil transaction costs from developer to registered provider, since the local planning authority has no authority to determine transaction costs between two independent parties and **MM34** deletes this aspect of the requirement. Meanwhile Policy S2(3) sets out the number of permanent pitches which will be identified for gypsies and travellers and travelling showpeople; the number provided for those who do not meet the definition in Planning Policy for Traveller Sites; and the number to meet the potential additional need of households of unknown planning status. There is a degree of overlap between Policy H1(6) and Policy S2(3) and **MM5** provides clarification by deleting some text from Policy H1(6) and providing additional

explanation in the supporting text. This is required to ensure that the policy is effective. The approach is based on appropriate evidence.

51. Subject to these main modifications, Policy H1 is sound.

52. Policy H2: *Affordable homes* in the submitted plan requires 40% of the homes on sites providing 5 or more homes, or on sites of 0.17 ha or more, to be affordable. However, this does not reflect the Written Ministerial Statement of 28 November 2014 or Planning Practice Guidance 23b-031 which state that local authorities should not request affordable housing contributions on sites of 10 units or less (in other words the threshold is 11 dwellings). **MM6** alters the policy to conform with the Written Ministerial Statement and Planning Practice Guidance and also removes floorspace thresholds which do not have a basis in national policy or guidance. The version of MM6 which was included in the main modifications consultation set the threshold at 10 dwellings which reflects the 2018 NPPF, but the Council have drawn attention to the inconsistency with the Written Ministerial Statement and the Planning Practice Guidance and MM6 has been amended to set the trigger at more than 10 dwellings and to remove the floorspace thresholds in relation to H2(2a) and H2(4) to accord with the policy context for transitional plans being taken forward under the 2012 NPPF. The threshold in Designated Rural Areas is more than 5 dwellings which is acceptable.

53. In the submitted plan, the explanatory text sets out the approach the Council will take in instances where the amount of affordable housing is not economically viable. This is however a policy statement and it should be set out as such. MM6 therefore incorporates it into Policy H2.

54. Policy H3 *Rural exception homes* allows for small scale rural housing developments to meet local affordable housing needs. The explanatory text sets out the approach the Council will take where an element of market housing is required to make a rural exception scheme viable, but again this is a policy statement so **MM7** includes the approach within the policy and brings the policy into line with Planning Policy for Traveller Sites.

55. Subject to the main modifications described above, which are all required for soundness, the plan makes adequate provision to meet the identified housing needs of all the community.

Issue 3 – Whether the Plan adequately meets the business and employment needs of the Borough

56. Policy E1 *Meeting employment needs* aims to create the conditions for delivering 4,100 additional B class jobs by 2034 by allocating land for a net gain of between 36,100 square metres and 43,700 square metres for office B1a and research and development B1b uses and between 3.7ha and 4.1ha of industrial land in use classes B1c, B2 and B8. These figures were derived from the updated Employment Land Needs Assessment (ELNA) of 2017 and were based on a range of employment forecasts, an analysis of changing floorspace and employment rates, employment density and the property market.

ED47

The Planning Inspectorate

Examination of the Watford Local Plan

Inspector: William Fieldhouse
Programme Officer: Louise St John Howe
Tel: 07789 486419
Email: louise@poservices.co.uk
Address: PO Box 10965, Sudbury, Suffolk CO10 3BF
Examination webpage: Watford Local Plan | Home

INSPECTOR'S NOTE NO. 7
ACTION POINTS FROM MATTERS 1 TO 6

Introduction

Further to the discussions at the week one hearing sessions, the following actions are required. I consider these to be necessary at this stage of the examination to inform my consideration of whether the Plan is sound and/or how it could be made sound by main modifications. I may decide in due course that other or different main modifications are required, including to the parts of the Plan that I refer to below.

Responses should be submitted to the Programme Officer by **midday on Tuesday 1 February 2022** unless otherwise specified.

M1. Legal and procedural requirements and other general matters

No action points identified at this stage.

M2. Amount of development needed in the Borough

Plan period

AP1. Council to amend its proposed main modification to policy SS1.1 (and other parts of the Plan as necessary) to refer to a plan period of 2021 to 2038.

Housing requirement

AP2. Council to amend the proposed main modification to policy HO3.1 (and other parts of the Plan as necessary) to:

(a) Clarify that the housing requirement is a minimum of 13,328 net additional homes in the period 2021 to 2038 which represents an annual average of 784 net additional homes per year.
(b) Delete the sentence "In addition to the identified housing need, a 5% buffer equivalent to 627 new homes during the plan period will contribute towards the overall housing supply".

AP3. Council to amend the proposed main modification to Figure 3.1 so that the title is "Summary of housing supply identified in the Plan" (or similar).

Additional industrial and office floorspace

AP4. Council to amend the proposed main modifications to policies SS1.1 and EM4.1 to delete references to how many new jobs may be created in the Borough. Council to consider whether those policies should instead refer to additional industrial and office floorspace that is (a) identified as being needed in the Borough / wider functional economic area and/or (b) proposed on sites identified in the Plan.

M3. Spatial strategy

Greenfield development

AP5. Council to prepare a main modification to delete the first sentence of paragraph 8 of policy SS1.1 relating to greenfield development, and to consider whether a replacement policy statement relating to the development of unallocated sites (including residential gardens) is required.

Development in the Green Belt

AP6. Council to prepare a main modification to the second sentence of the paragraph 8 of policy SS1.1 so that it reads as follows:
"Inappropriate development, as defined in national planning policy, in the Metropolitan Green Belt will not be approved except in very special circumstances".

M4. Watford Gateway Strategic Development Area

No actions identified at this stage.

M5. Town Centre Strategic Development Area

AP7. Council to ensure that when the next schedule of proposed main modifications is produced (to replace ED36) it includes all of the proposed main modifications set out in the statement of common ground with

Historic England (ED33) relating to policy CDA2.2, the reasoned justification, and site allocations in the Town Centre Strategic Development Area.

AP8. Council to produce a revised version of Appendix 5 to the Housing Supply Statement (ED27A) updating the list of "site allocations to be delivered by 2025/26, less planning permissions within the allocation" so that it is consistent with the information provided in Appendix 2B to the Council's matter 7 hearing statement. Council to also include an additional column to the list briefly summarising the latest information about pre-application discussions and expected timing of planning applications.

Council response to AP8 to be submitted to the Programme Officer by **midday on Monday 24 January 2022** and made available to participants before the matter 7 hearing session.

M6. Colne Valley Strategic Development Area

Policy CDA2.3 aims to transform 83 hectares of land designated as the Colne Valley Strategic Development Area through co-ordinated change to produce a sustainable and mixed use urban quarter of high quality design and place making, excellent connectivity and a diverse range of uses. A number of sites are allocated for housing or mixed use development which collectively are expected to accommodate around 4,400 new homes in the plan period thereby making a significant contribution to meeting the Plan's housing requirement. Much of the land in the Area is not specifically allocated for development.

A total of around 2,400 of the new homes would be on a number of allocated sites in the eastern part of the area off Lower High Street. The land and buildings on those allocations, and around them, are in active use for retail and commercial purposes along with extensive areas of surface level parking and access roads. Whilst the owners of the allocations have expressed support for the Plan's objectives for the Area, the indications are that they may be brought forward for development at different times, and some not until the late 2020s or early 2030s.

Policy CDA2.3 does not include any mechanisms to effectively plan and co-ordinate the delivery of the transformative change aspired for in the Area as a whole or of the allocated sites and other land around Lower High Street. The "development requirements and considerations" for the allocations set out in chapter 13 of the Plan include references to supporting the wider objectives for the Area and, in some cases, engaging with the owners of another site. However, it is not clear how this would be effective if different sites (allocations, but also potentially windfalls) are brought forward at different times, particularly in the absence of a

clearer articulation of when and how the different parts of the Area are expected to change, the overall pattern of development in the long term, and the changes to the road network and public realm that would be required to achieve the transformation.

AP9. Council to consider how policy CDA2.3 (and, if necessary, other parts of the Plan) could be modified to ensure that the Plan is effective in achieving the transformation of the Colne Valley Strategic Development Area, in particular the eastern part around Lower High Street, through co-ordinated change over the plan period. The policy should include effective mechanisms to ensure that development on allocated and unallocated sites, along with significant improvements to the built environment, public realm and connectivity for pedestrians, cyclists and public transport, are delivered in a coordinated and planned manner.

William Fieldhouse

INSPECTOR
24 January 2022

Watford Borough Council

Final Watford Draft Local Plan

Schedule A: Proposed Main Modifications, Second iteration

October 2021

Schedule of Proposed Main Modifications (Second iteration)

Watford Final Draft Local Plan

This Schedule of the proposed main text modifications includes changes since the Regulation 19 version of the Local Plan aimed at resolving any potential soundness and/or legal compliance issues identified during the Regulation 19 Consultation.

Reasons for modification can include:

- Positively prepared
- Justified
- Effective
- Consistent with national policy

The schedule is ordered by chapter and modification number and contains the policy reference/paragraph number and page number for each modification. Deleted text, maps or other figures are shown with a ~~red strike-through~~; additions and replacements are underlined in green. Dots denote where the paragraph / policy continues before/after the text shown in the modification.

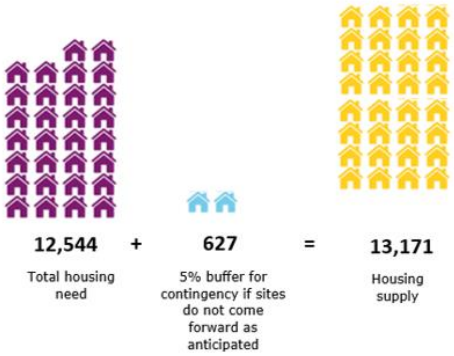
The proposed modifications will subsequently change the document numbering. The policy, paragraph and bullets referenced in this schedule are those found in the Regulation 19 Publication version of the Local Plan.

Main Modification Number	Page, Local Plan paragraph, policy (in Final Draft Watford Local Plan Regulation 19 consultation document)	Modification (deleted text shown as ~~strike through~~ and additional text shown underlined)	Reason for modification and Comment ID number
How to use this document (introduction)			
	Page, 6, after Table 'The Local Plan and the Spatial Strategy'	The diagrams covering the borough at the beginning of each chapter are included to provide context to the strategic objectives of the Local Plan and opportunities to consider when development comes forward. This also applies to the schematic diagrams for each of the three Strategic Development Areas. The strategic maps are not intended to demonstrate policy requirements and are indicative only. Where specific areas and sites within the borough are covered by particular policies, these are defined on the Policies Map.	• Consistent with national policy Officer change
CHAPTER 1: A SPATIAL STRATEGY FOR WATFORD			
	Front cover and then throughout the document (all other instances are shown in the Minor Modifications Schedule)	~~2018~~ 2021-~~2036~~ 2037	• Consistent with national policy ID 2002 Drax Investments Limited ID 2063 & 2064, 2068 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd ID 1981 St Albans City & District Council ID 1947 WSP ID 2058 Home Builders Federation ID 2091, 2092 North Western Avenue Watford Ltd
	Page 21, Strategic Policy SS1.1 paragraph 1	The Local Plan proposes to deliver for a housing need of ~~makes provision~~ at least 12,544 new ~~for 14,988 additional~~ homes and 9,900 ~~11,500~~ additional jobs between ~~2018~~ 2021 and ~~2036~~ 2037, along with other supporting infrastructure. Proposals	• Positively prepared • Consistent with national policy • Justified

		for new development will be supported, where they demonstrate that they will contribute towards the Local Plan's economic, social and environmental objectives, cumulatively achieving sustainable development.	ID 2002 Drax Investments Limited ID 2063 & 2064, 2068 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd ID 1981 St Albans City & District Council ID 1947 WSP ID 2058 Home Builders Federation ID 2091, 2092 North Western Avenue Watford Ltd
	Page 21, Strategic Policy SS1.1, after final paragraph	The Core Development Area is defined on the Policies Map.	• Consistent with national policy Officer change
CHAPTER 2: CORE DEVELOPMENT AREA			
	Page 23, Paragraph 2.1 and 2.2	The Core Development Area comprises three distinct locations, based on their character and the opportunities that each presents to contribute towards making Watford a place that people want to be and where businesses want to invest. The information set out in Figure 2.1 reflects these areas as defined on the Policies Map.	• Consistent with national policy Officer change
	Page 24, Paragraph 2.6, New sentence after final sentence	Figure 2.2 is a schematic diagram to provide context for the area and is not to be interpreted as policy.	• Consistent with national policy Officer change
	Page 24, Figure 2.2, Diagram title	Figure 2.2 Watford Gateway Strategic Development Area, Illustrative Context Plan	• Consistent with national policy Officer change
	Page 25, paragraph 2.17, after fifth sentence	When the area comes forward more comprehensive mixed-use development in the second part of the plan period and longer-term, a ~~A~~ route for a second bridge that connects Penn Road with Watford Junction is to be protected so that new development does not compromise potential access to the area in the future.	• Effective ID 1972 Canada Life Asset Management

		demonstrates a transition from higher elements in more central parts of the site transitioning to lower lying buildings closer to the boundary of the Strategic Development Area, such as Vicarage Road, will need to be set out.	
	Page 37, paragraph 2.72, first sentence	Informed by the Tall~~er~~ Buildings Study, the base future building height in the area is six ~~five~~ storeys.	• Positively prepared • Effective ID 1899 La Salle Investment Management
	Page 38, Strategic Policy CDA2.3, first paragraph	The Colne Valley Strategic Development Area is designated to facilitate transformative and co-ordinated change around the River Colne, ~~and~~ Lower High Street and the area of Watford General Hospital ~~area~~, producing a sustainable and mixed-use urban quarter of high quality design and place making, excellent connectivity and a diverse range of uses.	• Positively prepared Officer change
	Page 38, Strategic Policy CDA2.3, after a), two new bullets	• Redevelopment of the existing Watford General Hospital will provide modern facilities that are well integrated and co-ordinated with other developments, designed to minimise impacts on nearby residential areas and are well connected to support sustainable transport options including walking, cycling and bus services; • A car multi-storey car park with a capacity of approximately 1,450 car parking spaces located east of the existing Watford General Hospital car park;	• Positively prepared • Effective ID 1897 West Hertfordshire Hospitals NHS Trust
	Page 38, Strategic Policy CDA2.3: Colne Valley Strategic Development Area, Part f)	f) A site for a new primary school within Site MU21 'Land at Riverwell', and a site for a new 3 form entry primary school within Site MU16 'Land at Tesco', Lower High Street, ~~New primary school sites~~ to meet demand generated by new development.	• Positively prepared • Effective ID 2114 Hertfordshire County Council
	Page 38, Strategic Policy CDA2.3, after final paragraph	The Colne Valley Strategic Development Area is defined on the Policies Map.	• Consistent with national policy Officer change
CHAPTER 3: HOMES FOR A GROWING COMMUNITY			
	Page 40, paragraph 3.1	The Spatial Strategy to ~~2036~~ 2037 seeks to deliver at least ~~14,988~~ 12,544 new homes completed over the plan period. This is equivalent to the delivery of at	• Positively prepared • Justified

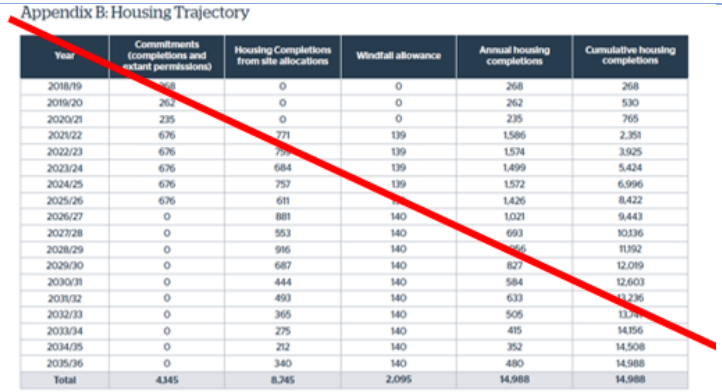
		least 784 new homes each year and forms the baseline figure to calculate the five year housing supply. ~~This figure includes the amount of housing required to meet local need as determined using the government's standard method (14,274 homes) and an additional 5% allowance (714 homes)~~ tTo mitigate ~~reduce~~ the risk of sites identified in the ~~p~~Plan not coming forward as anticipated, an additional 5% buffer equivalent to 627 homes has been added to the housing need calculated using the Government's standard method. This figure of 13,171 homes is the housing supply. The figures that make up ~~this~~ the housing supply in the Local Plan ~~target~~ are set out in Figure 3.1. Figure 3.2 provides an overview of site allocations for residential use and their distribution across the borough. For more detailed information about these sites, refer to Table 13.1 and for site boundaries refer to the Policies Map.	• Effective • Consistent with national policy ID 2002 Drax Investments Limited ID 2063, 2068 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd ID 1981 St Albans City & District Council ID 1947 WSP ID 2058 Home Builders Federation
	Page 40, figure 3.1 Revised housing figures in diagram (Commitments revised to reflect removal of completions from 2018 to 2021 and remove duplication of planning consents on sites put forward as site allocations.		• Positively prepared • Justified ID 2002 Drax Investments Limited ID 2063, 2068 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd ID 1981 St Albans City & District Council ID 1947 WSP ID 2058 Home Builders Federation Officer change (error correction)

		Figure 3.1a Housing Need in the Local Plan  **Figure 3.1b Housing Supply in the Local Plan**  	
	Page 41, paragraph 3.3	As part of the housing to be provided to ~~2036~~ 2037, a windfall allowance of ~~2,132~~ 2,045 units is included. This is based on a combination of three factors including the historical annual average of 70 dwellings per year completed on sites of less than five units; development sites coming forward within the density range identified in the Housing and Economic Land Availability Assessment, but higher than projected; and unidentified sites larger than five dwellings gaining planning permission. Combined, it is expected that windfall development will contribute, on average, ~~116~~157 new homes per year over the plan period with the windfall contribution as part of the housing trajectory from 2024/25.	• Positively prepared • Justified ID 2002 Drax Investments Limited ID 2063, 2068 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd

			ID 1981 St Albans City & District Council ID 1947 WSP ID 2058 Home Builders Federation
	Page 41, Strategic Policy HO3.1	To meet housing need, at least 12,544 new homes, equivalent to 784 new homes per year, ~~Provision~~ will be delivered ~~made for 14,988 new homes, inclusive of a 5% buffer of 714 homes,~~ in Watford Borough between 2021 and 2037 ~~for the period 2018 to 2036~~. In addition to the identified housing need, a 5% buffer equivalent to 627 new homes during the plan period will contribute towards the overall housing supply. Proposals for residential development will be supported where they contribute positively towards meeting local housing needs and achieving sustainable development.	• Positively prepared • Justified ID 2002 Drax Investments Limited ID 2063, 2068 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd ID 1981 St Albans City & District Council ID 1947 WSP ID 2058 Home Builders Federation
	Page 41, Strategic Policy HO3.1, after last paragraph add new sentence	Site allocations for housing and mixed-use, where residential use would be supported, are defined on the Policies Map.	• Consistent with national policy Officer change
	Page 43, Policy HO3.2, 1st paragraph, 1st sentence	Proposals for new residential development of five dwellings or more will be supported where they make provision for at least 20% of the total number of residential units to be family-sized (at least three+ bedrooms).	• Effective Officer change
	Page 43, new paragraph after paragraph 3.13	Affordable housing can refer to rented or sales properties and is defined by the National Planning Framework. Definitions of affordable housing are set out in Annex 2 of the National Planning Policy Framework. To best reflect affordable housing as a proportion of the total number of homes completed on a site, the requirement will be ~~based on~~ measured by habitable rooms~~, with supporting information to be provided by an applicant including the number of units, floorspace and bed spaces as part of the housing schedule~~.	• Effective Officer change

		of ~~in and adjacent to~~ the site. Early engagement with the site operator will be required to ensure that to ensure that development does not prejudice the existing or future use of the safeguarded site and associated operation due to the introduction of noise receptors.	
	Site allocations for residential use where these are the only proposed uses.	*Residential allocations have been clarified to state these are classified as C3 use. These proposed amendments will be included in the Schedule of Minor Modifications.*	• Effective Officer change
	Page 191, Table 13.4: Education facilities – Site ED01 Allocated Sites For Delivery Layer site ED01 boundary amended		• Effective ID 2055 Hertfordshire County Council
	Page 191, Table 13.4: Education facilities, Site: ED01 Former Meriden School Site, first bullet.	Development proposals should: • Provide appropriate mitigation for the lapsed detached playing field for Park Gate Junior School in line with the Playing Pitch Strategy (2020);	Positively prepared ID 2055 Hertfordshire County Council
Appendix A: ~~Draft~~ Monitoring Framework			
	Page 193, Chapter 1 row	~~13,000~~ 10,700 jobs provided ~~2018~~ 2021 - ~~2036~~ 2037	• Justified ID 2002 Drax Investments Limited

			ID 2063 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd ID 1947 WSP ID 2058 Home Builders Federation
	Page 193, Chapter 3 row	~~14,274~~ 13,171 dwellings 2~~018~~ ~~2021~~ - ~~2036~~ 2037, equivalent to ~~with 793~~ 784 per year.	• Positively prepared • Justified • Consistent with national policy ID 2002 Drax Investments Limited ID 2063, 2068 Glyn Hopkin Holdings Ltd ID 2090 North Western Avenue Watford Ltd ID 1981 St Albans City & District Council ID 1947 WSP ID 2058 Home Builders Federation
Appendix B: Housing Trajectory			

	Page 198, Appendix B: Housing Trajectory (table), revised to reflect 2021-2037 housing need figure of 12,544 new homes to be completed	Appendix B: Housing Trajectory  (illegible)	• Positively prepared • Justified • Consistent with national policy ID 2002 Drax Investments Limited ID 2063, 2068 Glyn Hopkin Holdings Ltd ID 2090, 2093 North Western Avenue Watford Ltd ID 1947 WSP ID 2058 Home Builders Federation ID 1973 Canada Life Asset Management

Year	Commitments (completions and extant permissions)	Housing Completions from site allocations	Windfall allowance	Annual housing completions	Cumulative housing completions
2018/19	268	0	0	268	268
2019/20	262	0	0	262	530
2020/21	235	0	0	235	765
2021/22	676	771	139	1,586	2,351
2022/23	676	759	139	1,574	3,925
2023/24	676	684	139	1,499	5,424
2024/25	676	757	139	1,572	6,996
2025/26	676	611	139	1,426	8,422
2026/27	0	881	140	1,021	9,443
2027/28	0	553	140	693	10,136
2028/29	0	916	140	1,056	11,192
2029/30	0	687	140	827	12,019
2030/31	0	444	140	584	12,603
2031/32	0	493	140	633	13,236
2032/33	0	365	140	505	13,741
2033/34	0	275	140	415	14,156
2034/35	0	212	140	352	14,508
2035/36	0	340	140	480	14,988
Total	4,345	8,745	2,095	14,988	14,988

Year	Commitments (extant planning permissions)	Housing completions from site allocations	Windfall allowance	Annual housing completions	Cumulative housing completions
2021/22	925	453	0	1,378	1,378
2022/23	609	357	0	966	2,344
2023/24	725	292	0	1,017	3,361
2024/25	248	751	109	1,108	4,469
2025/26	0	631	109	740	5,209
2026/27	0	933	109	1,042	6,251
2027/28	0	810	109	919	7,170
2028/29	0	899	109	1,008	8,178
2029/30	0	357	109	466	8,644
2030/31	0	882	109	991	9,635
2031/32	0	703	109	812	10,447
2032/33	0	436	109	545	10,992
2033/34	0	370	109	479	11,471
2034/35	0	377	109	486	11,957
2035/36	0	165	109	274	12,231
2036/37	0	203	110	313	12,544
	2,507	**8,619**	**1,418**	**12,544**	**12,544**

	Page 199, Appendix B: Housing Trajectory (table), revised to reflect 2021-2037 housing need figure of 12,544 new homes to be completed		• Positively prepared • Justified • Consistent with national policy ID 2002 Drax Investments Limited ID 2063, 2068 Glyn Hopkin Holdings Ltd ID 2090, 2093 North Western Avenue Watford Ltd ID 1947 WSP ID 2058 Home Builders Federation ID 1973 Canada Life Asset Management
Appendix C: TRANSPORT INFRASTRUCTURE REQUIREMENTS			
	Page 202, Watford Gateway Strategic Development Area, second row, second column	Eastern sustainable transport ~~mobility~~ hub at Watford Junction station with a new multi storey car park, a new station bridge connecting the two platforms and infrastructure provision for vulnerable road users via an extended link from Clive Way and through to Orphanage Road. Improved access to the sustainable transport ~~mobility~~ hub through upgrade works along the existing route of ~~along~~ Imperial Way, Clive Way and Reeds Crescent/Orphanage Road.	• Effective ID 1976 Canada Life Asset Management

WATFORD BOROUGH COUNCIL'S RESPONSE TO THE INSPECTOR'S ACTION POINTS AP1-AP7 and AP9 following the hearing session during the week commencing 17 January 2022

M1. Legal and procedural requirements and other general matters

No action points identified at this stage.

M2. Amount of development needed in the Borough

Plan period

AP1. Council to amend its proposed main modification to policy SS1.1 (and other parts of the Plan as necessary) to refer to a plan period of 2021 to 2038.

The Council propose to amend the Plan to have a plan period date of 2021 to 2038. These will be set out in the next iteration of the Schedule of Main Modifications.

Text affected includes: cover, policies SS1.1, HO3.1, paragraphs 1.2, 1.22, 1.23, 1.26, 2.32, 3.1, 3.3, 3.5, 3.35, 3.46, 4.8, 11.7, tables 4.1, 4.2, figure 4.3, text boxes pages 12-15, appendices A, B, H.

Housing requirement

AP2. Council to amend the proposed main modification to policy HO3.1 (and other parts of the Plan as necessary) to:

(a) Clarify that the housing requirement is a minimum of 13,328 net additional homes in the period 2021 to 2038 which represents an annual average of 784 net additional homes per year.

(b) Delete the sentence "In addition to the identified housing need, a 5% buffer equivalent to 627 new homes during the plan period will contribute towards the overall housing supply".

In response to (a), the Council will amend figures in the Plan to clarify that a minimum of 13,328 net additional homes will be delivered during the plan period representing an average of 784 net additional homes per year.

Text affected includes: policies SS1.1, HO3.1, paragraphs 3.1, 13.2, appendices A, B.

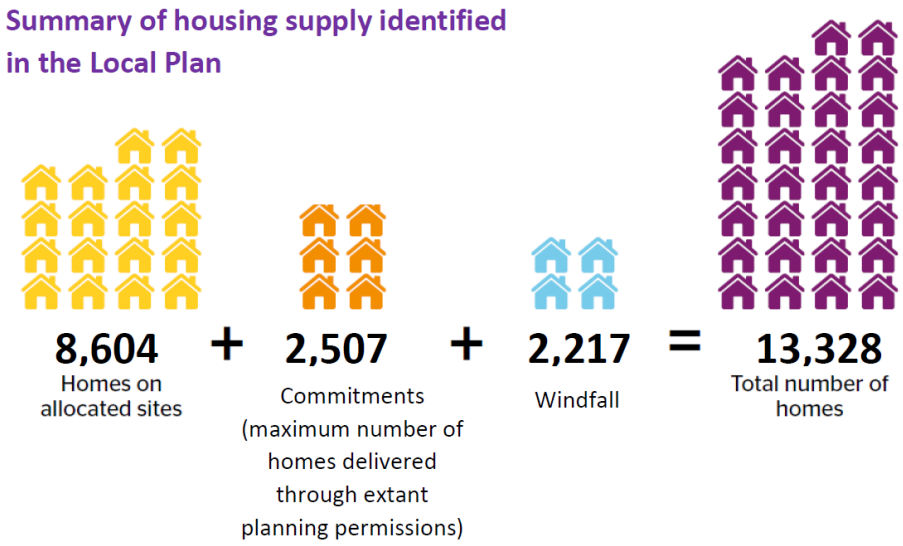
In response to (b), the Council will delete the cited sentence and set this out in the next iteration of the Schedule of Main Modifications.

Text affected includes: policy HO3.1, figure 3.1.

Housing requirement

AP3. Council to amend the proposed main modification to Figure 3.1 so that the title is "Summary of housing supply identified in the Plan" (or similar).

Figure HO3.1 proposed to be amended as follows:



Additional industrial and office floorspace

AP4. Council to amend the proposed main modifications to policies SS1.1 and EM4.1 to delete references to how many new jobs may be created in the Borough. Council to consider whether those policies should instead refer to additional industrial and office floorspace that is:

(a) identified as being needed in the Borough / wider functional economic area and/or
(b) proposed on sites identified in the Plan.

The Council proposes to remove reference to the number of jobs to be created as this only relates to figures associated with office and industrial floorspace and does not include jobs created through other sectors such as retail which make an important contribution towards the local economy.

The proposed amendments to Policy SS1.1 are as follows:

~~The Local Plan makes provision for 14,988 additional homes and 11,500 additional jobs between 2018 and 2036, along with other supporting infrastructure.~~ From 2021 to 2038, the Local Plan makes provision for 13,328 net additional homes and 110,514 sqm of net employment floorspace consisting of 25,206sqm of industrial uses as classified by the B2, B8, E(g)(ii) and E(g)(iii) Use Classes and 85,488sqm of office uses as classified by the E(g)(i) Use Class between 2021 and 2038, along with supporting infrastructure and facilities. Proposals for new development will be supported where they demonstrate that they will contribute towards the Local Plan's economic, social and environmental objectives~~, cumulatively achieving sustainable development~~.

The proposed amendments to Policy EM4.1 are as follows:

To meet the employment needs in Watford and contribute towards the strategic employment requirements of South West Hertfordshire, the Local Plan makes provision for 25,206sqm net industrial floorspace (B2, B8, E(g)(ii) and E(g)(iii) Use Classes) and 85,488sqm net office floorspace (E(g)(i) Use Class. To meet these ~~challenging~~ targets, the Local Plan will seek to prevent the net loss of ~~both~~ office and industrial floorspace across the Borough. New office growth will be prioritised at the Clarendon Road Primary Office Location, while new industrial growth will be prioritised in the five Designated Industrial Areas. ~~Over the plan period, the Council will seek to plan for the creation of 11,500 new jobs.~~

Following on from the amended figures above, and reflecting the figures set out in paragraph 4.4 (page 56, submitted Local Plan) alongside the proposed modification to this paragraph in document ED36, it is considered that amending Table 4.1 (page 58) and Table 4.2 (page 59) would be useful to cross-reference the strategic ned in SW Herts and the provision made in the Watford Local Plan that wold contribute towards this.

Revised Table 4.1 (below paragraph 4.13, p58)

~~Industrial potential supply 2018-2036~~	~~Floorspace (sqm)~~
~~Site allocations~~	~~17,035~~
~~Sites with planning permission~~	~~23,724~~
~~Total~~	~~40,759~~

Summary of industrial floorspace provision 2021-2038	Floorspace provision (sqm)
South West Hertfordshire requirement	481,500
Watford requirement	97,400
Provision through site allocations	12,799
Provision on sites with planning permission	12,407
Total industrial floorspace provision in the Local Plan	25,206

Revised Table 4.2 (below paragraph 4.15, p59)

~~Office potential supply 2018-2036~~	~~Floorspace (sqm)~~
~~Site allocations~~	~~38,672~~
~~Sites with planning permission~~	~~72,503~~
~~Total~~	~~111,175~~

Summary of office floorspace provision 2021-2038	Floorspace provision (sqm)
South West Hertfordshire requirement	188,000
Watford requirement	37,600
Provision through site allocations	19,428
Provision on sites with planning permission	66,060
Total office floorspace provision in the Local Plan	85,488

M3. Spatial strategy

Greenfield development

AP5. Council to prepare a main modification to delete the first sentence of paragraph 8 of policy SS1.1 relating to greenfield development, and to consider whether a replacement policy statement relating to the development of unallocated sites (including residential gardens) is required.

The Council proposes a modification to delete the first sentence of paragraph 8 which reads:

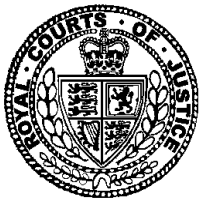
"~~All development will take place on brownfield, or previously developed land and only in exceptional circumstances will development on greenfield land be supported.~~"

The Council does not consider it necessary to include text or a policy requirement to reference residential gardens. These types of sites are classified are considered to be unallocated sites and will be considered in accordance with policies set out in the development plan. It is recognised that some development may come forward on residential gardens where this is considered appropriate when taking into account factors such as (but not limited to) access, privacy and amenity. Where proposals are determined to be appropriate, these will contribute towards the housing supply as set out in the Local Plan as windfall.

Development in the Green Belt

AP6. Council to prepare a main modification to the second sentence of the paragraph 8 of policy SS1.1 so that it reads as follows:

"Inappropriate development, as defined in national planning policy, in the Metropolitan Green Belt will not be approved except in very special circumstances".



Neutral Citation Number: [2021] EWHC 2782 (Admin)

Case No: CO/639/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/10/2021

Before :

THE HONOURABLE MR JUSTICE DOVE

- -

Between :

Tewkesbury Borough Council	**Claimant**
- and -	
Secretary of State for Housing Communities and Local Government	**Defendant**
- and –	
J J Gallagher Limited and Richard Cook	**Interested Parties**

- -
- -

Josef Cannon (instructed by **One Legal**) for the **Claimant**
Tim Buley QC (instructed by **Government Legal Department**) for the **Defendant**
Killian Garvey (instructed by **Shoosmiths LLP**) for the Interested Party
Hearing dates: 21st and 22nd July 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE DOVE

Mr Justice Dove :

1. On 25th October 2019 the interested party applied to the claimant for outline planning permission for the erection of up to 50 dwellings with associated site works, open space, car parking and site remediation in respect of a site described as Land off Ashmead Drive, Gotherington. The application was refused by the claimant on the 16th June 2020 and the interested parties appealed collectively. The appeal was conducted by way of the public inquiry procedure, and the Inspector appointed by the defendant to determine the appeal issued her decision letter on the 12th January 2021, in which she allowed the appeal and granted planning permission.

2. The claimant's application is made under section 288 of the Town & Country Planning Act 1990 and seeks to quash the Inspector's decision. The claimant is represented by Mr Josef Cannon, the defendant by Mr Tim Buley QC and the interested party by Mr Killian Garvey. The attribution of submissions set out below should be read accordingly. I am very grateful to all counsel and also to their legal teams for their extremely helpful written and oral submissions and, in particular, for the thoughtful preparation that went into a focused hearing bundle which provided simply the essential documentation necessary for the purpose of the hearing. A tribute to the care which had gone into the preparation of the hearing bundle was that (with the exception of some material which emerged subsequent to its preparation) there was no need to delve into any other documentation.

The facts

3. The requirement to demonstrate a five-year housing land supply is a central feature of national planning policy in relation to residential development. The details of that policy are set out below, but suffice to say it was an issue which the claimant and the interested parties considered should be addressed as part of the merits of the appeal proposal. It was an agreed position that at the time of the public inquiry the claimant could not demonstrate that there was a five-year supply of housing in their area.

4. The issue between the claimant and the interested parties for the purposes of the appeal was the extent of the shortfall in the five-year housing land supply. There were individual elements to that dispute, but for the purposes of the present case the key question was whether or not past oversupply of housing measured against an annual requirement could be taken into account when calculating the current housing land supply.

5. The nature of the dispute as to whether it could be taken into account or not was helpfully crystalised for the purposes of the debate at the public inquiry in the Statement of Common Ground ("the SOCG"). The relevant passages from the SOCG setting out the differences between the parties provided as follows:

> "**Use of 'Oversupply' as part of Housing Land Supply Calculation**
>
> 1.4 It is the Appellants' position that 'oversupply' from the previous monitoring years should not be included within the Council's five-year housing land supply calculation. This is consistent with the Secretary of State appeal decision at

Oakridge, Highnam (Tewkesbury Borough Council Reference: 16/00486/OUT; Appeal Reference: APP/G1630/W/17/3184272) dated 20th December 2018.

1.5 The Council do not agree with that approach and considers that past over delivery can be credited towards the five-year supply. That approach was also accepted, without comment, in earlier appeal decisions prior to the Highnam decision. There is no express policy on this issue in the Framework, although the Planning Practice Guidance contains guidance that supports the Council's approach. There is no case law that directly addresses this issue. Moreover, no conclusions as to the interpretation of planning policy in an appeal decision is binding.

…

1.8 In terms of how past shortfalls and past over supply can be addressed, paragraph 031 (Reference ID: 68-031-20190722) explains that the level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements. Paragraph 032 (Reference ID: 68-032-20190722) follows and states that where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years.

1.9 Contrary to the Appellant's position, the Council is of the view that its approach is consistent with the Framework. This is for the following reasons.

1.10 First, when calculating five-year supply, the principle of adjusting the annual requirement for future years, by reference to past years' delivery rates, is clearly established by national policy: see the approach expressly advised in respect of past years' under-delivery (paragraph 31 above). A symmetrical approach to past years' over-delivery is consistent with policy.

1.11 Secondly, the paragraph from the Planning Practice Guidance cited above at paragraph 34 supports the Council's approach. Notwithstanding the Council's current housing land supply position, the Council's area is one of those areas that previously 'delivered more completions than required' and 'this additional supply' (i.e. the surplus) 'can be used to offset any shortfalls…' The words 'against requirements from previous years' used in the Guidance, when read in the context of the heading for this paragraph, must be taken to mean 'the requirements delivered in previous years'. The heading makes it clear that the paragraph is intended to address the relationship between past over-supply and planned (i.e. future) requirements.

> 1.12 Thirdly, reliance upon policy to boost significantly the supply of homes, and on policy stating that the five-year requirement is a minimum, are nothing to the point. The policy objective to boost supply in paragraph 59 of the Framework is linked to the need for a sufficient amount and variety of land, and not the calculation of a five-year supply in a development control context."

6. It was the claimant's contention in the SOCG that they were able to demonstrate a five-year housing land supply of 4.37 years if the over-supply from previous years within the plan period was taken into account. It was the interested parties' position that removal of the oversupply would reduce the five-year housing land supply to 2.4 years; there were disputed sites included in the housing supply and once those were removed the housing supply was further reduced, in the opinion of the interested parties, to 1.84 years.

7. Shortly prior to the completion of the SOCG, and undoubtedly forming part of the background to it, the claimant published its Five-year Housing Land Supply Statement in October 2020. This document related the housing supply to the housing requirement derived from the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy ("the JCS"). As set out in greater detail below, the JCS provided a total housing requirement for the claimant of 9,899 dwellings for the plan period 2011 to 2031, equating to a need to provide 495 dwellings per annum. The Five-year Housing Land Supply Statement demonstrated that over the first nine years of the plan period housing completions in the claimant's administrative area had exceeded the housing need when measured at 495 dwellings per annum by 1,115 dwellings. In other words, the requirement over nine years measured at 495 dwellings per annum amounted to 4,455 dwellings, and during that period 5,570 dwellings had been completed. This over-supply of housing was taken into account in the Five-year Housing Land Supply Statement in the calculation of the five-year supply, giving rise to the claimant's figure in the SOCG of 4.37 years, or an under-supply of 180 dwellings.

8. The claimant made closing submissions in writing to the Inspector at the public inquiry which included submissions in relation to the housing land supply position. In that regard the claimant's submissions recorded as follows:

> "**10. Housing Land Supply.** Currently the Council cannot demonstrate a 5-year housing land supply. The issue before the Inquiry, which was considered at the round table session, was the extent of the shortfall. There is a range with the appellant claiming the Council can only demonstrate 1.82 years whereas the Council claims it can demonstrate 4.37 years. The Council acknowledges that the shortfall, on its own figures, is significant.
>
> The basis for the divergence between the two sides is how previous over delivery against the HLS is taken into account. The Appellants claim it cannot be taken into account, whereas, the Council claims it can be and should be.
>
> The Council's case is that taking account of previous oversupply is not against either the requirement of paragraph 73 of the NPPF

and is consistent with PPG. In particular, paragraphs 31 and 32. The PPG is silent on over supply but provides advice on under supply. Paragraph 32 "Where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years" (Ref ID 68-032-20190722). The Council submits that logic implies a symmetrical approach would follow and therefore previous over supply should be credited against any future under supply over the 5-year period.

If this approach cannot be taken previous oversupply is, in effect, lost. The houses are built, and occupied, but in effect disappear. This is not what the NPPF intended as it could amount to a perverse incentive to restrict supply in early years of the period to ensure there is no shortfall in the latter years. This would work against the desire to boost the supply of homes. (paragraph 59 NPPF).

Lastly, there is nothing within the NPPF nor the PPG to stipulate that this approach cannot be taken."

9. In determining the appeal, the Inspector had to address a number of material considerations related to the development plan, the interests of the AONB and the impact of the proposals on the village of Gotherington. Amongst the matters assessed by the Inspector was the extent of the shortfall in the five-year housing land supply.

10. In the light of the nature of the issues that the Inspector had to address, and the contentions raised by the parties in this case, it is necessary to set out her conclusions in respect of the housing land supply issues in some detail. Having set out the differences between each party's assessment of the five-year housing land supply she addressed the question of the additional or oversupply of housing, and the role it might play in calculating the five-year housing land supply, in the following paragraphs:

"*Additional supply*

58. The Council indicate that their approach to incorporating additional supply is consistent with Planning Practice Guidance (PPG) paragraph 32. This states that "*where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years*". However, paragraph 73 of the Framework states "*LPAs should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies*".

59. The policy in the Framework makes no allowance for subtracting additional supply from the annual requirement. Moreover, whilst the guidance in the PPG enables LPAs to take additional supply into account, there is no requirement to do so.

It is not a symmetrical approach to dealing with undersupply as advocated by the Council.

60. PPG paragraph 32 details that the additional supply can be used to offset shortfalls against requirements from previous years. Therefore, shortfalls against requirements from previous years would be necessary, in order to take account of any additional supply. The requirement from previous years, being those since the development plan was adopted, is 495 dwellings per annum (dpa). In the 3 years since adoption, there has been an overall surplus of 797 dwellings, and since the base date there has been an overall surplus of 1,115 dwellings. Therefore, there is no shortfall against requirements from previous years which could conceivably be offset.

61. Furthermore, for a site to be considered deliverable, it 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 five years. Housing already delivered cannot possibly meet this definition.

62. The Council's argument that the loss of additional housing delivery would have significant implications for plan making, potentially resulting in Council's holding back sites and restricting sites, is unfounded. This is because it would be unreasonable to refuse planning permission for housing if there had been additional supply, bearing in mind the Government's objective of significantly boosting the supply of homes. Additionally, Policy SP1 of the JCS requires at least 9,899 new homes. There is no maximum number.

63. Whilst it is clear that housing above the annual requirements has been delivered in the area and housing supply has been boosted in line with the Framework; it is my view that additional supply is not a tool that can be used to discount the Council's housing requirement set out in its adopted strategic policies. Consequently, the annual requirement should be 495 dpa as set out in the adopted strategic policies, and the future supply should reflect this. Therefore, the past additional supply should be removed from the 5-year housing requirement. As detailed by the appellant, this would reduce the housing land supply to 2.4 years."

11. The Inspector then addressed the disputed sites and concluded that neither of them could properly be incorporated within the assessment of the five-year housing land supply. The Inspector then went on to assess evidence in relation to future supply before reaching her conclusion in respect of the overall issue. She reasoned these matters as follows:

"*Future supply*

68. Aside from the 2 disputed sites and windfall developments, there is only one other site beyond years 1 and 2 in the trajectory which is predicted to deliver 5 dwellings. Notwithstanding my findings on the above sites, this is a grave situation.

69. The Council asserts that the eLP contains numerous housing allocations, which will feed into the supply following adoption. However, at the current time, the plan is of limited weight and these allocations should not be included in the trajectory. Furthermore, the eLP details that it is not the role of the Plan to meet the shortfall identified by the JCS, but it could contribute towards meeting some of this housing need.

70. The JCS was adopted with a shortfall, which was to be remedied by an immediate review on the plan. It is now 3 years later and there is little progress towards this.

71. The trajectory does not include sites which have a resolution to permit awaiting planning obligations. I also have very little evidence to indicate if any of these would come forward in the next 5 years. There are also, it is asserted, numerous major applications for housing being considered. Nonetheless, as these sites are not been included in the trajectory, I have little evidence whether these would be deliverable.

72. Therefore, despite the Council's arguments, the future supply in the borough, at the current time is deeply concerning.

Conclusion on housing land supply

73. Considering my conclusions on the additional supply and the disputed sites, the housing land supply would reduce to 1.82 years. This reflects the appellant's conclusions. Additionally, the lack of supply beyond year 3 is deeply concerning; and, even if I had taken account of the additional supply, the Council would still not have a 5-year housing land supply and the past trend of additional supply is not projected to continue."

12. The Inspector's overall conclusions in relation to the planning balance drew the threads of her assessment together in the following terms:

"**Planning Balance**

90. The proposal would conflict with the spatial strategy of the area and the NDP. It is clearly not plan-led development. However, given my conclusions on the housing land supply, the policies which govern the spatial strategy and housing development in the area are deemed out of date by Framework paragraph 11 d). Because of the very poor housing land supply position, this indicates that the spatial strategy is not effective and therefore these policies are of limited weight.

91. There would be limited harm to landscape character and appearance of the area and the setting of the AONB, and moderate harm to views from the AONB. This would conflict with the JCS, NDP, LP, Framework 172 and the MP in this regard. However, the harm is limited for the purposes of the character and appearance of the area and this attracts limited weight against the proposal. Nevertheless, I give great weight to the moderate harm to the AONB as required by the Framework.

92. In favour of the development is the provision of housing in general, affordable housing, net gains in biodiversity and the delivery of onsite facilities that would contribute towards the village's social wellbeing. The delivery of affordable and market housing would be a very significant benefit, of overriding importance when considering the chronic housing land supply position. The net gains in biodiversity are of considerable weight and the onsite public open space would be of moderate weight. Additionally, there would be economic benefits during construction and from the additional residents that would contribute towards spending in the area. This is of moderate weight.

93. Framework paragraph 11 d) requires permission to 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. Even giving great weight to the moderate harm to the AONB, it is my view that this does not provide a clear reason for refusing the development.

94. Taking account of all the above, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, the material considerations indicate a decision other than in accordance with the development plan."

13. Prior to the appeal with which this case is concerned there had been an earlier appeal made by the interested parties in relation to a similar application made on 2nd August 2016 and refused on 21st February 2017. The interested parties appealed, and the matter was determined following a hearing on the 7th December 2017. The appeal was dismissed in a decision letter dated 27th April 2018. There was an issue in that appeal in relation to housing land supply, related in particular to housing delivery. The Inspector set out the dispute and his views in the following paragraphs:

"*Other matters – housing land supply, heritage and highways*

38. In relation to housing land supply there are a number of areas of agreement between the main parties. Most importantly the housing requirement as set out in the JCS is agreed (9,899) along with completions. The Borough has an identified shortfall, as set

> out in the JCS Inspector's report, of around 2,400 dwellings against Objectively Assessed Need.
>
> 39. The main difference is how to deal with delivery. The Council's position is to deal with this over 5 years whilst the appellant advocates delivery over the whole plan period. The parties agreed that there is no established approach, but I have some sympathy with the Council's position which is that the houses in question are largely already in existence, and that to spread delivery over the whole plan period would be an artificial approach. There is also a difference related to build out rates.
>
> 40. The appellants have evidenced a 4.19 year supply based on their assessment of the housing target, surplus and supply, with a 20% buffer and the oversupply addressed across the plan period. The appellant has also calculated the position based on the Council's housing target and supply figures, with the oversupply spread across the plan period and a 20% buffer. This gives a 4.94 year supply. In either case, on the appellants' figures, the authority does not have a five-year housing land supply.
>
> 41. The authority considers it has a 5.3 year supply (applying a 20% buffer) or 6.06 years with a 5% buffer. The Council's evidence, especially the Tewkesbury Borough Housing Land Supply Statement (2017), represents a robust evidence base which persuasively demonstrates more than a 5-year housing land supply."

14. The Inspector set out his view that the JCS was a robust and recently adopted plan and ultimately concluded that a five-year housing land supply had been demonstrated and that the "tilted balance" from the National Planning Policy Framework ("the Framework"), a concept discussed below, was not engaged. The appeal was dismissed.

Relevant policy

15. National Planning Policy is contained within the Framework at chapter 5. The introductory paragraphs to this chapter provide as follows:

> "5. Delivering a sufficient supply of homes
>
> 59. To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
>
> 60. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national

> planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for."

16. The Framework goes on to describe the need for diversity in size, type and tenure of housing to ensure that all of the communities' housing needs are met. The Framework then describes the approach to be taken in relation to identifying a housing requirement and land for housing in the following terms:

> "65. Strategic policy making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations.
>
> 66. Where it is not possible to provide a requirement figure for a neighbourhood area, the local planning authority should provide an indicative figure, if requested to do so by the neighbourhood planning body. This figure should take into account factors such as the latest evidence of local housing need, the population of the neighbourhood area and the most recently available planning strategy of the local planning authority.
>
> Identifying land for homes
>
> 67. Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability, and likely economic viability. Planning policies should identify a supply of:
>
> (a) specific, deliverable sites for years one to five of the plan period; and
>
> (b) specific, deliverable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan."

17. In respect of maintaining an appropriate housing land supply the Framework provides as follows in paragraphs 73 and 74:

> "Maintaining supply and delivery

73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

(a) 5% to ensure choice and competition in the market for land;

(b) 10% where the local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or

(c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

74. A five-year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan, or in a subsequent annual position statement which:

a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and

b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process."

18. The failure to demonstrate a five-year supply of housing land has policy consequences in terms of the provisions of the Framework. In particular, paragraph 11, which addresses the presumption in favour of sustainable development, together with footnote 7 of the Framework that requires that applications are determined through an assessment using what is known in common parlance as the tilted balance in cases where a five year land supply cannot be demonstrated. The relevant provisions of the Framework in this respect are as follows:

"The presumption in favour of sustainable development

11. Plans and decisions should apply a presumption in favour of sustainable development.

…

> For decision-taking this means:
>
> c) approving development proposals that accord with an up-to-date development plan without delay; or
>
> d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [footnote 7], granting permission unless:
>
> i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
>
> ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
>
> …
>
> Footnote 7: This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 73)"

19. Additional assistance in relation to the application of the Framework can be derived from the defendant's Planning Practice Guidance ("the PPG") in relation to the how an undersupply in the earlier years of the plan period should be addressed. The PPG provides the following guidance:

> "How can past shortfalls in housing completions against planned requirements be addressed?
>
> Where shortfalls in housing completions have been identified against planned requirements, strategic policy-making authorities may consider what factors might have led to this and whether there are any measures that the authority can take, either alone or jointly with other authorities, which may counter the trend. Where the standard method for assessing local housing need is used as the starting point in forming the planned requirement for housing, Step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure. Under-delivery may need to be considered where the plan being prepared is part way through its proposed plan period, and delivery falls below the housing requirement level set out in the emerging relevant strategic policies for housing.

> Where relevant, strategic policy-makers will need to consider the recommendations from the local authority's action plan prepared as a result of past under-delivery, as confirmed by the Housing Delivery Test.
>
> The level of deficit or shortfall will need to be calculated from the base date of the adopted plan and should be added to the plan requirements for the next 5-year period (the Sedgefield approach), then the appropriate buffer should be applied. If a strategic policy-making authority wishes to deal with past under delivery over a longer period, then a case may be made as part of the plan-making and examination process rather than on a case by case basis on appeal.
>
> Where strategic policy-making authorities are unable to address shortfalls over a 5-year period due to their scale, they may need to reconsider their approach to bringing land forward and the assumptions which they make. For example, by considering developers' past performance on delivery; reducing the length of time a permission is valid; re-prioritising reserve sites which are 'ready to go'; delivering development directly or through arms' length organisations; or sub-dividing major sites where appropriate, and where it can be demonstrated that this would not be detrimental to the quality or deliverability of a scheme.
>
> Paragraph: 031 Reference ID: 68-031-20190722
>
> Revision date: 22 July 2019
>
> How can past oversupply of housing completions against planned requirements be addressed?
>
> Where areas deliver more completions than required, the additional supply can be used to offset any shortfalls against requirements from previous years.
>
> Paragraph: 032 Reference ID: 68-032-20190722
>
> Revision date: 22 July 2019"

20. The relevant element of the development plan for present purposes is the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 which was adopted in December 2017 ("the JCS"). Part 3 of the JCS set out its key spatial policies for the relevant area. Policy SP1 identified that in relation to housing the claimant should provide "at least 9,899 new homes". This figure was reiterated in policy SP2.

21. Within the JCS at paragraph 7.1.36 a chart was provided which set out year by year the volume of completions and projected completions measured against an annual housing requirement from the JCS of 495 dwellings. This assessment, which included forecasting for future years, was said to demonstrate "sufficient housing land supply, including a five-year supply, until the middle of the plan period at 2024/25 where there

is a shortfall against the cumulative requirement". The purpose of noting this was to identify that this would "enable adequate time to undertake an immediate review of Tewkesbury's housing supply while maintaining a five-year supply." The immediate review required by the JCS is currently in process.

The law

22. The decision whether to grant planning permission is principally governed by section 70 of the Town and Country Planning Act 1990. Section 70(1) provides the power to approve or refuse planning permission, and section 70(2) provides that when dealing with an application for planning permission the local planning authority shall have regard to the provisions of the development plan so far as material and any other material considerations. For present purposes the Framework is one such material consideration. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of a planning application shall be in accordance with the development plan unless a material consideration indicates otherwise.

23. The question of the interpretation of planning policy, whether contained within the Framework or the development plan (or other less formal policy) is a question of law for the court: see *Tesco Stores v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983. When considering questions of interpretation, it is important to recognise the nature and status of planning policy. Planning policy should not be construed as if it were a statute or contract, or some other similar legal instrument. As Lord Reed observed in paragraph 19 of *Tesco Stores,* development plans are often full of broad statements of policy which may superficially conflict with each other and require to be balanced in order to undertake the exercise of planning judgment on any given decision against the background of the factual circumstances of the case under consideration. These points were reemphasised by Lord Carnwath in *Hopkins Homes Ltd v SSCLG* [2017] UKSC 37; [2017] 1 WLR 1865, in which he noted that, in addition to the role of the court not being overstated, the role of specialist planning inspectors should be respected in relation to the interpretation and understanding of planning policy.

24. When considering the correct interpretation of planning policy the context of the policy, and in particular its subject matter and objectives, will undoubtedly be of considerable importance and assistance. It will also frequently be necessary to consider the wider policy framework within which the policy being interpreted sits, and to which it therefore relates as part of the context. This point was emphasised by Lord Reed in *Tesco Stores* at paragraph 18.

25. In understanding the role of the court it is essential to distinguish between what is properly the interpretation of a policy and, by contrast, what in truth amounts to its application. Whilst the interpretation of policy is, where it is required, a question for the court, the application of a policy will be a matter of planning judgment for the decision maker and therefore, subject to the limits of rationality, not a matter for the court. In paragraph 21 of Lord Reed's judgment in *Tesco Stores*, and paragraph 24 of Lord Carnwath's judgment in *Hopkins Homes*, it was emphasised that a question of interpretation arose in *Tesco Stores* on the basis that the question of whether the word "suitable" meant "suitable for the development proposed by the applicant" or, alternatively, "suitable for meeting identified deficiencies in retail provision in the area". This was a question of the interpretation of the term "suitable" which arose logically prior to the exercise of judgment in respect of a site's suitability measured

against the correct understanding of the language of the policy. In short, the question of interpretation related to resolving an understanding of the language of policy prior to the application of planning judgment in relation to the particular facts of the case.

26. In addition to this understanding of the nature of the interpretation of planning policies, as set out above it needs to be borne in mind that policies will often include broad statements or broad terms which, as Lord Carnwath observed, "may not require, nor lend themselves to, the same level of legal analysis" as the word suitable in the *Tesco Stores* case. Further, whilst an important aspect of the interpretation of planning policy is that it is to be understood and applied by the public for whose benefit the policy is developed, it is also produced to be understood and applied by planning professionals, and as such will on occasion contain planning concepts or terms of art.

27. An example of this would be the use of the term "openness" in Green Belt policy, which is a policy concept introduced and developed by planning professionals and policy makers. As was noted by Lord Carnwath in paragraphs 22 and following of his judgment in *R (Samuel Smith Old Brewery) v North Yorkshire County Council* [2020] UKSC 3; [2020] PTSR 221, "openness" is an example of the kind of broad policy concept which was being referred to in *Tesco Stores* set out above. At paragraph 23 of his judgment in the *Samuel Smith* case Lord Carnwath expressed his surprise in relation to the legal controversy which was to be discerned in the authorities with respect to the relationship between openness and visual impact. At paragraph 39 of his judgment Lord Carnwath concluded, having reviewed the authorities, that "the matters relevant to openness in any particular case are a matter of planning judgment not law". Thus, it is necessary to observe that within planning policy there will be references to broad policy concepts which are themselves the signal for the need for the application of planning judgment rather than amounting to terms requiring interpretation by lawyers.

28. Returning to the question of the five year housing land supply, as set out above, on the facts of the present case there was no dispute as to the failure of the claimant to demonstrate a five year supply of housing: the issue in question was the extent of such a shortfall. The potential materiality of the extent of any shortfall in the five year housing land supply was the subject of examination by the Court of Appeal in *Hallam Land Management Ltd v SSCLG* [2018] EWCA Civ 1808; [2019] JPL 63. Lindblom LJ gave consideration to the policies in relation to housing need and housing land supply in the following terms:

> "50. First, the relationship between housing need and housing supply in planning decision-making is ultimately a matter of planning judgment, exercised in the light of the material presented to the decision-maker, and in accordance with the policies in the NPPF paras 47 and 49 and the corresponding guidance in the Planning Practice Guidance ("the PPG"). The Government has chosen to express its policy in the way that it has – sometimes broadly, sometimes with more elaboration, sometimes with the aid of definition or footnotes, sometimes not (see *Oadby and Wigston BC v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040 at [33]; *Jelson Ltd* at [24] and [25]; and *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 at [36] and [37]; [2018] JPL 398). It is

not the role of the court to add or refine the policies of the NPPF, but only to interpret them when called upon to do so, to supervise their application within the constraints of lawfulness, and thus to ensure that unlawfully taken decisions do not survive challenge.

51. Secondly, the policies in the NPPF paras 14 and 49 do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.

52. Thirdly, the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker. It will not be the same in every case. The parties will sometimes be able to agree whether or not there is a five-year supply, and if there is a shortfall, what that shortfall actually is. Often there will be disagreement, which the decision-maker will have to resolve with as much certainty as the decision requires. In some cases, the parties will not be able to agree whether there is a shortfall. And in others, it will be agreed that a shortfall exists, but its extent will be in dispute. Typically, however, the question for the decision-maker will not simply be whether or not a five-year supply of housing land has been demonstrated. If there is a shortfall, he will generally have to gauge, at least in broad terms, how large it is. No hard and fast rule apples. But it seems implicit in the policies in the NPPF paras 47, 49 and 14 that the decision-maker, doing the best he can with the material before him, must be able to judge what weight should be given to both to the benefits of housing development that will reduce a shortfall in the five-year supply and to any conflict with relevant "non-housing policies" in the development plan that impede the supply. Otherwise, he will not be able to perform the task referred to by Lord Carnwath in *Hopkins Homes Ltd*. It is for this reason that he will normally have to identify at least the broad magnitude of any shortfall in the supply of housing land."

29. Adding observations of his own in relation to these matters Davis LJ observed as follows:

"81. Clearly a determination of whether or not there is a shortfall in the five-year housing supply in any particular case is a key

issue. For if there is then the "tilted balance" for the purposes of the NPPF para.14 comes into play.

82. Here, it was common ground that there was such a shortfall. That being so, I have the greatest difficult in seeing how an overall planning judgment thereafter could properly be made without having at least some appreciation of the extent of the shortfall. That is not to say that the extent of the shortfall will itself be a key consideration. It may or not be: that itself a planning judgment, to be assessed in the light of the various policies and other relevant considerations. But it ordinarily will be a relevant and material consideration, requiring to be evaluated.

83. The reason is obvious and involves no excessive legalism at all. The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal at [47] of *Hopkins Homes*. I agree also with the observations of Lang J at [27] and [28] of her judgment in the *Shropshire Council* case and in particular with her statements that "…Inspectors generally will be required to make judgments about housing need and supply". However these will not involve the kind of detailed analysis which would be appropriate at an "Development Plan inquiry" and that "the extent of any shortfall may well be relevant to the balancing exercise required under NPPF 14". I do not regard the decisions of Gilbart J, cited above, when properly analysed, as contrary to this approach.

84. Thus exact quantification of the shortfall, even if that were feasible at that stage, as though some local plan process was involved, is not necessarily called for: nor did Mr Hill QC so argue. An evaluation of some "broad magnitude" (in the phrase of Lindblom LJ in his judgment) may for this purpose be legitimate. But, as I see it, at least some assessment of the extent of the shortfall should ordinarily be made; for without it the overall weighing process will be undermined. And even if some exception may in some cases be admitted (as connoted by the use by Lang J in *Shropshire Council* of the word "generally") that will, by definition, connote some degree of exceptionality: and there is no exceptionality in the present case."

30. Thus, in addition to the question of whether or not the tilted balance in paragraph 11 of the Framework is engaged by virtue of the inability of the local planning authority to demonstrate a five year housing land supply, consideration should be given to the question of the extent of any shortfall, even in terms of a broad magnitude, so as to enable the decision-maker to understand the weight which can properly be given to that shortfall as a material consideration, albeit there may be exceptional cases where it is simply not possible for that to be done. None of the parties in the present case suggested that that exception was relevant.

31. Another form of material consideration which features in the submissions in the present case is the existence of an earlier relevant appeal decision. In that connection the correct approach was identified by Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P&CR 137 as follows:

> "In this case the asserted material consideration is a previous appeal decision. It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases *must* be decided alike. An Inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision
>
> To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the Inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the Inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate."

32. Finally, the claimant makes submissions as to the adequacy of the Inspector's reasoning in the present case. The correct approach to judging whether reasons are legally adequate in respect of an Inspector's appeal decision are to be found in the well-known observations of Lord Brown at paragraphs 35 and 36 of his speech in *South Bucks District Council v Porter (2)* [2004] UKHL 33; [2004] 1 WLR 1953.

<u>The Grounds</u>

33. The claimant's ground 1 is that whilst the Framework does not explicitly address the question of how past housing over-supply should be taken into account, the correct interpretation of the Framework and in particular paragraph 73 is that over-supply is to be taken into account when carrying out the assessment of the available five year

housing land supply. The context in which this interpretation arises is as follows. Firstly, the planning objective of the policy is to maintain a supply and delivery of sufficient homes in order to meet the local planning authorities' areas' assessed needs'. The purpose of the requirement to demonstrate a five-year supply is to ensure delivery of the housing requirement across the whole of the plan period and it is the total housing need rather than annualised figures that are the housing requirement. If oversupply against the annualised housing requirement was not taken into account, then the five-year supply would not be being calculated against the housing requirement but instead against an arbitrary figure which would change from year to year. This approach to interpretation is supported by the PPG in which in paragraph 032 a specific point is made in relation to taking account of additional supply in offsetting any shortfalls against requirements from previous years. Thus, in context, the reference to "the housing requirement" in paragraph 73 of the Framework is a reference to the total requirement over the plan period, and it follows that as the plan period progresses account needs to be taken of progress towards meeting the requirement, which includes acknowledgement of where the annual requirement has been exceeded. The claimant points out that this is not simply a semantic point, as failure to account for oversupply has the potential to apply the tilted balance in circumstances for which it was not designed. The purpose of the tilted balance is to foster the grant of planning permission for housing in order to assist in alleviating shortfalls in housing land supply, not in circumstances where there has been a history of oversupply against the plan's requirement.

34. The claimant goes on to observe that, therefore, the Inspector misinterpreted the policy of the Framework in concluding that the oversupply in the present case should be left out of account. Indeed, the claimant submits that it is clear from the Inspector's reasoning that she proceeded on an inaccurate basis, namely that the Framework prohibited her from taking account of identified past oversupply. Her observation in paragraph 59 that the Framework made no allowance for subtracting additional supply from the annual requirement illustrated this, along with her observations in paragraphs 61 and 63 of the decision letter where she indicated that housing already delivered could not fall within the definition of deliverable housing supply, and that past oversupply was not a tool to be used by the claimant to discount a housing requirement set out in the JCS. This reasoning was predicated upon the false assumption that the Framework precluded taking account of oversupply of housing in earlier years.

35. The defendant's response to these contentions is that in truth the Framework and the PPG are silent on the topic of whether or not any oversupply of housing in previous years should be taken into account when calculating the current five-year housing land requirement. Thus, there is no policy on this issue to be interpreted, as neither the Framework nor the PPG seek to address it. It is not the task of the court to create policy by filling gaps where policy might have been introduced but the policy-maker did not do so. It is open to a policy-maker to produce a policy which does not have universal coverage, but which leaves gaps to be addressed by the exercise of planning judgment in individual cases. In any event, the defendant points out that there are a variety of different policy options which would be available were the previous oversupply to be taken into account in the calculation. The defendant rejects the claimant's contention that the Inspector considered that she was prohibited from taking past oversupply into account. The defendant submits that properly understood the Inspector was simply

rejecting each of the reasons given by the claimant for taking account of the oversupply, providing her justification for why the interested parties' approach was to be preferred.

36. The claimant's ground 2 is, in effect, an alternative to ground 1. The claimant submits that if the court is satisfied that the Framework is silent in relation to the treatment of past over-supply, and the Inspector did not regard herself as prohibited from taking it into account, then it was *Wednesbury* unreasonable for her to have taken no account of it in assessing the housing land supply calculation. The claimant contends that the past oversupply of housing was such an obvious consideration, in particular where it amounted to in excess of 1,000 homes, that the Inspector was bound to take it into account. Furthermore, her reference in paragraph 90 of the decision to the poor housing landing supply position indicating that the spatial strategy was not effective was a conclusion that was simply not open to her on the basis that the development plan policies had already delivered 1,000 homes in excess of the requirement to that point in the plan period.

37. In response to these submissions the defendant contends that since this ground proceeds on the basis that national policy was silent as to how to treat an element of oversupply in previous years it was open to the Inspector to exercise her own planning judgment as to how to do so. There were a wide range of alternatives available to her in respect of how to address past oversupply, including not taking it into account at all. In the absence of any policy it could not properly be said to be irrational for the Inspector in the circumstances of the particular case to determine that no credit should be given for it in calculating the five-year housing land supply.

38. The claimant's ground 3 is the contention that it was irrational for the Inspector to take account in reaching her conclusions that houses already delivered could not meet the definition of deliverable housing contained within the Framework. This was quite irrelevant to the issue that the Inspector was addressing namely whether oversupply could be taken into account in calculating the five-year housing land supply. Secondly it was irrational of the Inspector at paragraph 62 of the decision letter to rely upon the observation that the housing requirement of 9,899 dwellings contained in the JCS for the plan period was not a maximum. Whilst that observation was correct it was nothing to the point in relation to whether or not past oversupply should not be taken into account in calculating the five-year housing land supply. Thus, under ground 3 it is contended that two irrelevant considerations were taken into account rendering the Inspector's conclusions irrational.

39. In response to this contention the defendant submits that, once the decision is read as a whole, it is clear that in relation to the point relating to deliverable housing the Inspector was merely looking at the other side of the equation and confirming for completeness that housing already delivered could not be added to the supply and be part of a supply of deliverable housing for the purposes of the five year housing land supply calculation. Secondly, in relation to her reference to the JCS housing requirement not being a maximum number the defendant submits that the Inspector's observations were accurate and rational. She was simply pointing out that the housing requirement was not a maximum as part of her justification for her conclusion that it would be unreasonable for the claimant to refuse planning permissions as a result of past oversupply.

40. The claimant's ground 4 is a criticism of the Inspector's reasoning. Firstly, the claimant criticises the adequacy of the Inspector's reasons in rejecting all of the points which were made by the claimant in favour of taking the past oversupply of housing into account. The Inspector's reasons do not deal with all the points raised. Further, the Inspector failed to deal at all with the decision of the previous Inspector in relation to the interested parties' earlier appeal and its bearing upon the current appeal in circumstances where it was an agreed position in that earlier appeal that oversupply should be taken into account in calculating the five year housing land supply.

41. Replying to these submissions the defendant contends that the Inspector's reasons were clear and adequate in relation to her rejection of the taking into account of the oversupply of housing in previous years. In respect of the earlier appeal decision the claimant had not suggested that that decision had a relevant bearing upon the question of the five-year housing land supply calculation. In addition the interested parties draws attention to the fact that the point now relied upon by the claimant simply did not arise in the earlier appeal decision. The point which the Inspector in that case had to resolve was a debate in relation to the Liverpool or Sedgefield method of calculation the five year housing land supply, not the question of whether oversupply should be taken into account in the way contended for by the claimant. There were in reality no reasons provided by the earlier Inspector with which this Inspector needed to become engaged.

Conclusions

42. In relation to ground 1, I am unable to accept the primary submission made by the claimant that the provisions of the Framework require any oversupply prior to the period for which a five-year housing land supply is being calculated to be taken into account. Firstly, the text of the Framework does not include any such suggestion. The claimant's argument depends upon this conclusion being a necessary inference from the way in which the Framework has been drafted. It is not an inference which, in my judgment, can properly be drawn. Whilst it is clear that the intention of the Framework is that planning authorities should meet the housing requirements set out in adopted strategic policies, that does not necessarily mean that any oversupply in earlier years as in the present case will automatically be counted within the five-year supply calculation. The text of the Framework is silent, or alternatively does not deal, with what account if any should be taken of oversupply achieved in earlier years when calculating the five-year supply.

43. In the absence of any specific provision within the Framework there is no text falling for interpretation, and it is not the task of the court to seek to fill in gaps in the policy of the Framework. It is far from uncommon for there to be gaps in the coverage of relevant planning policies: they will seldom be able to be designed to cover every conceivable situation which may arise for consideration. Again, that is perhaps unsurprising given the breadth of the potential scenarios which may arise in the context of a planning application on any particular topic, especially where it is a high level policy with a broad scope like the Framework which is being considered. When it arises that there is no policy covering the situation under consideration then it calls for the exercise of planning judgment by the decision-maker to make the necessary assessment of the issue to determine the weight to be placed within the planning balance in respect of it. In the absence of policy within the Framework on the question of whether or not to take account of oversupply of housing prior to the five year period being assessed in the calculation of the five-year housing land supply the question of whether or not to

do so will be a matter of planning judgment for the decision-maker bearing in mind the particular circumstances of the case being considered.

44. I do not consider that the claimant's argument is assisted by the guidance contained within the PPG. Whilst the claimant contends that the observations within paragraphs 31 and 32 of the PPG should be mirrored in relation to over-supply as a whole, I see no warrant for drawing that inference. It is clear that the PPG has sought to address a particular circumstance, namely where there has been some shortfall as well as some oversupply in previous years. However, the PPG does not engage with the particular situation with which this case is concerned, and there is no reason to suppose that the defendant has done other than leave the particular question arising in this case to the exercise of planning judgment on a case-by-case basis. Had it been thought appropriate to offer specific guidance the defendant would have done so. The defendant did not and therefore the matter is left as a question of judgment for the situations in which the issue arises.

45. Further submissions were offered by the claimant in relation to the purpose of the policy in relation to the five year housing land supply requirement and the consequences of it not being demonstrated, in order to support their contentions that it can be inferred to be the policy of the Framework that an oversupply of housing in earlier years should be taken into account. I am not dissuaded from the conclusion I have reached by those arguments. In particular, they are predicated on the assumption that it is appropriate for the court to introduce, by way of inference, text into the policy of the Framework which does not exist. As set out above that is in my judgment a clearly inappropriate course. Secondly, the points raised by the claimant in relation to the objective of the policy being to meet the strategic housing requirement across the plan period and the tilted balance being introduced by the five year housing land supply to address circumstances where planning permissions are required to improve the prospects of meeting that requirement are contentions which would undoubtedly form part of the planning judgment to be made in each particular case as to whether or not earlier oversupply should be taken into account, and, if so, how.

46. My conclusions in relation to the claimant's primary argument on ground 1 are reinforced by the practical considerations referred to by the defendant in the course of argument. These practical considerations provide some illuminating context as to why it may be that the defendant has left the issue which arises in this case to the exercise of planning judgment in individual applications. The defendant pointed out that whilst the assumption of the claimant's argument is that there is a binary or arithmetical choice between either taking past oversupply into account or not, the reality is that in practical terms there are several broad policy approaches which might be taken to the question of how to account for past oversupply in calculating the five year supply. It might be taken into account on a one-for-one basis as essentially sought by the claimant; the oversupply might be credited but applied over the remaining plan period which would be likely to be less than one-for-one in terms of the credit allowed in calculating the five-year housing land supply; the policy choice might be that past oversupply cannot be credited at all; the question of whether credit is made in the next five years or carried across the remaining plan period could be a matter left for the planning judgment of the decision-maker; finally the issue could be one left in its entirety to the planning judgment of the decision-maker in each case. Thus, the issue is perhaps not as simple as the claimant's primary submission would suggest, and in addition to the concerns set

out above the defendant's submission reinforces the concern of the court as to the propriety of second guessing these policy choices.

47. It follows that for all of these reasons the claimant's primary submission under ground 1, that the Framework required the oversupply from earlier years to be taken into account in the five-year housing land supply calculation, cannot succeed. The claimant contends that this primary submission proceeds on the basis that it is not the claimant's case as to the interpretation of the Framework that paragraph 73 of the Framework prescribes how an oversupply should be taken into account, but rather that whether to take it into account at all cannot be simply a matter of planning judgment but is required by the Framework. Again, similar points arise in relation to the absence from the Framework of any policy text which would justify such an approach. The Framework does not say, nor does the PPG, that oversupply must be taken into account in all circumstances. For the reasons already given it is not for the court to supplement or add to the existing text of the policy. The question of whether or not to take into account past oversupply in the circumstances of the present case is, like the question of how it is to be taken into account, a question of planning judgment which is not addressed by the Framework or the PPG and for which therefore there is no policy. No doubt in at least most cases the question of oversupply will need to be considered in assessing housing needs and requirements. The fact this may be the case does not require the court to provide policy in relation to this issue which the policy maker has chosen not to include.

48. The claimant's second submission in relation to ground 1 is the contention that the Inspector proceeded on an incorrect basis namely that the Framework prohibited her from taking account of the identified past oversupply. In particular the claimant relies upon paragraph 59 of the decision letter in which the Inspector noted that the policy in the Framework "makes no allowance for subtracting additional supply from the annual requirement", going on to allude to the absence of a symmetrical approach to that in paragraph 32 of the PPG in respect of earlier oversupply. Additionally, in paragraph 61 of the decision letter the Inspector observed that previous housing completions could not bring themselves within the definition of deliverable housing. At paragraph 63 of the decision letter the Inspector observed that "additional supply is not a tool that can be used to discount the council's housing requirement set out in its adopted strategic policies". Thus, the claimant contends that the Inspector misinterpreted the Framework as preventing her from taking any account of oversupply in addressing the five-year housing supply calculation.

49. In my judgment there are, first and foremost, two important pieces of context in relation to the claimant's argument. The first, which is trite, is that the Inspector's decision letter must be read fairly and as a whole, in the spirit that its purpose is to convey an administrative decision on a planning appeal rather than it being some form of legal instrument. Secondly, the purpose of the decision letter must be borne in mind, namely, to address the issues raised in the appeal by the parties. Bearing these factors in mind it is clear to me, firstly, that the Inspector's observations in relation to additional supply must be read in the context of the overall section of her decision entitled Housing Land Supply. The section in relation to additional supply must be read together with that pertaining to future supply in order to understand the Inspector's overall conclusions on housing land supply and the planning judgments which she reached. Secondly, the issues which the Inspector was addressing were those which were identified by the

claimant and the interested parties. For instance, in neither the SOCG nor the claimant's closing submissions which have been set out above was the Inspector being asked to rule definitively on an interpretation of paragraph 73 of the Framework. Rather, the contention made by the claimant was that in the particular circumstances of the case the earlier oversupply should be taken into account and could be taken into account, consistently with the policies of the Framework and the guidance in the PPG.

50. In that context the observations of the Inspector in paragraph 59 that there is no requirement in the PPG to take account of earlier oversupply reflects the need to exercise planning judgment and were consistent with the approach that in the absence of specific policy in the Framework it was necessary for the Inspector to exercise her own planning judgment in relation to the question of whether to take oversupply into account. Her observation in paragraph 61 about delivered housing not falling within the definition of deliverable housing simply reflected the reality of what could properly be taken account of as forward supply. The conclusion in paragraph 63 is one which is clearly cast with the particular circumstances of the case in mind, and has to be put in the context of the additional conclusions. These included the Inspector's conclusions at paragraphs 68 to 72 of the decision letter in relation to the shape of the future trajectory for housing supply in the claimant's administrative area, which she concluded was deeply concerning, particularly in relation to a lack of supply beyond year 3 in the calculation. This led to her conclusions in paragraph 73 of the decision letter on housing land supply, incorporating the observation reflecting the concern about lack of supply beyond year 3, and that "the past trend of additional supply is not projected to continue". Thus, read in context and as a whole, the Inspector's conclusions on housing land supply are in my view an expression of the application of planning judgment to the particular circumstances of the claimant's five year housing land supply calculation, and do not proceed on the basis that the Inspector was reading the Framework as prohibiting her from taking into account earlier additional supply. Indeed, her overall conclusion in paragraph 73 addresses the position even had she taken it into account. I am therefore unpersuaded that there is any merit in the alternative way in which the claimant presents ground 1.

51. Ground 2 is the contention that even if the claimant is wrong in relation to ground 1, the oversupply was so obviously material that it was irrational for the Inspector not to have taken it into account. It was so obvious in the light of the fact that there had been an oversupply of over 1,000 homes that it should be taken into account her failure to do so was plainly wrong, as was her observation that the spatial strategy was not effective (see paragraph 90 of the decision letter).

52. I am unable to accept this submission. Firstly, it is very clear from the section of the decision dealing with housing land supply issues that the Inspector was acutely aware of the earlier oversupply as a material consideration for her to address in her decision. She concluded, correctly, that how that was to be dealt with was a matter for the exercise of her planning judgment. The conclusion which she reached in relation to how the earlier oversupply was to be taken into account, if at all, was articulated in paragraph 73 of the decision letter which drew attention not only to her observations in relation to the claimant's arguments which she made in paragraphs 58 to 63, but also her concerns in relation to the viability of the supply beyond year 3 of the five year housing land supply calculation. The shape of the housing trajectory was also reflected in the weight

which she gave to this issue in the planning balance and I am unable to find any basis to characterise her approach as being irrational.

53. Turning to ground 3 the focus of the claimant's case is on two paragraphs within the decision letter: firstly, paragraph 61 in which, as set out above, the Inspector observes that delivered housing cannot meet the definition of deliverable housing, and the second is paragraph 62 in which the Inspector observed that the housing requirement in policy SP1 of the JCS was not a maximum figure. The claimant contends that both of these observations were matters which it was irrational for the Inspector to have taken into account. It is submitted that these are both relied upon by the Inspector as reasons for not taking oversupply into account and it was irrational to rely upon them.

54. I am unpersuaded that there is any substance in these contentions. Reading the decision letter as a whole, the observation at paragraph 61 of the decision letter was, as the defendant observes, simply observing the other side of the equation, or the other side of the coin, in relation to a five year housing land supply by looking at housing delivery. It was a piece of context rather than the Inspector relying upon this observation as a freestanding reason not to take account of previous additional supply. Similarly, the final sentence of paragraph 62 of the decision letter is merely expressing an additional reason for concluding that the council's argument about the loss of additional housing leading to local planning authorities holding back or restricting housing permissions for sites to be unfounded. Again, this observation was not a freestanding reason not to take account of previous oversupply. There is, therefore, in my view no substance in the complaints raised under ground 3 in relation to these matters.

55. Turning, finally, to ground 4 the claimant contends that the Inspector's reasons were inadequate in two principal respects. Firstly, she failed to provide adequate reasons to explain why she had failed to take into account past oversupply and fully engage with the reasons that the claimant had identified for taking past oversupply into account. Secondly, she failed to deal with the previous Inspector's decision on the same site in the relatively recent past, within which it was agreed that past oversupply should be taken into account (the issue being how it was to be taken into account).

56. In assessing these submissions it is necessary to bear in mind, firstly, that, as set out above, the Inspector's conclusions on the issue raised in this case are not solely to be found in paragraphs 58 to 63 where she deals with the particular arguments raised by the claimant on oversupply in the circumstances of the present case, but also in the other paragraphs addressing housing land supply concerns and in particular paragraph 73. Those reasons reflect that a part of the exercise of her planning judgment was her concern about the shape of the future trajectory of housing land supply during the five-year period. Secondly, it needs to be borne in mind, consistently with the approach from *South Bucks*, that the Inspector is not obliged to deal with every point raised by the claimant by providing reasons to support her conclusions on the main matters in issue.

57. Having reviewed the relevant material, and in particular the SOCG and the claimant's closing submissions, I am satisfied that the principal issues which were raised were addressed in the decision and, further, that the Inspector's reasons for reaching the conclusions which she did are clear anrd fully explained. It was not necessary for the Inspector to address every single point raised by the claimant in support of its contention that the oversupply in earlier years should be credited. She provided clear reasons for rejecting the claimant's approach and articulated the basis for her concerns in relation

to the shape of the trajectory, which underpinned her judgment that on the facts of the present case the correct judgment was that the oversupply ought not to be taken into account, leading to greater weight being attributed to the shortfall in the five-year housing land supply.

58. I accept the submissions made by the defendant and, in particular, the first interested party in relation to the earlier appeal decision on the same site. That appeal decision did not raise the question which the Inspector had to address in the present case: indeed, it was common ground that oversupply should be taken into account. In effect, therefore, the Inspector in the present case was determining that issue for the first time and there was nothing in the reasoning of the earlier Inspector which has been set out above with which this Inspector was required to deal in order to provide adequate reasons. In the circumstances for the reasons set out above I do not consider that there is substance in the claimant's ground 4.

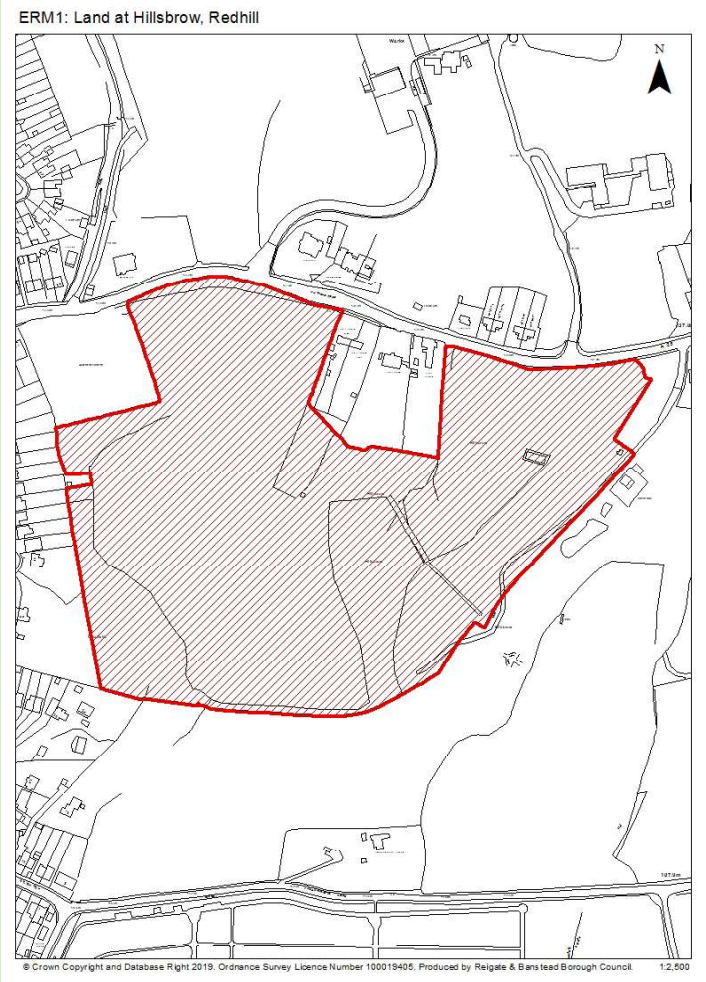
59. For all of the reasons set out above I have concluded that the claimant cannot succeed in relation to each of the four grounds which have been advanced, and therefore the claimant has no entitlement to relief in the present case.

Reigate & Banstead Local Plan
Development Management Plan

Adopted September 2019

Contents

Policy ERM1: Land at Hillsbrow, Redhill



Site area:
9.3ha

Existing/previous use:
Open grassland and woodland

Source:
HELAA Ref: RE22

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential**: approximately 145 homes, including approximately 25 units of housing for older people and approximately 1 traveller pitch

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside, reflecting the adjacent Holmesdale Biodiversity Opportunity Area and the Greensand Ridge
- Protection and enhancement of areas of ancient woodland and other areas of significant woodland, including provision of an appropriate buffer zone and long-term management proposals
- Design measures to protect and enhance landscape quality, including building heights and massing which ensure the development is not visible in long-range views. Opportunities should be sought to increase tree coverage where possible, particularly where this may help with mitigating any visual impact
- Design measures to protect the setting of adjoining listed buildings and respect the character of Nutfield Road
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- A full contamination survey and land remediation measures as appropriate

Policy ERM1: Land at Hillsbrow, Redhill (continued)

Infrastructure:

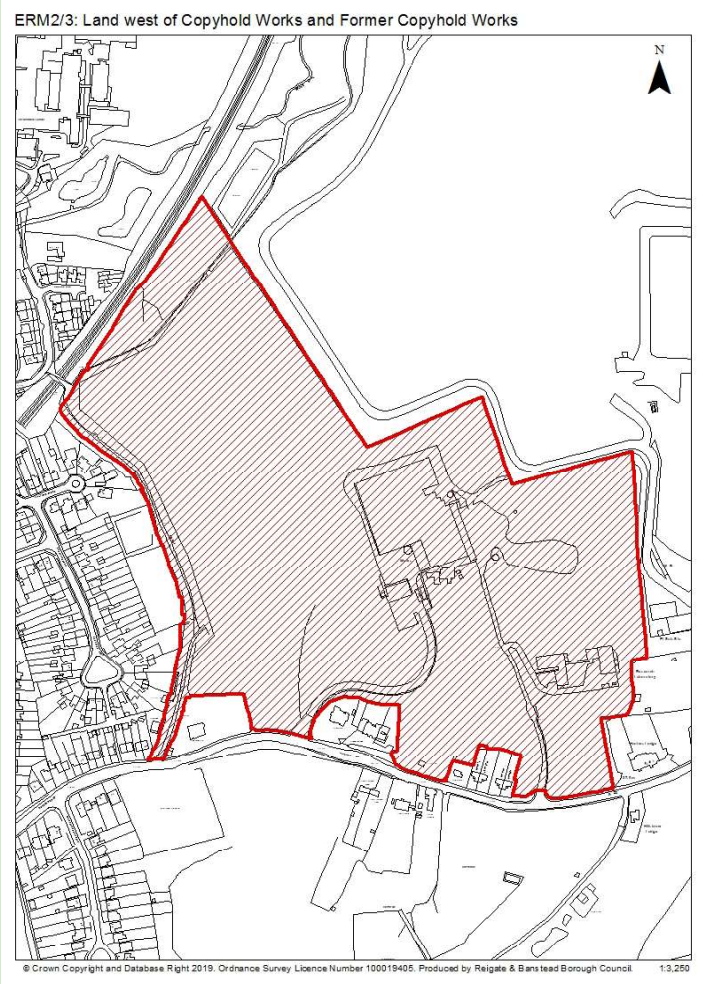
- Improvement and extension of pedestrian and cycle facilities, including new footways on Nutfield Road with safe crossing points to access the footpath adjacent to Redstone Park (FP102)
- Enhancement of the footpath adjacent to Redstone Hollow (FP530)
- Local improvements to existing bus infrastructure/passenger facilities on Nutfield Road
- Comprehensive initiatives to support and encourage sustainable travel
- Measures to manage the effects on nearby rural and residential roads, including Cormongers Lane/Fullers Wood Lane, from rat-running and re-routing
- Safe highway access onto Nutfield Road, taking a co-ordinated approach with any other allocated development sites in the vicinity
- Appropriate on-site public open space and play facilities
- Potential extension to existing allotments adjacent to the site
- Submission of a Transport Assessment will be required as part of a planning application, to include consideration of impacts on the A25
- Provide approximately one serviced traveller pitch which provides hard standing, garden and connections for drainage, electricity and water to accommodate one household. This pitch should be reasonably integrated with other residential development and not be enclosed with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community. Delivery is to be phased alongside delivery of other new homes. Pitches should be provided on this site unless the applicant can demonstrate that these pitches can be provided on an alternative site which is suitable, available and within the applicant's control. Land provided (whether on the SUE site or off-site) for this purpose will be secured through an appropriate legal agreement

Explanation:

3.3.64 The site is located on the southern side of the A25 to the east of Redhill town Centre and is in close proximity to Redhill Town Centre and Redhill Rail Station.

3.3.65 The site comprises areas of open grassland located on the brow of the Greensand Ridge, surrounded by belts of dense woodland, some of which is protected ancient woodland. There are areas of ancient and other woodland, which limit development potential and require protection. There is scope for development to improve green infrastructure linkages with the surrounding countryside and secure enhanced management of the ancient woodland areas. There is also possible localised land contamination owing to historic uses.

Policy ERM2/3: Land west of Copyhold Works and former Copyhold Works, Redhill



Site area:
17.2ha

Existing/previous use:
Open paddock and derelict former Copyhold works

Source:
HELAA Ref: RE20

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential**: approximately 230 homes, including approximately 53 units of housing for older people; and approximately 3 traveller pitches, and
- **Education**: 1.5ha of serviced land for a new two-form entry primary school. If further testing at the planning application stage demonstrates that there is no need for this use, the land can be used to deliver additional homes; and
- **Open Space**: a new, high quality public open space

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside, reflecting the Holmesdale Biodiversity Opportunity Area, Holmethorpe Site of Nature Conservation Importance and the Greensand Ridge
- Protection and enhancement of areas of significant woodland
- Design measures to protect and enhance landscape quality, including building heights/ massing and retention of open areas in visually sensitive locations, to minimise the visibility of development in long-range views
- Design and mitigation measures to address environmental health impacts associated with the adjoining landfill and to ensure an acceptable residential amenity, including but not limited to, an appropriate buffer zone to the adjoining landfill and maintaining appropriate access to boreholes
- Design measures to protect the setting of adjoining listed buildings and respect the character of Nutfield Road
- Layout to incorporate a buffer zone and improvements to the Redhill Brook corridor
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDs

Policy ERM2/3: Land west of Copyhold Works and former Copyhold Works, Redhill (continued)

- A full contamination survey and land remediation measures as appropriate
- Appropriate phasing of the delivery of homes on the site in order to minimise potential conflicts with any ongoing or future waste operations and site restoration works

Infrastructure:

- A 1.5ha serviced site capable of accommodating a new two-form entry primary school
- Improvement and extension of pedestrian and cycle facilities, including new footways on Nutfield Road and significant upgrades of the existing footpath east of Redstone Park (Foot Path No. 102 and Cycle Route 21)
- Additional north-south pedestrian and cycle links through the site as an integral part of the design
- Local improvements to existing bus infrastructure/passenger facilities on Nutfield Road
- Comprehensive initiatives to support and encourage sustainable travel
- Measures to manage the effects on nearby rural and residential roads, including Cormongers Lane/Fullers Wood Lane, from rat-running and re-routing
- Safe highway access onto Nutfield Road, taking a co-ordinated approach with any other allocated development sites in the vicinity
- Appropriate on-site public open space and play facilities
- Submission of a Transport Assessment will be required as part of a planning application, to include consideration of impacts on the A25
- Provide approximately three serviced traveller pitches, with hard standing, garden and connections for drainage, electricity and water, to accommodate three households. Pitches should be reasonably integrated with other residential development and not be enclosed with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community. Delivery is to be phased alongside delivery of other new homes. Pitches should be provided on this site unless the applicant can demonstrate that these pitches can be provided on an alternative site which is suitable, available and within the applicant's control. Land provided (whether on the SUE site or off-site) for this purpose will be secured through an appropriate legal agreement

Explanation:

3.3.66 The former Copyhold works and land to the west are located on the northern side of the A25, east of Redhill Town Centre and in close proximity to the rail station

3.3.67 The western side of the site comprises an open paddock which slopes downwards towards its northern boundary. On the western edge there is an existing public right of way leading into the town. The eastern side of the site comprises a previously developed former industrial site, comprising a number of derelict buildings and associated areas of hardstanding.

3.3.68 The site is largely enveloped by belts of dense woodland. It is believed that parts of the site may have been historically quarried (including the paddock which was subsequently restored).

3.3.69 The site adjoins the active Patteson Court landfill, albeit the land which immediately adjoins the site has been filled and restored.

3.3.70 Housing development of the site must ensure that operations at Patteson Court are substantially completed before residential development takes place and are not compromised by development of this site. As advised by Surrey County Council as the Waste Planning Authority, 'substantially complete' shall be taken to be the date at which the disposal of non-hazardous and hazardous waste materials (with the exception of those materials that meet the relevant restoration criteria) is completed in accordance with the details approved through the applicable planning permission(s) and Environmental Permit, including completion of all capping activities. In line with advice from Surrey County Council, as Waste Planning Authority, care should be taken in the site design and layout to minimise any environmental concerns arising from the landfill.

3.3.71 Any planning application, should demonstrate that the development of the site would not compromise the effective operation of the Patteson Court landfill and that it would achieve an acceptable residential environment. In particular, careful consideration would be required in terms of traffic and environmental health impacts, including noise and odour. Appropriate environmental and technical assessments – taking account of the up to date information regarding any ongoing operations at the landfill at the time of application and appropriate consultation with the operator and Waste Planning Authority – would be expected to support any planning application. These studies should also clearly identify any mitigation measures to be provided within any development proposals in order to ensure an acceptable relationship and residential environment. Such mitigation measures could include appropriate stand-off/buffer zones, acoustic screening and strengthening of boundary landscaping to the landfill operation.

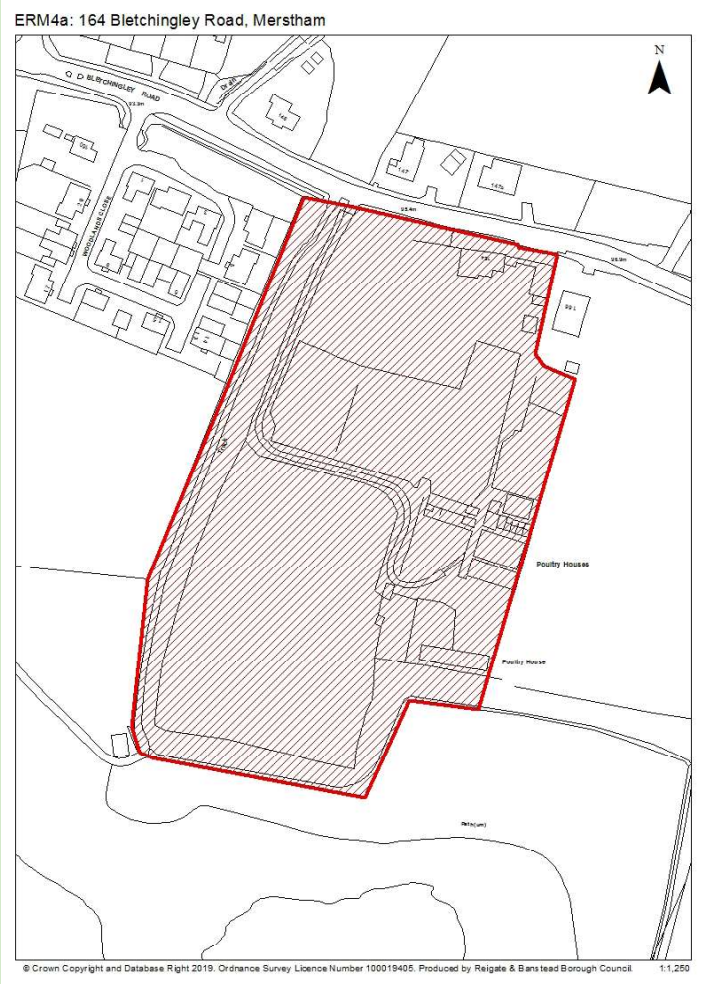
3.3.72 Careful consideration should also be given to the phasing of the delivery of homes within the site to ensure that any potential conflict with ongoing waste operations and site restoration works at Patteson Court can be minimised, taking account of circumstances at the time and the future of the landfill site and any environmental assessments available at the time of any planning application.

3.3.73 The proposal will need to minimise visibility of the development in long range views. In particular, development will need to protect the woodland backdrop and borrowed landscape to Gatton Park, a registered park and garden, including vistas and views from the park.

3.3.74 The proposals should respect the undesignated historic landscape character of the wooded boundary to Nutfield Road.

3.3.75 The housing capacity on the site may be increased over and above the allocated capacity, should testing at the point of planning application demonstrate there is no need for a new primary school in this location.

Policy ERM4a: 164 Bletchingley Road, Merstham



Site area:
2.5ha

Existing/previous use:
House set within a substantial plot containing a series of small scale redundant farm buildings

Source:
HELAA Ref:M18

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 30 homes

Requirements:

Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside, and an appropriate relationship with the adjoining Spynes Mere Local Nature Reserve and reflecting the adjacent Holmesdale Biodiversity Opportunity Area
- Protection and enhancement of woodland boundaries
- Design and layout to enhance landscape quality, provide an appropriate transition to surrounding countryside and minimise visibility of the development in long range views
- Protection and enhancement of the character and setting of existing listed buildings
- Design to respect and enhance the character of Bletchingley Road
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Additional tree or hedgerow planting along eastern boundary to strengthen the Green Belt boundary

Infrastructure:

- Improvement and extension of pedestrian and cycle facilities, including new footways on Bletchingley Road and significant upgrades of the existing bridleway through the site (Bridleway 119) (in conjunction with ERM4b)
- Local improvements to existing bus infrastructure/passenger facilities on Bletchingley Road

Policy ERM4a: 164 Bletchingley Road, Merstham (continued)

- Upgrading of off-carriageway pedestrian/cycle routes to nearby local centres and Merstham station
- Safe highway access onto Bletchingley Road, taking a co-ordinated approach with other sites in the vicinity
- Submission of a Transport Assessment will be required as part of a planning application, to include consideration of impacts on the junction of the A23/School Hill. Where necessary the applicant will need to carry out a feasibility study, and to contribute to any improvements and interventions required, with respect to the impact of additional traffic on the safety and efficiency of this junction
- Appropriate on-site public open space and play facilities

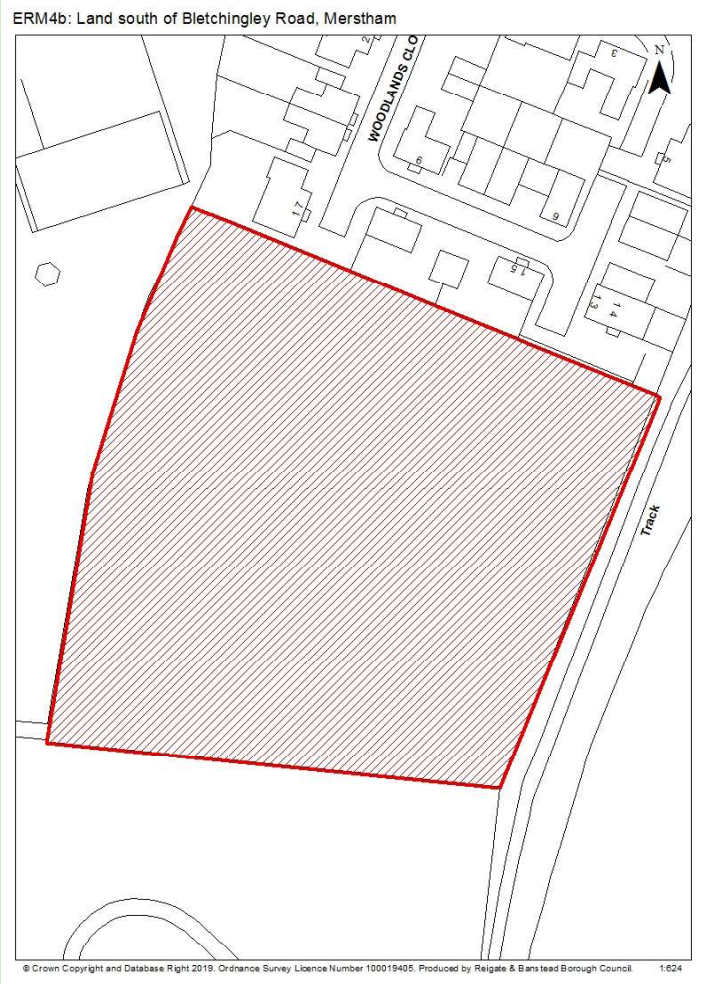
Explanation:

3.3.76 The site is on the eastern edge of the Merstham area, a short distance from the nearby local centre. To the south, the site adjoins the wetland nature reserve of Spynes Mere and the Holmesdale Biodiversity Opportunity Area.

3.3.77 Proximity to Spynes Mere Local Nature Reserve means there is a need for sensitive transition to the nature reserve and there is some visibility within long distance views and any scheme should consider the locally listed building in the north of the site.

3.3.78 There is scope for development to improve green infrastructure linkages with the surrounding countryside and to enhance rights of way and potential for development to support and complement the regeneration of Merstham Estate. This could include the provision of starter homes and/or self-build plots, which would be encouraged on this site.

Policy ERM4b: Land south of Bletchingley Road, Merstham



Site area:
0.8ha

Existing/previous use:
Area of open space to the south of the former Darby House site

Source:
HELAA Ref: M20

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 30 homes

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside, an appropriate relationship with the adjoining Spynes Mere Local Nature Reserve, and reflecting the adjacent Holmesdale Biodiversity Opportunity Area
- Protection and enhancement of woodland boundaries
- Design and layout to enhance landscape quality, provide an appropriate transition to surrounding countryside and minimise visibility of the development in long range views
- Design to respect and enhance the character of Bletchingley Road
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Additional tree or hedgerow planting along western boundary to strengthen the Green Belt boundary

Infrastructure:

- Improvement and extension of pedestrian and cycle facilities, including new footways on Bletchingley Road and significant upgrade of the existing bridleway through the site (Bridleway 119) (in conjunction with ERM4a)
- Local improvements to existing bus infrastructure/passenger facilities on Bletchingley Road

Policy ERM4b: Land south of Bletchingley Road, Merstham (continued)

- Upgrading of off-carriageway pedestrian/cycle routes to nearby local centres and Merstham station
- Safe highway access onto Bletchingley Road, taking a co-ordinated approach with other sites in the vicinity
- Submission of a Transport Assessment will be required as part of a planning application, to include consideration of impacts on the junction of the A23/School Hill. Where necessary the applicant will need to carry out a feasibility study, and to contribute to any improvements and interventions required, with respect to the impact of additional traffic on safety and efficiency of this junction
- Appropriate on-site public open space and play facilities

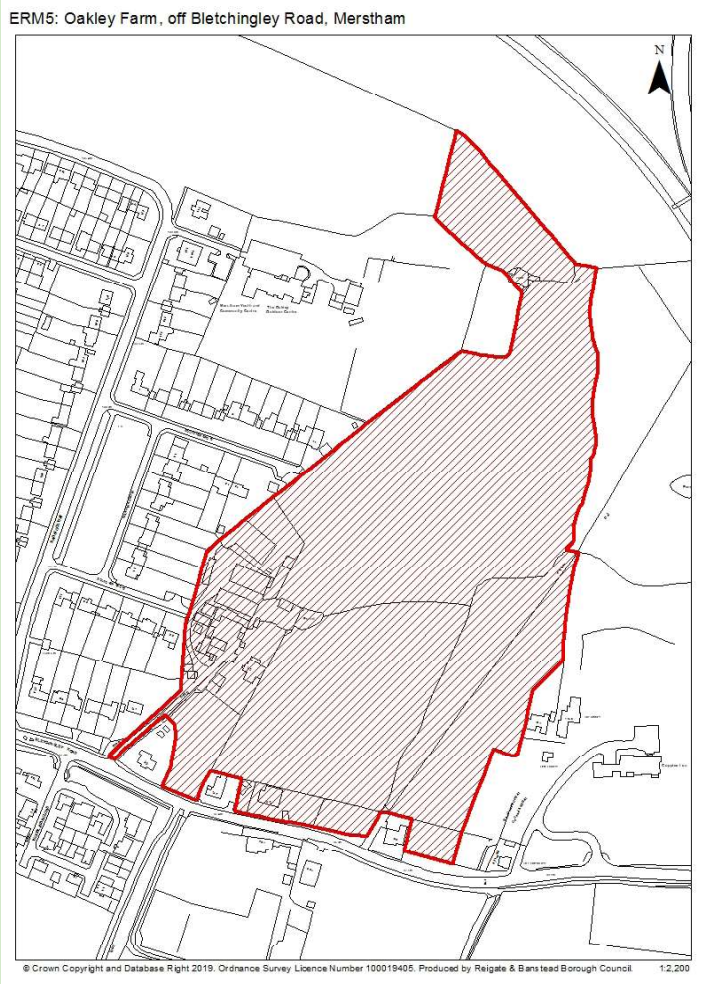
Explanation:

3.3.79 The site is on the eastern edge of the Merstham area, a short distance from the nearby local centre. To the south, the site adjoins the wetland nature reserve of Spynes Mere and the Holmesdale Biodiversity Opportunity Area. The site of Woodlands School adjoins to the west.

3.3.80 Proximity to Spynes Mere Local Nature Reserve means there is a need for a sensitive transition to the local nature reserve.

3.3.81 There is scope for development to improve green infrastructure linkages with the surrounding countryside and enhance rights of way. There is also potential for development to support and complement the regeneration of Merstham Estate. This could include the provision of starter homes and/or self-build plots, which would be encouraged on this site.

Policy ERM5: Oakley Farm, off Bletchingley Road, Merstham



Site area:
7.1ha

Existing/previous use:
Open fields, small cluster of agricultural buildings in the west

Source:
HELAA Ref: M14

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** Approximately 130 homes including approximately 25 units of housing for older people and approximately 1 traveller pitch; and
- **Employment:** Small business space (offices and workshops) and/or community space, clustered around the existing farm buildings; and
- **Open Space:** New high quality public open space in the eastern part of the site.

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside
- Protect existing residential amenity
- Ensure an appropriate transition to adjoining countryside, particularly by providing a significant area of new green corridor and public open space (including play facilities) in the eastern part of the site
- Protection and enhancement of woodland, particularly on boundaries
- Design and layout to enhance landscape quality, particularly in proximity to the AONB and minimise visibility of the development in long range views
- Appropriate buffer zone to the adjacent motorway and mitigation measures to protect future residents from noise pollution/air quality issues
- Protection and enhancement of the character and setting of existing listed buildings
- Design to respect and enhance the character of Bletchingley Road
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS

Policy ERM5: Oakley Farm, off Bletchingley Road, Merstham (continued)

- Additional tree or hedgerow planting along the north eastern boundaries to strengthen the Green Belt boundary

Infrastructure:

- New small scale commercial/small business units (offices and workshops) and/or complementary community space
- New high quality public open space, including appropriate play facilities
- Improvement and extension of pedestrian and cycle facilities, including new footways on Bletchingley Road and significant upgrades of the existing footpath running through the site (Footpath 198)
- Local improvements to existing bus infrastructure/passenger facilities on Bletchingley Road
- Upgrading of off-carriageway pedestrian/cycle routes to nearby local centres and Merstham station, including Footpath 93
- Safe highway access onto Bletchingley Road, taking a co-ordinated approach with other sites in the vicinity
- Submission of a Transport Assessment will be required as part of a planning application, to include consideration of impacts on the junction of the A23/School Hill. Where necessary the applicant will need to carry out a feasibility study, and to contribute to any improvements and interventions required, with respect to the impact of additional traffic on safety and efficiency of this junction
- Provide approximately one serviced traveller pitch, with hard standing, garden and connections for drainage, electricity and water, to accommodate one household. This pitch should be reasonably integrated with other residential development and not be enclosed with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community. Delivery is to be phased alongside delivery of other new homes. This pitch should be provided on this site unless the applicant can demonstrate that the pitch can be provided on an alternative site which is suitable, available and within the applicant's control. Land provided (whether on the SUE site or off-site) for this purpose will be secured through an appropriate legal agreement.

Explanation:

3.3.82 The site is on the northern side of Bletchingley Road, a short distance east of the nearby Portland Drive Local Centre, and lies between the existing built up area of Merstham and the borough boundary with Tandridge. To the east, the site adjoins further open countryside in the borough of Tandridge and is also bounded by the M23/M25 to the north east.

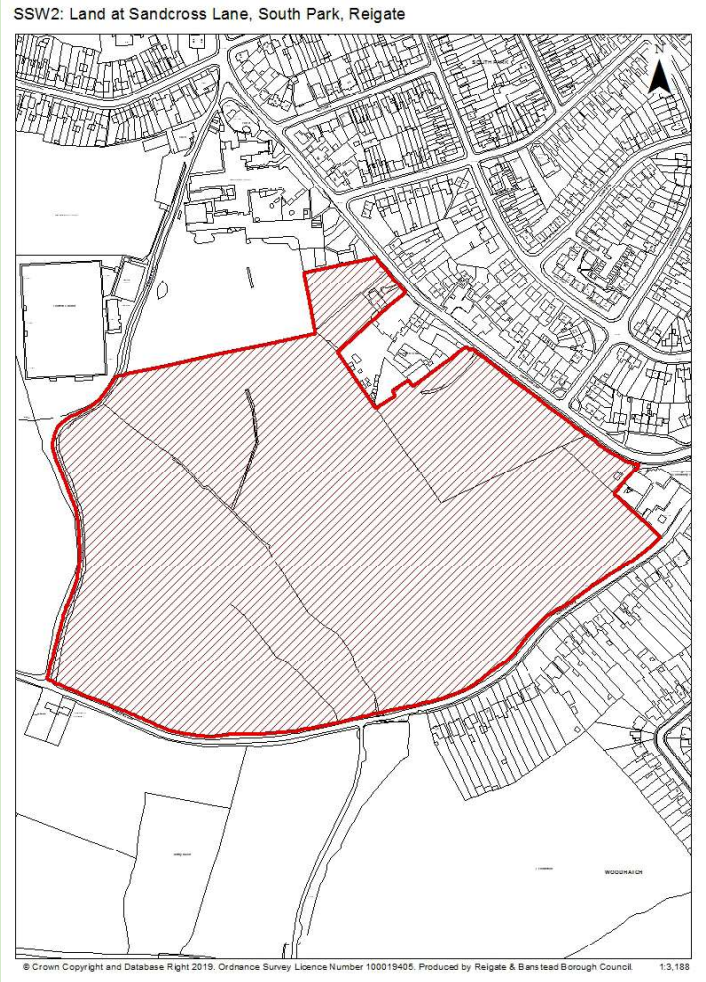
3.3.83 The site comprises several open fields used predominantly for grazing, with a small cluster of agricultural buildings in the west, some of which are listed.

3.3.84 There is scope for development to improve green infrastructure linkages with the surrounding countryside, enhance rights of way and to support and complement the regeneration of Merstham Estate. This could include the provision of starter homes and/or self-build plots, which would be encouraged on this site.

3.3.85 Development proposals should preserve and enhance the setting of the locally listed farm yard and farmhouse.

3.3.86 The historic landscape should be respected and a green corridor along Bletchingley Road included, retaining the hedge and underwood as well as historic hedgerows and native tree cover within the site.

Policy SSW2: Land at Sandcross Lane, South Park, Reigate



Site area:
16.67ha

Existing/previous use:
Open arable fields

Source:
HELAA Ref: SPW04, and SPW13

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential**: Approximately 290 homes, including approximately 65 units of housing for older people and approximately 3 traveller pitches; and
- **Commercial/retail**: Small-scale local commercial facilities, including shops, to complement existing nearby facilities; and
- **Health**: Land set aside for a new health facility, close to existing community facilities. If further testing at the planning application stage demonstrates that there is no need for this use, the land can be used to deliver additional homes; and
- **Open Space**: New high quality public open space in the western part of the site

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements , including links to the wider countryside reflecting the Earlswood and Redhill Common Biodiversity Opportunity Area
- Ensure an appropriate transition to adjoining countryside, particularly by providing a significant area of new public open space in the west of the site
- A site specific flood risk assessment must be undertaken which takes account of the Strategic Flood Risk Assessment Level 2
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Protection of existing trees and hedgerows
- Incorporate a buffer zone to the existing ditch network within the site to safeguard ecology and water quality
- Additional tree or hedgerow planting along the northern boundary to strengthen the Green Belt boundary

Policy SSW2: Land at Sandcross Lane, South Park, Reigate (continued)

Infrastructure:

- A serviced site capable of accommodating a new health facility
- Enhancements to local community provision
- Upgrading of off-carriageway cycle routes to the nearby local centre (along Prices Lane)
- Consideration should be given to whether there are opportunities to improve traffic management and access to Sandcross Primary School. Off- road routes to the Primary School should be included.
- Local improvements to existing bus infrastructure/passenger facilities in and around Sandcross Lane and measures to maximise the accessibility of routes/services to new and existing residents
- Improvements to the local highway network, including the Dovers Green Road/Sandcross Lane junction and Slipshatch Road/Sandcross Lane junction
- Measures to manage the effects on nearby rural and residential roads from rat-running and re-routing to potentially include speed restrictions, traffic calming measures and limited one-way or no entry access to local rural roads including Park Lane
- Submission of a Transport Assessment as part of a planning application, to include consideration of impacts on the junction of Woodhatch Road/A217 Dovers Green Road/ Prices Lane. Where necessary to contribute to any improvements and interventions required, with respect to the impact of additional traffic on safety, capacity and efficiency of this junction
- Appropriate on-site public open space and play facilities
- Provide approximately three serviced traveller pitches which provide hard standing, garden and connections for drainage, electricity and water to accommodate three households. Pitches should be reasonably integrated with other residential development and not be enclosed with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community. Delivery is to be phased alongside delivery of other new homes. Pitches should be provided on this site unless the applicant can demonstrate that these pitches can be provided on an alternative site which is suitable, available and within the applicant's control. Land provided (whether on the SUE site or off-site) for this purpose will be secured through an appropriate legal agreement

Explanation:

3.3.102 The site is located to the western side of Sandcross Lane, a short distance to the east of the Woodhatch Local Centre. The site comprises an open arable field which is actively used for agriculture and is bounded to the west and south by rural roads. King George's playing fields adjoin the western boundary of the site, with further agricultural fields beyond to the south and west.

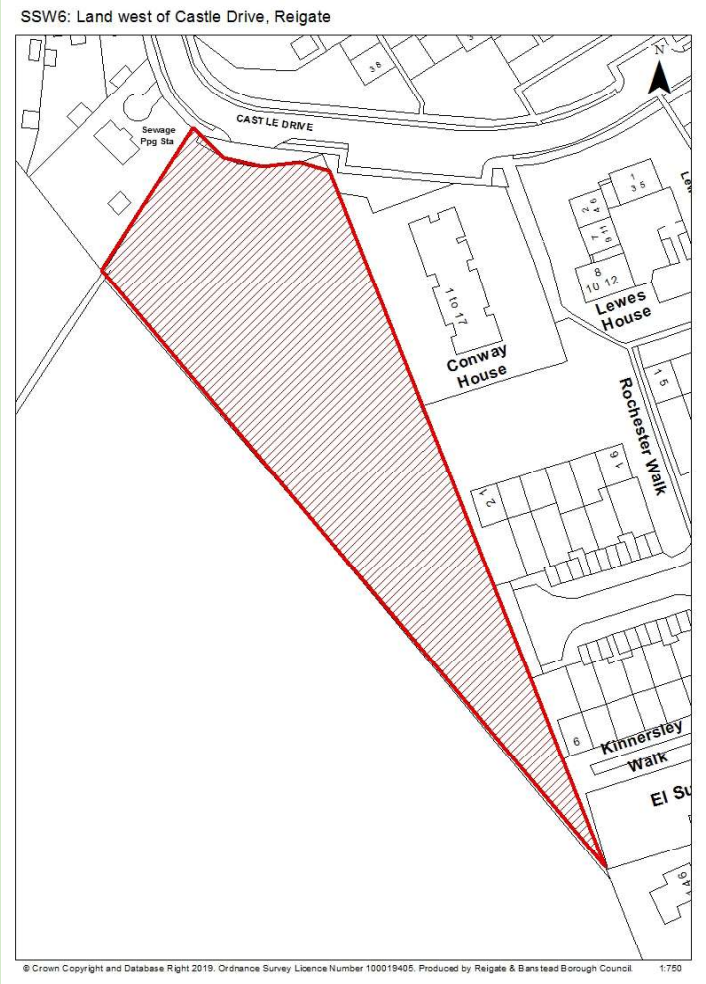
3.3.103 Development of the site would result in the loss of actively managed agricultural land. Key considerations include localised issues with surface water flooding on the site and in the surrounding area. Development could have adverse traffic impacts on rural road network and create some additional pressure on surrounding junctions, particularly the Woodhatch junction.

3.3.104 Development has potential to enhance local green infrastructure/biodiversity value and provide publicly accessible open space to complement adjoining sports facilities. There is also scope for development to expand and improve the viability of existing community facilities and local services (including health and youth facilities and local shops).

3.3.105 The housing capacity on the site may be increased over and above the allocated capacity, should testing at the point of planning application demonstrate there is no need for land for a new health facility on this site.

3.3.106 The hedgerows which bound the site on Slipshatch Road, Whitehall Lane and Sandcross Lane are important undesignated historic landscape features and form a group with neighbouring hedgerows, and should be retained as green lane/green corridors with buffers using a 'Parkway' Approach. The 'Parkway' Approach aims to screen development from roads surrounding the site using a wide vegetation buffer to keep the character of the existing country lanes, as a transition to, and lessening the urbanisation of, the countryside.

Policy SSW6: Land west of Castle Drive, Reigate



Site area:
1.06ha

Existing/previous use:
Amenity land

Source:
HELAA Ref: SPW07

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 10 homes

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside reflecting the Earlswood to Redhill Common Biodiversity Opportunity Area
- Ensure an appropriate transition to the adjoining countryside, including consideration of setting of the backdrop to the Hartswood Manor approach drive.
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Layout to ensure no development on land within Flood Zones 2 and 3
- Protection of existing trees and hedgerows
- Additional tree or hedgerow planting along the western boundary to strengthen the Green Belt boundary.

Infrastructure:

- Improvement and extension of pedestrian and cycle facilities, including crossing points on Dovers Green Road
- Local improvements to existing bus infrastructure/passenger facilities in and around Dovers Green Road

Policy SSW6: Land west of Castle Drive, Reigate (continued)

- Submission of a Transport Assessment as part of a planning application, to include consideration of impacts on the junction of Woodhatch Road/A217 Dovers Green Road/ Prices Lane. Where necessary, the applicant will need to contribute to any improvements and interventions required, with respect to the impact of additional traffic on the safety, capacity and efficiency of this junction

Explanation:

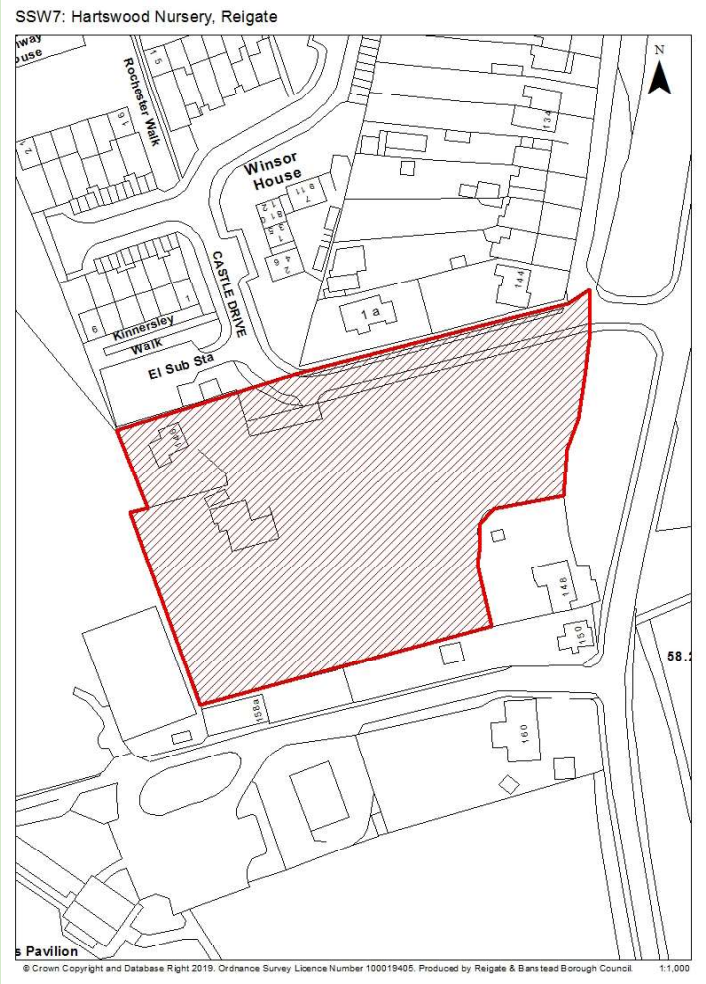
3.3.107 This site comprises an area of land on the southern edge of Woodhatch. The land west of Castle Drive comprises a narrow triangle of amenity land to the rear of existing residential properties. The larger parcel of land to the west has been deemed unsuitable for development.

3.3.108 To the north of the site, there are localised issues with surface water flooding and a very small area is within Flood Zones 2 and 3.

3.3.109 There is scope for development to improve green infrastructure linkages with the surrounding countryside and to formalise existing areas of amenity open space.

3.3.110 Hartswood Manor is a Grade II* listed building and is located approximately 500m away from the site to the west. The setting of Hartswood Manor (including the approach drive to the Manor) should be considered as part of any new development.

Policy SSW7: Hartswood Nursery, Reigate



Site area:
1.06ha

Existing/previous use:
Nursery

Source:
HELAA Ref: SPW08

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 25 homes

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside reflecting the Earlswood to Redhill Common Biodiversity Opportunity Area
- Ensure an appropriate transition to adjoining countryside
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Protection of existing trees and hedgerows, particularly those fronting onto the A217
- Design measures to protect the setting of adjoining listed buildings including the Hartwood Manor approach drive
- Protect and respect the appearance of the common land verge
- A full contamination survey and land remediation measures as appropriate
- Additional tree or hedgerow planting along the western and southern boundaries to strengthen the Green Belt boundary
- A site-specific flood risk assessment must be undertaken which takes account of the Strategic Flood Risk Assessment (SFRA) Level 2 (2017)

Policy SSW7: Hartswood Nursery, Reigate (continued)

Infrastructure:

- Improvement and extension of pedestrian and cycle facilities, including crossing points on Dovers Green Road
- Local improvements to existing bus infrastructure/passenger facilities in and around Dovers Green Road
- Submission of a Transport Assessment as part of a planning application, to include consideration of impacts on the junction of Woodhatch Road/A217 Dovers Green Road/ Prices Lane. Where necessary the applicant will need to contribute to any improvements and interventions required, with respect to the impact of additional traffic on safety, capacity and efficiency of this junction
- Appropriate on-site public open space and play facilities in line with policy OSR2- Open space in new Developments

Explanation:

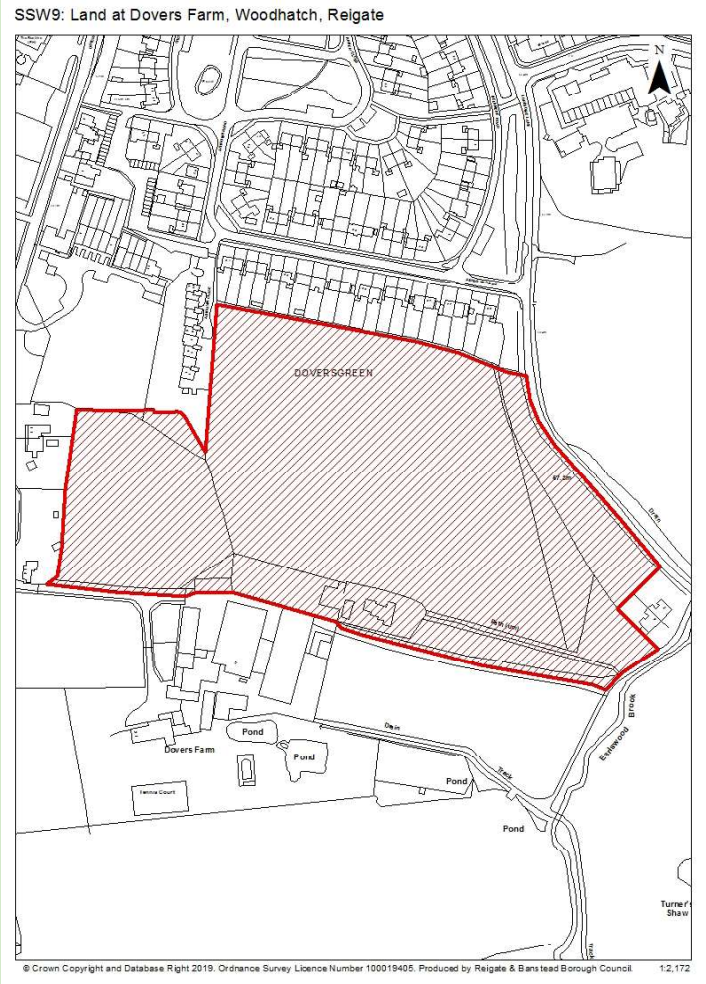
3.3.111 This site comprises a small area of land on the southern edge of Woodhatch and comprises an existing residential dwelling and area of adjoining land sometimes used for grazing. The site fronts onto the A217, with a small common land verge in between the site and the road.

3.3.112 Design of any development would need to include a buffer zone on the boundary with the common on the east side to preserve the rural setting. The site is adjacent to two Grade II listed buildings that front onto Dovers Green Road. Any development would need to respect the setting of the nearby listed buildings, including development being of an appropriate scale and form, with an appropriate landscape backdrop.

3.3.113 In addition, the southern and western boundaries form part of the approach to Hartswood Manor and would require an approach buffer zone and form to respect the green setting of this approach.

3.3.114 There is scope for development to improve green infrastructure linkages with the surrounding countryside, and formalise existing areas of amenity open space.

Policy SSW9: Land at Dovers Farm, Woodhatch, Reigate



Site area:
6.1ha

Existing/previous use:
Fields

Source:
HELAA Ref: SPW05

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 120 homes, including approximately 25 units of housing for older people, and approximately 1 traveller pitch.

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside and reflecting the Earlswood and Redhill Common Biodiversity Opportunity Area and River Mole Biodiversity Opportunity Area
- Ensure an appropriate transition to adjoining countryside, particularly to the south of the site
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Layout to ensure no development on land within Flood Zones 2 and 3 and incorporate a buffer zone and improvements to the main river corridor and ditch network within the site. A site-specific flood risk assessment must be undertaken which takes account of the Strategic Flood Risk Assessment Level 2
- Design measures to protect the setting of adjoining listed buildings
- Protection of existing trees and hedgerows, in particular the area of woodland along Lonesome Lane should be retained
- Additional tree or hedgerow planting along the southern boundary to strengthen the Green Belt boundary

Policy SSW9: Land at Dovers Farm, Woodhatch, Reigate (continued)

Infrastructure:

- Local improvements to existing bus infrastructure/passenger facilities in and around Dovers Green Road
- Improvement and extension of pedestrian and cycle facilities on Dovers Green Road and Lonesome Lane and upgrading of the existing bridleway (BW61) through the site
- Safe highway access, including through improvements to the existing junction onto the A217
- Improvements to the local highway network, including the Dovers Green Road/Sandcross Lane junction and Slipshatch Road/Sandcross Lane junction
- Measures to manage the effects on nearby rural and residential roads from rat-running and re-routing to potentially include speed restrictions, traffic calming measures and limited one-way or no entry access to local rural roads including Park Lane
- Submission of a Transport Assessment as part of a planning application, to include consideration of impacts on the junction of Woodhatch Road/A217 Dovers Green Road/ Prices Lane. Where necessary, the applicant will need to contribute to any improvements and interventions required, with respect to the impact of additional traffic on safety, capacity and efficiency of this junction
- Appropriate on-site public open space and play facilities
- Provide approximately one serviced traveller pitch which provides for hard standing, garden and connections for drainage, electricity and water to accommodate one household. This pitch should be reasonably integrated with other residential development and not be enclosed with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community. Delivery is to be phased alongside delivery of other new homes. This pitch should be provided on this site unless the applicant can demonstrate that the pitch can be provided on an alternative site which is suitable, available and within the applicant's control. Land provided (whether on the SUE site or off-site) for this purpose will be secured through an appropriate legal agreement

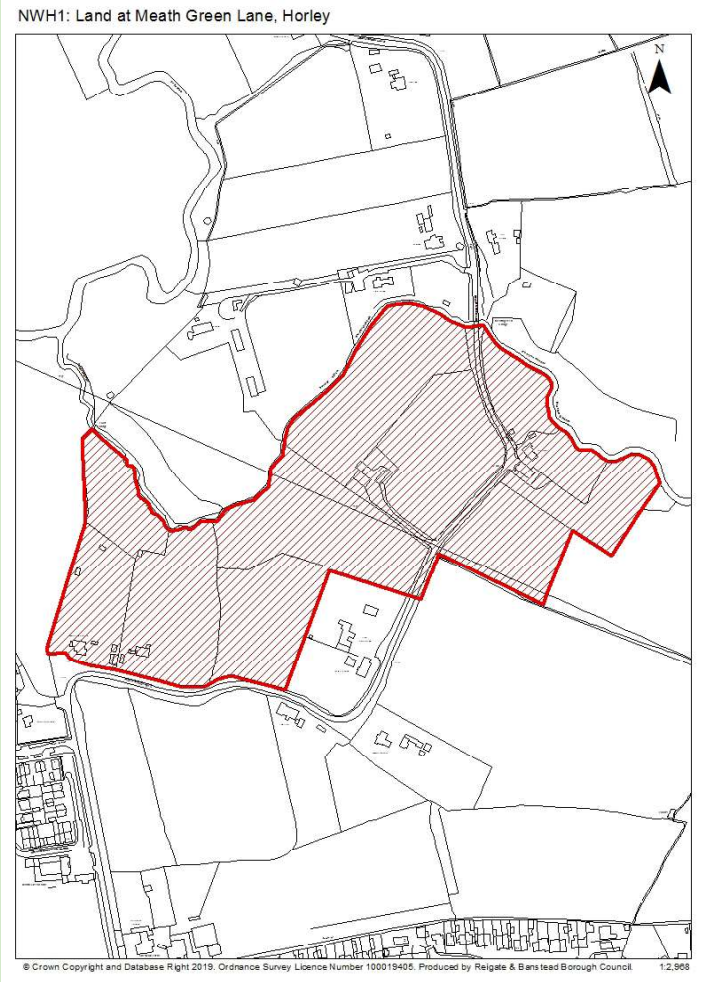
Explanation:

3.3.115 The site is located on the southern edge of Woodhatch, adjacent to Ashdown Road. It is a short distance to the south of the Woodhatch Local Centre and close to Dovers Green School.

3.3.116 The site comprises an open arable field which is actively used for agriculture, along with a belt of woodland in the east. The land is bounded to the west and south by roads, including the A217. Further agricultural fields - and a small cluster of workshop/warehouse units - adjoin the site beyond to the south, with an area of public open space to the west.

3.3.117 To the south of the site, there are localised issues with surface water flooding and a very small area is within Flood Zones 2 and 3, which should be taken into account and addressed as part of any scheme.

Policy NWH1: Land at Meath Green Lane, Horley



Site area:
9.9ha

Existing/previous use:
Includes residential homes with large curtilage, small agricultural holding and fields

Source:
HELAA Ref: HW06, HW07 and HW43

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 75 homes and approximately one traveller pitch; and
- **Open Space:** new public open space along the river corridor to link up the Riverside Green Chain

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside and reflecting the River Mole (and tributaries) Biodiversity Opportunity Area
- Layout to ensure no development on land within Flood Zones 2 and 3, with flood affected land provided as public open space to link up the Riverside Green Chain and enable improvements to the Burstow Stream river corridor
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Protection and enhancement of trees and hedgerow, particularly on boundaries
- Protection and enhancement of the character and setting of existing listed buildings
- Design to respect and enhance the semi-rural character of Meath Green Lane
- An appropriate archaeological survey and measures to protect/record interest features as required
- A site-specific flood risk assessment must be undertaken which takes account of the Strategic Flood Risk Assessment (SFRA) Level 2 (2017)

Policy NWH1: Land at Meath Green Lane, Horley (continued)

Infrastructure:

- Upgrading of pedestrian/cycle routes, including Footpath FP410 which runs along the boundary of the site
- Measures to ensure development has appropriate access to the North West Sector bus routes and links into pedestrian/cycle routes to the neighbourhood centre
- Vehicular access should not be from Meath Green Lane, primary highway access is to be through the North West Sector access points/link roads to prevent rat running
- Provide approximately one serviced traveller pitch which provides for hard standing, garden and connections for drainage, electricity and water to accommodate one household. This pitch should be reasonably integrated with other residential development and not be enclosed with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community. Delivery is to be phased alongside delivery of other new homes. This pitch should be provided on this site unless the applicant can demonstrate that the pitch can be provided on an alternative site which is suitable, available and within the applicant's control. Land provided (whether on the SUE site or off-site) for this purpose will be secured through an appropriate legal agreement

Explanation:

3.3.139 The land at Meath Green Lane is located on the northern edge of the Horley North West neighbourhood and adjoins the Riverside Green Chain.

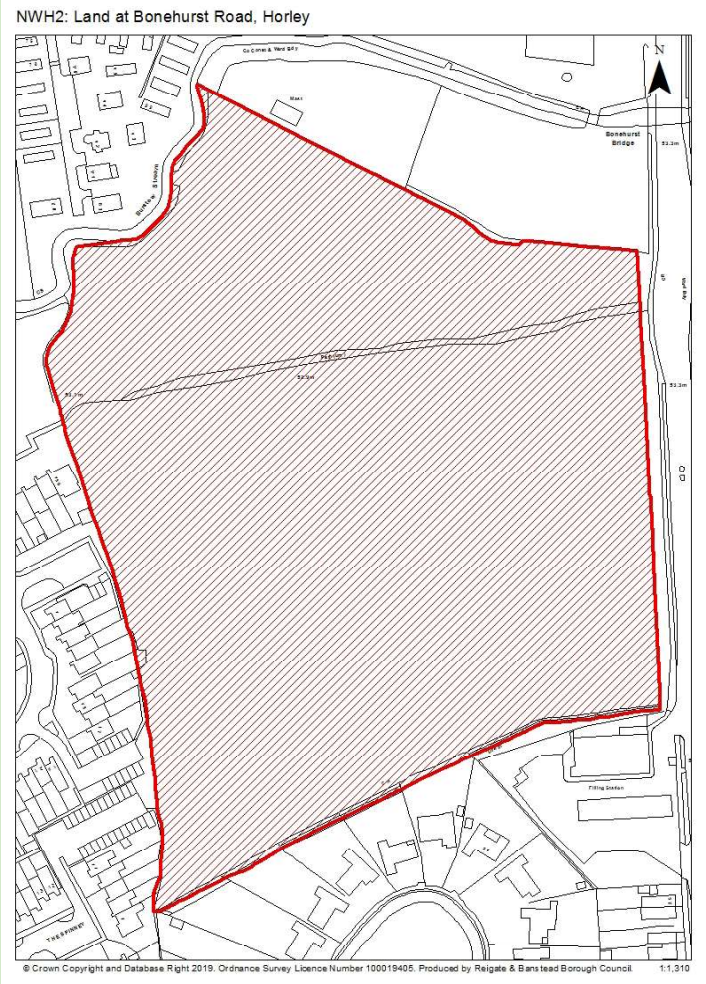
3.3.140 To the north the site is bounded by the Burstow Stream, with open countryside beyond. The north of the site is partially affected by fluvial flood risk (Flood Zones 2 and 3) and due to the proximity to Burstow Stream, development will be required to be located outside of this flood-prone area.

3.3.141 There are Grade II listed buildings and an area of archaeological potential located within the site which will need to be considered in any development proposal. Additionally, the hedge-lined lane has a character as an undesignated historic landscape and new development should be designed to be set back behind a buffer to the lane to respect this character.

3.3.142 The development of this site relies upon the delivery of the North West Sector infrastructure for highway access and local facilities. However, proximity to the North West Sector also provides the potential to integrate development on this site physically and functionally with the North West Sector.

3.3.143 Development of the site would also provide an opportunity to secure completion of the publicly accessible Riverside Green Chain to the north of Horley.

Policy NWH2: Land at Bonehurst Road, Horley



Site area:
5.09ha

Existing/previous use:
Open land used informally for access to the countryside and amenity

Source:
HELAA Ref: HW03

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 40 homes; and
- **Open Space:** new public open space along the river corridor to link up the Riverside Green Chain

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside and reflecting the River Mole Biodiversity Opportunity Area
- Layout to ensure no development on land within Flood Zones 2 and 3, with flood affected land provided as public open space to link up the Riverside Green Chain, enhancements to the river corridor and to incorporate additional flood storage to reduce downstream flood risk/highway flooding. A site-specific flood risk assessment must be undertaken which takes account of the Strategic Flood Risk Assessment Level 2
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS
- Protection and enhancement of trees, particularly those which are protected and/or on the site boundaries
- Regard should be had to the listed buildings adjacent to the site

Infrastructure:

- New public open space, including along the river corridor as a continuation of the Riverside Green Chain
- Upgrading of pedestrian/cycle routes, including FP409 which runs through the site

Policy NWH2: Land at Bonehurst Road, Horley (continued)

- Safe highway access onto the A23 Bonehurst Road
- Additional flood storage measures to reduce downstream flood risk and manage highway flooding.

Explanation:

3.3.144 This site is located on the northern edge of Horley. The site is adjacent to the A23 to its east and is largely enveloped within existing residential neighbourhoods to the west, south and east. The site comprises an area of open land which is used informally for access to the countryside and amenity.

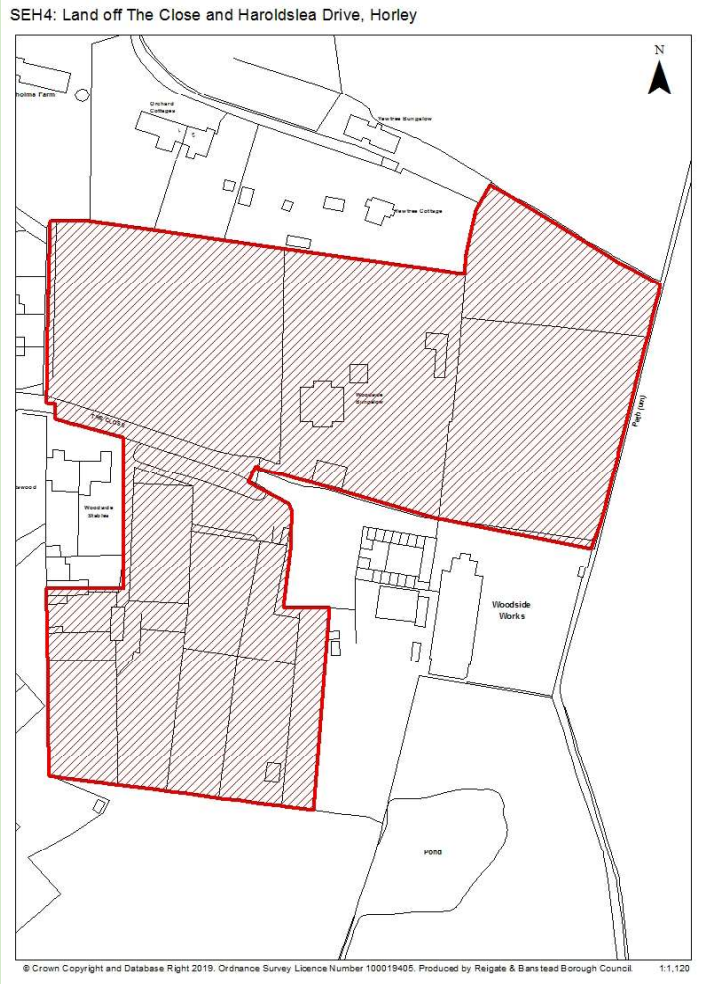
3.3.145 The Burstow Stream, which bounds the site to the north is a prominent source of flooding in this area. As a result, the north of the site is partially affected by fluvial flood risk (Zones 2 and 3) and development will be required to be located outside of this.

3.3.146 The development of this site would result in the loss of land used informally for public access to countryside and amenity. However, development would be required to provide public open space as part of the new development. There are also electricity pylons traversing the north of the site, however these are within the land at risk of flooding where development would not be appropriate.

3.3.147 Development of this site would provide the opportunity to secure completion of the publicly accessible Riverside Green Chain to the north of Horley, and to incorporate flood measures which would reduce flood risk in the vicinity and along the A23. The Environment Agency is considering future flood alleviation schemes in the Horley area.

3.3.148 The site is bound by the grounds of Cambridge Hotel to the north, which is a Grade I listed building with Grade II curtilage, and there are locally listed buildings on the opposite side of Bonehurst Road. Any design should retain the hedgerow, shrubbery, understorey and tree line and include a substantial buffer to safeguard the setting of these buildings.

Policy SEH4: Land off The Close and Haroldslea Road, Horley



Site area:
2.5ha

Existing/previous use:
Small equestrian centre and an existing residential dwelling within a substantial plot

Source:
HELAA Ref: HE13, HE16, and HE36

Development timeframes:
See MLS1

Allocation:
The site is allocated for:

- **Residential:** approximately 75 homes and approximately 1 traveller pitch

Requirements:
Development will be subject to the following requirements and considerations:

Design and mitigation requirements:

- Deliver biodiversity and green infrastructure enhancements, including links to the wider countryside
- Measures to manage and reduce surface water run-off including a comprehensive system of SuDS and protection of the ditch network within the site
- Protection and enhancement of existing trees and hedgerows, particularly on site boundaries
- A full noise assessment and implementation of measures to protect future residential amenity as required
- Design measures to protect and enhance the setting of adjoining listed buildings
- Additional tree or hedgerow planting along the southern and eastern boundaries to strengthen boundaries to adjoining countryside

Infrastructure:

- Upgrading of highway access via The Close, including appropriate improvements to the junction with Balcombe Road
- Improvement and extension of pedestrian footways on The Close and links to pedestrian/ cycle facilities to Horley town centre

Policy SEH4: Land off The Close and Haroldslea Road, Horley (continued)

- Local improvements to existing bus infrastructure/passenger facilities on Balcombe Road
- Provide approximately one serviced traveller pitch which provides for hard standing, garden and connections for drainage, electricity and water to accommodate one household. This pitch should be reasonably integrated with other residential development and not be enclosed with hard landscaping, high walls or fences, to an extent that suggests deliberate isolation from the community. Delivery is to be phased alongside delivery of other new homes. This pitch should be provided on this site unless the applicant can demonstrate that the pitch can be provided on an alternative site which is suitable, available and within the applicant's control. Land provided (whether on the SUE site or off-site) for this purpose will be secured through an appropriate legal agreement

Explanation:

3.3.149 The site is located off The Close and Haroldslea Drive, lying on the south eastern edge of the town of Horley. An existing residential cul-de-sac and new housing development at Inholms adjoin the site to the west. Extensive open countryside bounds the site to the east. The site provides a good opportunity to re-use the previously developed land on parts of the site.

3.3.150 Access to the main road network via The Close is constrained and access improvements will be required.

3.3.151 The listed buildings adjoin the site to its north, and any development should include a landscape buffer to the northern boundary to form an appropriate boundary to the setting of the listed buildings. Buildings should also be of appropriate character, scale and materials.

3.5 Section 5: Managing land supply

What the Core Strategy says

3.5.1 The Council is planning for the provision of a total of at least 6,900 homes over the plan period; equivalent to an annual average provision of 460 homes per year.

3.5.2 The spatial strategy in the adopted Core Strategy is based on an 'urban areas first' approach. This reflects national policy guidance and the constrained nature of the borough. Housing provision will be focussed within the existing urban areas, to deliver the priorities for regeneration and growth identified in Core Strategy Policy CS6. Although other unanticipated urban opportunities (windfall sites) may come forward, current housing land supply evidence (Annex 7: Housing Trajectory) indicates that it will not be possible to accommodate the total level of planned growth within the existing urban area. Sustainable urban extensions to accommodate the additional housing required to deliver the housing target have therefore been identified.

3.5.3 The release of sites for sustainable urban extensions will be triggered if the Council is unable to demonstrate a five year land supply.

3.5.4 **Core Strategy Objectives:**

SO1: To ensure that future development addresses the economic and social needs of the borough without compromising its environmental resources.

SO2: To enable required development to be prioritised within sustainable location within the existing built up area…whilst also catering for local housing needs.

3.5.5 **Core Strategy Policies**:

- *Policy CS3: Green Belt*
- *Policy CS6: Allocation of land for development*
- *Policy CS13: Housing delivery*

Policy MLS1: Managing land supply

1. The Council's Housing Monitor will proactively consider the need for release of the allocated sustainable urban extension sites based on a forward-looking mechanism. In order to maintain a five-year housing supply it will forecast whether such supply can be maintained over the next year and subsequent year. Where the Housing Monitor predicts that a five-year housing supply would not be maintained over this period, allocated sustainable urban extension sites will be released for development as necessary.
2. The Housing Monitor will be published annually, in June each year, setting out the position as of April that year. The Housing Monitor will:
   a. Set out the 5YHLS position for that year and establish whether or not the Council can demonstrate a 5YHLS.
   b. Make an assessment of the likely 5YHLS position in April of the subsequent year, based on an up to date assessment of the Council's housing trajectory.
3. The Council will only grant planning permission for sites outside of the annual monitoring process if it can be clearly demonstrated, via up to date evidence, that there is a five year supply shortfall.
4. Planning permission will not be granted for any proposals which would prejudice or compromise the long-term comprehensive development of an urban extension allocation. This excludes proposals for necessary works to support the efficient operation of the Patteson Court Landfill.
5. The Council will maintain an on-going dialogue with those involved in promoting and **Policy**

MLS1: Managing land supply (continued)

delivering allocated sustainable urban extensions sites and will actively support and encourage Planning Performance Agreements and/or the preparation of joint Development Briefs (where appropriate) for the sites in order to facilitate their timely delivery upon release.

Explanation

3.5.6 The Core Strategy sets out a strategy to meet the borough's identified housing target. The Housing Trajectory (Annex 7) demonstrates how this can be achieved to ensure continuity throughout the plan period (ending 2027). The annual Housing Monitor shows that housing delivery has responded so far to meet the key indicator of five years supply of specific deliverable sites and it is important that this level of delivery is maintained to assist in the achievement of sustainable development.

3.5.7 The Core Strategy recognises that sustainable urban extensions will be needed as part of the housing delivery strategy to support delivery of the borough's housing requirement as set out in Core Strategy Policy CS13.

3.5.8 Core Strategy Policy CS13 identifies that sites for sustainable urban extensions within the broad areas of search set out in Policy CS6 will be released when such action is necessary to maintain a five year supply of specific deliverable sites. Policy CS13 also notes that the phasing of sustainable urban extension sites will be set out in the DMP and will take account of strategic infrastructure requirements.

3.5.9 Core Strategy Policy CS6(3) identifies that the Council will allocate land beyond the current urban area for sustainable urban extensions, based on an assessment of the potential within the following broad areas of search (in order of priority):

a. Countryside beyond the Green Belt adjoining the urban area of Horley

b. East of Redhill and East of Merstham

c. South and South West of Reigate

3.5.10 Based on current information, the only site where the timing of delivery may be impacted by a site specific constraint or infrastructure requirement is ERM2/3 Copyhold, in order to ensure the efficient operation of the landfill site is not compromised. Policy ERM2/3 explains this relationship further and identifies the evidence, mitigation and issues which would need to be considered as part of any application for development.

3.5.11 This policy establishes a proactive and forward looking approach to the management of land supply which respects the Council's "urban areas first" approach and the principles established through Core Strategy Policy CS13 whilst ensuring that the Council is able to respond effectively and decisively to evidence of a current or future shortfall in the five year land supply in a plan-led manner.

3.5.12 To do this, the policy sets out clear and robust mechanisms for the release of urban extensions sites, starting with the Council's annual Housing Monitoring process. In this way, it provides clarity and certainty for all stakeholders but allows for sufficient flexibility to respond to changing circumstances. The Council recognises the importance of a positive, on-going dialogue with those involved in bringing forward sustainable urban extensions and the policy reflects a commitment to this to ensure that these sites deliver the right development at the right time.

The Planning Inspectorate

Report to Reigate and Banstead Borough Council

by Helen Hockenhull BA(Hons) B. Pl MRTPI

an Inspector appointed by the Secretary of State

Date: 9 July 2019

Planning and Compulsory Purchase Act 2004
(as amended)
Section 20

Report on the Examination of the Reigate and Banstead Development Management Plan

The Plan was submitted for examination on 18 May 2018

The examination hearings were held between 30 October and 9 November 2018

File Ref: PINS/L3625/429/9

Abbreviations used in this report

AGLV	Area of Great Landscape Value
AONB	Area of Outstanding Natural Beauty
CS	Reigate and Banstead Local Plan: Core Strategy
DMP	Development Management Plan
GBR	Green Belt Review
GTAA	Gypsy and Traveller Accommodation Assessment
HELAA	Housing and Employment Land Availability Assessment
LDS	Local Development Scheme
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively assessed need
PPG	Planning Practice Guidance
PPTS	Planning Policy for Traveller Sites
RSH	Rural Surrounds of Horley
SA	Sustainability Appraisal
SHAR	Strategic Highways Assessment Report
SHLAA	Strategic Housing Land Availability Assessment
SUE	Sustainable Urban Extension

Non-Technical Summary

This report concludes that the Reigate and Banstead Development Management Plan (DMP) provides an appropriate basis for the planning of the Borough, provided that a number of main modifications [MMs] are made to it. Reigate and Banstead Borough Council has specifically requested me to recommend any MMs necessary to enable the Plan to be adopted.

The MMs all concern matters that were discussed at the examination hearings. Following the hearings, the Council prepared a schedule of the proposed modifications and carried out sustainability appraisal of them. The MMs were subject to public consultation over a six-week period. In some cases, I have amended their detailed wording and added consequential modifications where necessary. I have recommended their inclusion in the Plan after considering all the representations made in response to consultation on them.

The Main Modifications can be summarised as follows:

- Amendment to Policy MLS1 Phasing of urban extension sites to remove the detailed phasing and allow sites to come forward when available and deliverable to maintain a 5-year housing land supply thus ensuring the plan is justified and effective;
- Increased capacity on allocated sites to meet the needs of gypsies, travellers and traveling showpeople and identification of further sites including provision within the Sustainable Urban Extensions (SUEs);
- Amendments to the requirements for development on some of the allocated sites in order that the plan is justified and effective;
- A range of other alterations to development management policies necessary to ensure they are justified, effective and consistent with national policy;
- Deletion of safeguarded land policy MLS2 to ensure the plan is justified.

that with the proposed allocations, the retail needs of the borough will be met. This approach is therefore sound.

126. Banstead village centre boundary as it excludes the community hall and associated car parking area. The community hall is not contiguous with the primary shopping area, with non-town centre uses lying in the intervening area. The car park, whilst being an important local facility, does not form a town centre use defined in the Framework. Furthermore, its loss or reuse would be subject to the consideration of other policies in the plan e.g. Policy TAP1. There is therefore no evidence to justify an amendment to the town centre boundary.

127. In order to support the change of use of retail premises to other town centre uses, Policies RET1, RET2 and RET4 require a marketing exercise to demonstrate that an A1 retail use is no longer viable. As discussed in relation to Policy EMP 4, amendments to Annex 3 are required to reflect the different marketing periods appropriate for different sites and uses (**MM45**).

128. The Local Centres Evidence Paper provides a rigorous and objective assessment of local centres, looking at amongst other things, the mix of retail and community uses, parking and environmental quality. Eighteen existing centres were assessed as well as ten potential new ones. I am satisfied that this forms a robust approach and that the local centres identified in Policy RET3 are justified.

129. The Framework in paragraph 26 sets the threshold for the requirement for retail impact assessment for retail developments outside of town centres of 2,500 square metres but also allows for locally set thresholds. Policy RET5 requires an impact assessment for comparison retail development of over 150 square metres and for convenience retail development exceeding 250 square metres. Evidence to justify this locally set threshold had assessed the factors important to be considered set out in Para 016 of the PPG Ensuring the vitality of town centres. Having regard to the average size of retail premises in the town centres; 250 square metres, the vulnerability of existing centres and the likely impacts on viability and vitality, I consider the thresholds set down in Policy RET5 are justified.

Conclusion on Issue 4

130. In summary, subject to the modification identified, the plan sets out an approach to town and local centres which is justified, effective and consistent with national policy and that, so far as it is not consistent with the CS, the inconsistency is justified**.**

Issue 5 – Whether the approach to the supply and delivery of housing is justified, positively prepared, effective, deliverable and consistent with national policy and the Core Strategy.

Housing supply

131. Core Strategy Policy CS13 sets out a requirement of at least 6,900 homes over the plan period to 2027. It also outlines that at least 5800 homes will be delivered within existing urban areas, with the remainder to be provided

in sustainable urban extensions in the broad locations as set out in Policy CS6.

132. Annex 7 of the DMP provides a Housing Trajectory over the plan period. **MM47** updates this to take account of revised capacities and delivery timescales on individual sites. The Trajectory illustrates that taking account of completions, commitments and allocations, the DMP makes provision for 8,030 homes. The housing target is therefore exceeded by 1130 dwellings, around 16%. This additional capacity recognises that delivery may be slower than predicted on some sites and provides flexibility thereby ensuring that the borough can meet its housing requirement.

133. In terms of the spatial distribution of housing, there are minor surpluses and deficiencies in delivery in individual Sub Areas. This is due to variations in the number of deliverable sites. Overall however the distribution of new housing accords with the Core Strategy.

134. The Council's Housing Monitor 2018 illustrates that since 2012 there have been two years of marginal under delivery (6%) and 4 years of over delivery against the CS housing requirement of 460 homes per annum. Overall this has resulted in a surplus of 167 homes. This information was updated in the Council's Housing Trajectory Position Statement of June 2018. This indicated that as a result of various errors in the data and further Building Control information, the completions were in fact higher over this period by 414 dwellings. This demonstrates that completions have exceeded the annual requirement in each year since 2012.

135. Included within the supply is a windfall allowance of 75 dwellings per annum. The historic windfall rates since 2012/13, with the inclusion of prior approvals for office to residential conversions, indicate that actual windfalls have been significantly above this figure. I therefore conclude that this allowance is robust and justified.

136. The calculation of housing supply does not include a non-implementation rate. The Council has taken a cautious approach, removing sites with a history of non-implementation and sites which are unlikely to come forward. These assumptions are supported by ongoing discussions with landowners and developers. There is no requirement in national policy to include a non-implementation rate and there is evidence in the Updated Housing Trajectory Position Statement to support the Council's position that the sites identified are deliverable and developable. I am satisfied that this approach is justified.

137. The Housing Trajectory Position Statement indicates that 3,169 dwellings are deliverable over the next 5 years. The Council's site by site assumptions behind this figure are supported by developers on a number of key sites. In the absence of convincing evidence to the contrary and in light of my conclusions on individual sites detailed later in this report, I conclude that this figure is realistic.

138. The Housing Trajectory indicates that a 5-year housing land supply would not be achievable towards the end of the plan period from 2024/25. In order to address this issue, Policy MLS1 provides for the release of the SUEs. I conclude this to be an appropriate and justified approach to ensure that the

delivery of housing is maintained throughout the plan period. (I consider the detail of this Policy in the next section of my report).

139. In conclusion, and subject to the above-mentioned modification, the approach to the supply and delivery of housing is justified, positively prepared, effective, deliverable and consistent with national policy and the Core Strategy.

Delivery and phasing of SUEs

140. Policy CS13 of the Core Strategy sought to release SUEs when necessary to maintain a 5-year housing land supply. It further stated that the phasing of such sites would be set out in the DMP and take account of site-specific factors including the need to provide mitigation measures and strategic infrastructure requirements.

141. There are no strategic infrastructure requirements e.g. a new road or education provision or any other constraints which would directly impact on the delivery of any of the SUEs being proposed in the DMP. Whilst there are clearly a range of mitigation measures required for each allocation to come forward, there is no evidence that such measures could not be delivered concurrently with the respective developments. I accept that the one exception to this is Site ERM2/3 Copyhold Works, due to its relationship to the neighbouring Pattinson Court Landfill site.

142. There are therefore no constraints or site-specific factors which would affect the lead in times and delivery of the identified SUEs. The detailed phasing proposed in Policy MSL1, stating an order in which sites would be released, does not reflect site constraints and lacks justification. For the plan to be positively prepared and in the interests of effectiveness, **MM43** is necessary to provide a forward-looking mechanism through the annual Housing Monitor to determine the need to release SUEs over the next and subsequent year. This approach should ensure the maintenance of a deliverable 5-year housing land supply over the plan period and allow sites to come forward when they are available and developable.

143. The modification changes the policy title to 'Managing Land Supply' reflecting the changed direction of the policy. In the interests of effectiveness, it also adds criteria to protect the SUEs from development which would prejudice or compromise their long-term development, promote on-going dialogue with site promoters and to encourage the preparation of Development Briefs and the use of Planning Performance agreements to bring sites forward.

144. Subject to the above modifications, I conclude that the policy is positively prepared and effective.

Affordable Housing

145. The need for affordable housing in the borough is high. There has been criticism that the SHMA is out of date having been prepared in 2008 and updated in 2012. More recent evidence prepared by the Council, namely the Affordable Housing Policy Paper, shows a continued upward trend in house prices relative to incomes and increasing affordability issues. The DMP in

Fareham Local Plan

Shaping Fareham's Future

Local Plan Part 2: Development Sites and Policies

June 2015
Adopted Version

FAREHAM
BOROUGH COUNCIL

demonstrate the deliverability of the scheme. This should include a detailed programme of delivery specifically setting out when the proposal will be delivered. If deemed necessary the Council will include a planning condition to limit the commencement time to a year from the date of permission to ensure delivery in the short term. In order to protect areas outside of the existing settlements from unnecessary levels of development, only proposals that are of a scale relative to any identified shortfall will be considered.

5.166 Protecting the character and beauty of the countryside is an important objective and so the careful design of any proposal will be a key consideration. Any proposal must be adjacent to an existing urban area boundary and sensitively designed to ensure it is as well related, and integrated, to the neighbouring settlement as possible. Proposals that minimise the impacts on the countryside and, where relevant, Strategic Gaps will be preferred. Any proposal will also need to demonstrate that there will be no unacceptable environmental, amenity or traffic implications and that all other relevant Policies in the Local Plan have been duly considered.

Self Build Housing

5.167 The NPPF states that: *"To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should plan for a mix of housing based on current and future demographic trends, and the needs of different groups in the community such as...people wishing to build their own home"*[75]. The Council is very supportive of this policy and will encourage those wishing to build their own houses to do so where the opportunity arises.

5.168 Opportunities for self-build within the Borough are provided through support in the Development Site Briefs for Housing Allocations H12 and H13, whilst the residential frontage infill component of Policy DSP7 will also offer support to the delivery of small scale self-build schemes (for one or two dwellings). Lastly, the Council will continue to review the demand for self-build in the Borough, and will explore making further land available for self-build through the Local Plan Review, should future demand exceed the land made available for self-build in the Borough, by both the DSP Plan and the Welborne Plan.

Housing Allocations

5.169 The Core Strategy sets out the overall level of housing and broad locations for development and provides the context for the consideration of sites for new housing development. The housing options within the policy area of Welborne will be considered in Local Plan 3: The Welborne Plan. This document therefore only provides for the housing requirements for the remaining part of the Borough (excluding Welborne).

5.170 The housing supply that is needed to ensure that the Borough meets its overall housing requirement is set out in Table 4. The total from the various sources shows a supply surplus of 929 dwellings in meeting the housing requirement, as set out in the Core Strategy, for Fareham Borough (excluding Welborne). The information set out below is correct as at 31 March 2014. The information will be updated through

[75] DCLG (2012) National Planning Policy Framework (Paragraph 50)

the Strategic Housing Land Availability Assessment (SHLAA) and the Monitoring Report.

5.171 The Policies Map identifies the sites being allocated to help meet the Borough's housing requirements as set out in the Core Strategy and the update to the South Hampshire Strategy published in October 2012. These allocations have been identified as a result of extensive public consultation, stakeholder engagement, detailed research (including the SHLAA[76]) and using extant residential planning permissions where a material start on the site has not been made (see Appendix C).

Table 4: Housing Delivery Overview (2006 - 2026)

Source	**Number of Dwellings (net)**	
Housing requirements		
	Core Strategy (2006-2026)	**South Hampshire Strategy (2011-2026)**
Strategy Requirements	3,729	**2,202**
Housing completions 1 April 2006 - 31 March 2014 1 April 2011 - 31 March 2014	2, 857	 **858**
Outstanding requirement for plan period at 1 April 2014	872	**1,344**
Projected housing supply 1 April 2014 - 31 March 2026		
Core Strategy Allocation at Coldeast	30	
Planning permissions (in progress)	544	
Planning permissions (not started)	582	
Allocations rolled forward from existing Local Plan	130	
New Allocations (including Town Centre Development Opportunity Area and Older Persons Accommodation)	415	
Projected Windfall	100	
Total projected housing supply	**1,801**	
Projected surplus (1 April 2014 - 31 March 2026)	**Core Strategy**	**South Hampshire Strategy**
	929	**457**

[76] Fareham Borough Council (January 2014) Strategic Housing Land Availability Assessment

5.172 In order to guide development of the proposed housing allocations in the DSP Plan, individual site briefs have been prepared. Prospective developers of the sites should have regard to the development principles and planning requirements set out in the briefs.

5.173 The SHLAA (January 2014)[77] identifies housing sites that have a capacity of five or more dwellings. It does not include housing supply associated with the Welborne Plan area. Sites below this threshold have not been assessed in terms of their deliverability/developability as part of the SHLAA or Viability Assessment of Site Allocations and have therefore not been considered as potential housing allocations in this Plan. Currently unidentified sites, below the 5 dwelling threshold, may come forward for housing development in the future (as windfall sites) through the planning application process.

5.174 The sites included in this document have also been assessed as part of the SHLAA, Viability Assessment of Site Allocations, Sustainability Appraisal (SA) and Habitat Regulations Assessment (HRA). The Council will require sites to be developed in accordance with the policies contained in the relevant parts of the Local Plan and any other applicable planning and design guidance.

Policy DSP40: Housing Allocations

The sites set out in Appendix C, Table 8 and shown on the Policies Map are allocated for residential development and should be developed in line with the principles set out in their respective Development Site Briefs.

Sites listed in Appendix C, Table 9 and shown on the Policies Map have extant planning permission for residential development and are allocated for residential development. In instances where the planning permission for a site listed in Appendix C, Table 9 lapses, the Council will consider similar proposals and/or the preparation of an additional development site brief to set out the parameters for an alternative form of residential development.

All sites listed in Appendix C will be safeguarded from any other form of permanent development that would prejudice their future uses as housing sites to ensure that they are available for implementation during the plan period.

Where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy (excluding Welborne) additional housing sites, outside the urban area boundary, may be permitted where they meet all of the following criteria:

i. The proposal is relative in scale to the demonstrated 5 year housing land supply shortfall;
ii. The proposal is sustainably located adjacent to, and well related to, the existing urban settlement boundaries, and can be well integrated with the neighbouring settlement;
iii. The proposal is sensitively designed to reflect the character of the neighbouring settlement and to minimise any adverse impact on the

[77] Fareham Borough Council (January 2014) Strategic Housing Land Availability Assessment

Countryside and, if relevant, the Strategic Gaps

iv. It can be demonstrated that the proposal is deliverable in the short term; and

v. The proposal would not have any unacceptable environmental, amenity or traffic implications.

Sub-Division of Residential Units

5.175 The sub-division of existing dwellings within the urban area to two or more self-contained units will help to provide a supply of smaller units. This may play a part in eliminating the need to release greenfield sites for residential development. However, the intensification of residential areas through subdivision may not necessarily meet the anticipated market demands of households and may have detrimental impact on the character of the area or the amenity of local residents.

5.176 A converted or sub-divided dwelling should meet adequate space standards and have particular regard to Core Strategy Policy CS17: High Quality Design and the Design Supplementary Planning Document.

Policy DSP41: Sub-Division of Residential Dwellings

Sub-division of residential dwellings to smaller self-contained units of accommodation will be permitted provided that:

i. the proposal, or the cumulative impact of the proposal with other similar proposals, would not adversely affect the character of the area or have unacceptable environmental, amenity or traffic implications, particularly in Conservation Areas;

ii. the resultant sub-divided units conform to the space standards and design requirements set out in Core Strategy Policy CS17: High Quality Design and the Design Supplementary Planning Document; and

iii. appropriate outdoor amenity space, bin storage and parking provision are provided.

Older Persons' Housing

5.177 The projected increase in older persons (aged over 65) in Hampshire between 2006 and 2026 is 114,000 (53%). This is higher than any other county in the South East, this issue is particularly acute within the PUSH sub-region which includes Fareham[78]. In line with the general increase in the population of older people, it will be important for the Council, through the Local Plan process, to set out policies that will encourage an increase in specialised older person's accommodation to meet current and future demand.

5.178 Population data from the 2011 Census estimates the total resident population of Fareham to be 111,600. Of this total, 30,600 (27%) are aged 60 or over and 3,100 (2.7%) are aged 85 or over[79]. According to the Hampshire Long Term Population

[78] Hampshire County Council (November 2009.) Housing Provision for Older People in Hampshire: Older Persons Housing Study.

[79] Census 2011, Population Estimates Summary Tables (http://www3.hants.gov.uk/factsandfigures/population-statistics/census_pages.htm)

The Planning Inspectorate

Appeal Decision

Inquiry (Virtual) held on 10 August 2021 - 19 August 2021

Site visit made on 11 & 12 November 2021

by Lesley Coffey BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2022

Appeal Ref: APP/A1720/W/21/3271412
Land South of Romsey Avenue, Fareham, PO16 9TA

- 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 Foreman Homes Ltd against the decision of Fareham Borough Council.
- The application Ref P/18/1073/FP, dated 20 August 2018, was refused by notice dated 21 September 2020.
- The development proposed is hybrid planning application for residential development of 225 dwellings, bird conservation area. Seeking full planning permission for 58 dwellings and outline planning permission for 167 dwellings with all matters reserved except for access.

Decision

1. The appeal is allowed and planning permission is granted for a residential development of 225 dwellings, a bird conservation area and area of public open space with all matters reserved except for access, at Land South of Romsey Avenue, Fareham, PO16 9TA in accordance with the terms of the application, Ref P/18/1073/FP, dated 20 August 2018, subject to the conditions in the attached schedule.

Applications for costs

2. At the Inquiry an application for costs was made by Foreman Homes Ltd against Fareham Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The description above is taken from the application form and was amended during the course of the application. The revised description is "Outline planning application for residential development of 225 dwellings, bird conservation area and area of public open space with all matters reserved except for access." I have considered the appeal on the basis of the revised description.

4. An Environmental Impact Assessment (EIA) has been undertaken and reported in an Environmental Statement (ES) in accordance with the Requirements of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017. A revised ES was submitted prior to the Inquiry and has been taken into account in this decision.

5. There were 12 reasons for refusal. Reason for refusal e) was that the proposal failed to provide sufficient information to demonstrate the satisfactory disposal of surface water. On the basis of additional information submitted by the appellant, the Lead Local Flood Authority withdrew its holding objection, and the parties agree that this matter can be addressed by way of a condition. Notwithstanding this, local residents raised concerns about the suitability of the proposed drainage strategy and this matter is addressed below.

6. Reasons for refusal g) – l) relate to the absence of planning obligations in respect of a range of matters, including the provision of affordable housing and education. The appellant submitted two Unilateral Undertakings dated 2 September 2021 to address these matters.

7. The first Unilateral Undertaking (UU) covenants to deliver 40% of the residential units as affordable housing, open space, a Neighbourhood Equipped Area of Play (NEAP), as well as financial contributions towards mitigating the recreational impacts on the Solent, education, Countryside Service, a Traffic Regulation Order, highway and transport improvements, and a Travel Plan.

8. The second UU covenants to provide the Bird Conservation Area together with arrangements for the management, maintenance and monitoring of the Bird Conservation Area. Both UUs are discussed below.

9. The Council and the appellant submitted Statements of Common Ground in relation to Planning and Housing Land Supply. A SoCG with Hampshire County Council (The Highway Authority) in respect of highways and transport matters was also submitted. Notwithstanding the areas of agreement with the Highway Authority set out in the SoCG the Council and local residents remain concerned about the effect of the proposal on parking and highway safety.

10. The site visits were undertaken during term time at the request of local residents.

Main Issues

11. I consider the main issues to be:

- The effect of the proposal on highway safety and the effect of parking displacement on residential amenity;
- The effect of the proposal on on-site biodiversity;
- The effect of the proposal on European Protected Sites with particular reference to Support Areas for brent geese; and
- Whether the location of development outside the settlement boundary is acceptable having regard to Policy DSP40 of the Local Plan Part 2:Development Sites and Policies.

Reasons

12. The appeal site is located adjacent to but outside of the settlement boundary for Portchester. It is about 12.55 hectares in area and is broadly rectangular in shape. Access to the site is from a short stretch of road leading from Romsey Avenue which also provides rear access to some of the Romsey Avenue properties.

13. The northern boundary of the site is formed by the rear gardens of the properties fronting Romsey Avenue, whilst the eastern boundary is formed by recreational open space associated with the development of 120 dwellings of Cranleigh Road that are currently under construction. Wicor recreation ground lies to the south west of the appeal site.

14. The site is located about 1.9 kilometres West of Porchester town centre and 2.8 kilometres east of Fareham town centre. The appellant and the Highway Authority agree that the site is in a sustainable location, within walking and cycling distance of local services and facilities and would allow future residents to make sustainable transport choices, including by foot, by bicycle and public transport.

Highway Safety and Parking Displacement

15. Access to the site would be from the existing access road that currently serves the rear of the properties in Romsey Avenue and a field gate to the site. The access road would be 5.5 metre wide with a 2 metre wide footway on the eastern side. A parking bay is proposed on the western side and would allow up to four cars to be parked.

Highway Safety

16. Beaulieu Avenue and Romsey Avenue are residential streets with approximately 5.5m carriageway widths and unrestricted on-street parking. In order to maintain the free-flow of traffic Hampshire County Council (the Highway Authority) required the provision of parking bays within current verges and double yellow lines adjacent to the junction of the access road and Romsey Avenue and the junction of Romsey Avenue and Beaulieu Avenue. A Traffic Regulation Order (TRO) would be necessary to implement the proposed parking restrictions. The UU includes a financial contribution towards the costs of the TRO.

17. The Highway Authority concluded that the introduction of parking restrictions would not incentivise inappropriate or dangerous parking and would not have a severe impact on the operation of the highway network. It also confirmed that the impact of the increased vehicular use of this section of the highway on walking distances to alternative parking spaces was a matter for the local planning authority.

18. In terms of highway safety, Mr Philpott, on behalf of the Council, explained that whilst yellow lines generally prevent waiting or parking, some activities such as stopping to load or unload, or parking with a valid Blue Badge for up to 3 hours are permissible.

19. Mr Philpott submitted that if a vehicle were to stop on the double yellow lines, service vehicles (particularly larger ones) may be obstructed, and this in turn could give rise to inappropriate manoeuvres or vehicles mounting the footway. He suggested that existing residents may need to stop on the yellow lines in order to load/unload, or for disabled parking. On the basis of the 17 properties with frontages onto the proposed yellow lines he suggests that there could be 2 or 3 vehicles a day for servicing purposes. This figure is based on TRICS data.[1]

[1] Two way flow of 5 vehicles between 0700-1900 per day

20. It is possible that delivery drivers may park on the yellow lines to load/unload, particularly outside of the properties on the south side of Romsey Avenue between the site access and Beaulieu Avenue. However, there are no restrictions on such parking at present, although the Highway Code states that cars should not stop in such locations. Whilst the appeal proposal would increase the number of vehicles using this stretch of Romsey Avenue, including service vehicles, they would be unlikely to add to the number of vehicles stopping in the locations where the yellow lines are proposed.

21. Even on the Council's evidence the number of vehicles visiting these properties would be low. No evidence was submitted to the Inquiry to indicate that there are safety concerns in respect of the existing situation, or that delivery vehicles visiting these dwellings have a detrimental effect on highway safety. The proposed parking restrictions would deter rather than increase the propensity for vehicles to park in these locations, I therefore conclude that there is no substantive evidence to indicate that the proposed parking restrictions would be detrimental to highway safety. Indeed, the proposed parking bays would be likely to improve driver visibility and the free flow of traffic by comparison with the existing situation.

22. I agree with the Highway Authority that subject to the proposed improvements the proposal would not be harmful to highway safety.

Parking Displacement

23. The parties differ as to the number of parking spaces that would be displaced by the appeal scheme due to the introduction of the proposed parking restrictions. There are existing yellow lines at the northern end of Beaulieu Avenue at the junction with the A27. It is proposed to introduce yellow lines at the junction with Romsey Avenue, these would extend a short distance along Beaulieu Avenue, and due to the corner would be unlikely to displace any parking.

24. I acknowledge the Council's view that whilst the Highway Code states that vehicles should not stop within 10 metres of a junction other than in an authorised parking space this is not mandatory or underpinned by legislation. [2] Nonetheless, I consider that few drivers would park in such a clearly inappropriate and potentially dangerous location. The proposed parking bays would be sufficient for 11-12 cars. Given the limited length of the yellow lines proposed along Beaulieu Avenue I do not consider that the appeal proposal would have a significant adverse effect on parking.

25. A parking survey to establish the extent of existing on-street parking in Romsey Avenue and Beaulieu Avenue demonstrated that with the proposed parking there would be sufficient capacity within reasonable proximity to the existing parking locations to accommodate the displaced parking.

26. The yellow lines would extend in front of 15 properties in this part of Romsey Avenue. Of these, 11 have sufficient space to park two cars on their driveway. The appellant carried out an initial parking survey, and at the request of the Highway Authority undertook further independent surveys in November 2018. The latter identified that a maximum of 13 cars parked either in the bellmouth of Romsey Avenue or within the visibility splays where the parking restrictions

[2] Rule 243

are proposed. This figure formed the basis for the appellant's parking displacement study.

27. The Council suggest that the number of vehicles displaced by the proposal would be greater than suggested by the appellant. It states that there is parking demand for 7 – 9 vehicles within the access road as evidenced by photographs submitted by residents and Google images that show between 7 and 5 vehicles (including a trailer).

28. Based on the available evidence, it would seem that between 4 and 5 vehicles are generally parked on the access road. This is supported by the appellant's parking surveys, evidence from additional visits undertaken by Mr Wiseman on behalf of the appellant, and my own observations from visiting the site at various times of day and different times of year. It may be that on occasion that parking demand exceeds this figure as indicated in the photographs submitted by residents. The Council's position relies on photographs, the most recent of which support the appellant's position, whereas the appellant relies on independent survey evidence. Whilst there may be some variation in the level of parking on the access road, on the basis of all of the evidence submitted to the Inquiry and my own observations, I consider the typical level of parking displacement to be about 5 vehicles, 4 of which would be provided for by the proposed parking bays.

29. The appellant's parking displacement study concluded that the furthest a vehicle would be displaced would be 45.1 metres, whilst the average would be 22 metres. The Council is critical of this figure on the basis of the number of cars to be displaced and the methodology used. It undertook its own assessment (the Mayer Brown Parking Displacement Study).

30. The Council's study considered a number of scenarios including 7 vehicles parked in the access road, with 3 being displaced, and 9 vehicles parked in the access road with 5 displaced. Whilst the Council accept that the scenario put forward by the appellant that assumes that all cars are able to park in the closest space possible to their original position is possible, it considers that in practice displacement would be more random. Therefore, for each scenario it submitted 5 rounds of displacement.

31. For the reasons given above in respect of the number of vehicles displaced from the access road I find scenario 1 to be the most representative. Based on the Mayer Brown Parking Displacement Study about 3 vehicles would be displaced by more than the 45 metres suggested by the appellant. The extent of displacement ranges from 46 metres to 87.8 metres. In each round the majority of vehicles would be displaced by less than 20 metres, and the number of vehicles displaced by more than 60 metres is low in all rounds. Moreover, since the survey on which scenario 1 is based was undertaken, two additional properties now benefit from off-street parking, and therefore the extent of displacement may be less than assessed at the time of the survey. I do however accept Mr Philpott's view that such off-street parking provision may have been provided to accommodate additional cars within the same household. I have therefore relied on the number of vehicles in scenario 1.

32. Although there may be some displacement of existing parking on surrounding roads caused by the parking restrictions, the extent of displacement would not be great. Moreover, many of the properties in Romsey Avenue, including the

locations where yellow lines are proposed have one or more off-street parking space.

33. I therefore conclude that the proposal would not have an adverse effect on highway safety and may even provide some safety benefits due to the improved visibility at junctions and greater width of the running carriageway. Nor would the proposal give rise to a significant loss of amenity due to parking displacement.

34. Overall the proposal would not conflict with Core Strategy Policy CS5 which states that proposals should not affect the safety and operation of the strategic and local road network and Policy DSP40 of the Local Plan Part 2 Development Sites and Policies in so far as it would not have any unacceptable amenity or traffic implications.

On-Site Biodiversity

35. The Council consider that insufficient information was submitted with the application to conclude that it would not harm on-site biodiversity. The appellant subsequently updated the Environmental Statement including Chapter 10 in relation to Ecology and Biodiversity and submitted a Framework Landscape and Ecological Specification Plan (fLEMP)

36. Further clarification in relation to the fencing surrounding the Bird Conservation Area, the badger sett, and the mix of grasses was provided during the Inquiry. As a consequence, the remaining differences between the parties relate to the need for updated surveys and the cumulative effects on badgers arising from the adjacent Cranleigh Road development.

37. The surveys assessed in the original ES took place between 2014-2018. The Phase 1 Habitat and the badger surveys were updated in November 2020. The most recent survey found that the badger sett recorded in the south eastern corner of the site was still active and it is suggested that this is an annex to a main sett on the neighbouring site to the east.

38. The proposal would provide some enhancement in terms of improved foraging for badgers and additional open space. The existing trees and hedgerows on the site would be retained. The Council nevertheless remains concerned that the badger group on the adjoining site would be 'hemmed in' by development to the north, east and west.

39. The lfLEMP sets out that there would be a 30-metre buffer zone around the badger sett in the south east corner of the site. Any works within this area would be carried out under the supervision of an Ecological Clerk of Works and a licence would be sought from Natural England due to the proximity of the proposed fence to the sett.

40. The proposed measures within the fLEMP and the Construction Traffic Environment Management Plan would avoid harm to the badgers on the site. There is sufficient survey information to avoid any significant impact on badgers during construction. Badgers are a mobile species and should any works be required in the vicinity of the setts, further surveys may be necessary as part of the licencing process.

41. In terms of the 'in combination' effects, the hedgerows, which afford foraging opportunities would be retained and enhanced, and further hedgerows would

be planted as part of the Bird Conservation Area proposals. Overall, the proposal would improve the foraging habitat for badgers on the site.

42. The baseline conditions for bats were reassessed following updated manual and automated activity surveys conducted in May 2021 and compared with the previous baseline. The May bat surveys recorded Barbastelle bats in addition to those identified in the previous surveys. As a result of this finding, this species was added to the EIA.

43. Six ash trees in the south west corner of the site were identified as having low potential to support roosting bats. No further roosting features were identified in the November 2020 survey.

44. The updated baseline evidence indicates no significant change to bat activity on the site. The boundary features, including the hedgerows and trees used by commuting bats would be retained and enhanced. Whilst updated bat surveys (that are due to continue until October) may be useful for the determination of the reserved matters, in the light of the updated baseline evidence, and having regard to the characteristics of the site I consider that there is sufficient information in order to assess the likely significant effect of the proposal on bats.

45. The fLEMP includes a number of mitigation measures in relation to biodiversity including areas of semi-improved grassland, hedgerow planting, a kingfisher and sand martin bank. Taken together these measures would deliver a biodiversity net gain. The proposal also includes a number of mitigation measures such as bird and bat boxes, artificial hibernacula for reptiles and amphibians and log piles. The appellant has calculated of 10.04% biodiversity net gain in accordance with the Framework.

46. On site ecological features of interest including badgers, bats, breeding birds and reptiles would be protected. The Ecological Design Strategy, together with the CEMP and the LEMP would deliver include mitigation and enhancement measures. These would be secured through appropriate conditions.

47. I conclude that the effect of the proposal on on-site biodiversity is, subject to the proposed mitigation, acceptable and would comply with Local Plan Part 2 Policy DSP13 which seeks to safeguard protected and priority species and their associated habitats, breeding areas, foraging areas and would also secure a net gain in biodiversity through environmental enhancements.

The effect of the proposal on European Protected Sites

48. Eight Natura 2000 sites fall within either the standard 10km buffer applied during the Ecological Impact Assessment, or separately defined Zone of Influence (ZOI). At its closest point the appeal site is situated 0.2 km from the Portsmouth Harbour Special Protection Area (SPA) and Ramsar, 5.14 km from the Solent and Southampton Water SPA and Ramsar, 6.79km from the Solent Maritime SAC, 6.83 km from the Chichester and Langston Harbour SPA and Ramsar and 7.43 km from the Solent and wildlife Lagoons SAC. Together these are referred to as the Solent Special Protection Areas (SPAs).

49. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') aims to conserve key habitats and species by creating and maintaining a network of sites known as the Natura 2000 network.

50. Core Strategy Policy CS4 seeks to prevent adverse effects upon sensitive European sites and states that the Council will work with other local authorities (including the Partnership for Urban South Hampshire) to develop and implement a strategic approach to protecting European sites from recreational pressure and development. Development likely to have an individual or cumulative adverse impact will not be permitted unless the necessary mitigation measures have been secured.

51. Policy DSP13 of the Local Plan Part 2 states that development may be permitted where it can be demonstrated that amongst other matters designated sites and sites of nature conservation value, as well as protected and priority species populations and their associated habitats, breeding areas, foraging areas are protected and, where appropriate, enhanced and the proposal would not prejudice or result in the fragmentation of the biodiversity network.

52. Policy DSP15 states that proposals resulting in a net increase in residential units may be permitted where 'in combination' effects of recreation on the SPAs are satisfactorily mitigated through the provision of a financial contribution that is consistent with the approach being taken through the Solent Recreation Mitigation Strategy. Any proposal likely to have a direct effect on a European-designated site, will be required to undergo an individual Appropriate Assessment. This may result in the need for additional site-specific avoidance and/or mitigation measures to be maintained in perpetuity. Where proposals would result in an adverse effect on the integrity of any SPAs, planning permission will be refused.

53. The proposal has the potential to impact on the integrity of the Solent SPAs through recreational disturbance, the deterioration of the water quality, disturbance during construction, and the loss of supporting habitat for brent geese'

Recreational Disturbance

54. The proposed development would increase the population of the local area and in the absence of suitable alternative recreational space, people are likely to visit the Solent SPAs, including Portsmouth Harbour. This increased recreational pressure may lead to disturbance of SPA designation bird species, and therefore, have potential effects on the features of the SPA.

55. The appellant proposes mitigation for this increased recreational disturbance in accordance with Policy NE3. The mitigation includes a financial contribution based on the Bird Solent Aware payment schedule (April 2021), in accordance with the Solent Bird Aware Solent Recreation Mitigation Strategy and secured through the UU. The Strategy details the mitigation measures implemented to minimise the impacts of increased recreational disturbance. The inclusion of public open space within the proposed development would also be likely to significantly reduce the proportion of daily visits away from the Portsmouth Harbour SPA.

Water Quality

56. The waste water from the new development would introduce an additional source of nutrient loading (Total Nitrogen) to the Portsmouth Harbour SPA, Ramsar catchment. There is existing evidence of high levels of nitrogen and

phosphorus in the water environment with evidence of eutrophication at some designated sites.

57. The appellant submitted a nitrogen budget that demonstrates that the development would be nitrogen neutral and that no mitigation is required. Neither the Council, nor Natural England raise any concerns with regard to the submitted nitrogen budget, subject to a condition that secures water use of 110 litres of water per person per day.

58. On the basis of the submitted nitrogen budget I am satisfied that the proposed development would not have an adverse effect on water quality.

Brent Geese

59. Fareham Borough is an internationally important wintering location for brent geese and wading bird species. These areas are dependent on a network of habitats to provide feeding and roosting areas for brent geese and waders (SPA birds) outside of the SPA boundaries. These supporting sites are functionally linked to the SPAs, and adverse impacts to these supporting habitats may affect the integrity of the SPA.

60. The appeal site is identified within the Local Plan as an 'uncertain' site for brent geese and waders. However, the most recent assessment, *the 2020 Solent Waders and Brent Goose Strategy* (SWBGS), categorises the site as a Primary Support Area for the Portsmouth Harbour Special Protection Area (SPA) and Ramsar site. Primary Support Areas are land that, when in suitable management, make an important contribution to the function of the ecological network for Solent waders and brent geese. Such areas are "important" for the purposes of Policy DSP14 and the loss of such a site requires either evidence to demonstrate that there would be no adverse impact on the site, or that appropriate avoidance and/or mitigation measures to address the identified impacts can be secured.

61. The site forms part of Parcel F21 which includes an agricultural field to the south of the appeal site. It is adjoined by a 'low use' site to the west (F22) and a secondary support area to the south west (F05).

62. Parcel F21 would be reduced in size by about 8.1 hectares. The remaining 10 hectares would include a 4.5 ha Bird Conservation Area within the appeal site of which 3.7 ha would be managed to provide optimal foraging habitat for brent geese. The brent goose mitigation habitat would comprise improved grassland specifically managed as foraging habitat for brent geese and would be located at the southern end of the site to ensure that it would be bordered as much as possible by open arable land. The delivery and future maintenance of this area would be secured by the Bird Conservation Area UU.

63. In terms of Primary Support Areas the SWBGS states that where on-site avoidance or mitigation measures are unable to manage impacts, there may be opportunities for the loss or damage to these areas to be off-set by the provision of new sites to ensure a long term protection and enhancement of the wider wader and brent goose ecological network. In this instance it is proposed to provide mitigation on-site. Such mitigation must ensure the continued ecological function of the wader and brent goose sites is maintained and enhanced.

64. Aside from sightings of individual birds by local residents there are no records of brent geese on the appeal site since 2013. Although winter crops were previously cultivated on the site, since 2014 it is ploughed in November and sown with summer crops in March. This regime means that the earth is bare from November until April when the first crops start to appear and therefore the site has not been in suitable management for brent geese since 2014. Therefore, the suitability of the mitigation needs to be assessed against the potential of the land to support brent geese when in suitable management. The last recorded brent geese on the site were in 2012 and 2013 when 300 geese were recorded on the site.

65. Although the *SWBGS - Guidance on Mitigation and Off-setting Requirements* does not set out criteria against which mitigation should be assessed, the remaining land with mitigation in place should fulfil the same special contribution and particular function of the areas lost. I therefore consider that given the significant reduction in the size of the Primary Support Area that the criteria for off-set land within the SWBGS provide a useful guide as to the suitability of the proposed mitigation. These are habitat type; disturbance; area/size of habitat; timing and availability of habitat; and geographic location. These factors are closely related to the concerns raised by Natural England in relation to the appeal scheme, namely the size of the proposed reserve, the loss of openness, restricted sight lines and the close proximity of new development.

66. *Habitat Type* It is proposed to provide 3.7 ha of improved grassland, with the remainder of the Parcel F21 outside of the site remaining in agricultural use. Overall, in comparison with the agricultural use of the site, even when in favourable management, the proposed habitat would represent an enhancement. This enhancement must be balanced against the overall loss of habitat and the ability of the mitigation land to accommodate brent geese at a comparable level to that previously recorded on the site.

67. *Disturbance* At the present time the rear gardens of the dwellings on the south side of Romsey Avenue back on to the appeal site. Anecdotal evidence from the appellant suggests that some residents use the site for recreational purposes. The SWBGS states that buildings within 50 – 500 metres of the support site make it less suitable for brent geese. There are already numerous dwellings within this distance and the proposed development would not make a significant difference in this regard.

68. There is also a potential for greater disturbance from recreational use and unmanaged public access to the public open space on the site and the site to the east. The mitigation proposals include a 2 m high perimeter fence to prevent access to the Bird Conservation Area, as well as a ditch along the length of the fence on the reserve side with a single point of access for maintenance/security. These measures would assist with limiting disturbance. The Bird Conservation Area UU includes provision to transfer the area to the Hampshire and Isle of Wight Wildlife Trust, the RSPB or another body together with a monitoring fee to cover the costs of an annual report for the first 10 years, with provision for additional monitoring every 10 years, in perpetuity, in accordance with the SWBGS Mitigation and Off-setting requirements. On this basis I am satisfied that the proposed measures would remain effective for the lifetime of the development.

69. *Area/Size* The appellant submitted details of other Primary Support Areas or Core Areas[3] nearby that support a similar or greater number of geese and are considered to be comparable in character and size with the proposed Bird Conservation Area.[4] A number of these areas are used as sports facilities and also have urban development close by. They nonetheless continue to support a similar or higher number of brent geese as recorded at the site when it was under suitable management.

70. These sites range in size from 2.92 ha to 5.6 ha and with the exception of G30C all record in excess of 300 brent geese during surveys. The number of birds observed fluctuates annually with 400-500 being typical, but occasions where 900-1,200 birds have been recorded. The sites are generally used as sports pitches or amenity grassland. Some are surrounded by more open land by comparison with the appeal site, but a number are adjoined by residential or commercial development and located adjacent to roads. I viewed these sites at the time of my site visit and with the exception of G30C they are comparable in size to the brent goose foraging area and for the most part have a similar or greater proximity to development as the Bird Conservation Area proposed. Unlike the Bird Conservation Area proposed by the appeal, the primary use of these sites is generally for recreational sporting purposes and not as a dedicated conservation site. G30C differs from the other sites in that it is bisected by a road and the northern part is an area of woodland and therefore the available land is less that the 2.92ha suggested. It is notable that this is the only area that did not record a significant number of brent geese.

71. Timing/Availability of habitat/Geographic location The UU secures the provision of the Bird Conservation Area and requires it to be laid out prior to the commencement of any other development. The site forms part of the Primary Support Area for brent geese and therefore is suitable in terms of location.

72. Overall, I conclude that the proposed mitigation would be consistent with the requirements of the SWBGS Mitigation Strategy, and would, subject to the measures within the Bird Conservation Area UU mitigate the loss of the part of the Primary Support Area and would therefore comply with Policy DSP14.

73. The appellant also submits that the designation of the site as a Primary Support Area is not justified on the basis of the SWBGS which uses a metric methodology to categorise sites. The metrics are based on the survey results which took place over a three-year period from 2016/17. The records were collated along with the previous records from the 2010 Strategy, and supplemented with bird data from Hampshire Ornithological Society, Hampshire & Isle of Wight Wildlife Trust (HIWWT), the Solent Birds Studies bird surveys and Solent Birds Recording App, as well as additional surveys by Hampshire Biodiversity Information Centre surveys for the coastal local authorities.

74. The appeal site has not provided suitable foraging conditions for brent geese since 2014 when due to damage to winter crops due to Canada geese the farmer adopted a new farming regime. The ES confirms that prior to this change there are records of 300 brent geese on the site during 2012 and 2013

[3] Core Areas are considered essential to the continued function of the Solent waders and brent goose ecological network and have the strongest functional-linkage to the designated Solent SPAs in terms of their frequency and continuity of use by SPA features.
[4] Shadow HRA pages 30 -35

when the management involved the management of a winter wheat crop rotation.

75. There is limited information available in relation to these records and the appellant questions the extent to which they can be relied upon. The SWBGS includes a mechanism for the re-classification of support sites, but these require 3 consecutive years of survey to the agreed survey methodology under appropriate habitat management conditions.

76. It is undisputed that the current management regime renders the site unsuitable for brent geese and the appellant states that the land will not return to winter crops. Whilst this may be the intention of the current tenant farmer the situation could change in the future. The loss of this land without mitigation would result in the permanent loss of foraging habitat for brent geese. Whilst the site has not fulfilled this function for a number of years, its loss without either mitigation, or clear evidence that under a suitable management regime it would not provide suitable foraging for brent geese, would be contrary to Policy DSP14 and DSP15 due to the potential effect on the integrity of the SPA.

77. Observations from local residents suggest that the birds may be disturbed by on-going construction noise. It is proposed that the Bird Conservation Area would be provided before construction commences and that a Construction and Environment Management Plan (CEMP) including an Ecological Avoidance and Mitigation During Construction Plan, identifying all sensitive habitats on-site. Notwithstanding this, disturbance during construction may deter some birds from using the site, however, they are a mobile species and the areas they occupy will vary from year to year.

78. Details of a sanctuary for brent geese in Southsea were submitted to the Inquiry. The evidence suggests that the area was not used and was removed for summer months when it is not required by the geese. Brent geese are a mobile species and their failure to use a site each year does not necessarily mean that mitigation is unsuccessful. On the basis of the available information I do not consider that the failure of the brent geese to use the Southsea site has implications for the mitigation proposed by this appeal.

Appropriate Assessment (AA)

79. The Solent Disturbance and Mitigation Project found that a significant effect on the SPA arising from new housing development around the Solent could not be ruled out. Therefore, avoidance and mitigation measures are required for all residential development within 5.6 km of the Solent SPAs to ensure there is no adverse effect on the integrity of the SPAs from the in-combination effects of new housing.

80. The Habitats Regulations (the Regulations) require that if likely significant effects on a European site cannot be excluded, permission may only be granted after having ascertained that it would not affect the integrity of the site either alone or in combination with other plans or projects. If adverse effects on the integrity of the protected site cannot be excluded on the basis of objective scientific evidence, then it must be assumed that they will occur. However, this is an outline application, and my assessment should be proportionate to the amount of evidence before me.

81. The appeal site lies within buffer zone or Zone of Influence for 8 Natura 2000 sites. These sites are recognised for the international importance of the Solent harbours and estuaries for wintering waterbird assemblages, and/or individually important populations of one or more species. Portsmouth Harbour SPA qualifies under Article 4.2 of the Birds Directive for supporting internationally important numbers of wintering dark-bellied brent geese and nationally important numbers of grey plover, dunlin and black-tailed godwit.

82. The proposed development has the potential for the following effects:

- Recreational pressure impacts from the proposals alone or in combination on Solent and Southampton Water SPA and Portsmouth Harbour SPA;
- Potential air quality impacts on Portsmouth Harbour SPA;
- Potential impacts of construction noise disturbance on Portsmouth Harbour SPA and supporting habitat loss impacts on Portsmouth SPA.
- Potential for harm to water quality was screened out due to the submitted nitrogen budget.

83. The conservation objectives for the SPA areas are to ensure that, the integrity of the SPA is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:

- the extent and distribution of the habitats of the qualifying features
- the structure and function of the habitats of the qualifying features
- the supporting processes on which the habitats of the qualifying features rely
- the populations of each of the qualifying features
- the distribution of qualifying features within the site.

84. Four out of ten condition features of the Solent and Southampton Water SPA are in poor condition and/or are currently impacted by anthropogenic activities. The remaining six features are in good condition and not impacted. For the Portsmouth SPA 3 out of the 4 condition features are in good condition, with the remaining one in poor condition.

    As part of the updated ES the appellant submitted a shadow Habitats Regulation Assessment. This was considered by Natural England prior to the Inquiry. Natural England is satisfied in terms of the recreational, air quality and disturbance during construction. I address Natural England's concerns with regard to the loss of supporting habitat below. *Recreational Disturbance*

85. Both the Local Plan and Natural England's condition assessment conclude that, in the absence of mitigation, any new residential development within 5.6 kilometres of the Solent SPA sites is likely to lead to a significant effect on the condition features of the sites through additional recreational disturbance either alone or in-combination.

86. Policy NE3 of the Fareham Borough Local Plan provides a financial mechanism through which the impacts of recreational disturbance from new residential developments can be mitigated. Policy NE3 is implemented through the Solent Bird Aware Solent Recreation Mitigation Strategy. The scale of developer

contributions was updated in April 2021 and the submitted UU makes provision for the appropriate sum.

87. The contribution would be used to fund a team of seven rangers who would engage with visitors, explaining the vulnerability of the birds, and advising people how they can avoid bird disturbance. The aim is to secure behavioural change through awareness raising, including through communications, marketing and education. Monitoring would help confirm that mitigation measures are working as anticipated, and whether refinements or adjustments are necessary. In the longer term, it would establish whether the mitigation strategy is being effective.

88. Natural England is satisfied that the proposed mitigation would be acceptable.

Air Quality

89. There are nine pinch point locations within 5km of the site where additional traffic from the proposed development would travel within 200m of the Solent SPA sites. The sensitive qualifying features of the sites could be exposed to emissions.

90. The changes in the Annual Average Daily Traffic (AADT) for these nine locations were under the threshold AADT for the development alone. However, seven of the locations exceeded the 1000 AADT when assessed cumulatively with other proposed developments.

91. Changes in key pollutants emitted by road traffic that are known to have negative impacts on the natural environment were calculated. The modelled figures show that the critical loads for NH_3 (Airborne ammonia) are not exceeded at any of the pinch points in relation to the qualifying feature species that the SPA is designated for ($3\mu g/m^3$). Therefore there would be no adverse effects on the SPA site arising from increased ammonia associated with the development or in combination with other projects.

92. Critical loads for NOx were exceeded slightly in relation to the qualifying feature species that the SPA is designated for ($30\mu g/m^3$) at two pinch points. These are both located on the main roundabout that links the A27 west out of Portchester, with the A27 running north to south from the M27 with Fareham. This is immediately adjacent to the Portsmouth Harbour SPA at the northern tip of Salterns Lake/Fareham Creek. The habitats within this location of the SPA are largely tidal mudflats. This habitat type is inundated with sea water at least twice every 24 hours. Tidal mudflats are therefore not generally sensitive to increased deposition of airborne pollutants, as they are not able to accumulate.

93. A small section in the north-western part of the creek is not intertidal. In this location the total Predicted Environmental Concentration does not exceed the Critical Level either in combination with other projects.

94. The structure and function of the habitats of qualifying features would not be adversely affected by predicted airborne pollutants or deposition. There would be no significant impact on the qualifying features nor the conservation objectives of the Solent SPA sites through airborne pollution arising from the proposals alone, or in combination with other proposals in the Local Plan.

Construction Phase Noise Impacts

95. The proposed development site is about 200 metres from the closest boundary of the Portsmouth Harbour SPA. During the construction phase of the development, noise levels would significantly increase from the baseline, through groundworks, site preparation and the building phase. The qualifying features of the SPA (specifically brent geese) are sensitive to construction noise within 300 metres of the SPA. Any additional noise created within this zone is likely to disturb or prevent brent geese feeding within the SPA. Similar considerations apply to the proposed brent geese foraging area.

96. Mitigation will be required to limit the short-term impacts of noise generated by construction disturbing SPA bird species. Mitigation measures will be conditioned through a CEMP. This would limit what operations can take place on site during the sensitive period for brent geese and other SPA species. The construction schedule for the site would be configured to restrict disturbance noise level creating operations outside of the sensitive period for SPA birds, between October and February inclusive. A condition is proposed to secure this.

97. With the appropriate mitigation measure applied through a CEMP, there are unlikely to be significant effects from construction noise on the qualifying feature bird species for the Portsmouth Harbour SPA. There would be no effect on the conservation objectives and the integrity of the Solent SPAs would be maintained.

Loss of Supporting SPA Habitat

98. The appeal site is a Primary Support Area for brent geese and waders and when in suitable management has the potential to make an important contribution to the function of the ecological network for Solent waders and brent geese and is functionally important for the integrity of these internationally important sites.

99. Prior to the Inquiry Natural England acknowledged that the proposed bird mitigation land could be successful, but nonetheless consider that there is no certainty that the reserve would replicate the current ecological function of the appeal site due to the combined influence of a number of factors.

100. A number of documents were submitted during the course of the Inquiry including the Bird Conservation Area UU, the Framework Landscape and Environmental Management Plan, the Winter Bird Mitigation Technical Note and the Funding for Bird Conservation Area Proposals.[5]

101. Together these documents outline the design, management and costing of the Bird Conservation Area, the necessary financial contribution, the timing and provision of the Bird Conservation area and its transfer to an appropriate body such as the RSPB or the HIWWT. Subsequent to the Inquiry, these documents were submitted to Natural England for comment.

102. Natural England state that mitigation measures may be acceptable where, together with long term management, the habitat quality in the remainder of the Primary Support Area can be significantly improved so as to provide for a greater capacity for the target species than the original site.

[5] INQ 39,INQ 25 & INQ 26

103. Its current position is that the suitability of the Bird Mitigation Reserve is still uncertain, and it is unable to advise with certainty that the Bird Mitigation Reserve would fulfil or exceed the same special contribution and particular function of the existing Primary Support Area and protect the integrity of the Portsmouth Harbour Special Protection Area.

104. In its present condition the appeal site does not provide suitable foraging for brent geese and has not done so since 2014. The current farming regime does not benefit brent geese, and this seems unlikely to change in the foreseeable future. Notwithstanding this, in the absence of suitable mitigation the permanent loss of part of the Primary Support Area as proposed would have the potential to harm the integrity of the SPA.

105. The proposed development would result in the loss of Solent Wader and Brent Goose habitat. Parcel F21 would be reduced in size by about 8.1 ha, with about 10 ha remaining including the Bird Mitigation Reserve (4.5ha). This would include 3.7 ha of improved grassland specifically managed as a lush sward which is the highest preference forage habitat for brent geese. There would be a central scrape providing a winter source of freshwater. The northern boundary between the development and mitigation area would have a perimeter fence of sufficient height to screen the area from human disturbance. The southern boundary would be retained as is, to maintain permeability between the brent goose reserve and southern field parcel of F21.

106. The mitigation area would be smaller in size than the existing Primary Support Area. The suitability of the grazing for brent geese would be significantly improved. There is clear evidence, based on the comparative sites submitted by the appellant, that in terms of size of the area proposed the Bird Conservation Area has the potential to accommodate a much greater number of birds than were previously recorded at the appeal site. Moreover, this area would form part of the remaining 10 ha Primary Support Area for brent geese. The quality of the habitat would be secured through the Bird Management and Monitoring Plan that would detail the exact specifications for establishment, fencing, management and monitoring of the site in perpetuity. The site would be managed by a conservation body, so the potential to remove suitable grazing habitat for several years, or even in the longer term, would be removed.

107. Unlike the present Primary Support Area, or the sites in the appellant's Shadow HRA, the site would not be subject to dual use or accessible to the public and any consequential disturbance. Unlike these other areas the Bird Conservation Area would be specifically managed to provide a high-quality foraging habitat for brent geese. The mitigation includes measures to screen the area from the effects of human disturbance, and in any event would be no closer to the proposed dwellings by comparison with the existing site. These measures would be secured by the UU. The level of openness would be reduced from the existing due to the proximity of the proposed development, but the area to the south, between the Bird Conservation Area and the SPA would remain unchanged. It would be significantly more open that many of the sites I visited, some of which were enclosed by built development or other urban features on three or more sides.

108. The Bird Mitigation Reserve proposed through the Romsey Avenue development would secure suitable brent goose and wader habitat linked to the

remainder of F21 in perpetuity and would greatly exceed the current ecological function of the appeal site as a Primary Support Area.

109. The appeal proposal would provide suitable habitat that would be secured for the foreseeable future and would be suitably managed and monitored. The proposed mitigation would provide enhanced suitability by preventing disturbance and ensuring the habitat within the site is suitable throughout the winter period in perpetuity. I therefore conclude that subject to the proposed mitigation the scheme would not harm the integrity of the SPA.

110. Taking all of these matters together, I find that there is certainty that the site would be managed for the benefit of brent geese in perpetuity, and that, and it would replicate or exceed the potential ecological function of the existing Primary Support Area in the event that it were to be returned to favourable management conditions for brent geese. I conclude that the proposal would not have an adverse effect on the integrity of the Portsmouth Harbour SPA either alone or in combination with other projects.

Development outside of the settlement boundary

111. The parties agree that due to an absence of a 5 year housing land supply Policy DSP40 is triggered. This states that where it can be demonstrated that the Council does not have a five year supply of land for housing against the requirements of the Core Strategy, additional housing sites, outside the urban area boundary, may be permitted where they meet the specified criteria. There is no dispute between the parties in relation to the first four criterion. These relate to the scale and location of the development, the character of the area and the deliverability of the proposal.

112. The Council submit that the proposal would fail to comply with the fifth criterion since it would give rise to environmental harm due to the adverse effect on the integrity of Europeans sites, harm to on-site ecology and the loss of Best and Most Versatile Agricultural (BMV) and. It also considers that displacement of parking in Beaulieu Avenue and Romsey Avenue would be unacceptable in terms of highway safety and amenity.

113. As set out above the difference between the parties in terms of the impacts on on-site ecology have narrowed significantly since the application was determined. I have found above, that subject to the proposed mitigation the effect of the proposal on on-site biodiversity is acceptable.

114. I also conclude that subject to the mitigation measures secured by the UU the proposal would adequately mitigate the loss of part of the Primary Support Area and avoid harm to the integrity of the SPA. Whilst there would be a loss of BMV land, the Council and the appellant agree that it is a matter to be weighed in the overall balance and would not in itself justify the refusal of planning permission

115. The proposal would not have an adverse impact on highway safety and would perhaps provide some benefits. Whilst the displacement of parking may give rise to some inconvenience at times this would not be at an unacceptable level.

116. I therefore conclude that the proposal would comply with Policy DSP40 as a whole and the principle of the development outside of the settlement boundary is acceptable.

Other Matters

Highway Issues

117. A number of interested parties, including Councillors Nick and Sue Walker, raised concerns about the impact of the proposal on the safety of children walking and cycling to and from school.

118. The Transport Assessment assessed the effect of the proposed development on cyclists and pedestrians during the construction and operational phases. The addendum Transport Assessment included a detailed Pedestrian / Cycle Audit to consider the routes from the site to key destinations. As a consequence, a number of mitigation measures are proposed.

119. The appellant proposes a financial contribution towards improved footway provision along the routes towards Fareham town centre and the railway station and cycle safety improvement schemes at Cornerway Lane roundabout, as well as improvements to footpaths in the vicinity of the site. Other measures include a school travel plan for Wicor Primary School which is a 12-minute walk from the proposed site. Subject to these measures the Highway Authority confirm that the proposed development is acceptable in terms of highway safety and sustainability.

120. I visited the area at the beginning and end of the school day to observe traffic conditions in the vicinity of the Wicor Primary School. As is often the case with primary schools, congestion was greatest at the end of the school day when the immediate vicinity was subject to parking pressure. The proposal would not add significantly to school traffic and with the proposed School Travel Plan to encourage walking and cycling and the proposed mitigation measures I do not consider that the proposed development would have an adverse effect on the safety of children travelling to and from school by foot.

121. I also noted at the time of my visit a considerable number of Secondary School students cycling to and from school. The importance of maintaining a safe cycle route to and from school for these students cannot be under-stated. Whilst there would be a modest increase in the number of overall number of vehicles using Romsey Avenue and Beaulieu Avenue at the beginning and end of the school day, the visibility at the junctions would be improved due to the proposed parking restriction and there would also be a wider carriageway in Beaulieu Avenue and safety improvements for cyclists at Cornerway Lane roundabout. Therefore, having regard to the evidence submitted to the Inquiry I do not consider that the proposed development would have a significant effect on the safety of cyclists in the surrounding area.

122. The Transport Assessment and the Addendum Transport Assessment assessed the operational capacity of a number of junctions within the vicinity of the appeal site. It was agreed that the site access and Romsey Avenue operate with reserve capacity, as does Romsey Avenue and Beaulieu Avenue. The Beaulieu Avenue junction with the A27 would, with the proposed widening works and adjustments to the bellmouth radii, operate within capacity. The Cornerway Lane junction would operate with reserve capacity. The A27 Downend Road signalised junction is forecast to operate with negative practical reserve capacity in future years and the appellant has provided a financial contribution to mitigate against the effects of development. The A27 Delme

Arms roundabout is proposed to be improved and the appellant has agreed a financial contribution towards this improvement.

Housing Land Supply

123. The parties submitted a housing land supply Statement of Common Ground. It is agreed that the Council is unable to demonstrate a five year supply of housing land. Although the parties differ as to the extent of the shortfall, they agree that this matter should be afforded significant weight.

124. The housing requirement falls to be measured against the local housing need figure calculated using the standard method. Together with the Housing Delivery Test results published in February 2021, it is agreed that it is appropriate to apply a 20% buffer to the requirement.[6] This results in a minimum five year requirement of 3,234 dwellings for the five year period 1 January 2021 to 31 December 2025.

125. The Council submits that it has a five year land supply sufficient for 2,310 dwellings. This results in a shortfall of 924 dwellings and a supply of 3.57 years. The Appellant considers the supply to be 600 dwellings. This results in a shortfall of 2,634 dwellings and a supply of only 0.93 years.

126. It is common ground between the Council and Appellant that the Council is not meeting paragraph 59 of the Framework, thus engaging the presumption in favour of sustainable development at paragraph 11(d) of the Framework unless disapplied by virtue of paragraph 177.

127. Whilst the Council and Appellant disagree as to the extent of the shortfall, it is nevertheless agreed, on either position, that the shortfall is considerable and the weight to be attached to the delivery of housing from the Appeal Scheme is significant. Therefore it is not necessary for me to conclude on the precise extent of the shortfall.

128. It was suggested by a local resident that Portchester has already accommodated considerably more than the 57 dwellings indicated within the Core Strategy. Core Strategy policy CS2 states that 3,729 dwellings would be provided within the Borough to meet the South Hampshire sub-regional strategy housing target between 2006 and 2026. The accompanying text suggests that about 57 of these dwellings would be provided within the Portchester area, this position is confirmed by Policy CS11 which expects about 60 dwellings to be provided in Portchester over the plan period.

129. At the date at which the Part 2 Local Plan was adopted there was a residual requirement for 872 dwellings over the remainder of the Plan period from April 2014. Since the adoption of the Core Strategy the National Planning Policy Framework was published in 2012, and the most recent iteration is dated July 2021. Amongst other matters it supports the Government's objective of significantly boosting the supply of homes and requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement. Where (as in the case of Fareham) the strategic policies are more than five years old local housing need should be calculated using the standard method as set out in National Planning Guidance. Where there has

[6] The recently published 2021 Housing Delivery Test results indicate that 62% of the required homes have een delivered over the past three years.

been significant under delivery of housing over the previous three years a buffer of 20% should be applied, to improve the prospect of achieving the planned supply. Accordingly, the current housing need for Fareham considerably exceeds that within the Core Strategy.

Other Issues

130. An interested party referred to an appeal decision in Harrogate[7] that also involved the loss of agricultural land. The Inspector's conclusions turned on a number of other factors, that when taken together did not justify allowing the appeal. The circumstances in this appeal differ from the Harrogate appeal, and whilst the loss of BMV land is a matter to be weighed in the overall planning balance, the parties are in agreement that the loss of such land would not in itself justify dismissing the appeal. Therefore the Harrogate decision does not alter my view above.

131. Each appeal is fact specific. I consider that the circumstances in this appeal differ from the Harrogate appeal in that even on the Council's figures the shortfall is greater than in Harrogate. It would also seem that in the Harrogate case the housing land supply was agreed to be 4.06 years, whereas in the context of this appeal the housing land supply is not agreed. Based on the submitted evidence, is likely to be between 3.57 years and 0.93 years and as such significantly lower than in the Harrogate case. Notwithstanding this, the loss of BMV land is a matter to be weighed in the overall planning balance.

132. A number of local residents referred to the importance of the natural environment in terms of recreation and their well-being. They consider the area to be unique and that the change to the view of the site would adversely impact on their well-being. Reference was also made to policies within the Framework, including the definitions of open space, Heritage Coast and Green Infrastructure.

133. The appeal site does not come within the definition of open space or Heritage Coast and there would be no loss of public open space. The proposal makes provision for green infrastructure in terms of the Bird Conservation Area and Public Open Space. The UU includes provision for open space, a neighbourhood equipped area of play (NEAP) and maintenance contributions. It also includes contributions towards the improvement of public footpaths and the Wicor Countryside Service.

134. The proposal would therefore accord with paragraph 92 of the Framework in so far as the layout would encourage walking and cycling.

School Places

135. Residents advise that there is a shortage of primary school places within the area. Hampshire County Council Children Service Department confirm that Wicor Primary School is full. The UU includes an education contribution calculated in accordance with the Council's formula for the provision of additional infrastructure at Wicor Primary School. This would mitigate the effect of the proposed dwellings on the primary education within the area.

AFC Portchester

[7] APP/E2734/W/16/3160792

136. Local residents are concerned that if the appeal is allowed that the activities of Portchester AFC may be limited due to disturbance to new residents from noise. Evidence presented to the Inquiry indicates that social activities at the Club continue until 01:00 or later, and whilst existing residents may be tolerant of this, new residents may not be.

137. The clubhouse may also be used by other local sporting teams for evening meetings on weekdays. Together the lease and planning permission provide that the clubhouse shall not be let or hired out for use for private social functions or used outside of 09:00-23:00 Monday-Sunday. There are also requirements prohibiting nuisance to neighbours. Although there have been some complaints in recent years these have been low in number and would seem to be isolated incidents. The closest of the proposed dwellings would be a similar distance from the Club to the existing dwelling at Cranleigh Avenue. Therefore provided the Club complies with the terms of the lease and planning permission it should not give rise to any undue disturbance to future residents. Accordingly, subject to suitable acoustic mitigation the proposed development would not restrict the operation of the club.

Drainage

138. Dr Farrell, an interested party, submitted that visible algal mats indicate that the substrate beneath the top soils indicate that the soil has been saturated for a long period of time and may be unsuited to infiltration.

139. Dr Farrell believes that infiltration rates would be greatly reduced or eliminated if the water table was close to the surface and therefore total reliance upon soakaways on land known to remain saturated over the winter months is unsound, as the water table is likely to be close to the surface rendering the soakaways inoperable. For this reason, he considers the drainage plan to be unsound.

140. The soil investigations were carried out at an appropriate time of year and did not encounter groundwater within any of the twelve trial holes or in the updated 2019 infiltration testing. In order to satisfy the Lead Local Flood Authority (LLFA) the appellant undertook further infiltration tests. The updated report concluded that "given the observed infiltration over the test period, it is considered that some areas of the site would be suitable for the adoption of surface water soakaway systems". The LLFA was satisfied with this conclusion.

141. As explained in the appellant's technical note the algal mats referred to by Dr Farrell could be the result of compaction associated with the current farming activity on the existing soils.

142. Although the most recent infiltration testing was undertaken in May, the original testing was undertaken in January and February when no groundwater was encountered in trial pits at depths in excess of 2.5 metres. The suitability of the site for a drainage strategy based on infiltration was a specific concern of the LLFA. On the basis of additional information submitted in June 2021 the LLFA was satisfied in this matter and withdrew its objection.

143. I am satisfied that this matter has been considered in detail by the LLFA and it is satisfied with the proposed strategy. Taking account of all of the available information I have no reason to conclude otherwise.

Unilateral Undertakings

144. As set out above the appellant submitted two Unilateral Undertakings. The Framework states that planning obligations must only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. I shall consider the main UU first, followed by the Bird Conservation Area UU in the context of the guidance in the Framework, PPG and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The UU includes a mechanism (sometimes known as a 'blue pencil' clause) at 3.3 which provides that should the decision-maker conclude that any of the obligations do not pass the statutory tests such obligations shall have no effect and consequently the owner and/or other covenanters shall not have liability for payment or performance of that obligation.

145. Schedule One undertakes to provide 40% of the dwellings as affordable housing in accordance with a mix that has been agreed with the Council. The provision of affordable housing accords with Core Strategy Policy CS18. The Council's Affordable Housing Strategy (2019-36) states that there is a current need for around 3,000 affordable homes in the Borough, with around 1,000 households on the waiting list. I conclude that the affordable housing obligations meet the tests within the Framework.

146. Schedule Two includes obligations in relation to the provision of open space. It requires the provision of open space in accordance with the Council's minimum requirements and the payment of an open space maintenance contribution. It also requires the provision of a Neighbourhood Equipped Area for Play (NEAP) to be provided and transferred to the Council, or the transfer of land for the NEAP together with the NEAP contribution to allow the Council to layout and equip the NEAP. There is also a requirement for a NEAP maintenance contribution.

147. The provision of open space is necessary to comply with policy CS21 and to meet the recreational needs of the proposed development.

148. Schedule Three concerns environmental and habitat obligations. It requires the payment of the Bird Aware Solent contribution which is necessary to mitigate the recreational pressure arising from future residents on the Solent SPA. It is necessary to make the development acceptable and maintain the integrity of the SPA. It is also directly related to the development and fairly and reasonably related in scale and kind.

149. Schedule Four undertakes to make a financial contribution towards Primary Education. Wicor Primary School is at capacity and the contribution would be used to provide additional infrastructure at the school, including a School Travel Plan to meet the educational needs of the development. Therefore the contribution is necessary to make the development acceptable and I am satisfied that it is fairly and reasonably related in scale and kind.

150. Schedule Five relates to Countryside Services. It covenants to make a financial contribution towards re-surfacing footpaths 110 and 111a. It also includes a financial contribution towards the Wicor Countryside Service. The contributions are necessary to mitigate the increased use of the footpaths and country service by future residents. These contributions are directly related to the development and fairly and reasonably related in scale and kind.

151. Schedule Six includes a number of highway obligations. These include financial contributions towards highway improvements in the vicinity of Delme roundabout, Downend Road/A27, Cornerway Lane Roundabout cycle improvements, footway widening in the vicinity of the site, walking audit measures and a school travel plan. It also includes a contribution towards the Traffic Regulation Order for Beaulieu Avenue and Romsey Avenue and a Travel Plan and monitoring contribution.

152. The need for these measures were identified in the Transport Assessment and the Transport Assessment Addendum. They are necessary to make the development acceptable and fairly and reasonably related in scale and kind.

Bird Conservation UU

153. This requires the provision of the Bird Conservation Area and its future management. It requires the owners and the appellant to use their best endeavours to transfer the Bird Conservation Area to Hampshire and the Isle of Wight Wildlife Trust or the RSPB to be managed and maintained in accordance with the Bird Conservation Area Scheme. It also requires the Bird Conservation Area Commuted Sum to be paid to the management Company or the party that the Bird Conservation Area is transferred to, as well as a Bird Conservation Area monitoring fee. For the reasons discussed above these obligations would meet the tests with the Framework and the statutory tests.

Conditions

154. I have assessed the suggested conditions in light of the tests set out at paragraphs 55 and 56 of the Framework and the advice in the PPG. The reserved matters need to be submitted for approval. In some instances I have adjusted the suggested wording in the interests of precision. Given the urgent need for housing within the District the timeframe for the submission of reserved matters and commencement of development have been reduced to 12 months. in each case. In order to provide certainty in respect of the matters that would not be reserved for future consideration, a condition requiring the development to be carried out in accordance with the approved plans is necessary.

155. Although a drainage strategy has been submitted and the LLFA consider it to be acceptable in principle the application is in outline and further details are necessary. An assessment of the risks from any contamination on the site is necessary in order to safeguard human health and the environment, as well as a condition in the event that any unexpected contamination is encountered.

156. Details of finished floor levels are necessary in order to safeguard the amenity of surrounding residents and ensure that the development would harmonise with its context. In order to ensure that the living conditions of future occupants would not be unacceptably affected by noise from AFC Portchester, a noise survey in relation to noise emanating from AFC Portchester is necessary, together with details of any required noise mitigation measures.

157. A Construction Environmental Management Plan (CEMP) is necessary in order to safeguard the amenities of surrounding residents and minimise any harm to biodiversity. Although the condition references the Framework Construction Environmental Management Plan, it includes measures in relation to biodiversity on-site and I am satisfied that it would assist with informing the

CEMP. Due to the proximity of the site close to the Portsmouth Harbour SPA and the mitigation to be provided for the brent geese I agree that a programme of construction is necessary to avoid an adverse impact on the species that use the SPA. At the Inquiry the appellant confirmed that the proposed condition was acceptable. An Ecological Design Strategy in respect of the public open space and the boundary hedges is necessary in the interests of biodiversity. In the interest of safeguarding the ecological value of the site in the longer term, including the habitat for brent geese and other species, a Landscape Environmental Management Plan is also required.

158. Details of the Bird Conservation Area and the Bird Conservation Area monitoring scheme are necessary to ensure that the mitigation proposals for brent geese are satisfactory. The implementation of these measures are secured by the UU.

159. In the interests of sustainability an electric vehicle charging strategy is required. A condition to limit water consumption per resident per day would be necessary in the interests of biodiversity and sustainability. In order to safeguard residential amenity the hours of construction should be limited.

160. A lighting design strategy is necessary in the interests of biodiversity. The Council also suggested a condition requiring a review of the ecological measures secured through conditions in relation the conditions in relation to the programme of construction (condition 11), the LEMP (condition 13) and the formation and layout of the Bird Conservation Area (condition 14) should works not commence within 2 years of the date of this decision.[8] In summary the condition would require updated ecological surveys and the identification of any new ecological impacts.

161. Although the reserved matters need to be submitted within a year of this decision, it may take time for them to be approved, as such the suggested condition could require the measures secured by the relevant conditions to be reviewed a short time after they have been discharged. Condition 11 simply restricts construction work during winter months to safeguard the SPA. I can see no justification as to why the passage of time would require updated ecological surveys in relation to this matter. The LEMP set out management objectives for the site including areas of habitat creation and on-going ecological assessments. Whilst badgers are a mobile species and their distribution across the site may change prior to the commencement of works they are protected under the Protection of Badgers Act 1992, this makes it illegal to kill, injure or take a live badger or to interfere with badger setts. Any such activities would require a licence from Natural England. I therefore do not consider the suggested condition to be necessary, and consider that it could introduce uncertainty and delay in terms of ecological mitigation, I have therefore not imposed it.

162. Since I have decided to grant permission contrary to the advice of Natural England I have included a condition that prohibits commencement of development from 21 days of the date of that decision.

[8] These are condition 9, 11 and 12 on the schedule submitted by the Council (INQ 27)

Planning Balance

163. I have found above that the proposal would not be harmful to highway safety or have a significant effect on amenity due to parking displacement. The proposed development would provide satisfactory mitigation in relation to on-site biodiversity. Subject to the mitigation measures proposed in terms of the Bird Conservation Area and the financial contribution to mitigate the recreational impacts on the Solent SPAs, the proposal would not harm the integrity of the SPAs.

164. The appeal site is situated in a sustainable location with access to a range of facilities by walking and cycling. The Council has a significant shortfall in housing land supply and a pressing need for affordable housing. The proposed development would contribute towards meeting this need thereby contributing to the social aspect of sustainability.

165. There would be some harm arising from the loss of BMV agricultural land, however, as agreed by the parties the loss of this land would not in itself warrant refusal of planning permission. I therefore find that the proposal would comply with Policy DSP40, and the development plan as a whole.

Conclusion

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

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

FOR THE APPELLANT:

Christopher Boyle QC
He called

David Wiseman BA(Hons), MRTPI	Stuart Michael Associates(Highways)
Adam Day BSc(Hons), MSc ACIEEM	Fpcr Environment and Design (On-Site Ecology)
Paul Whitby BSc(Hons), CIEEM	The Ecology Co-op (European Sites)
Tim Wood	Stuart Michael Associates (Drainage)
Nigel Burton	Temple Group (Noise)
Steven Brown BSc(Hons) DipTP MRTPI	Wolf Bond Planning

FOR THE LOCAL PLANNING AUTHORITY:
Ned Helme of Counsel
He called

Alec Philpott BEng MCIHT	Mayer Brown (Highways)
Nicholas Sibbett CEcol CMLI CEnv MCIEEM	The Landscape Partnership (Ecology)
Mark Sennitt MRTPI	Paris Smith (Planning)

INTERESTED PARTIES:

Councillor Nick Walker
Councillor Sue Walker
Councillor Roger Price
Fareham Society
Carol Puddicome
Dr Farrell
Gillian Marshall
Melanie Hefford
Mike Towson
Simon Brown
Claire Martin
Darren Jones

DOCUMENTS SUBMITTED AT THE INQUIRY

INQ 1 - Opening Submissions on behalf of the Council
INQ 2 - Opening Submission on behalf of the Appellant
INQ 3 - Submission from Robert Tutton
INQ 4 - Submission from Carol Puddicome
INQ 5 - Submission from Cllr Nick Walker and Cllr Sue Walker
INQ 6 - Submission from Dr Farrell
INQ 7a - Submission from Gillian Marshall
INQ 7b - Submission from Gillian Marshall
INQ 8 - Submission from Mel Hefford
INQ 9a - Submission from Mr M Towson
INQ 9b - Submission from Mr M Towson
INQ 9c - Submission from Mr M Towson
INQ 10a - Submission from Mr Simon Brown
INQ 10b - Submission from Mr Simon Brown
INQ 10c - Submission from Mr Simon Brown
INQ 10d - Submission from Mr Simon Brown
INQ 10e - Submission from Mr Simon Brown
INQ 10f - Submission from Mr Simon Brown
INQ 10g - Submission from Mr Simon Brown
INQ 10h - Submission from Mr Simon Brown
INQ 11 - Existing Local Off Street Parking
INQ 12 - Site Plan distance mark up
INQ 13 - Newgate Lane East Appeal Decision
INQ 14a - SMA Table 1 - Adjusted Parking Displacement
INQ 14b - Table 2 - MB Scenario 1 Parking displacement
INQ 14c - Table 3 - MB Scenario 2 Parking displacement
INQ 14d - Table 4 - MB Scenario 3 Parking displacement
INQ 15 - Submission from Claire Martin
INQ 16 - AFC Portchester Lease
INQ 17 - AFC Portchester Licence
INQ 18 - AFC Portchester Planning Permission P_10_0453_FP (relating to use of clubhouse)
INQ 19 - AFC Portchester Planning Permission P_12_0463_FP (relating to use of clubhouse)
INQ 20 - AFC Portchester Noise Complaints to FBC
INQ 21 - Submission from Mr Towson. Brent geese refuge on Castle Field, Southsea
INQ 22 - Final Submission from Dr Farrell
INQ 23 - Technical Note - Drainage
INQ 24 - Acoustic Review of Additional Information Re. AFC Portchester - Technical Note - 17.08.21
INQ 25 - Bird Mitigation Tech Note – 17.08.21
INQ 26 - Foreman Bird Conservation Area Note – 17.08.21
INQ 27 - Suggested Draft Conditions – 17.08.21
INQ 28 - Email chain
INQ 28a - S106 - UU (17.08.21)
INQ 29 – Reply to Inspector on S106 points
INQ 30 – Section 106 Unilateral Undertaking – Main – Final Draft 18.08.21
INQ 31 – Section 106 Unilateral Undertaking – Bird Conservation Area – Final Draft 18.08.21
INQ 32 - Comments from Mr Daren Jones

INQ 33 - Response to S106-UU queries by The Council
INQ 33a - Appendix A - HCC Cabinet Decision Report 29.09.2020 - Major Develop & Infrastructure Funding (s.106 Monitoring)
INQ 33b - Appendix B - Plan showing proximity of public rights of way network
INQ 34 - Romsey Ave - Suggested Site Visit Itinerary – 18.08.21
INQ 35 - Developer Contribution Guidance Document August 2018
INQ 36 - WoolfBond Romsey Ave Costs
INQ 37 - FINAL FBC Response to Costs App Romsey Avenue Inquiry
INQ 38 - S106-MAIN UU FINAL VERSION 19.08.21
INQ 38a - Main UU Plan 1
INQ 38b - Main UU Plan 2
INQ 38c - 5611.025C - Proposed Access Arrangements Offsite Junction Footway Cycleway and Parking Improvements
INQ 38d - 5611.002D - Proposed Site Access
INQ 39 - S106- Bird Conservation Area UU Final 19.08.21
INQ 39a -Bird Conservation Area UU Plan 1
INQ 39b - Bird Conservation Area UU Plan 2
INQ 39c - Bird Conservation Area UU Plan 3
INQ 40 - Email chain
INQ 41 - E21837 Portchester Ecology note for inspector 19.08.21
INQ 42 - WoolfBond Romsey Ave Costs Reply
INQ 43 - WoolfBond Romsey Ave Closing
INQ 44 - FINAL Closing Submissions for FBC in Romsey Avenue Inquiry

DOCUMENTS SUBMITTED FOLLOWING THE INQUIRY

INQ 45 - Email dated 13 January 2022 from Natural England commenting on additional evidence submitted during the Inquiry

Schedule of Conditions
Appeal Ref: APP/A1720/W/21/3271412

1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 1 year from the date of this permission.

3) The development hereby permitted shall be begun before the expiration of two years from the date of this permission, or before the expiration of one year from the date of the approval of the last of the reserved matters to be approved, whichever is later.

4) The development hereby permitted shall be carried out in accordance with the following approved plans:
   (i) Site Location Plan No. 16.140.01C
   (ii) Site Areas Plan No. 16.140.28
   (iii) Proposed Access Drawing No. 5611.002D (included in the Transport Addendum (Oct 2019))
   (iv) Highway Works Plan No. 5611.025C (included in the Transport Addendum (Oct 2019)).

5) No development hereby permitted shall commence until a detailed surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be based on the principles set out within the Updated Surface Water Drainage Technical Note dated 26/5/21 and shall include:
   a) A technical summary highlighting any changes to the design from that within the approved documentation.
   b) Infiltration test results undertaken in accordance with BRE365 and providing a representative assessment of those locations where infiltration features are proposed once further plot specific details are submitted.
   c) Detailed drainage plans to include type, layout and dimensions of drainage features including references to link to the drainage calculations.
   d) Detailed drainage calculations to demonstrate existing runoff rates are not exceeded and there is sufficient attenuation for storm events up to and including 1:100 + climate change.
   e) Evidence that urban creep has been included within the calculations.
   f) Confirmation that sufficient water quality measures have been included to satisfy the methodology in the Ciria SuDS Manual C753.
   g) Exceedance plans demonstrating the flow paths and areas of ponding in the event of blockages or storms exceeding design criteria.
   h) A timetable for its implementation.
   i) A management and maintenance plan for the lifetime of the development.

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

6) No development shall commence until an intrusive site investigation and risk assessment has been carried out, including an assessment of the risks posed

to human health, the building fabric and the wider environment such as water resources. Where the site investigation and risk assessment reveal a risk to receptors, a detailed scheme for remedial works to address these risks and ensure the site is suitable for the proposed shall be submitted to and approved in writing by the local planning authority.
The development shall be implemented in accordance with the approved scheme.

7) The presence of any unsuspected contamination that becomes evident during the development of the site shall be immediately reported to the local planning authority. This shall be investigated to assess the risks to human health and the wider environment and a remediation scheme shall be submitted to and approved in writing the local planning authority. The approved remediation works shall be fully implemented before the permitted development is first occupied or brought into use.

On completion of the remediation works and prior to the occupation of any properties on the development, the developers and/or their approved agent shall confirm in writing that the works have been completed in full and in accordance with the approved scheme.

8) No development hereby permitted shall commence until details of the internal finished floor levels of all the proposed buildings and finished external ground levels in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved by the Local Planning Authority in writing. The development shall be carried out in accordance with the approved details.

9) The reserved matters submitted pursuant condition 1 shall include the findings of a noise survey that captures noise levels from the current activities at AFC Portchester. If required by the survey findings, or as may be required by the local planning authority, the reserved matters shall include a scheme of noise mitigation to achieve an appropriate internal and external noise levels at the proposed dwellings in line with BS8233: 2014. Any mitigation measures shall be implemented prior to the first occupation of the dwellings.

10) No development shall take place (including ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall follow the principles of the Framework Construction Traffic Environmental Plan prepared by Stuart Michael Associates (Issue 2 dated June 2021) to include, but not limited to the following:

a) The parking of vehicles of site operatives and visitors.
b) Loading and unloading of plant and materials.
c) The routing of lorries in accordance with Plan No. 6729.002.
d) Storage of plant and materials used in the construction of the development.
e) Measures to control the emission of dust and dirt during construction.
f) A risk assessment of potentially damaging construction activities.
g) identification of "biodiversity protection zones.

h) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements) including in relation to the protection of badgers.
i) the location and timing of sensitive works to avoid harm to biodiversity features including nesting birds.
j) the times during construction when specialist ecologists need to be present on site to oversee works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

11) No development shall take place until a programme of construction, including the restriction of construction works in the period of October to February in the following year (to avoid the sensitive period for birds of Portsmouth Harbour SPA), has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved programme of construction and no restricted construction works as identified in the approved programme shall be carried out in the period of October to February.

12) No development shall take place until an Ecological Design Strategy (EDS) addressing the Public Open Space and boundary hedgerows has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following:
a) A description and evaluation of ecological features to be retained, created and managed such as hedgerows, attenuation ponds and trees.
b) A planting scheme for the ecology mitigation and enhancement areas.
c) Purpose and conservation objectives for the proposed works.
d) Review of site potential and constraints.
e) Detailed design(s) and/or working method(s) to achieve stated objectives.
f) Extent and location/area of proposed works on appropriate scale maps and plans.
g) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
h) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
i) Persons responsible for implementing the works.
j) Details of initial after-care and long-term maintenance.
k) Details for monitoring and remedial measures.
l) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details including the timetable for implementation and all features shall be retained in that manner thereafter.

13) No development shall take place until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall follow the principles of the Framework Landscape & Ecological Specification and

Management Plan prepared by FPCR (July 2021) to include, but not be limited to:

a) A planting scheme for ecology mitigation and enhancement areas.
b) A work schedule (including an annual work plan).
c) The aims and objectives of landscape and ecological management and appropriate management options for achieving the stated aims and objectives.
d) Details of the persons, body or organisation responsible for implementation of the plan.
e) Details of a scheme for ongoing monitoring and remedial measures where appropriate.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

14) No reserved matters pursuant to condition 1 shall be submitted until a scheme of works to include the means for the formation, laying out and provision of the Bird Conservation Area (the "Bird Conservation Area Scheme"), has been submitted to the local planning authority. The submitted scheme must include, but shall not be limited to: -

- the design and layout of the Bird Conservation Area;
- the areas of wetland creation to provide shallow water conditions within the Bird Conservation Area;
- the boundary fencing, hedgerow planting and ditches to be provided within the Bird Conservation Area;
- the signage and educational interpretation boards to be provided within the Bird Conservation Area;
- the pond to be created in the Bird Conservation Area to provide suitable breeding and foraging opportunities for amphibians and reptile species; and
- a costed plan detailing how the Bird Conservation Area will be managed and maintained for the lifetime of the Development in accordance with the Bird Conservation Area Monitoring Scheme.

No development shall take place until the submitted Bird Conservation Area Scheme has been approved in writing by the local planning authority.

15) No reserved matters pursuant to condition 1 shall be submitted until a scheme detailing how the Bird Conservation Area will be monitored (the "Bird Conservation Area Monitoring Scheme") including a system of reporting to the Borough Council to record the details of such monitoring has been submitted to the local planning authority. Unless otherwise agreed with the Council the scheme shall follow the principles of the Brent Goose Mitigation Area and Bird Reserve Proposal (Lindsay Carrington Ecological Services) (Aug 2020) and the principles of the Framework Landscape & Ecological Specification and Management Plan prepared by FPCR (July 2021) to include, but not limited to, the following:

- Monthly monitoring visits of the Bird Conservation Area by a suitably qualified professional from October – March (inclusive) with such visits being undertaken within 2 hours of high tide.
- At least monthly inspection of the boundary fences at the Bird Conservation Area.
- Annual review meetings with the Borough Council to review the effectiveness of the Bird Conservation Area Monitoring Scheme and to allow any necessary revisions to ensure effectiveness; and
- Provision for the monitoring of newly created habitats to ensure long-term effectiveness for biodiversity mitigation and enhancement as stipulated in section 6 of the Framework Landscape & Ecological Specification and Management Plan(July 2021).

No development shall take place until the submitted Bird Conservation Area Monitoring Scheme has been approved in writing by the local planning authority.

16) No development hereby permitted shall proceed beyond damp proof course level until an Electric Vehicle Charging Strategy has been submitted to and approved by the local planning authority in writing. The strategy shall identify the nature, form and location of electric vehicle charging points that will be provided, including the level of provision for each of the dwellings hereby approved and the specification of the charging points to be provided. The development shall be carried out in accordance with the approved details.

17) No dwelling hereby permitted shall be occupied until details of water efficiency measures have been submitted to and approved in writing by the local planning authority. These water efficiency measures should be designed to ensure potable water consumption does not exceed a maximum of 110L per person per day. The development shall be implemented in accordance with the approved details.

18) No work relating to the construction of any development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 08:00 or after 18:00 hours Monday to Friday, before the hours of 08:00 or after 13:00 on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.

19) No dwelling hereby permitted shall be occupied until a lighting design strategy for biodiversity has been submitted to and approved in writing by the local planning authority. The strategy shall:

a) identify those areas/features on site to which bats, brent geese and waders are particularly sensitive and that are likely to cause disturbance in or around their breeding sites and resting places, or along important routes used to reach key areas of their territory, for example, for foraging, and;

b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or

prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved strategy, and these shall be maintained thereafter at all times in accordance with the approved strategy.

Unless expressly authorised under the approved strategy, no external lighting shall be installed on the development site unless otherwise first agreed in writing by the local planning authority.

20) The development hereby permitted shall not be commenced for a period of at least 21 days from the date of this decision.

Appendix 15 – Schedule of sustainably located sites controlled by Foreman Homes.

Site Name	SHELAA Ref. (DS004)	Emerging Local Plan Status	Emerging Local Plan Details	Site status at 17 Feb 2022 and further information
Land to the east of Brook Lane (Part of Land North and South of Greenaway Lane, Warsash)	3164	Draft allocation: Policy HA1	Total allocation of 824 homes (33.43 ha)	SHLAA yield 180 dwellings (6.78ha). Outline application (P/17/0845/OA) for up to 180 dwellings submitted 17th July 2017. Resolution to grant.
Land north of Greenaway Lane (Part of Land North and South of Greenaway Lane, Warsash)	3240	Draft allocation: Policy HA1	Total allocation of 824 dwellings (33.43 ha)	SHLAA yield 6 dwellings (0.64ha). Outline planning application (P/20/0730/OA) for 6 x self-build dwellings submitted 16th July 2020. Pending Council decision.
Land west of Lockswood Road (Part of Land North and South of Greenaway Lane, Warsash)	3162	Draft allocation: Policy HA1	Total allocation of 824 dwellings (33.43 ha)	SHLAA yield 62 dwellings (3.44ha). Outline planning application (P/18/0590/OA) for up to 62 dwellings submitted 31st May 2018. Pending Council decision.
Land at Rookery Avenue, Whiteley	1168	Draft allocation: Policy HA27	Allocation for 32 dwellings and 1,800m^2 employment (2.29ha)	SHLAA yield 32 dwellings and 1,800m^2 employment (2.29ha). Detailed application (P/19/0870/FUL) for 32 dwellings submitted 14th August 2019. Pending Council decision.
Land north of Military Road, Wallington	3035	Draft Allocation: Policy E4b	Allocation for 4,750m^2 employment (1.23ha)	SHLAA yield 4,750m^2 employment (1.23ha). Outline application (P/20/0636/OA) for up to 22 units for employment use submitted 29th June 2020. Pending Council decision.
Land at Standard Way, Wallington	20	Draft allocation: Policy E4d	Allocation for 2,000m^2 employment (0.6ha)	SHLAA yield 2,000m^2 employment (0.6ha). Outline application (P/19/0169/OA) for up to 2,000m^2 employment floorspace submitted 11th February 2019. Pending Council decision.
Land east of Cartwright Drive, Titchfield	3184	Omission site	N/A	SHLAA yield 209 dwellings (11.61ha). Outline application (P/21/1707/OA) for 49 dwellings submitted 15th October 2021. Pending Council decision.
Land east of Titchfield Road, Titchfield	3059	Omission site	N/A	SHLAA yield 720 dwellings (360.1ha). No planning applications.

Site Name	SHELAA Ref. (DS004)	Emerging Local Plan Status	Emerging Local Plan Details	Site status at 17 Feb 2022 and further information
Land east of Posbrook Lane and south of Bellfield, Titchfield	11	Omission site	N/A	SHLAA yield 60 dwellings (3.39ha). Outline application for up to 57 dwellings submitted 5th November 2019. Appeal submitted against non-determination (PINS Ref: APP/A1720/W/20/3254389). Appeal decision pending.
Land south of Romsey Avenue, Fareham	207	Omission site	N/A	SHLAA yield 225 dwellings (12.71ha). Outline application for 225 dwellings submitted 20th August 2018. Refused 21st September 2020. Appeal allowed (APP/A1720/W/21/3271412) 28th January 2022.
Land west of Military Road, Wallington	27	Omission site	N/A	SHLAA yield 22 dwellings (2.17ha). Outline application (P/19/0130/OA) submitted 6th February 2019 for up to 26 custom and self-build dwellings. Pending Council decision.
Land north Wallington and Standard Way	324	Omission site	N/A	SHLAA yield 21 dwellings (0.87ha). Outline planning application (P/19/0894/OA) for up to 29 dwellings submitted 19th August 2019. Pending Council decision