



## Appeal Decision

Inquiry held on 25 April 2017

Site visit made on 27 April 2017

by **S R G Baird BA(Hons) MRTPI**

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

**Decision date: 14 August 2017**

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**Appeal Ref: APP/A1720/W/16/3156344**

**Land north of Cranleigh Road and west of Wicor Primary School,  
Portchester, Fareham, Hampshire**

- 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 Persimmon Homes South Coast against the decision of Fareham Borough Council.
  - The application Ref P/15/0260/OA, dated 17 March 2015, was refused by notice dated 24 March 2016.
  - The development proposed is residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 120 dwellings together with a new vehicle access from Cranleigh Road, public open space including a locally equipped area of play, pedestrian links to the public open space, surface water drainage and landscaping on land north of Cranleigh Road and west of Wicor Primary School, Portchester, Fareham, Hampshire in accordance with the terms of the application, Ref P/15/0260/OA, dated 17 March 2015, subject to the conditions contained at Annex A of this decision.

### Preliminary Matters

2. The application was made in outline with all matters other than means of access reserved. The appellant and the local planning authority (lpa) confirmed that the drawings that comprise the planning application are Drawing Nos. LOC 1 Rev D – Location Plan and J-D1708.00 - Site Access Layout and Highway Improvements. The application plans are supported by 2 Illustrative Plans; Drawing Nos. 01 Rev W- Illustrative Site Plan and 2498-SK-04 Rev P3 – Indicative Landscape Strategy.
  3. The appellant has submitted a signed S106 Unilateral Undertaking (UU) providing for financial contributions towards: (a) mitigation in accordance with the Interim Solent Recreation Mitigation Partnership and (b) the approval and monitoring of a Travel Plan. In addition, the UU provides for the laying out of the public open space and that 40% of the dwellings would be affordable housing units.
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4. An application for an award of costs was made by Persimmon Homes South Coast against Fareham Borough Council. This application is the subject of a separate Decision.
5. Following the close of the inquiry, the Supreme Court issued a judgement<sup>1</sup> concerning the interpretation of paragraph 49 of the National Planning Policy Framework (Framework) and its relationship with Framework paragraph 14. The parties were given an opportunity to comment on the implications of this judgement for their cases. I have taken the judgement and the parties' comments into account in coming to my decision.

### **Main Issues**

6. These are:
  - (i.) whether the lpa can demonstrate a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land supply (HLS);
  - (ii.) the effect on the supply of Best and Most Versatile (B&MV) agricultural land; and
  - (iii.) the effect on the character and appearance of the area.

### **Reasons**

7. The development plan for the area includes the Core Strategy (CS) adopted in August 2011, the Local Plan Part 2: Development Sites and Policies adopted in June 2015 (LP2) and the Local Plan Part 3: The Welbourne Plan adopted in June 2015 (LP3). The lpa has commenced a Local Plan Review (LPR). It is anticipated that a draft Local Plan will be published for consultation in September 2017.

#### Issue 1 - Housing Land Supply

8. Framework paragraph 47 seeks to boost significantly the supply of housing. Lpas are enjoined to ensure that Local Plans meet the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. Lpas are to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing land against their housing requirements with an additional buffer of 5% or 20% where there has been a record of persistent under delivery of housing.
9. Here, the lpa's 5-year HLS calculation is based on the requirements of the CS, in particular Policy CS2, adopted in 2011. The CS has a plan period running from 2006 to 2026 and was produced in the context of the no longer extant regional strategy (The South-East Plan) and the then emerging South Hampshire Strategy (SHS), a non-statutory sub-regional plan produced by a consortium of several lpas.
10. Given the CS was adopted several months before the publication of the Framework and the CS housing requirement is largely based on the regional

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<sup>1</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).

strategy it is not a Framework compliant OAN. Although LPs 2 and 3 post-date the Framework, neither plan undertakes the identification of an OAN.

11. Given the above, and in light of the Navigator appeal decision<sup>2</sup>, the appellant submits that the starting point for calculating the HLS position should be based on the April 2016 Objectively Assessed Housing Need Update produced for the PUSH<sup>3</sup> authorities and the June 2016 PUSH Spatial Position Update. Both studies identify an OAN for Fareham that is materially higher than the CS housing requirement. The Ipa's position is that as LPs 2 and 3 have been found sound, and in light of PPG and Ministerial guidance on the use of SHMAs the housing requirement used to calculate the HLS is that contained in the CS. The Ipa's position is that until the LPR has been the subject of consultation, examination and adoption it is premature to use the PUSH OAN as the Borough's housing requirement.
12. PPG<sup>4</sup> advises that housing requirement figures in an up-to-date, adopted LP should be used as the starting point for calculating the 5-year HLS. PPG advises that considerable weight should be attached to the housing requirement figures in adopted LPs, which have successfully passed through the examination process, unless significant new evidence comes to light. However, PPG notes that evidence that dates back several years, such as that drawn from revoked regional strategies may not adequately reflect current needs. Thus, where evidence in a LP has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs i.e. SHMAs should be considered. That said the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints.
13. In December 2014, in a Ministerial letter, the Government clarified the policy position on emerging evidence in the form of SHMAs. The letter notes that the publication of a locally agreed assessment provides important new evidence and where appropriate will promote a revision of housing requirements in LPs. Lpas are expected to actively consider the new evidence over time and, where over a reasonable period they do not, Inspectors could reasonably question the approach to HLS. The Minister goes on to note that the outcome of a SHMA is untested and should not automatically be seen as a proxy for a final housing requirement in LPs or that it does not immediately or, in itself, invalidate housing numbers in an existing LP.
14. Here, the CS housing requirement is largely based on the no longer extant South East Plan, whose evidence base dates back to at least 2000. It is accepted that the CS does not contain a Framework compliant assessment of OAN and neither LPs 2 or 3 purport to set a housing requirement based on an OAN. The 2014 Ministerial guidance, in my view, restates the advice contained in the PPG and does not, in itself, preclude using up-to date SHMA information to assess the 5-year HLS.
15. The latest assessment of the "Policy-Off" OAN is contained in the April and June 2016 PUSH reports. These documents, as the introduction to the April

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<sup>2</sup> APP/A1720/A/14/2220031.

<sup>3</sup> Partnership for Urban South Hampshire.

<sup>4</sup> Paragraph 030 Ref ID: 3-030-20140306.

2016 report says, provide an analysis of housing need, which for Fareham is 420 dpa and 450 dpa respectively. These are substantial bodies of work that have been carried out in accordance with PPG guidance and at least one lpa has adopted the PUSH OAN calculated for its area as the basis for calculating the 5-year HLS. Here, the lpa acknowledges that the PUSH April 2016 OAN is the best evidence on the OAN for Fareham. I have taken careful note of the Minister's reference to lpa's considering the evidence over time and the reference to a reasonable period. Whilst the 2 reports are relatively recent, the lpa was aware during the Navigator appeal in December 2014 that the OAN identified in the 2014 South Hampshire SHMA was materially higher than the CS requirement. The decision in the Navigator appeal, which was not challenged, was predicated on an acceptance that the 2014 OAN provided a more suitable basis for a 5-year HLS calculation. In my experience it is rare in the extreme to conclude that the "Policy-Off" OAN is likely to reduce and it is clear from the April and June PUSH OAN reports that it continues to rise materially.

16. In line with PPG advice, it is, in my view, reasonable to conclude that the CS/LP 2 housing requirement is materially out-of-date and is derived on a basis that is inconsistent with the Framework. Thus, having regard to the case law<sup>5</sup> referred to, PPG and Framework policy, I consider that the 5-year HLS supply should be assessed on the basis of the PUSH April 2016 OAN.
17. Before dealing with the assessment of the 5-year HLS position, it is appropriate to deal with the matter of whether a 5 or 20% buffer should be added to the housing requirement. The lpa add a buffer to the housing requirement set out in the CS and LP 2, but not to the contribution to be made by the major urban extension at Welbourne (LP 3). The exclusion of Welbourne is predicated on the basis that it is a site specific allocation implementing a large-scale development proposal in the CS. I am not aware that there is support for such an approach either in the Framework or PPG and read on its face the Framework suggests that the buffer should be applied to the requirement as a whole. Accordingly, I consider the buffer figure should be applied to the requirement as a whole.
18. PPG<sup>6</sup> advises that the approach to identifying a record of persistent under delivery inevitably involves questions of judgement in order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing. The guidance indicates that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle. Here, I have details of net completions for the years 2006/07 to 2015/16 and these figures are not disputed by the lpa. For the period 2006/07 to 2010/11 the CS Policy CS2 requirement is applied and from then until 2015/16 the appellant applies the OAN figure taken from the PUSH April 2016 assessment of OAN. This is on the basis that the PUSH OAN figure is calculated from 2011. On this basis, completions only exceed the housing requirement in 2 out of the last 10 years. However, in the period up until 2014 when the then PUSH SHMA identified an OAN of 395 dpa the lpa could not have been expected to meet a

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<sup>5</sup> City and District of St Albans and The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government and anr [2103] EWCA Civ 1610 & Gallagher Homes Limited Lioncourt Homes Limited and Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin).

<sup>6</sup> Paragraph 035 Ref ID: 3-035-20140306.

need that it was not aware of. On this basis, allowing for peaks and troughs in the housing market it appears to me that there has been significant under-delivery in only 3 out of the last 10 years. On this basis, the application of a 20% buffer is not, in my view, justified.

19. Turning now to the 5-year HLS, I have considered 2 scenarios. One based on the requirements of CS Policy CS2, the lpa's preferred scenario, and one based on the up-to-date OAN figure. On the CS based approach, the 5-year housing land requirement is some 1,932 dwellings and the lpa claim a deliverable supply of some 2,003 dwellings, a surplus of some 71 units giving a 5.18-years' supply of housing land<sup>7</sup>. However, taking into account my conclusion on the appropriateness of excluding Welbourne from the buffer figure including it within the 5% allowance on the whole of the requirement would still return a HLS marginally above 5-years. The surplus would be reduced to some 13 units; a figure the lpa does not dispute.
20. The appellant disputes the deliverability of 9 of the LP 2 allocations, the deliverability of the brownfield site at Warsash Maritime Academy and the ability of the Welbourne allocation to deliver some 425 dwellings in years 4 and 5 of the HLS calculation. Using the lpa's CS housing requirement figure, the appellant's calculation gives a shortfall of some 1,965 units and estimates a 3.28-years' supply of housing land.
21. In coming to my conclusions on the deliverability of the disputed LP 2 sites, I have taken careful note of the lpa's submissions that the allocated sites were found "sound" by the Inspector when he examined LP 2 and that the sites continue to be listed in the Annual Monitoring Report (AMR). That said, LP 2 was examined in late 2014 based on a draft plan submitted for examination in mid-2014 and no doubt based on evidence obtained during 2013. The November 2016 AMR, other than containing a list, provides no detailed assessment of the sites. These assessments are, in my view, snapshots in time, which in the case of LP 2 were undertaken between 3 and 4 years ago. The deliverability of these sites needs to be kept under robust review and, given the paucity of information contained in the AMR, the value of these in making an up-to-date assessment of the HLS is limited.
22. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable<sup>8</sup>. PPG<sup>9</sup> indicates that the 5-year HLS must be underpinned by "*...robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.*"
23. At the inquiry, the lpa provided an updated assessment of the deliverability of the disputed sites. However, the information provided on each site was limited and indeed the lpa's witness acknowledged that he did not have detailed information on the sites. The appellant's submission that the lpa's evidence regarding deliverability was based on, "*...discussions with others about discussions with others*" is an apt description. In my view, the lpa's evidence on deliverability relating to the LP 2 sites falls well below the

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<sup>7</sup> Table AB 1 submitted by the lpa at the inquiry.

<sup>8</sup> Footnote 11, National Planning Policy Framework.

<sup>9</sup> Paragraph 030 Ref. ID: 3-03020140306.

threshold set by PPG in that it is neither robust nor clearly and transparently set out. I have similar concerns regarding the inclusion within the 5-year supply of 100 units at Warsash Maritime Academy. Although this is a substantial site, the level of detail provided by the lpa on its deliverability is thin and lacks clarity and transparency.

24. LP 3 allocates some 371ha of mainly greenfield land at Welbourne to deliver some 6,000 dwellings and the lpa includes some 425 units within the 5-year supply in years 4 and 5. The delivery of Welbourne is a major undertaking and already the delivery of units has been pushed back in the programme. At one time the lpa considered that the delivery of dwellings would commence in 2016 with 120 units being completed by the end of the first quarter in 2017. Whilst I accept that significant pre-planning work has been carried out, a delivery partner will not be appointed until the beginning of 2018, major planning applications will have to be prepared and already, albeit as a precaution, the lpa is contemplating the use of compulsory purchase powers. Whilst I acknowledge the lpa's commitment to the delivery of Welbourne, on the evidence before me, it would appear that the potential to deliver a significant number of units towards the end of the 5-year period is optimistic.
25. In light of these findings, I am unable to safely conclude that at least 315 units, comprising the disputed list of LP 2 sites and the brownfield site at Warsash Maritime Academy, are capable of being considered as deliverable within the 5-year period. In this context, the lpa cannot demonstrate a 5-year supply of deliverable housing land.
26. In the scenario where the up-to-date OAN is used to derive the 5-year housing requirement and using the lpa's supply figures the lpa accepts that it could not demonstrate a 5-year HLS. At most, the evidence indicates that there would be a supply of some 3.6 years. However, given my conclusions regarding the deliverability of the disputed sites, I consider the HLS would be marginally over 2 years.
27. Drawing all of the above together, on whatever approach is used to identifying the 5-year housing land requirement, the lpa cannot demonstrate a 5-year supply of deliverable housing land. Indeed, on the balance of probabilities the available supply is well below the 5-year threshold.

#### Issue 2 – Best & Most Versatile Agricultural Land

28. The majority of the site is Grade 1 and the remainder Grade 2 agricultural land and is classed as best and most versatile land<sup>10</sup> (B&MV). CS Policy CS16 seeks to prevent the loss of B&MV. The Framework does not place a bar on the development of B&MV agricultural land. Framework paragraph 112 identifies that where development would involve the use of B&MV land, the economic and other benefits of that land should be taken into account and goes on to say where significant development is demonstrated to be necessary the use of poorer quality land should be used in preference to that of a higher quality i.e. apply a sequential approach. Here, given the appeal site extends to some 5.5ha, this proposal is not, in my view, a significant development where the sequential approach is engaged.

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<sup>10</sup> Annex 2, National Planning Policy Framework.

29. CS Policy CS16 was predicated on guidance contained in PPS7<sup>11</sup>, which the Secretary of State in his 2006 decision<sup>12</sup> described as containing a strong presumption against the loss of land of high agricultural value. PPS7 is no longer extant and CS Policy CS16, given that it says in a straightforward manner that it will prevent the loss of B&MV agricultural land without an opportunity to balance potential harm against potential benefits, is, in my view, inconsistent with the Framework and subject to the guidance contained at Framework paragraph 215.
30. The development would result in the permanent loss of B&MV agricultural land and as such would conflict with the provisions of CS Policy CS16. Accordingly, it must feature on the negative side of the planning balance, albeit the scale of the permanent loss would be limited.

#### Issue 3 – Character & Appearance

31. The appeal site abuts but lies outside the defined settlement boundary of Portchester. Whilst the development plan treats the area as countryside it is not subject to any landscape designation. Relevant development plan policies are CS Policies CS14 and 17 and LP 2 Policy DSP6. Policy CS14 indicates that development outside the defined settlement boundary will be strictly controlled to protect the countryside and coastline from development which would adversely affect its landscape character, appearance and function. Policy CS 17 seeks high quality design and layout and development should respond positively to and be respectful of key characteristics of the area including landscape. Except for certain categories of development, which do not apply in this case, LP 2 Policy DSP6 has a presumption against new residential development outside the defined settlement boundary. As such the proposal would be in conflict with LP 2 Policy DSP6.
32. Core Principles of the Framework seek to: ensure that planning secures high quality design ensuring that account is had to the different roles and characters of different areas recognising the intrinsic character and beauty of the countryside and a contribution to the conservation and enhancement of the natural environment. Framework paragraph 109 reiterates that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.
33. Both parties referred to various landscape character assessments. Of these the Fareham Borough Landscape Assessment examines the finest grain and is, in my view, the most relevant. In terms of landscape character, the appeal site sits on the eastern edge of Local Landscape Character Area (LCA) 12–Cams Wicor Coastal Fringe and to the south and east of LCAs 36 and 38 Urban Areas of Downend and Portchester South. LCA 12 is described as a discrete parcel of open landscape contained by the coast and the urban fringe. Whilst the main feature of this LCA is the extensive parkland and woodland of the Cam Hall Estate on its western edge the description notes that the LCA includes areas of open amenity landscape, fringe pasture and coastal industry to the east. The essential characteristics of the area are: an area of flat or gently undulating land occupied by mixed but open landscapes; a strong coastal influence and a strong fringe character with

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<sup>11</sup> Planning Policy Statement 7: Sustainable Development in Rural Areas.

<sup>12</sup> APP/A1720/A/05/1176455.

valuable areas of open space with attractive views out across Portsmouth Harbour and to Portsdown Hill and the Cams Hall Estate. The enhancement priorities for the area are to: maintain the open unbuilt character, particularly the estuary and coastal margins and improve the landscape quality of areas which lie between the settlement boundaries and the coast.

34. In terms of landscape and visual impact, whilst the appellant and the lpa use different terminology, in my view they both result in broadly the same outcome. Both parties agree that there would be substantial and adverse landscape and visual impacts. What is in dispute is the spatial extent over which these adverse effects would be experienced and whether the appeal site should be classed as a "valued" landscape.
35. In terms of visual impact, I had the opportunity to extensively walk the roads immediately around the site and the publicly accessible areas to the west. In addition, I visited Portsdown Hill and was able to assess the impact of the development from publically accessible vantage points.
36. Within the immediate area of the site from Cranleigh Road along its southern boundary and from Cranleigh Road southwards towards the junction with Gatehouse Road, the visual impact of the development to be at its highest, i.e. substantial and adverse. Further to the west along Cranleigh Road and from vantage points on the public footpaths and open space to the west, parts of the development, mainly the upper storeys and roof planes would be visible. However, the visual impact of the development would be significantly reduced by the degree of separation and the presence of existing tree/hedge planting and new boundary planting that could be conditioned as part of any permission. The magnitude of this impact would range from moderate to minor adverse depending on distance from the site.
37. Given there is no public access to the site and given the extent of intervening planting and industrial development on the foreshore there would be no material impact on views out over Portsmouth Harbour. In this context, the development would only have a limited adverse impact on views towards Portsdown Hill. The development would be in the foreground of the built-up area to the north and east and would not obscure publically available views of the hill from the east.
38. From public vantage points on Portsdown Hill there are sweeping panoramic views across Portchester and Portsmouth Harbour. Whilst the development would be noticeable, it would be seen as a modest extension of the existing built-up development to the north and east and against the backdrop of the housing area to the south of Cranleigh Road and mature planting beyond. The visual impact of the development would be mitigated by the above factors and the degree of separation from Portsdown Hill. Views of Portsmouth Harbour would not be interrupted or obscured and the wide sweep of the panoramic views would be maintained. In this context, the visual impact of the development from these vantage points would be minor.
39. Turning to whether the appeal site should be identified as a "valued" landscape and in the context of Framework paragraph 109 one whose enhanced planning status should be taken account of in the balancing exercise. I have taken careful note of the submissions made by interested persons and I was left in no doubt about their views on value. All landscapes are valued by someone at some time, particularly countryside



that is threatened by development. However, that does not necessarily make it a valued landscape for the purposes of Framework paragraph 49.

40. Although the Framework refers to valued landscapes it does not provide a definition of what type of landscape that might be. Framework paragraph 109 starts by reiterating the wider objective of enhancing the natural environment, which I take to mean the countryside in general and then it goes on to refer to valued landscapes, which must mean something more than just countryside in general. Case law<sup>13</sup> and Inspectors' decisions have identified that "valued" means something more than popular, such that a landscape was "valued" if it had physical attributes which took it out of the ordinary. In addition, the Guidelines for Landscape and Visual Impact Assessment (GLVIA3), provides at Box 5.1 a range of factors that can help in the identification of valued landscapes. These include landscape quality/condition; scenic quality; rarity, representativeness; conservation interests recreation value; perceptual aspects and associations. Whilst some of the factors go beyond the threshold identified by case law the Box 5.1 headings provide a useful context within which to assess "value". However, this is not a technical process and relies on subjective, albeit informed professional, judgement/experience.
41. Given the urbanising influence of built development on the northern eastern and southern boundaries and the generally overgrown nature of the site, I consider the landscape quality/condition of the site to be low/medium. For similar reasons, the site displays limited aesthetic appeal and it has low scenic value. Rarity and representativeness can be dealt with together. This is a landscape that does not contain rare landscape types or features. As such in terms of rarity and representativeness, I consider the value of the site/landscape to be low.
42. Given that the site has been neglected for some considerable time, the presence of the badger sett and the submissions regarding its ecology, it attracts a medium value for its conservation interest. There is no public access to the land other than it being a piece of a larger area of open land and has low recreational value and a medium value in terms of perceptual aspects. As far as I am aware the site /landscape has no cultural associations and as such attracts a low value. Reiterating again that this is not a technical exercise, drawing the Box 5.1 factors together, I consider the nature and value of the landscape of the appeal site to be ordinary/low. Combining this "score" with the case law requirement that the landscape should display physical attributes that takes it out of the ordinary, I conclude, that when looked at in the round the appeal site is not a Framework paragraph 109 valued landscape and does not benefit from the enhanced planning status that such an attribution would bring to the balancing exercise.
43. On this issue, the development would have a highly localised substantial and adverse impact on landscape character and visual impact. However, this impact would reduce with distance and for the most part in the wider area the landscape character and visual impact of the development would be

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<sup>13</sup> Stroud District Council v Secretary of State for Communities and Local Government [2015] EWHC 488 (Admin) & Cheshire East Borough Council v Secretary of State for communities and Local Government [2016] EWHC 694 (Admin).

minor moderate. That said the landscape and visual harm resulting from the development would conflict with CS Policies 14 and 17 and LP 2 Policy DSP6.

### **Other Considerations**

#### Highways

44. I understand the concerns raised by residents particularly regarding the impact of traffic on congestion on the wider network and on Hatherley Crescent/Cornaway Lane at school dropping off/pick-up times. The planning application was accompanied by a robust Transport Assessment (TA) the scope of which was agreed with Hampshire County Council (HCC) as the Highway Authority (HA). In light of this study and its findings, the HA and the lpa, subject to the imposition of appropriate planning conditions, have no objection to the proposal on highway safety or traffic generation grounds. I have no reason to disagree with those conclusions.
45. In terms of the impact on the wider area, the TA concludes that the capacity of junctions within the study area would not be significantly impacted upon and that the estimated marginal increases in queue lengths would not significantly impact on the operation of the highway network. Congestion occurring at school drop off and pick-up times is restricted to short periods of the day and occurs only on weekdays during term time. Given the location of the site directly abutting the school, the development would be unlikely to generate additional vehicular traffic to and from the school. In my experience, additional traffic generated by the development would only likely to have an impact during the short morning drop-off window. These impacts are not a reason to withhold permission.

#### Ecology

46. The site is located some 350m from the Portsmouth Harbour Site of Special Scientific Interest (SSSI) which forms part of the wider Portsmouth Harbour Special Protection Area (SPA) and Ramsar Site. The appellant submitted ecological appraisals and produced an Ecological Construction and Management Plan. Given the proximity of the site to the national and internally designated sites referred to above, there is potential for the development to affect the interest features for which they were designated.
47. The appellant submitted to the lpa a Habitat Regulations Assessment (HRA), which has been assessed by Natural England (NE). Based on what I consider to be a robust study, the HRA concludes that, having regard to measures that could be built-into the scheme and a financial contribution to the Solent Recreation and Mitigation Partnership, significant effects are unlikely to occur either alone or in combination on the interest features of the SPA and Ramsar. In light of these finding, and similar to the conclusion reached by NE, I conclude that an appropriate assessment under the regulations<sup>14</sup> is not required. Similarly, subject to the development being carried out in accordance with the details submitted with the application, NE indicates that the development would not damage or destroy the interest features for which the Portsmouth Harbour SSSI has been notified. Again, I have no reason to disagree with that conclusion.

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<sup>14</sup> The Conservation of Habitats and Species Regulations 2010 (As Amended).

48. There is an active badger sett within the site, which the appellant proposes to relocate within the area of public open space to the west. Badgers and their setts are protected by legislation<sup>15</sup>. Whilst the lpa has no objection to the relocation, the developer would require a separate licence from NE to remove the badgers. Whilst I note the concerns raised regarding the efficacy of artificial badger setts, they are, in my experience, in common usage and successful. I have no reason in this case to conclude there would be unacceptable harm or loss.
49. From the representations made both orally and in writing, I am in no doubt that the appeal site is highly regarded by local residents and the adjacent primary school as an ecological resource. The school's activities in introducing its pupils to the natural world are substantial and nationally recognised. Although the appeal site is privately owned and there is no public access to it, I recognise that the school views the site as a resource and an indirect source for the wildlife that inhabits the school site. Clearly whilst there would be some loss of habitat, this relates to many species that are common and widespread. The proposed area of public open space albeit it would be divorced from the school grounds by a housing estate, would be publicly available and could be laid out and managed as an improved ecological resource. Moreover, the tending and maturing of private gardens does provide a range of diverse habitats for a wide range of species. Whilst not a direct replacement the variety of habitats provided by private gardens would mitigate any impact on local ecology.
50. Drawing all of the above together, I conclude that the proposed development would not have a materially unacceptable effect on local ecology.

#### Education and Health

51. The development would generate a demand for 31 primary school places and 22 secondary school places. Research by the appellant identifies that the 5 infant/junior schools in Portchester are full. The Northern Infant school has recently been expanded and the Northern Junior School has a proposal to expand in 2019. HCC as the local education authority (LEA) indicates that the local secondary school has spaces available to meet the needs of the development. Whilst there is pressure on local primary schools, the appellant's submission that some of the existing school places are taken up by pupils from out of the school planning area, which could be used by local children, is not disputed by the lpa. There is no objection from the lpa or LEA on the grounds that the proposal would result in unacceptable pressure on local education infrastructure. I have no reason to disagree.
52. Evidence submitted by the appellant indicates that all primary healthcare centres within some 2 miles of the site are currently accepting patients. Whilst there were submissions that appointments are not easy to obtain, this is not a local problem and is something that occurs nationwide. There is no objection from the local providing body for primary care or the lpa.

#### Benefits

53. The proposed development would deliver economic, social and environmental benefits. Chief amongst these are that the proposal would

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<sup>15</sup> Protection of Badgers Act 1992.

deliver up to 120 homes including up to 48 affordable units. Economic benefits that would flow from the application include those arising from employment during the development phase; a New Homes Bonus payment and increased Council Tax revenues. When undertaking the planning balance factors such as these are generally held to be benefits of development albeit they are benefits that would occur from most developments.

#### S106 Undertaking

54. Framework paragraph 204 and CIL Regulation 122 say that Planning Obligations should only be sought and weight attached to their provisions where they meet all of the following tests. These are: they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
55. NE's lack of objection to the development is based on the developer making a contribution to the implementation of the Solent Recreation Mitigation Scheme. The purpose of the contribution is to mitigate disturbance of the Portsmouth Harbour SSSI and the wider Portsmouth Harbour Special SPA and Ramsar Site. The UU provides a mechanism for the provision of affordable housing required by development plan policy and the provision and retention of the public open space. These obligations are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, in this respect, the UU is consistent with the guidance at Framework paragraph 204 and Regulations 122 of the CIL Regulations and where appropriate, I have attached weight to them in coming to my conclusion
56. The UU provides for (i) the submission of a Full Travel Plan; (ii) the payment of £5,750 to Hampshire County Council made up of £750 towards the cost of approving a Full Travel Plan and £5,000 to monitor compliance with it; (iii) the appointment of a Travel Plan Coordinator and (iv) a Travel Plan Bond.
57. The submission of a Travel Plan is a matter that could be dealt with by the imposition of an appropriate condition. Here, the only explanation I have for the monitoring fees is that *"it has been assessed based on the highway authority's experience with regards to monitoring such developments and is justified to ensure that the modal targets within the Travel Plan area achieved and if not there are "punitive" measures within the travel plan that can be instigated to endeavour to achieve the desired modal targets. The monitoring process ensures this check."*
58. The test contained within the Framework and CIL Regulation 122 i.e. "necessary to make the development acceptable in planning terms" is a high threshold in that the obligation has to be necessary and not merely desirable. Moreover, there is nothing in the Planning Acts, the CIL Regulations, the Framework or PPG that suggest that an authority could or should claim monitoring fees as part of a planning obligation. The monitoring of the Travel Plan is, in my view, one of the functions of the County Council. Despite my request for supporting evidence, I conclude that

in the absence of a full justification supported by evidence<sup>16</sup> the payment of a monitoring fee and the provision of a Travel Plan Bond are unnecessary to make the development acceptable in planning terms nor am I in a position to conclude that the requested contribution and Bond are fair and reasonably related in scale and kind to the development. For these reasons, I consider the requested contribution does not accord with the tests set out in the Framework and CIL Regulation 122 and I have not taken it into account in coming to my decision.

### **The Planning Balance**

59. The starting point is that S38(6) of the Planning and Compulsory Purchase Act 2004 and S70(2) of the Town and Country Planning Act 1990 requires that decisions on applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
60. The site is located outside the settlement boundary of Portchester and does not fall within any of the categories of development that may be permitted by LP Policy DSP6; as such the proposal is in conflict with this policy. Both parties refer to CS Policy CS11, which refers to development within the settlement boundaries of Portchester being permitted. Given the specific nature of this policy and the location of the site outside the settlement boundary, I consider this policy is not relevant to the overall planning balance. I have concluded that the proposed development would have an adverse impact on landscape character and a substantial adverse visual amenity albeit that impact would be highly localised. As such the proposal would be in conflict with CS Policies CS14 and CS17. The proposal would result in the loss of B&MV and would be in conflict with CS Policy CS16.
61. Paragraph 2 of the Framework confirms that it is a material consideration in planning decisions. The fourth bullet point of Framework paragraph 14 has 2 limbs. The first limb indicates that where the development plan is absent, silent or relevant policies are out-of-date 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 this Framework taken as a whole. The second limb indicates that development proposals should be granted unless or specific policies in the Framework indicate development should be restricted. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, if the lpa cannot show a 5-year supply of deliverable housing sites. Framework paragraph 215 indicates that due weight should be given to relevant policies in existing plans according to their consistency with the Framework.
62. In relation to housing land supply, the lpa cannot demonstrate a 5-year supply of deliverable housing sites. In this context, the decision of the Supreme Court<sup>17</sup> indicates that such a shortfall triggers the fourth bullet point of Framework paragraph 14. In this case, based on the evidence before me it is only the first limb of the fourth bullet point that is engaged.

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<sup>16</sup> Planning Policy Guidance, Paragraph: 004 Reference ID: 23b-004-20150326.

<sup>17</sup> Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin) .

The appellant and the lpa agree that CS Policy CS14 and LP 2 Policy DSP6 are not relevant policies for the supply of housing and I have no reason to disagree. Given, the nature of CS Policy CS 17 – first bullet point, I consider this is not a relevant policy for the supply of housing either.

63. Based on the evidence before me the housing land supply stands at just over 2-years resulting in a significant shortfall. I acknowledge that the lpa is seeking to address its ongoing housing requirements through the preparation of the Local Plan Review and the promotion of the sustainable Urban Extension at Welbourne. That said, a consultation draft of the Local Plan Review is not anticipated to be published until September 2017 and I would not expect that plan to be adopted before mid-2018 at the earliest. Welbourne is the subject of an adopted LP and will be progressed through the appointment of a development partner who will not be identified until early 2018. Once identified the lpa/development partner will subsequently need to involve themselves in land acquisition through negotiation and/or compulsory purchase and to submit/determine major planning applications. On all the evidence before me, it appears to me, given the scale of the development and the constraints involved, which include the provision of a new junction on the M27 (albeit up to 500 units may be permitted before the new junction is required), the potential for significant development within the 5-year period is limited. In these circumstances, the material shortfall in housing land supply will continue and the backlog of housing required to meet local needs will grow.
64. As far as I am aware there are no constraints that would delay this development and as such granting permission would, in line with the clear objectives spelt out at Framework paragraph 47, provide for a significant and material boost/contribution to meeting housing needs within the District, particularly affordable housing. Drawing all this together, I consider that the contribution the appeal site could make to meeting the District's housing needs attracts very substantial weight in the planning balance.
65. Whilst, the objectives of CS Policy C14, CS 17 and LP 2 Policy DSP6 in seeking to protect the countryside from development are consistent with the fifth Core Principle identified at Framework paragraph 17, I conclude in this case that the limited harm in terms of the loss of B&MV agricultural land and landscape character and visual impact would not significantly and demonstrably outweigh the benefits of this scheme in making a material contribution to the significant shortfall in housing land. Accordingly, having regard to Framework paragraph 14, I consider the proposed development represents sustainable development.
66. In coming to the above conclusion, I have had regard to the appeal decision issued by the Secretary of State in 2006. However, I consider this decision was issued in the context of a materially different development plan context. Then, although located in countryside, the area was also identified in the development plan as a Local Gap and a Coastal Zone. Here local policy indicated that development that would physically or visually diminish undeveloped land within the gap would not be permitted. Now, although still defined for planning purposes as countryside, the open area to the west and south of the built-up area of Portchester is no longer classed as a Local Gap or within the Coastal Zone.

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

### **Planning Conditions**

68. For the avoidance of doubt and in the interests of proper planning and I have imposed a condition relating to the specification of plans (4)<sup>18</sup>. Conditions relating the submission of details and the implementation of approved schemes in relation to: the construction of the estate roads (6); boundary treatment (7); archaeological investigations (8); foul and surface water drainage (9); an arboricultural assessment (10); existing and finished ground level and finished floor levels (11); the prevention of mud on the highway (12) construction traffic access (13) and the submission of a Travel Plan (14) are reasonable and necessary in the interests of the appearance of the area, highway safety, the identification and preservation of potential archaeology and the protection neighbours' living conditions. Conditions relating the prevention of fires (15), hours of operation (16); the treatment of hard surfaces (17) and a restriction on eaves height (20) are reasonable and necessary in the interests of appearance and neighbours' living conditions. In the interests of the appearance of the area, a condition relating to landscape implementation and maintenance (18) is necessary. In the interests of ecology, a condition requiring the development to be carried out in accordance with the submitted Ecological Construction and Management Plan (19) is necessary. Where necessary and in the interests of precision and enforceability I have reworded the suggested conditions.
69. At the inquiry, the lpa and the appellant agreed that the suggested conditions relating to boundary treatment, access details, external lighting/floodlighting and the insertion of roof lights were matters that were covered by the submitted plans, were unnecessary , duplicated other conditions or were matters that could be dealt with as part of the reserved matters submissions. I have not imposed these conditions.

*George Baird*  
Inspector

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<sup>18</sup> Numbers relate to those in the Schedule of Conditions.

## **Annex A**

### **SCHEDULE OF CONDITIONS**

1. Details of the appearance, scale, layout and landscaping of the site (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 3 years from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development shall be carried out in accordance with the following approved drawings: Location Plan - Drawing 6132 LOC Rev D and J-D1708.00 Site access Layout and Highway Improvements.
5. No housing development including gardens and roads shall take place to the west of the hedgerow running north to south through the site as shown on Drawing No. 01 Rev W- Illustrative Site Plan.
6. No development shall commence until details of the width, alignment, gradient and type of construction proposed for any roads, footways and/or access/accesses, to include all relevant horizontal and longitudinal cross sections showing the existing and proposed ground levels, together with details of street lighting (where appropriate), the method of disposing of surface water, and details of a programme for the making up of roads and footways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall commence until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the dwellings are first occupied or in accordance with a timetable agreed in writing with the local planning authority and shall thereafter be retained at all times.
8. No development shall commence until a preliminary archaeological survey establishing the location, extent, nature and significance of archaeological remains on the site including a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed mitigation strategy.
9. No development shall commence on site until details of sewerage and surface water drainage works to serve the development hereby permitted have been submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the drainage works have been completed in accordance with the approved details.
10. No development shall commence until an Arboricultural Impact Assessment Report and Method Statement for tree/hedgerow protection has been



- submitted to and approved in writing by the local planning authority and the approved scheme implemented. The tree/hedgerow protection shall be retained throughout the development period until such time as all equipment, machinery and surplus materials have been removed from the site.
11. No development shall commence until details of the internal finished floor levels of all of the proposed buildings in relation to the existing and finished ground levels on the site and the adjacent land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  12. No development shall commence until details of the measures to be taken to prevent spoil and mud being deposited on the public highway by vehicles leaving the site during the construction works have been submitted to and approved in writing by the local planning authority. The approved measures shall be fully implemented upon the commencement of development and shall be retained for the duration of construction of the development.
  13. No development shall commence until the local planning authority have approved details of how construction traffic will access the site, how provision is to be made on site for the parking and turning of operatives and delivery vehicles and the areas to be used for the storage of building materials, plant, excavated materials and huts associated with the implementation of the permitted development. The areas and facilities approved in pursuance to this condition shall be made available before construction works commence on site shall thereafter be kept available at all times during the construction period, unless otherwise agreed in writing with the local planning authority.
  14. Prior to the commencement of construction works a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for monitoring and effective enforcement. Development shall be carried out in accordance with the approved details.
  15. No materials obtained from site clearance or from construction works shall be burnt on the site.
  16. No work relating to the construction of any of the development hereby permitted (including works of demolition or preparation prior to operations) shall take place before the hours of 0800 or after 1800 hours Monday to Friday, before the hours of 0800 or after 1300 hours on Saturdays or at all on Sundays or recognised public holidays, unless otherwise first agreed in writing with the local planning authority.
  17. No development shall proceed beyond damp proof course level until details of the finished treatment of all areas to be hard surfaced have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and the hard surfaced areas subsequently retained as constructed.
  18. The landscaping scheme submitted under Condition 1 above, shall be implemented within the first planting season following the commencement of the development or as otherwise agreed in writing with the local planning

authority and shall be maintained in accordance with the agreed schedule. Any trees or plants which, within a period of 5 years from first planting, are removed die or become seriously damaged or defective, shall be replaced, within the next available planting season, with others of the same species, size and number as originally approved.

19. The development shall be carried out strictly in accordance with the Ecological Construction and Management Plan dated August 2016 and updated November 2016.
20. The dwellings shall not exceed two-storey eaves height.

## **ANNEX B**

### **APPEARANCES**

#### FOR THE APPELLANT

Christopher Boyle QC, instructed by the Bryan Jezepeh Consultancy.

He called:

Steven Brown BSc (Hons) Dip TP, MRTPI  
Woolf Bond Planning.

Liz Bryant MA, CMLI  
Allen Pyke Associates.

Michael Knappett BSc (Hons), BTP, MRTPI.  
Bryan Jezepeh Consultancy.

#### FOR THE LOCAL PLANNING AUTHORITY

Paul Stinchcombe QC, instructed by Fareham Borough Council

He called:

Andy Blaxland  
Director, Adams Hendry Consulting Limited.

Nicola Brown BA (Hons), BLand Arch, CertUD, CMLI  
Director, Huskisson Brown.

#### INTERESTED PERSONS

Mr Mullen.  
Mrs Fox.  
Ms Sawyer.  
Mr Woodman Portchester Civic Society.  
Cllr Price.  
Cllr Walker.  
Cllr Bell.  
Cllr Fazackarley.  
Cllr Cunningham.  
Ms Morton, Wicor Primary School.  
Mr Cable.  
Mr Britton.  
Mrs Kirk.

#### DOCUMENTS SUBMITTED AT THE INQUIRY

- Doc 1 - Phides Estates (Overseas) Limited and Secretary of State for Communities and Local Government and Shepway Council and David Plumstead [2015] EWHC 827 (Admin).
- Doc 2 - Supplementary Tables AB1, AB2 & AB3 to the evidence of Mr Blaxland.

- Doc 3 - Additional Suggested Condition – Field A.
- Doc 4 - Note in response to question from Mr Boyle.
- Doc 5 - Submissions by Cllr Walker.
- Doc 6 - Submissions by Cllr. Price.
- Doc 7 - Submissions by Cllr. Bell.
- Doc 8 - Submissions by Cllr Fazackarley.
- Doc 9 - Submissions by Cllr Cunningham.
- Doc 10 - Submissions by Portchester Civic Society.
- Doc 11 - Submissions by Mr Cable.
- Doc 12 - Submissions by Wicor Primary School.
- Doc 13 - Submissions by Mrs Kirk.
- Doc 14 - Summary of S106 Unilateral Undertaking.
- Doc 15 - Lpa CIL Compliance Schedule.
- Doc 16 - Email dated 27 April 2017, Response by Hampshire County Council regarding S106 Unilateral Undertaking Travel Plan Contributions.
- Doc 17 - S106 Unilateral Undertaking.
- Doc 18 - Minutes of Planning Committee 24 March 2016.
- Doc 19 - Appellant’s application for coasts.
- Doc 20 - Lpa response to the application for costs.

DOCUMENTS SUBMITTED AFTER THE INQUIRY CLOSED

- Doc 21 - Appellant’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).
- Doc 22 - Lpa’s response on the implications of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin).