



Ministry of Housing,  
Communities &  
Local Government

Caroline Stares  
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London  
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Our ref: APP/K3605/W/17/3172429

24 May 2018

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY BONNAR ALLAN LIMITED  
LAND EAST OF WEYLANDS HOUSE AND MOLESEY ROAD AND SOUTH OF  
FIELDCOMMON LANE, WALTON-ON-THAMES, SURREY  
APPLICATION REF: 2016/2217**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Prentis BA BPI MRTPI who held a public local inquiry from 31 October 2017 for 9 days into your client's appeal against the decision of Elmbridge Borough Council to refuse your client's application for planning permission for an outline application with all matters reserved except access for the development of a new garden village comprising up to 1,024 new residential units, community based hub and parkland, primary school, medical centre, dentists and pharmacy, local supermarket, pub/restaurant, offices, parking, nature conservation and water features, recreation, landscaping and associated facilities following demolition of existing structures, in accordance with application ref: 2016/2217, dated 4 July 2016.
2. On 19 June 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

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

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

## **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR14 and IR39-46, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

## **Procedural matters**

6. The Secretary of State notes at IR3 that shortly before the inquiry the appellant submitted a revised set of parameter plans. For the reasons given at IR3, the Secretary of State agrees with the Inspector that no-one would be prejudiced by the appeal being determined on this basis. The Secretary of State has considered the appeal on the basis of the amended plans.

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

7. A list of representations which have been received since the inquiry closed is at Annex A. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy and statutory considerations**

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of the Elmbridge Core Strategy 2011 (CS), the Elmbridge Local Plan Development Management Plan 2015 (DMP) and the Surrey Waste Plan 2008 (SWP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR23-25.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

## *Emerging plan*

11. The Council has commenced the preparation of a new local plan. A Strategic Options Consultation (Regulation 18) was published in December 2016 (IR26). Studies and reports that form the base for the emerging local plan include those set out at IR28.
12. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework.

13. The Secretary of State has given careful consideration to the Inspector's analysis at IR26-28 and IR339. The Secretary of State considers that the emerging plan is at an early stage and affords it very little weight.

### **Main issues**

14. The Secretary of State agrees that the main considerations are those set out by the Inspector at IR336. He has given careful consideration to the Inspector's analysis at IR337-339.

#### *The need for housing and the supply of housing land*

15. The Secretary of State has given careful consideration to the Inspector's analysis at IR340-344. He has taken into account at IR341 that the Council and appellant agreed that the supply figure was 1,635 and it was agreed that a 5% buffer should be applied. The Secretary of State has further taken into account that using the SHMA16 figure for OAN, the Council's position was that it could demonstrate a supply of 3.20 years. For the reasons given at IR341, the Secretary of State agrees with the Inspector at IR341 that the available supply falls short of the 5 years required by the Framework. He further agrees that paragraph 49 of the Framework is engaged and that relevant policies for the supply of housing should not be considered up-to-date.

16. The Secretary of State has taken into account at IR342 that there were three main areas of disagreement between the Council and the appellant. For the reasons given at IR343, the Secretary of State agrees with the Inspector at IR343 that he does not consider that the SHMA16 is rendered out of date merely because new projections have been issued since it was prepared.

#### *Whether market signals justify an uplift to the OAN*

17. For the reasons given at IR345-349, the Secretary of State agrees with the Inspector at IR350 that his overall assessment is that there is a worsening trend in a number of relevant indicators and that this suggests that there should be an uplift to the OAN to reflect market signals. He further agrees that the conclusion of the SHMA16, that no market signals uplift is required, is not supported by the evidence before the inquiry.

18. For the reasons given at IR345-355, the Secretary of State agrees with the Inspector at IR356 that he attaches very little weight to the appellant's evidence regarding what that uplift should be. He further agrees that in this case he considers that evidence of what has been done elsewhere is the best evidence before him. For the reasons given at IR345-355, the Secretary of State agrees with the Inspector at IR357 that clearly affordability is a significant issue in Elmbridge and he agrees that it would be appropriate to increase the SHMA16 OAN by 20% to reflect market signals. It would increase the OAN to 569 dpa.

#### *Whether an uplift should be made for affordable housing*

19. For the reasons given at IR358-360, the Secretary of State agrees with the Inspector at IR360 that 35% of all housing delivered as affordable housing, which would amount to 199 affordable dwellings per annum which would be about 60% of the identified need. He further agrees that this would be an appropriate and realistic response to affordable housing needs.

### *Whether an uplift should be made for employment*

20. For the reasons given at IR361-363, the Secretary of State agrees with the Inspector at IR363 that the appellant's employment led figure of 553 dpa is reasonable. He further agrees that as this would be contained within the market signals uplift referred to above no further adjustment is required.

### *Five year housing land supply*

21. For the reasons given at IR364, the Secretary of State agrees at IR364 that the agreed supply position is 1,635. He further agrees (IR365) that 2.65 years should be regarded as a broad indication of the likely level of supply relative to the OAN and it should not be interpreted as a precise figure.

### *Planning for the Right Homes in the Right Places*

22. The Secretary of State agrees that as 'Planning for the right homes in the right places' is a consultation document, little weight can be placed on its proposals (IR366).

### *Progress on the local plan and the prospects for improving the supply position*

23. For the reasons given at IR367-368, the Secretary of State agrees with the Inspector at IR368 that on balance, the appellant's suggested timescale of adoption of a new local plan seems more realistic. For the reasons given at IR367-369, the Secretary of State agrees with the Inspector at IR370 that the backlog over the plan period cannot be quantified with any certainty because it depends on the outcome of the local plan process. For the reasons given at IR370-371, the Secretary of State agrees with the Inspector at IR371 in attaching limited weight to the appellant's specific calculations in relation to backlogs beyond the 5 year period. He further agrees with the Inspector at IR372 that a significant proportion of new housing in Elmbridge, beyond that identified in the current housing land supply, is likely to come from strategic sites. The Council and the appellant agreed that little weight can be attached to the emerging plan at this stage. For the reasons given at IR372, the Secretary of State agrees that even if planning applications were submitted before the new plan is finally adopted, it seems unlikely that there would be significant delivery from new strategic sites within, say, 5 years from now. He further agrees that there seems to be little prospect of a significant improvement in the supply position within that timeframe.

### *Conclusions on the need for housing and the supply of housing land*

24. For the reasons given above, the Secretary of State agrees with the Inspector at IR373 that the OAN is around 569 dpa which implies that the likely level of deliverable supply is somewhere around 2.65 years. He further agrees that without the appeal scheme there seems to be little prospect of a significant improvement in the supply position in the short term.

### *The effect of the proposal on the Green Belt*

25. The Secretary of State has given careful consideration to the Inspector's analysis at IR374-413.

*Harm by reason of inappropriateness*

26. For the reasons given at IR376, the Secretary of State agrees with the Inspector at IR376 that the introduction of a large amount of urban development into this largely undeveloped site would amount to inappropriate development. The Secretary of State agrees with the Inspector at IR378 that paragraph 88 is clear that substantial weight should be given to any harm to the Green Belt. He further agrees that it follows that substantial weight should be attached to the harm by way of inappropriateness in this case.

*The effect of the proposals on openness*

27. The Secretary of State has taken into account a number of legal authorities on the question of openness at IR379. For the reasons at IR380-385, he agrees at IR385 that all three components of the appeal site make a very significant contribution to the openness of the Green Belt. For the reasons given at IR386, the Secretary of State agrees with the Inspector that the proposals would have a major impact on the openness of Area A in terms of the footprint, height and volume of built environment. For the reasons given at IR387, the Secretary of State agrees that given the scale of development, the demolition of the existing buildings would be of little consequence. For the reasons given at IR388, the Secretary of State agrees with the Inspector at IR388 that the proposals would have a significant impact on the visual appreciation of openness and there would be significant views of the new buildings from multiple viewpoints outside the site.

28. The Secretary of State has taken into account at IR389 that about half of the total site area would be developed. For the reasons given at IR389, he agrees with the Inspector at IR389 that the park which is proposed in the centre of Area A would be a park in an urban setting and would not have the same feeling of wide open space that Area A has now. For the reasons given at IR379-390, the Secretary of State agrees with the Inspector at IR391 that Area A would become very built up if the appeal scheme were to be implemented and the very significant contribution that it currently makes to the openness of the Green Belt would largely be lost. He further agrees that this would cause significant harm to the openness of the Green Belt. He further agrees that there might be a relatively minor loss of openness in relation to Area B and that Area C would be unchanged.

*Purpose 1 – checking the unrestricted sprawl of large built-up areas*

29. For the reasons given at IR392-393, the Secretary of State agrees with the Inspector at IR393 that the appeal scheme would have the effect of further fragmenting this narrow band of Green Belt by extending the Fieldcommon Estate southwards. He further agrees that it would also extend Hersham northwards, thereby significantly extending the built up area of Walton-on-Thames/Weybridge/Hersham into the Green Belt. He further agrees that this would result in significant harm to Purpose 1.

30. The Secretary of State has taken into account the Inspector's discussion at IR394, and for the reasons given at IR395, he agrees that the decision on an appeal elsewhere is of little assistance and that he takes account of the potential for this outline scheme to achieve good design at reserved matter stage. He further agrees that that does not outweigh his finding that the scheme would further fragment an already narrow band of Green Belt and would result in significant harm to Purpose 1.

*Purpose 2 – preventing neighbouring towns from merging*

31. The Secretary of State has taken into account at IR396 that the examination Inspector of the CS found that the Green Belt serves the fundamental Green Belt purpose of preventing neighbouring towns from merging into one another. He agrees with the Inspector at IR396 that the appeal site lies within a narrow section of Green Belt which performs the role of separating Walton-on-Thames/Weybridge/Hersham from Esher. For the reasons given at IR397, the Secretary of State agrees with the Inspector at IR396-7 that the sense of separation, which can currently be experienced by those using public rights of way, would be eroded and this would amount to significant harm to Purpose 2.

*Purpose 3 – safeguarding the countryside from encroachment*

32. The Secretary of State has given careful consideration to the Inspector's discussion at IR398-400 and agrees with the Inspector at IR401 that the site should be regarded as countryside, as the term is used in paragraph 80 of the Framework. He further agrees that the site therefore contributes to Purpose 3. He further agrees that the appeal scheme would amount to a large encroachment into the countryside, thereby resulting in significant harm to Purpose 3.

*Purposes 4 and 5*

33. For the reasons given at IR402-403, the Secretary of State agrees with the Inspector at IR403 that consideration of Purposes 4 and 5 of the Green Belt does not add materially to the cases for or against the appeal.

*Alternative sites and the likelihood of Green Belt harm in any event*

34. For the reasons given at IR404-406, the Secretary of State agrees with the Inspector at IR405 that the appellant's case fell well short of demonstrating that the appeal scheme would avoid the need to release any specific site which would be more harmful. For the reasons given at IR406-407, the Secretary of State agrees with the Inspector at IR407 that it seems more likely than not that the emerging local plan will promote some Green Belt sites for housing, however it is not known where such a site (or sites) would be. As such he concludes that it cannot be said whether the appeal site would be preferable in terms of impacts on the Green Belt or in relation to any other material planning considerations. He therefore agrees with the Inspector at IR407 that this is not a factor which should weigh significantly for or against the appeal.

*Other Green Belt matters*

35. The Secretary of State has given careful consideration to the Inspector's analysis at IR408-410 and he agrees with the Inspector at IR408 that the discussion about where the Green Belt boundaries might be drawn if the appeal proposals were approved and implemented had little bearing on the merits of the appeal. For the reasons given at IR411, the Secretary of State agrees with the Inspector at IR411 that provision of public open space and opportunities for public access, having regard to paragraph 81 of the Framework, are matters which are relevant to the management of land within the Green Belt. He further agrees that they do not alter his assessment of impacts on openness and Purposes 1 to 3.

### *Conclusions on Green Belt*

36. For the reasons given at IR374-411, the Secretary of State agrees with the Inspector at IR412 that the proposals would amount to inappropriate development in the Green Belt.
37. He further agrees at IR413 that Area A would become very built up if the appeal scheme were to be implemented and the very significant contribution that it currently makes to the openness of the Green Belt would largely be lost. He further agrees that would cause significant harm to the openness of the Green Belt. In doing so he has had regard to the fact that the site lies within a strategic arc of Green Belt which is already narrow and fragmented (IR449). He further agrees that there might also be a relatively minor loss of openness in relation to Area B. In addition, he further agrees that the proposals for Area A would cause significant harm in relation to the purposes of including land in the Green Belt. He further agrees that in particular, significant harm would be caused to Purposes 1, 2 and 3.

### *The effect of the proposals on the transport network, including the opportunities for sustainable modes of transport*

#### *Baseline conditions*

38. The Secretary of State has given careful consideration to the Inspector's analysis at IR414-432. For the reasons given at IR414-419, the Secretary of State agrees with the Inspector at IR420 that bringing together all of the evidence relating to the Hersham station railway arch, it is clear that this junction is currently subject to significant congestion and queuing at peak periods.

#### *Network impacts*

39. For the reasons given at IR414-425, the Secretary of State agrees (IR425) that it is clear that at both the Halfway junction and Hersham Station Railway Arch there is likely to be a material increase in the level of congestion and queuing already experienced.

#### *Mitigation of transport impacts*

40. For the reasons given at IR426-428, the Secretary of State agrees with the Inspector at IR428 that the enhancements that the UU would provide to Hersham Station are unlikely to have a significant impact on the transport choices of future occupiers of the appeal site. He further agrees (IR429) that even if the target for reduction of private car trips set out in the travel plan is met, 60% of the additional residential trips would be by car and many of those trips would pass through one or other of the junctions.

### *Conclusions on transport*

41. For the reasons given at IR414-429, the Secretary of State agrees with the Inspector at IR430 that due to the constrained access within the locality, the congestion and queuing which occurs and the limitations of the existing bus services, he does not consider this to be a highly accessible location. For the reasons given at IR430, the Secretary of State agrees with the Inspector at IR431 that with regard to paragraph 32 of the Framework, he considers that the proposals have taken up the opportunities for sustainable transport modes and that safe and suitable access can be achieved. For the reasons given at IR431, the Secretary of State agrees with the Inspector that overall, the proposals would achieve compliance with the Framework insofar as it relates to transport.

42. For the reasons given at IR414-431, the Secretary of State agrees with the Inspector at IR432 that the package of transport measures, as a whole, is no more than is necessary to mitigate (as far as practicable) the transport impacts of the scheme. He further agrees that even with mitigation in place, there would be a residual harmful effect insofar as there is likely to be a material increase in the level of congestion and queuing already experienced at the Halfway junction and the Hersham station railway arch. He further agrees that the level of harm would not be such as to indicate that the appeal should be dismissed on these grounds. The Secretary of State considers that this is a factor which should attract weight in the overall planning balance.

*Whether the harm to the Green Belt is clearly outweighed by other considerations*

43. The Secretary of State has given careful consideration to the Inspector's analysis at IR433-455.

*Housing delivery*

44. The Secretary of State agrees with the Inspector's conclusion that the likely level of deliverable supply (in relation to the assessment of the OAN) is somewhere around 2.65 years. For the reasons given at IR434-436, the Secretary of State agrees with the Inspector at IR437 that whilst it is unlikely that the appeal site would make an early contribution to supply, it does offer the prospect of making a significant contribution sooner than other sites which are as yet unidentified. The Secretary of State further agrees at IR437 that having regard to the degree of shortfall against the OAN, he attaches significant weight to the benefit of housing delivery.

*Affordable housing*

45. For the reasons given at IR438-439, the Secretary of State agrees with the Inspector at IR439 that the weight to be attached to the benefit of affordable housing should be tempered by the fact that there would be limited (if any) provision for the tenure type for which there is the greatest need. He therefore attaches moderate weight to this factor.

*Economic benefits*

46. The Secretary of State agrees with the Inspector at IR440 that the proposals would bring economic benefits in terms of employment, estimated by the appellant to be 240 jobs, associated with the supermarket, offices, pub/restaurant and medical facilities. Like the Inspector, the Secretary of State has taken into account at IR440 that the appellant pointed out that the new employment opportunities would be in an area where the level of economic/social need is higher than elsewhere in Elmbridge. The Secretary of State agrees with the Inspector that whilst this is so, this is a relative measure of economic/social need. He further agrees that the evidence does not suggest that the area around the appeal site suffers high levels of deprivation compared with national indices. The Secretary of State attaches significant weight to these economic benefits.

*Recreation, community facilities and access to the Green Belt*

47. For the reasons given at IR442-447, the Secretary of State agrees with the Inspector at IR448 that the proposed public park would represent a social benefit in that it would be available for the wider community to use. He further agrees that the value of that benefit would be tempered by the loss of an existing recreational resource, namely the passive enjoyment of the site in its existing condition as seen from public rights of way. He further agrees that the replacement of the Lower Green Community Hall would also be a social

benefit to the wider community. The Secretary of State attaches moderate weight to these benefits.

#### *Other matters*

48. For the reasons given at IR456-472, the Secretary of State agrees with the Inspector that none of the other matters discussed in this section add materially to the case for or against the appeal.

#### *Public Sector Equality Duty*

49. Like the Inspector at IR474, the Secretary of State has considered the protected characteristics set out in the Equality Act 2010. For the reasons given at IR474-475, the Secretary of State agrees with the Inspector at IR475 and has not identified any negative equalities impacts.

#### **Planning conditions**

50. The Secretary of State has given consideration to the Inspector's analysis at IR327-335, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

#### **Planning obligations**

51. Having had regard to the Inspector's analysis at IR8-12, the Unilateral Undertaking and the s106 Agreement dated 12 December 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR12 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. However, the Secretary of State does not consider that the obligations overcome his reasons for dismissing this appeal and refusing planning permission.

#### **Planning balance and overall conclusion**

52. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with DMP Policy DM17 and CS Policy CS1 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

53. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework indicates that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted. However, as Green Belt policy is a restrictive policy in terms of the Framework, the Secretary of State has not applied the 'tilted balance', but rather considered whether very special circumstances exist to justify a grant of planning permission in the Green Belt.

54. The Secretary of State considers that the harm to the Green Belt from inappropriate development, through harm to openness and harm to the purposes of including land in the Green Belt carries very substantial weight, in agreement with the Inspector at IR449. He considers that harm in relation to transport carries limited weight, in agreement with the Inspector at IR450.
55. The Secretary of State considers that the benefits of housing delivery and the economic benefits of the proposal each carry significant weight. He also considers that the provision of affordable housing carries moderate weight. He also considers that the provision of a public park and a replacement community hall carry moderate weight.
56. The Secretary of State considers that the above benefits do not clearly outweigh the harm to the Green Belt and any other harm. He further considers that the very special circumstances required to justify development in the Green Belt do not exist. The Secretary of State concludes that there are specific policies in the Framework that indicate that this development should be restricted. Overall he considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
57. The Secretary of State therefore concludes that the appeal be dismissed.

### **Formal decision**

58. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the development of a new garden village comprising up to 1,024 new residential units, community based hub and parkland, primary school, medical centre, dentists and pharmacy, local supermarket, pub/restaurant, offices, parking, nature conservation and water features, recreation, landscaping and associated facilities following demolition of existing structures, in accordance with application ref: 2016/2217, dated 4 July 2016.

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

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

Yours faithfully

*Philip Barber*

Authorised by the Secretary of State to sign in that behalf

## Annex A Schedule of representations

### General representations

<b>Party</b>	<b>Date</b>
C Elmer	6 May 2018
M Flannigan	24 April 2018; 1 May 2018



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

by David Prentis BA BPI MRTPI

an Inspector appointed by the Secretary of State

Date: 30 January 2018

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**ELMBRIDGE BOROUGH COUNCIL**  
**APPEAL MADE BY**  
**BONNAR ALLAN LIMITED**

Inquiry opened on 31 October 2017

Land east of Weylands House and Molesey Road and south of Fieldcommon Lane, Walton-on-Thames, Surrey

File Ref: APP/K3605/W/17/3172429

**File Ref: APP/K3605/W/17/3172429**

**Land east of Weylands House and Molesey Road and south of Fieldcommon Lane, Walton-on-Thames, Surrey**

- 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 Bonnar Allan Limited against the decision of Elmbridge Borough Council.
- The application Ref 2016/2217, dated 4 July 2016, was refused by notice dated 22 November 2016.
- The proposal is an outline application with all matters reserved except access for the development of a new garden village comprising up to 1,024 new residential units, community based hub and parkland, primary school, medical centre, dentists and pharmacy, local supermarket, pub/restaurant, offices, parking, nature conservation and water features, recreation, landscaping and associated facilities following demolition of existing structures.

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

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**Procedural Matters**

1. The Inquiry sat for 9 days between 31 October and 14 November 2017. An accompanied site visit was made on 15 November and I made unaccompanied visits to the site and surrounding area before and during the course of the Inquiry.
2. The application was made in outline with all matters other than access into the site from Molesey Road reserved for subsequent approval. The access roads within the site would be approved under reserved matters and/or conditions. The application plans offered for approval include an access plan, details of highway works in the vicinity of the site and a set of parameter plans<sup>1</sup>. Various versions of an illustrative masterplan were included in the evidence and I have taken these into account<sup>2</sup>.
3. Shortly before the Inquiry the appellant submitted a revised set of parameter plans. These showed an increased separation distance between the southern edge of the proposed residential area and the Weylands waste treatment works<sup>3</sup>. I am satisfied that this is a minor amendment which would not alter the substance of the proposal. No-one at the Inquiry objected to the amendment and no-one would be prejudiced by the appeal being determined on this basis. I have considered the appeal on the basis of the amended plans. If, however, the Secretary of State is minded not to accept the amended parameter plans it would be possible to achieve the same separation distance by imposing a planning condition.
4. The parameter plans show a vehicular access to Fieldcommon Lane. However, there are no details of such an access within the plans which are offered for approval. The Council and the appellant agreed that this is a matter which is

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<sup>1</sup> The plans that would be approved are listed in ID2. The plans are included within the plans folders at CD A5 and CD A46

<sup>2</sup> The most recent is at CD A45

<sup>3</sup> The amended parameter plans contained within CD A46 can be compared with those considered by the Council which are contained within CD A5

capable of being resolved by a condition. I have included an appropriate condition in the schedule at Annex D (Condition 17). The illustrative masterplan shows a bridge over the River Mole linking the main body of the site to a proposed recreation area to the east of the river. The bridge would be outside the current application site and a separate planning permission would be required. I comment on the implications of that later in this report. At this stage it is sufficient to note that this is a matter which is capable of being covered by a condition.

5. The appeal was recovered by the Secretary of State by letter dated 19 June 2017 for the following reason:

*The reason for this direction is that the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities and proposals for significant development in the Green Belt.*

6. The Council refused planning permission for reasons which may be summarised as follows:

- 1) The proposal would be inappropriate development in the Green Belt and would be harmful to the character and openness of the Green Belt
- 2) It has not been shown that the transport impacts of the development can be sufficiently mitigated, such that a development of this scale could be considered sustainable in transport terms
- 3) The proposal would prejudice the development of a site allocated for waste management due to the potential impacts of noise, dust and odour on the proposed residential units close to the southern boundary
- 4) Insufficient information has been submitted concerning biodiversity

These reasons are set out in full in Core Document (CD (a list of abbreviations is at Annex B)) B4.

7. By the close of the Inquiry, reasons for refusal 2, 3 and 4 were no longer pursued by the Council. Reason 4 had been resolved in advance of the Inquiry by the provision of additional information. Reason 3 had also been resolved by the amendment to the parameter plans described above and by a suggested planning condition. I return to that suggested condition later in these Procedural Matters. Following further discussions on the mitigation of transport impacts, agreement on transport matters was reached between the Council and the appellant during the course of the Inquiry. Nevertheless, local residents and others maintained objections on transport grounds (and other grounds) and evidence on these matters was discussed at the Inquiry.
8. A draft Agreement under S106 of the Town and Country Planning Act 1990 between the Council, Surrey County Council (SCC) and the site owners was submitted at the Inquiry (the Agreement). The Agreement was subject to discussions during the course of the Inquiry which were concluded at a late stage. I therefore allowed a period after the close of the Inquiry for a signed version to be submitted. The version available for discussion at the Inquiry was in

final draft form<sup>4</sup>. On the final day of the Inquiry the appellant suggested an addition to one of the obligations in the Agreement. I allowed a period after the close of the Inquiry for a unilateral undertaking (UU) to be submitted and for further comments to be made by other parties on this matter<sup>5</sup>.

9. The Agreement makes provision for:

- a contribution to new or enhanced bus services
- bus stops to be provided within 400m of all dwellings
- a contribution to improvements to Hersham station comprising improved cycle storage, an extended platform canopy on the London-bound platform and provision of lifts from street level to platform level
- a contribution to improving the recreation ground and replacing the Community Hall at Lower Green
- arrangements for securing the delivery and subsequent management of a public park
- implementation of highways works
- a contribution to enhanced provision for pedestrians and cyclists in the local highway network
- provision of a serviced site for a primary school
- delivery of 50% of the dwellings as affordable housing

10. The UU augments the terms of the contribution to lifts at Hersham station, such that the site owner would make up any funding shortfall needed to provide the lifts in the event that the specified contribution proved to be insufficient.

11. The Council and the appellant provided agreed written evidence that the obligations contained within the Agreement would be in compliance with Regulation 122 and (where relevant) Regulation 123 of the Community Infrastructure Levy Regulations 2010<sup>6</sup>. SCC provided written evidence in response to my questions regarding bus service enhancements, the pedestrian/cycle contribution and the primary school site<sup>7</sup>.

12. From the Council's perspective, the Agreement resolved its concerns in relation to transport. Other parties disputed the effectiveness of the transport provisions in mitigating transport impacts. However, there was no dispute regarding compliance with Regulations 122 and 123, either in relation to transport or any other matter. Nor were any concerns raised in relation to the UU, which augments one element of the Agreement. I see no reason to take a different view and have therefore taken the obligations into account in reaching my

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<sup>4</sup> The final draft is ID13 and the signed version is PID5

<sup>5</sup> The draft UU is at PID1 and the signed version is PID6. PID3 and PID4 include correspondence relating to some minor amendments and a note on positive planning obligations. SCC has confirmed receipt of the UU (PID7)

<sup>6</sup> ID15

<sup>7</sup> LPA9 and LPA12

recommendation. I discuss some of the individual obligations in greater detail under the relevant headings in this report.

13. After the close of the Inquiry I identified a concern regarding the wording of a suggested condition relating to the Weylands waste treatment works. This condition was intended to resolve the Council's concerns reflected in the third reason for refusal. I invited written representations from the parties on this matter and have taken account of the comments received<sup>8</sup>.
14. The application was accompanied by an Environmental Statement (ES)<sup>9</sup>. In reaching my recommendation I have taken the environmental information into consideration.
15. The Cobham Green Belt Group (CGBG) was given Rule 6 status and was represented at the Inquiry.

## **THE SITE AND SURROUNDINGS**

16. The site and its surroundings are described in the evidence and in the Statement of Common Ground<sup>10</sup>. The site extends to a total of approximately 59.6 hectares (ha). The greater part of the site (which I refer to as Area A) is bounded by Molesey Road to the west, Fieldcommon Lane and a public footpath to the north and the River Mole to the east. There is a bridleway along the southern boundary of Area A. The appeal site includes two further parcels to the east of the river which I shall refer to as Area B (to the north) and Area C (to the south).
17. Area A was used for the extraction of sand and gravel from 1950 to around 2001. It was subsequently infilled with waste material. This was primarily inert construction and demolition waste although some contaminants are believed to be present. The land has been restored and most of it is used for grazing horses. There is a lake in the centre of Area A which is used for recreational fishing. To the north of the lake is a group of buildings where some commercial activity takes place. Area B is predominantly open grassland although part of it appeared to be occupied by parked vehicles and trailers at the time of my visit. Area C is mainly woodland. The bridleway to the south of Area A crosses the River Mole and continues through Area C to connect to Lower Green, which forms part of Esher. Part of the London/Woking railway line passes through Area C on an embankment.
18. The site is adjoined to the north by residential development at Fieldcommon, grazing land, open space at Molesey Heath nature reserve and a camping and caravan park. To the east of Areas B and C there is the Esher Sewage Treatment Works and the Sandown Industrial Park. To the south of Area A there is the Hersham Trading Estate and the North Weylands Industrial Estate. There is also open land lying between the southern site boundary and the railway embankment. To the west of Molesey Road is the Esher Rugby Club. The wider area includes the settlements of Walton-on-Thames to the west, West Molesey to the north, Lower Green to the east and Hersham to the south. There are also some large reservoirs to the north west and north east.

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<sup>8</sup> Inspector's questions at PID8 and associated correspondence at PID10 to PID13 inclusive

<sup>9</sup> CD A11 to A25 inclusive.

<sup>10</sup> ID5

19. Access to the locality is constrained by the river, the railway line and the reservoirs. There are three routes to/from the site, Molesey Road (to the north and south) and Rydens Road (to the west). The Halfway junction on Rydens Road and the Hersham station railway arch on Molesey Road are subject to congestion at peak periods. There are bus services running along Molesey Road. Hersham station provides frequent train services on the London Waterloo to Woking line. It is 1.2km from the centre of the site.
20. There are 5 primary schools and 2 secondary schools within 2.5km of the centre of the site. The closest primary school is about a 10 minute walk away. There are small convenience stores in the vicinity of the site and the nearest supermarket is about 2.0km away. The centres of Esher and Walton-on-Thames, which are both about 3km away, provide a range of shops, services and employment opportunities. There are parks and open spaces at Fieldcommon and Lower Green. Most of the Fieldcommon estate is within 400m of a park although a small part of it is not. Parts of Walton-on-Thames and Hersham are similarly more than 400m from a park<sup>11</sup>.
21. Although Elmbridge is a wealthy area there are pockets of need. There are 4 wards which have higher rates of child poverty than the regional average. These wards, which are all in the vicinity of the appeal site, have neighbourhoods where child poverty is up to 27%, compared with an average for the Borough of 14%<sup>12</sup>.
22. The planning history of the site is set out in the Statement of Common Ground<sup>13</sup>. In summary, there was a permission for the extraction of sand and ballast which ran from 1951 to 2001. Various permissions were granted in association with that use. In the period since 2001 there have been two applications for the retention of structures and uses. There has also been enforcement action in relation to unauthorised structures and uses and there have been two applications for golf courses (one withdrawn and the other refused).

## **PLANNING POLICY**

23. The development plan includes the Elmbridge Core Strategy 2011 (CS), the Elmbridge Local Plan Development Management Plan 2015 (DMP) and the Surrey Waste Plan 2008 (SWP)<sup>14</sup>. CS Policy CS1 states that new development will be delivered with a clear spatial strategy which provides the most sustainable way to accommodate growth. It goes on to say that the Green Belt will continue to be a key determinant in shaping settlements and development patterns. Walton and Weybridge are identified as the most sustainable locations in Elmbridge, providing a broad range of uses and services. Esher, Hersham and West Molesey are identified as suburban settlement areas, primarily residential in character, with a more limited range of services.
24. DMP Policy DM17 seeks to protect the Green Belt. It states that inappropriate development in the Green Belt will not be approved unless the applicant can demonstrate very special circumstances. Both the CS and the DMP contain a

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<sup>11</sup> CD F10, figures 4.2, 4.4 and 4.7 (see also ID5, paragraph 2.19)

<sup>12</sup> The national average is 29% - see ID5, paragraph 5.23

<sup>13</sup> ID5

<sup>14</sup> CD E1, E3 and G2 respectively

- number of other policies which are relevant to the appeal proposals<sup>15</sup>. These include policies relating to biodiversity, community infrastructure, design, housing mix, affordable housing, transport, flooding and riverside development.
25. The SWP is the adopted Minerals and Waste Plan for the area. A new plan is being prepared. Consultation on a draft is expected to take place in winter 2017/18 but no details of the emerging plan were available to the Inquiry. Policy WD2 of the SWP allocates some of the land to the south of the appeal site for waste recycling, storage, transfer, materials recovery and processing at the Weylands treatment works.
26. The Council has commenced the preparation of a new local plan. A Strategic Options Consultation (Regulation 18) was published in December 2016<sup>16</sup>. This document set out 3 strategic options. Option 1 proposed maintaining Green Belt boundaries and seeking to meet all development needs by significantly increasing densities on all sites in the urban areas. Option 3 proposed meeting all development needs by amending Green Belt boundaries, regardless of the strength of the Green Belt. Option 2, the preferred option, sought to meet development needs as far as possible, whilst maintaining appropriate densities in the urban area, by amending the Green Belt boundaries where the designation is at its weakest. The consultation went on to identify 3 strategic areas of weakly performing Green Belt where the designation could be removed. The Council and the appellant agreed that the emerging local plan carries very little weight at this stage.
27. The Council and the appellant disagreed as to whether progress on the preparation of the local plan has stalled. The Council's Local Development Scheme 2016 (LDS) envisaged publication of a Preferred Approach plan in July 2017<sup>17</sup>. In July 2017 the Council published a Position Statement which stated that the scale of the response to the Strategic Options Consultation, together with potential changes set out in the Housing White Paper, would delay the next iteration of the local plan<sup>18</sup>. It also stated that a revised LDS would be published once the Government had provided a clearer timetable as to the implementation of the changes set out in the Housing White Paper.
28. A number of studies and reports forming the evidence base for the emerging local plan were referred to in the evidence. These included the Green Belt Boundary Review (GBBR)<sup>19</sup> and the Kingston and North Surrey Strategic Housing Market Assessment 2016 (SHMA16)<sup>20</sup>.

## THE PROPOSALS

29. The application is in outline, with only the means of access from Molesey Road to be determined at this stage. This would be provided by a new 4 arm roundabout at the junction of Molesey Road and Rydens Road. There would also be a priority junction with a right turn lane into the site towards the southern end of the site.

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<sup>15</sup> The relevant policies are set out at section 4 of the Statement of Common Ground (ID5)

<sup>16</sup> CD F2

<sup>17</sup> CD F1

<sup>18</sup> CD F5

<sup>19</sup> CD E5

<sup>20</sup> CD G1

The general location and scale of the development is described in the parameter plans which cover matters such as land use, density, building heights, phasing and circulation.

30. The main components of the scheme would be:

- a southern residential zone including buildings from 2 to 5 storeys
- a northern residential zone including buildings from 1 to 4 storeys
- a public park centred on the existing lake
- a community hub adjacent to the proposed roundabout, comprising a supermarket, offices, a pub/restaurant, a medical centre, dentists and pharmacy and a primary school
- an area of open space in the northern tip of the site together with linear open spaces or buffer zones around the site boundaries

31. All of the above would be within Area A. Area B would be used for recreational purposes including a sports pitch, a skate park and a play area. Area C would remain as woodland. Around 50% of the total site area, approximately 30ha, would constitute green space including public open space, the lake and woodland.

32. The appellant proposes to create a joint venture arrangement for the delivery of the scheme. No development agreement was in place at the time of the Inquiry. Letters of intent from Countryside Properties UK Limited and Paragon Asra Housing Limited (an affordable housing provider) are included in the evidence<sup>21</sup>. The appellant anticipates that the developer would provide the main infrastructure, including the open space and other green infrastructure. The developer would also provide the medical centre, dentist's surgery, pharmacy and offices on a shell and core basis, ready for fitting out by tenants. Delivery of these components could be secured by a condition. Sites for the local supermarket and pub/restaurant would be marketed. It is anticipated that these facilities would be built by the future operators. The appellant has sought commercial advice in relation to the non-residential elements of the scheme and is confident that there will be market interest<sup>22</sup>.

33. The appeal scheme would generate a requirement for just over one form entry of primary school capacity, together with a need for early years provision. At present there would not be sufficient capacity in Walton/Hersham to meet these needs. However, SCC advises that there may be some spare capacity in existing schools by the time demand from the appeal site builds up. That would be taken up first, before provision of a new primary school. Due to the current uncertainty regarding pupil projections, the Agreement provides for a school site to be offered to SCC part way through the development. As single form entry schools are not considered to be viable, the site would be of sufficient size to accommodate a two form entry primary school together with early years

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<sup>21</sup> Appendix 1 to the Rebuttal Proof of Mr Fidgett

<sup>22</sup> Inspector's note - evidence on the delivery mechanism was given by Mr Fidgett in his oral evidence, both in chief and in response to my questions

provision. If the school were required at that point, SCC would take the land and facilitate the provision of an academy school<sup>23</sup>.

34. The masterplan and parameter plans show a bridge linking Area A to the recreational facilities in Area B. The appellant intends this to be a pedestrian and cycle bridge which would also be capable of accommodating service and emergency vehicles. The bridge does not form part of the appeal application and would need separate planning permission in its own right. There was no feasibility study in the evidence before the Inquiry. However, the appellant stated that the proposed bridge had been considered by its engineers and that the cost had been allowed for in the scheme budget. It had also been discussed with the Environment Agency who had no objection in principle subject to certain design requirements. The appellant suggested that delivery of the bridge could be secured by a Grampian condition<sup>24</sup>.
35. The application was accompanied by a transport assessment (TA) and a TA Addendum<sup>25</sup>. The scope of baseline traffic surveys and the methodology for calculating the amount and distribution of the traffic generated by the appeal scheme were agreed with SCC as highway authority. There was also agreement on the traffic growth factor to be applied and on the committed developments to be taken into account when modelling the future operation of the junctions within the study area with/without the traffic generated by the development. The TA identified that the Halfway junction is operating over capacity now and that traffic growth, committed developments and the appeal scheme would all increase queueing at this junction. No capacity improvements have been identified at any of the existing junctions studied.
36. The proposed off-site highway works focus on improvements to safety, with an emphasis on provision for cyclists and pedestrians:
- cycle paths along Molesey Road, both to the north towards West Molesey and to the south towards Hersham station
  - a Toucan crossing on Molesey Road to the north of Hersham station
  - widening of Rydens Road to 6.5m with the footway being increased to 2.0m
  - a Toucan crossing on the western arm of the Barley Mow roundabout
  - further cycle improvements to be carried out by SCC funded by a contribution
  - alteration to 30mph speed limit zone
  - bus stop enhancements
37. The contribution to bus services, secured by the Agreement, would provide a half hourly service (including weekends) from 0600hrs to 2300hrs. This would be an

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<sup>23</sup> LPA12

<sup>24</sup> Inspector's note – evidence on the delivery of the bridge was given orally by Mr Fidgett, both in chief and in answer to questions from Mr Howell Williams

<sup>25</sup> CD A31, A32 and A42 (see also APP11 – supplementary note addressing Inspector's questions)

- improvement on existing services which do not run so late into the evening or on Sundays. The Agreement would also provide for a review of bus stop locations within the site, so as to ensure that all dwellings were within 400m of a bus stop. Reference has been made above to the contribution to improvements at Hershams Station.
38. The proposed travel plan includes targets to increase the use of walking, cycling and public transport for both residential and non-residential uses. The target for residential uses is to reduce the proportion of trips made by car from 75% in the opening year to 60% after 5 years<sup>26</sup>.
  39. The effect on air quality is considered in the ES and the air quality assessment<sup>27</sup>. The assessment concludes that the proposals would be air quality neutral in relation to building emissions. The impact of road traffic on air quality in the locality has been modelled using the DEFRA emissions factor toolkit. A sensitivity test was carried out using the '*calculator using realistic diesel emissions*'<sup>28</sup>. The assessment concludes that the impact on particulates would be negligible. For nitrogen dioxide (NO<sub>2</sub>), the model predicts a moderate adverse effect at two receptors. The sensitivity test predicts a major adverse effect at 2 receptors and a moderate adverse effect at 4 receptors.
  40. Overall the assessment predicted a moderate adverse impact on the Walton Air Quality Management Area and along Molesey Road and Rydens Lane. Mitigation would therefore be necessary. The assessment states that the proposals would provide safe and accessible pedestrian and cycle routes both within the site and in the locality. There would be safe and secure cycle parking. The use of sustainable transport modes would be promoted through travel plans. Having regard to the proposed mitigation, the assessment concludes that the impact on local air quality would be reduced to minor adverse.
  41. The effect of existing noise sources on the proposed dwellings is considered in the ES and the noise assessment<sup>29</sup>. The baseline noise survey covered representative measurement positions, including two on the southern site boundary close to the adjoining industrial estate and waste transfer operations and one on the western boundary close to Molesey Road. Predicted noise levels within the proposed dwellings were found to be within the World Health Organisation guidance on acceptable internal noise levels in dwellings. Noise levels in gardens and other open spaces were found to be mainly below the guideline figure. Noise control measures relating to the proposed uses, such as the supermarket and school, would be secured through the detailed design process for those elements of the scheme. The assessment concluded that no specific mitigation measures to control noise would be needed.
  42. The ES identifies that the site includes a number of habitat types including grassland, woodland, open mosaic habitat, hedgerows and a lake<sup>30</sup>. Surveys have been carried out for amphibians, bats, breeding birds, mammals and reptiles. The proposed layout seeks to retain those features which are of greatest benefit to

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<sup>26</sup> CD A39

<sup>27</sup> CD A26; CD A34 (see also APP12 and APP13 responding to matters raised by Mr Kirkman)

<sup>28</sup> Emissions data is discussed in CD A34, paragraphs 5.19 to 5.27

<sup>29</sup> CD A22 and CD A30 (see also APP14 in relation to noise measurements)

<sup>30</sup> CD A18

biodiversity. The mitigation measures proposed in the ES include retention and management of woodland, creation of parkland, creation of biodiverse green roofs, retention of an area of flower rich grassland, creation of new areas of meadow, extensive tree and shrub planting and retention of low light corridors to enhance bat habitats.

43. Following mitigation the ES considers that there would be 3 residual negative impacts. These would be the loss of 11 mature oak trees, the loss of two pairs of breeding skylark and reduction in reptile numbers due to predation by household pets. Nevertheless, in general the ES considers that the effects on the habitats and species assessed would be beneficial.
44. The potential for land contamination is considered in the ES<sup>31</sup>. This identified potential contamination of soils, localised impact on groundwater and localised concentrations of methane. It may be necessary for highway corridors to be subject to remedial earthworks. Clean soil capping is likely to be required in gardens and landscaped areas. Further work is recommended, including groundwater monitoring, soil sampling and ground gas monitoring. The ES concludes that, although the site presents a number of geotechnical and environmental constraints, the results of the targeted investigations carried out to date indicate that it is suitable for residential development.
45. The ES notes that there have been comprehensive flood defence and alleviation works along the River Mole since the severe flooding experienced in 1968<sup>32</sup>. The most likely source of fluvial flooding at the appeal site is the Dead River, on the opposite side of Molesey Road. The site is primarily within flood zone 1, the area which is at least risk of flooding. A small part of the site, in the north west corner of Area A, is in flood zone 2 and is regarded as being at low risk of flooding. The flood risk strategy is to locate only non-residential development in this part of the site. There would be no requirement to raise ground levels to protect the development from flooding<sup>33</sup>.
46. The parameter plan for the drainage strategy shows a conceptual design for a sustainable drainage system (SuDS)<sup>34</sup>. Surface water flows would be managed within the site by means of swales and attenuation ponds. Surface water would be discharged to the River Mole at a controlled rate, with any excess water accumulating during a storm event being attenuated within the site.

## **AGREED MATTERS**

47. The following is a summary of matters agreed between the Council and the appellant. They were not necessarily agreed by other parties.
48. The SHMA 2016 took as its starting point a figure of 428 households per annum in Elmbridge for the period 2015 to 2035. This was derived from the DCLG 2012 based household projections and resulted in an estimated objectively assessed need (OAN) of 474 dwellings per annum (dpa)<sup>35</sup>. The DCLG 2014 based

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<sup>31</sup> CD A20

<sup>32</sup> CD A19

<sup>33</sup> APP10, page 2

<sup>34</sup> CD A46, plan 4368/011/B

<sup>35</sup> CD G1, table 10.1

projections indicate a figure of 448 households per annum in Elmbridge over the same period.

49. In September 2017 the Government published a standardised method for assessing housing need in *Planning for the right homes in the right places: consultation proposals*. Applying this method, the indicative assessment of housing need in Elmbridge would be 612dpa. However, as this is a consultation document little weight can be placed on its proposals at this stage.
50. Affordable housing need in Elmbridge is identified in table 8.7 of the SHMA16 as 332dpa. This amounts to 70% of the full OAN as assessed in the SHMA16.
51. The Council's 5 year housing land supply position (5YrHLS) is set out in the *Elmbridge Local Plan Authority Monitoring Report 2015/16* which indicates a 5YrHLS of 3.16 years (against the SHMA16 OAN). This takes account of a 5% buffer which is agreed to be the correct figure. The supply figure in the monitoring report (1,614) is now thought to be a slight underestimate and the agreed figure for the 5 year supply is 1,635.
52. The ES identifies a number of statutory designated nature conservation sites in the locality including the South West London Waterbodies (Special Protection Area and RAMSAR site), the Knights and Besborough Reservoirs (Sites of Special Scientific Interest) and Molesey Heath and West End Common (Local Nature Reserves). No significant effects were identified in relation to any of these sites.
53. The site was previously identified as a Site of Nature Conservation Interest. However, it has since been deselected and is no longer identified as such.

## **THE CASE FOR THE APPELLANT – BONNAR ALLAN LIMITED<sup>36</sup>**

### ***Introduction***

54. This appeal proves the need for urgent intervention from the Secretary of State - both in response to Elmbridge Borough Council's own request for guidance in the letter from the leader of the Council, dated 22nd February 2017<sup>37</sup>, and to give guidance to other local planning authorities in a similar position. They all need to know how to address the pressing need for more homes when it can only be met in the Green Belt. This appeal provides the perfect opportunity to make the Government's position clear.
55. The Secretary of State has already tried to do that but it seems not all local authorities were listening. The Housing White Paper *Fixing our Broken Housing Market* told everyone that we are in a housing crisis and that solving it will require some tough decisions. It went on to outline three major problems that had to be overcome if we were to build more homes, the third of which could have been directly addressed to Elmbridge<sup>38</sup>:

*'Many councils work tirelessly to engage their communities on the number, design and mix of new housing in their area. But some duck difficult decisions and don't plan for the homes their area needs'*

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<sup>36</sup> This is a summary of the full closing submissions which are at APP20

<sup>37</sup> CD F4

<sup>38</sup> CD C3, page 13 (see also pages 14, 18 and 21 with regard to ducking decisions)

56. These messages have recently been reinforced in the House of Lords through oral answers to the question posed by Baroness Neville-Rolfe<sup>39</sup>:

*'To ask Her Majesty's Government, in the light of the comments by the Secretary of State for Communities and Local Government on 22 October about investment in housing, what steps they are taking to liberalise planning laws in order to make it easier for new residential properties to be built... The problems are chronic, particularly in the south, with millions more people living here than was predicted 20 years ago. Can the Government increase the supply of homes by easing planning laws and being brave enough to do so in undistinguished pockets in the Green Belt?'*

57. The response from Lord Young of Cookham (the Spokesman in the House of Lords for the Cabinet Office) made three important points:

- planning policy already states that the Green Belt should be developed where that is necessary and all other opportunities have been explored
- some areas of Green Belt do not live up to their name - they are sometimes very unattractive pieces of land
- some local authorities had been dilatory in coming forward with Local Plans

58. With regard to the first point, we know that housing needs can be an *'exceptional circumstance'* giving rise to the need to release land from the Green Belt in accordance with paragraphs 83 to 85 of the Framework. Moreover, meeting housing needs can contribute to the *'very special circumstances'* needed to justify inappropriate development in the Green Belt in accordance with paragraphs 87 and 88 of the Framework. That is clear from the cases of *Hunston*<sup>40</sup>, *Phides*<sup>41</sup> and *Suffolk Coastal*<sup>42</sup>. There are two examples before this Inquiry – the *Weyburn Works* decision letter in Waverley<sup>43</sup> and the *Oaklands College* decision letter in St Albans<sup>44</sup>.

59. With regard to the second point, the appeal site could be regarded as the kind of Green Belt that Lord Young had in mind. It is degraded urban fringe land and is recorded as such in the GBR<sup>45</sup>. As for the third point, some authorities are reviewing their local plans and identifying where the release of land from the Green Belt would meet needs in the most sustainable way. However, this has not occurred everywhere<sup>46</sup> and it is not happening in Elmbridge where the challenge of satisfying housing needs is not being met. The Council has failed to deliver the

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<sup>39</sup> CD L23

<sup>40</sup> CD K2, *St Albans City and District Council v (1) Hunston Properties Limited and (2) Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610, paragraph 28

<sup>41</sup> CD K6, *Phides Estates (Overseas) Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin), paragraph 60

<sup>42</sup> CD K4, *Suffolk Coastal District Council v Hopkins Homes Ltd and another; Richborough Estates Partnership LLP and another v Cheshire East Borough Council* [2017] UKSC 37, paragraphs 59 to 61

<sup>43</sup> CD K16

<sup>44</sup> APP9

<sup>45</sup> CD F11, page 104

<sup>46</sup> Rebuttal proof of Mr Spry, figure 2.1

up-to-date local plan required by Government policy, it is failing to meet housing needs and it is thereby failing the very people it is meant to serve.

60. There is no immediate prospect of these failures being addressed. The Council has stalled plan making in direct response to a White Paper which was meant to achieve exactly the opposite reaction<sup>47</sup>. Moreover, Mr Tunnell (the Council's planning witness) stated that the Council may pull back from a previous decision to release Green Belt land to meet housing needs<sup>48</sup>. Even before that possible U-turn, the Council was not planning to meet all of its housing needs<sup>49</sup>. The context for this appeal is that Elmbridge has acute housing problems and is unwilling to face up to them. The appeal scheme could make a substantial contribution towards addressing those problems speedily. These points weigh very heavily in favour of the scheme.
61. There are also important site-specific advantages of the appeal proposals, the greatest of which would be the provision of a park of around 28ha<sup>50</sup> in a strategically important arc of Green Belt land that is degraded and fragmented<sup>51</sup>. This would improve visual perceptions of openness<sup>52</sup> and provide open access to the public<sup>53</sup>. It would restore biodiversity to land blighted by mineral extraction and infilling with waste material and would provide increased connectivity to the wider Green Belt, as shown by the appellant's Connectivity Plan<sup>54</sup>. The appeal proposals would positively enhance the Green Belt – the very constraint which has contributed so significantly to unmet housing needs in Elmbridge.

### ***The application***

#### *The site and its surroundings*

62. The site is enclosed by a mix of native trees and hedgerows of variable height and condition around its boundaries. A tall belt of woodland surrounds an existing lake within the central part of the landholding. Retained buildings along Fieldcommon Lane are used as light industrial units with associated hardstanding used for lorry and trailer parking. The lake is currently used by a private fishing club. There is no public access into the site. Although public footpaths run alongside it, some sections are tightly constrained by fencing and appear unwelcoming.

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<sup>47</sup> CD F4

<sup>48</sup> Inspector's note – in answer to questions from Mr Stinchcombe, Mr Tunnell stated that the Council had consulted on a strategic option which envisaged release of Green Belt land. Whilst that did not amount to a firm proposal it was (he thought) unlikely that the Council would row back from that position. He stated that it was not possible to be certain at this stage of the process.

<sup>49</sup> CD F2, paragraph 3.16

<sup>50</sup> Inspector's note – Mr Stinchcombe's closing submissions refer to a '70 acre park'. I have converted that figure to hectares for consistency with other measurements in this report. The statement of common ground notes that approximately 30ha of the site would comprise green space. That figure includes public open space, the lake, a meadow and woodland (paragraph 5.26 of ID5)

<sup>51</sup> CD E5, Annex 2, page 180

<sup>52</sup> CD K1, John Turner v. Secretary of State for Communities and Local Government and East Dorset District Council [2016] EWCA Civ 466

<sup>53</sup> The Framework, paragraph 81

<sup>54</sup> CD H4

63. Although the grassland is visually open, the block of woodland around the lake restricts longer views across the appeal site and reduces the overall sense of openness. The boundary hedgerows and extensive surrounding vegetation also provide a substantial level of screening and visual separation from the adjacent Green Belt landscape.
64. The site is sustainably located. The TA<sup>55</sup> shows the location of existing facilities, including schools, a doctor's and dental practice, sports and recreation spaces and shops. There are three bus stops adjacent to the site boundaries (a 5 minute walk from the centre of the site). Hersham station, which provides trains to London, is just 1.2km from the centre of the site (a 14 minute walk). Footpaths run nearby and the site adjoins an existing cycle network.

#### *The masterplan*

65. The proposals would provide up to 1,024 new homes, half of which would be affordable. The highest density of residential development would be in the most sustainable location, closest to the train station<sup>56</sup>. This would all be part of a new community based around the facilities needed for day-to-day life, including a primary school, medical facilities, shops and space for sports and leisure activities. It would take the form of a sustainable urban extension to Walton-on-Thames.
66. The indicative masterplan has been guided by a landscape led strategy which would create a new park, planted with 1,200 trees, together with a fishing lake and the creation of new habitats. There would be public access points to ensure that these attractive new features would be open to everyone, not just the new residents. Final details of the scheme would be subject to a reserved matters application.

#### *The Green Belt*

67. Green Belt will be discussed in detail below but 6 points should be made at the outset:
- the Council has acknowledged that '*exceptional circumstances*' exist such as to justify the release of Green Belt land to meet housing needs<sup>57</sup> so any definitional harm would not be unique to the appeal scheme
  - the proposals would represent a carefully planned layout which would be the antithesis of unrestricted sprawl, would maintain the gaps between towns and would safeguard the green infrastructure of the Borough by improving an area of poor quality land
  - the proposed park would be a substantial addition to the amount of useable Green Belt land - the parkland could remain as Green Belt because it would be used for purposes which are appropriate to, and welcomed within, the Green Belt<sup>58</sup>

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<sup>55</sup> CD A31

<sup>56</sup> CD A46, drawing No 4368-005B (density parameter plan)

<sup>57</sup> CD F7

<sup>58</sup> CD H4; the Ministerial Foreword to the Framework; paragraphs 81 and 89 of the Framework

- the park would contain a diversity of habitats bringing dead land back to life and resulting in an overall improvement in the biodiversity and appearance of the area
- at present the enclosed nature of the site creates an obstruction to connectivity within the Green Belt - the proposals would enhance connectivity as part of a network of green infrastructure, creating a new hub for pedestrian movement in the area
- the proposals would create important amenity benefits through the provision of formal sports and recreation facilities within the park including a football pitch, a multi-use games court, children's play areas, a skate park, outdoor gym and fitness equipment - these are all appropriate within the Green Belt

68. Some of the Green Belt in Elmbridge will have to be built upon if housing needs are to be met. It follows that definitional harm to the Green Belt, and some impact on openness, is inevitable. However, building the homes that are needed on the appeal site can enable the quality and function of the Green Belt to be enhanced in other ways. That is a benefit of the greatest possible importance.

*Other benefits*

69. The proposals would also bring other significant benefits, including the delivery of housing:

- up to 1,024 new homes, making a major contribution towards meeting urgent housing needs in Elmbridge
- 50% affordable housing, making a significant contribution towards meeting the acute need for affordable housing
- many of these homes would be delivered within five years of commencement, thereby making a significant contribution to the Borough's 5YrHLS
- a mix of homes in a range of tenures, including a significant proportion of 1, 2 and 3 bedroom homes to accord with the requirement for smaller, more affordable, homes

70. These houses would come as part of a wider package of essential investment in social infrastructure, which would benefit new residents and existing residents alike:

- the provision of land for a new 2 form entry primary school (with capacity to expand to 3 form entry if required)
- the sporting and recreational facilities described already, all of which will help to integrate communities and directly address need
- a doctor's surgery, pharmacy, dental surgery, local supermarket, office space, public house/restaurant (which would provide up to 240 jobs across a range of employment opportunities)

- public transport investment to provide new canopies and a lift for the disabled at Hershams station, improved bus services and contributions to the wider footpath and cycle network

71. The proposals would deliver these significant benefits within an area where there are acknowledged pockets of need. This would help reduce the social inequality and exclusion identified in, for example, the *Streets Apart* report<sup>59</sup> and the *Open Space and Recreation Assessment*<sup>60</sup>.

#### *Overwhelming compliance with local policy*

72. Mr Tunnell identifies 27 relevant planning policies. He then concludes that the proposals would conflict only with Policies CS1 and DM17<sup>61</sup>. It is remarkable that, even on the Council's case, a scheme of this scale should be regarded as so compliant with development plan policy. Moreover, the appellant considers that the Council is wrong to assert any breach of Policies DM17 and CS1. The appeal proposals substantially comply with all applicable policies.

#### *Flawed approach to the reason for refusal*

73. It is still more remarkable that the sole remaining reason for refusal is based on a fundamental error of approach made by the Council. In particular, the Council assumed that there was a 7.51 year supply of housing<sup>62</sup>. That was a false premise, reached without regard to the principles in *Hunston*<sup>63</sup> and *Gallagher*<sup>64</sup>. Had the Council members been properly advised, they would have appreciated that the supply was considerably below the 5YrHLS required by paragraph 47 of the Framework. This point was acknowledged by the Council's planning witness<sup>65</sup>. That is important because it feeds directly into the correct approach to decision-taking, which the Council failed to follow.

### ***National planning policy – housing and Green Belt***

#### *The Government's policy to boost housing supply*

74. Paragraph 14 of the Framework requires local planning authorities positively to meet the development needs of their area. The core planning principles set out in paragraph 17 indicate that local planning authorities should plan to meet their full OAN, responding positively to wider opportunities for growth and taking account of market signals, including housing affordability. This is taken forward in paragraph 47 which states that to '*boost significantly*' the supply of housing, local planning authorities should:

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<sup>59</sup> CD G13

<sup>60</sup> CD F10, figure 3.5; paragraphs 3.25 and 3.26; paragraphs 4.18 and 4.19; table 4.6; paragraphs 4.31 and 4.32

<sup>61</sup> Proof of evidence of Mr Tunnell, paragraphs 31-90 and paragraph 133

<sup>62</sup> CD B1, paragraph 115

<sup>63</sup> CD K2, *St Albans City and District Council v (1) Hunston Properties Limited and (2) Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610

<sup>64</sup> CD K7, *Gallagher Homes Limited and (2) Lioncourt Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1283

<sup>65</sup> Inspector's note, in answer to questions from Mr Stinchcombe, Mr Tunnell accepted that the Council did not have a 5YrHLS at the time the application was determined

*'use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework...'*

Paragraph 47 also requires local planning authorities to maintain a rolling 5YrHLS.

75. The Framework outlines the evidence required to determine OAN, setting out in paragraph 159 that local planning authorities should:

*'Prepare a Strategic Housing Market Assessment to assess their full housing needs... identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which meets household and population projections, taking account of migration and demographic change; addresses the needs for all types of housing, including affordable housing....'*

76. Whilst the above relates primarily to plan-making, it is of significant relevance to decision-taking for two reasons. First, paragraph 215 of the Framework states that:

*'... due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).'*

77. Second, paragraph 49 states that where a local planning authority cannot demonstrate a 5YrHLS, its policies for the supply of housing are deemed out-of-date. This has implications for the presumption in favour of sustainable development, set out in paragraph 14. For plan-making this means meeting OAN. For decision-taking, this means granting permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or *'specific policies in the Framework indicate development should be restricted'*. Those specific policies (which are set out in footnote 9) include Green Belt. However, if those policies are satisfied, then they do not indicate that development should be restricted.

### *Green Belt*

78. Green Belt policy is set out in Section 9 of the Framework. Paragraph 79 makes it clear that the Government attaches great importance to Green Belts, the fundamental aim of which is to prevent urban sprawl by keeping land permanently open. Paragraph 80 then goes on to set out the five purposes served by Green Belts:

- 1) to check the unrestricted sprawl of large built-up areas
- 2) to prevent neighbouring towns merging into one another
- 3) to assist in safeguarding the countryside from encroachment
- 4) to preserve the setting and special character of historic towns
- 5) to assist in urban regeneration by encouraging the recycling of derelict and other urban land

79. Paragraph 83 states that local planning authorities should establish Green Belt boundaries in their Local Plans and that, once established, these boundaries should only be altered in '*exceptional circumstances*' and through the preparation or review of the Local Plan. Paragraphs 84 and 85 go on to advise local planning authorities that, when drawing up or reviewing Green Belt boundaries, they should:

- take account of the need to promote sustainable patterns of development
- ensure consistency with the Local Plan strategy for meeting identified requirements for sustainable development
- not include land in the Green Belt which it is unnecessary to keep permanently open
- define the Green Belt boundaries clearly, using physical features that are readily recognisable and likely to be permanent

80. As for decision-taking, paragraph 87 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 states that, when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt and that:

*'Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.'*

81. The word '*potential*' is important. This qualification was inserted into the Framework when it replaced the previous statement of Green Belt policy in PPG2 (January 1995)<sup>66</sup>. It is an important and new aspect of Government policy. It can only mean that an assessment is required as to the extent to which, beyond definitional harm, real harm would be caused in the particular circumstances of any given case. This is particularly relevant in areas where housing must be built on Green Belt land and so definitional harm is going to be caused in any event.

82. The case of *Turner*<sup>67</sup> is important here, since it makes it clear that a visual dimension should be included in any Green Belt assessment. It is this consideration of visual impact which largely differentiates the definitional harm inherent to any built form in the Green Belt from the actual harm that will, potentially, be occasioned and falls to be assessed under paragraph 88 of the Framework.

#### *Exceptional circumstances and housing need*

83. All of the land in the Borough outside the existing settlements is designated as Green Belt. As noted above, the Council has previously concluded that '*exceptional circumstances*' exist which necessitate the release of land from

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<sup>66</sup> CD C6

<sup>67</sup> CD K1 - *John Turner v Secretary of State for Communities and Local Government and East Dorset District Council* [2016] EWCA Civ 466, paragraphs 14 and 15. See also *Goodman Logistics Development (UK) Ltd v Secretary of State for Communities and Local Government and Slough Borough Council* [2017] EWHC 947 (Admin) (LPA4)

Green Belt to meet housing needs through a replacement Local Plan<sup>68</sup>. The appellant agrees with this previous view and laments the apparent signalling of a retreat. Meeting housing needs is an essential component of sustainable development. Failing to meet housing needs would cause significant social and economic harm and would be at odds with the messages of the recent White Paper<sup>69</sup>.

84. In accordance with its previous view the Council instructed Arup to conduct the GBBR<sup>70</sup>. However, the GBBR was so broad brush that it did not test the performance of the appeal site itself against the purposes of designation. Arup has now been instructed to conduct a finer-grained review which confirms that the GBBR is not an adequate evidence base upon which to found decisions. Moreover, the GBBR took no account of visual impact, which we now know to be highly relevant following *Turner*<sup>71</sup>. This can be seen from the glossary where every relevant definition reveals a purely volumetric approach to assessments of openness<sup>72</sup>.
85. The Council adopted a flawed approach to the strategic options. All three of the options identified were inadequate. Option 1 was to meet all development needs in the urban area, which would be impossible. Option 2 looked to release only the 'weakest performing' Green Belt sites, which avoided any fine balancing of weaker performing sites against housing needs. Option 3 would have completely disrespected Green Belt policy by ignoring the extent to which any particular site contributes to the purposes of the Green Belt.
86. Three additional points should be noted in relation to the need to release land from the Green Belt:
- the Council is planning for a considerable shortfall in housing, as may be seen from Option 2 of the *Strategic Options Consultation*<sup>73</sup>
  - it is therefore imperative to consider whether more can properly be done towards meeting housing needs, consistent with the objective of achieving sustainable development and with paragraph 83 of the Framework
  - the Council has significantly underestimated its OAN, such that the housing shortfall which it is facing is much greater than it has assumed

*Very special circumstances and housing need*

87. It is accepted that there is a difference between the concepts of 'exceptional circumstances' (justifying the alteration of Green Belt boundaries) and 'very special circumstances' needed to justify inappropriate development in the Green Belt. It is also accepted that Planning Practice Guidance (the Guidance) states that:

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<sup>68</sup> CD F7

<sup>69</sup> CD C3, pages 18 and 28

<sup>70</sup> CD E5

<sup>71</sup> CD K1

<sup>72</sup> CD E5, appendix A

<sup>73</sup> CD F2, paragraph 3.16

*'Unmet housing need ... is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt'*<sup>74</sup>

88. However, the Guidance uses the word '*unlikely*' rather than '*never*'. It follows that there will be some cases in which unmet housing need could amount to very special circumstances. It can certainly contribute to them, as seen in the decision letters relating to *Weyburn Works*<sup>75</sup> and *Oaklands College*<sup>76</sup>. The appellant's evidence indicates the kind of cases where this might be so, including where there is little or no prospect of needs being met unless there is prompt intervention. Moreover, whilst '*exceptional circumstances*' and '*very special circumstances*' are conceptually different, acceptance of the former clearly feeds into any assessment of the latter.
89. There is a further powerful reason why the Secretary of State should make it clear that there will be cases (albeit rare) where unmet housing need could indeed amount to very special circumstances. In Green Belt areas, the need to demonstrate very special circumstances, taken together with the PPG advice that unmet housing need is unlikely to amount to the same, has operated as a disincentive to plan-making<sup>77</sup>. That is what has happened in Elmbridge.

### ***Planning background in Elmbridge***

#### *Local Plan out-of-date*

90. The Framework (March 2012) required local planning authorities to produce a Local Plan. However, some five and a half years later, Elmbridge still lacks an up-to-date Local Plan despite the fact that housing needs are such that the requirement for an up-to-date plan is urgent. The plan-making process is at such an early stage that it is common ground that it can be given little weight. The CS and DMP are out-of-date insofar as their policies for the supply of housing are concerned, leaving a planning policy void at the local level.

#### *The Green Belt review*

91. The Council went some way towards addressing the housing crisis that it now faces before it stalled the review of the Local Plan. The 2016 document *Exceptional Circumstances Case*<sup>78</sup> explained that the need for housing, combined with inadequate urban capacity, required the release of land from the Green Belt. Accordingly, the Council commenced the GBBR which identified three potential locations where such development might occur.

#### *Planning for shortfall*

92. Even though the Council had concluded that exceptional circumstances existed, sufficient to compel the release of Green Belt land to help meet its housing needs, it nonetheless proposed to under-provide for housing. That can be seen

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<sup>74</sup> CD C2, ID reference 3-034

<sup>75</sup> CD K16

<sup>76</sup> APP9

<sup>77</sup> Rebuttal proof of Mr Spry, paragraph 2.13 and figure 2.1

<sup>78</sup> CD F7

from the Council's selection of Option 2 in the *Strategic Options Consultation* where it stated that <sup>79</sup>:

*'Based on the evidence collected and on the sustainability appraisal of the options set out above, we consider that Option 2 is to be preferred. This option balances the Government's directive to increase the levels of development, and in particular, housing development in the Borough whilst recognising that there are constraints on the amount of developable land which will prevent us from meeting our development needs in full.'*

#### *Stalling the Replacement Local Plan*

93. The Council has now stalled essential parts of the plan-making process, despite the clearest directions from the Government to the opposite effect. The Leader of the Council wrote to the Secretary of State on 22 February 2017<sup>80</sup> explaining that there would be a pause in the preparation of the Local Plan resulting from the introduction of a standardised methodology for calculating housing needs. Mr Tunnell was unconvincing in his attempt to dismiss the letter as no more than political posturing<sup>81</sup>. In short, when the White Paper emphasised the need for Councils to get a move on, this Council seized upon the White Paper as a pretext to carry on ducking the hard issues.

#### *The timetable for replacement Local Plan*

94. The Elmbridge Local Plan Local Development Scheme<sup>82</sup> (LDS) (September 2016) set out the timetable for producing the new Local Plan as follows:

September 2016 – commencement of document preparation

January to February 2017 - strategic options consultation

July to September 2017 - consultation on preferred approach to spatial strategy and policies including site allocations and designations

February 2018 - publication of proposed submission Local Plan

May 2018 - submission

July 2018 - examination

September 2018 - adoption

95. The timetable assumed that there would be 4 months between submission and adoption of the Local Plan. That was wholly unrealistic. An analysis of plans submitted for examination since the introduction of the Framework by Lichfields<sup>83</sup> found that no plan has been found sound and adopted in this timescale. The average time for comparable plans was 17 months. Moreover, in July 2017 the

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<sup>79</sup> CD F2, paragraph 3.16

<sup>80</sup> CD F4

<sup>81</sup> Inspector's note – in answer to questions from Mr Stinchcombe, Mr Tunnell said that the letter was designed to demonstrate the Council's approach to the wider community. Whilst he characterised it as a '*politician's letter*' he maintained that it represented a serious technical contribution

<sup>82</sup> CD F1

<sup>83</sup> CD L1

Council published a *Position Statement* which stated that the timetable for producing the new Local Plan would be delayed<sup>84</sup>.

96. The Council did not consult on its Preferred Approach in 2017 and its *Position Statement* indicates that this will not now take place until early 2018. Although the Council now states that six months will be required to prepare the necessary evidence base, it has still not published a timetable for renewing the plan. The timetable provided by the Council's planning witness at the Inquiry reveals more than a year of slippage as compared with the published LDS<sup>85</sup>. Given the fluidity of these timetables, the Council's lack of realism and its lamentable track record, little reliance can be placed on its evidence regarding the pace of plan-making.
97. The appellant considers that the evidence on the timetable for plan-making given by Mr Spry (the appellant's witness on housing matters) is more credible and reliable<sup>86</sup>. A realistic timetable would be:

Autumn 2018 – strategic options consultation

Spring 2019 - consultation on a preferred approach

Autumn 2019 - publication of proposed submission plan

Winter 2019 – submission

Winter 2020 – adoption

This timetable assumes 12 months from submission to adoption. This is slightly shorter than the average, reflecting the fact that the proposed standardised methodology may reduce the time required to examine OAN. It may be that there are further rounds of consultation, or that additional time is needed to address large volumes of comments, or that the examination is longer than average. All of this means that the plan may not be adopted until autumn 2021<sup>87</sup>.

#### *The Council's invitation to the Secretary of State and his response*

98. The Secretary of State's response<sup>88</sup> to the Council's letter of 22 February 2017 stated:

*'I wish to be clear that where authorities have not got an up-to-date plan in place, they should continue to make every effort to do so as soon as possible'*

It went on to say that the Government has been:

*'...very clear that all authorities should get a plan in place by early 2017'*

The White Paper<sup>89</sup> stated that:

*'Authorities that fail to ensure an up-to-date plan is in place are failing their communities, by not recognising the homes and other facilities that local people*

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<sup>84</sup> CD F5

<sup>85</sup> Rebuttal proof of evidence of Mr Tunnell, paragraph 75

<sup>86</sup> Proof of evidence of Mr Spry, paragraphs 7.14 to 7.22

<sup>87</sup> Proof of evidence of Mr Spry, paragraph 7.22 and figure 7.4

<sup>88</sup> CD F4

<sup>89</sup> CD C3, paragraph 1.6

*need, and relying on ad hoc, speculative development that may not make the most of their area's potential'*

99. The Council's attempts to dismiss this correspondence, along with the White Paper, as nothing new missed the point. There is a housing crisis in this country and the Government has made it clear that more needs urgently to be done. The Council's *Position Statement* of July 2017 is the opposite of the approach required by the Secretary of State. It is a paradigm example of the White Paper's description of authorities that duck difficult decisions and don't plan for their housing needs.

#### *A timely opportunity*

100. The Secretary of State has called this appeal in for his own consideration, in the light of the Council's request for further clarification on Green Belt, plan-making and 5YrHLS. This appeal therefore affords the Secretary of State a timely opportunity to give the Council the clarification that it seeks, explaining in terms that local planning authorities must not duck the hard issues to which housing needs and Green Belt constraints give rise. The alternative to making that clear now would be overwhelmingly negative for the prospect of meeting housing needs.

### ***The housing situation in Elmbridge***

#### *The Council's position*

101. The Elmbridge Local Plan Authority Monitoring Report 2015/16<sup>90</sup> sets out two calculations of 5YrHLS. The first used the Local Plan target of 225dpa to calculate a supply of 7.51 years. The second used the SHMA16 OAN of 474dpa, resulting in a supply of 3.16 years. Having regard to *Hunston*<sup>91</sup> and *Gallagher*<sup>92</sup> the Council should not even have considered the first approach (a point accepted by Mr Tunnell). Accordingly, even on the Council's figures, it must be accepted that the Council cannot demonstrate the 5YrHLS required by paragraph 47 of the Framework.

102. In fact, if the Sedgefield approach is taken to the shortfall and a 5% buffer is properly applied, housing supply is 2.99 years. If the Council's estimate of OAN is updated from 474dpa to 495dpa (to reflect the latest data on the demographic starting point) that falls to just 2.85 years<sup>93</sup>.

#### *OAN properly assessed*

103. However, the Council's reliance on an OAN of 474 dpa (or indeed 495 dpa) is fundamentally flawed for three reasons:

- a failure to make any uplift to account for market signals and affordability
- a failure to address affordable housing needs

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<sup>90</sup> CD E6

<sup>91</sup> CD K2

<sup>92</sup> CD K7

<sup>93</sup> APP15; the Guidance Ref ID 2a-016; proof of evidence of Mr Leather (in relation to the 2014 based household projections which he used to update the assessment in the SHMA16 to give the 495 dpa figure)

- an erroneous approach to employment-led housing needs

*Error 1 – market signals and affordability*

104. The Guidance identifies a requirement to take account of market signals, including market indicators of the balance between the demand for and supply of dwellings. It goes on to state that<sup>94</sup>:

*'Appropriate comparisons of indicators should be made. This includes comparison with longer term trends (both in absolute levels and rates of change) in the: housing market area; similar demographic and economic areas; and nationally. A worsening trend in any of these indicators will require upward adjustment to planned housing numbers compared to ones based solely on household projections'*

[emphasis added]

The words that have been underlined are mandatory. Where the evidence demonstrates a worsening trend in any of the identified indicators, an upward adjustment to the demographic starting point must be made.

105. The Guidance then outlines the matters to be considered in exercising planning judgement on the scale of any required upward adjustment:

- 1) identify the scale of affordability problems by reference to factors such as house prices, affordability and rents (and trends with respect to these)
- 2) identify the scale of increased supply which could reasonably be expected to improve affordability (the greater the pressures from market signals, the greater the uplift)

106. Elmbridge faces dramatically worsening market pressures. House prices are already high and clearly represent a worsening trend, which alone would justify an upward adjustment for market signals:

- as at 2016, they averaged £537,450 making Elmbridge the 9th most expensive local authority in England
- in the last 5 years, they rose 37% (compared to 25% nationally)
- in the last 10 years they rose 65% (compared to 33% nationally)
- in the last 20 years they rose 389% (compared with 290% nationally)

107. The same applies to affordability which would also justify upward adjustment on its own:

- as at 2016, the lower quartile workplace-based affordability ratio in Elmbridge was 14.9 (ranked 26th nationally)
- the affordability ratio has continued to worsen in Elmbridge since the onset of the financial crisis in 2007

108. Rents provide yet another indicator justifying a market signals uplift:

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<sup>94</sup> CD C2, the Guidance Ref ID 2a-019 and 2a-020

- as at March 2017 the average monthly rent for all dwellings in Elmbridge was £1,295 making it the 24th most expensive local authority in England
  - rents have risen by 36.3% since 2011, which is amongst the highest increases seen in Surrey (far higher than the national average of 18.4%)
109. The Council's evidence acknowledges that affordability is a constraint in Elmbridge<sup>95</sup>. This can also be seen in the SHMA16<sup>96</sup> which states that there is no indication of any long-term widening of the gap in house prices, nor has affordability worsened, except in Elmbridge. The SHMA16 goes on to comment that:
- 'In Elmbridge there are signs that prices are rising even more rapidly than in London as a whole, and it is here that the case for an addition to the OAN to increase affordable supply is strongest'*
110. In summary, Elmbridge has some of the most expensive housing in England and all market indicators are getting worse. It is clear that a significant uplift for market signals is required. Despite this, Mr Leather (the Council's witness on housing matters) contended that there should be no market signals uplift at all. Moreover, Mr Leather stood by the SHMA16 approach that only if the Elmbridge affordability ratio becomes 2.1 times higher than the England ratio should an uplift be applied. Even then, the uplift would be only 10%.
111. The appellant considers that the SHMA16 is entirely wrong in its approach to affordability. Mr Spry, one of the Government's advisors on the Local Plans Expert Group, has not seen this approach proposed anywhere else and he disagrees with it fundamentally. It is entirely contrary to the Guidance referred to above. There is no basis for waiting until a chronic situation becomes even worse before responding to market signals. Moreover, the SHMA16 approach is inconsistent. The SHMA16 indicates that an uplift would be appropriate if affordability got even worse. It follows that the authors of the SHMA16 must anticipate that increased supply would improve affordability in Elmbridge. If that is so, an uplift now would have the same effect.
112. The basis for the SHMA16 trigger point for a market signals uplift appears to be a reference in the Guidance to making a comparison with longer term trends nationally. That misses the importance of looking at longer term trends in absolute terms. Looked at that way, the position in Elmbridge is stark. Over the long term, the affordability ratio increased by 116% in Elmbridge and 101% nationally. However, the starting-points were very different. In Elmbridge, house prices are now almost 15 times earnings (up from just under seven). Nationally, house prices are now just over seven times earnings. Whereas today entry level homes might still be accessed elsewhere in the country by two people on lower quartile incomes, that is now quite impossible in Elmbridge. Affordability in Elmbridge has worsened more than it has in England in both absolute and relative terms.
113. The appellant considers that there should be a 64% uplift from the starting point to address affordability. This results in a figure of 760dpa. There was some

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<sup>95</sup> Proof of evidence of Mr Tunnell, paragraph 271

<sup>96</sup> CD G1, pages 118 and 119; see also page 138, paragraph 7.43

delay at the start of the Inquiry to enable Mr Leather to understand Mr Spry's methodology. The appellant was surprised that this was necessary because the Council's case was one of principle (that no uplift should be made) rather than an objection to the amount of the uplift.

114. In fact the methodology was clear from Mr Spry's evidence. It engages the Office for Budget Responsibility (OBR) projections for house prices and wages<sup>97</sup> and the University of Reading elasticity figure for calculating the interrelationship between increased housing supply and house prices<sup>98</sup>. These inputs are then used to establish the increased housing supply necessary to peg the affordability ratio in Elmbridge at 14.9. The Council's team (through Mr Tunnell) was aware of this methodology. Essentially the same methodology had been advocated by Mr Spry at the examination of the Mid Sussex Local Plan where it was accepted by the examining Inspector as the best available<sup>99</sup>. Mr Tunnell had been responsible for that examination on behalf of the local planning authority.

115. Mr Spry's methodology is the best available in this case. It is accepted that it applies assumptions which are projected over a long period. That is unavoidable in a planning system which is intended to look forward 15 years or more. It is no different to the way in which population projections are made<sup>100</sup>. The input assumptions are credible, being based on OBR projections and a reputable academic paper. Moreover, it seeks only to peg affordability. If the supply turned out to be greater than that needed to meet that objective then affordability would be improved. This is the intention of Government policy. The Guidance also makes clear that the market signals uplift should be accompanied by monitoring the response of the market over the plan period. With regular reviews of the plan every five years, this allows for calibration of the supply response.

116. The appellant accepts that an uplift of 64% seems a lot but that is where the evidence leads. Moreover, it is broadly consistent with the conclusion advanced by the Government's standard methodology, which would require an uplift of 71% if no cap was applied<sup>101</sup>. The conclusion that a substantial uplift is needed is unavoidable. It is what the Guidance requires, given that every relevant market indicator is worsening.

117. The suggested uplift was sense-checked to see whether the growth scenario could reasonably be expected to occur. Delivery of 760dpa would represent growth of 1.3% to 1.4% per annum in the total stock of housing in Elmbridge. There have been several adopted plans with targets higher than this and a number of local authorities in the region have consistently delivered in excess of 1% per annum over a 15 year period<sup>102</sup>. At a national level past build rates will need to increase significantly to achieve the Government's target of 250,000 to 300,000 dpa. The Government's standard methodology (with its headline figure of 266,000 dpa) represents a growth in England's housing stock of 1.12%. Given

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<sup>97</sup> CD C4

<sup>98</sup> CD L10

<sup>99</sup> Rebuttal proof of Mr Spry, appendix 4

<sup>100</sup> Inspector's note – in answer to questions from Mr Howell Williams, Mr Spry drew a parallel with population projections where long term assumptions are made, for example in relation to migration

<sup>101</sup> CD L8

<sup>102</sup> Proof of evidence of Mr Spry, table 5.4 and paragraph 5.50

the affordability position in Elmbridge its requirement should clearly be above the national average.

118. In contrast, the approach taken by the SHMA16 is confused and inconsistent with the Guidance in several respects:

- indicating that any uplift should be relatively restricted when the Guidance states that the more significant the affordability constraints the larger the additional supply response should be
- referring to land constraints, which the Guidance says should not be done when assessing OAN
- basing its uplift on the Local Plans Expert Group (LPEG) report<sup>103</sup> but then adopting the lowest band of increase recommended when Elmbridge should have been in the highest band
- adopting the flawed assumption that Elmbridge would be applying a market signals uplift in isolation when the Guidance makes it clear that all local planning authorities need to seek to improve affordability<sup>104</sup>

119. For all the above reasons the appellant considers that a market signals uplift of 64% is required, resulting in an OAN for Elmbridge of 760dpa. That is a scenario which can reasonably be expected to improve affordability.

#### *Error 2 - affordable housing*

120. The approach of the SHMA16 failed to undertake the proper exercise set out in the Guidance. Mr Leather's reliance on the *PAS Technical Advice Note on Objectively Assessed Need* as justification for not including affordable housing need in the calculation of OAN is misplaced for two reasons. First, the note is not formal policy or guidance. Rather, it provides informal advice, which local authorities and others use at their own risk. Second, the note contains an important caveat in relation to a High Court judgement issued on 19 February 2015<sup>105</sup>. The judgement referred to is *Satnam*<sup>106</sup>. A subsequent High Court judgement (*Kings Lynn*<sup>107</sup>) post-dated the note. These cases make it clear that affordable housing is to be addressed as part of the calculation of OAN.

121. It is appreciated that *Kings Lynn* and *Barker Mill*<sup>108</sup> draw different conclusions on whether addressing affordable housing needs is part of OAN. However, the judgment in *Barker Mill* is not applicable here since it concerned plan-making and not decision-taking. Furthermore, to the extent that it may be read as

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<sup>103</sup> CD G1, paragraph 7.49

<sup>104</sup> Rebuttal proof of Mr Spry, appendix 4 (see the comments of the examining Inspector on a similar point made at that examination)

<sup>105</sup> CD L22, paragraphs 1.2 and 9.8

<sup>106</sup> CD K9, *Satnam Millennium Limited v Warrington Borough Council* [2015] EWHC 370 (Admin)

<sup>107</sup> CD K10, *Borough Council of Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government and Elm Park Holdings Ltd* [2015] EWHC 2464 (Admin), see paragraph 36

<sup>108</sup> CD K25, *Trustees of the Barker Mill Estates v Test Valley Borough Council and Secretary of State for Communities and Local Government* [2016] EWHC 3028 (Admin)

commenting on decision-taking, *Barker Mill* is based on a straightforward misunderstanding of *Kings Lynn*.

122. First, in *Barker Mill*, Mr Justice Holgate distinguished what he considered to be a one stage OAN process in a s78 decision-taking situation (as here and as in *Kings Lynn*) from the two stage plan-making process identified in *Gallagher*. For plan-making, he placed consideration of an uplift for affordable housing into stage 2 (the policy-on stage). That is clearly not binding in a decision-taking context. If there is conflict between the two cases, *Kings Lynn*, which is applicable to s78 matters, must be the one to be preferred. Second, insofar as Mr Justice Holgate appeared to think that Mr Justice Dove (in *Kings Lynn*) was talking about a second stage in a *Gallagher* sense, that was incorrect. It is clear that Mr Justice Dove was discussing stages within paragraph 159 of the Framework (*Gallagher* stage 1)<sup>109</sup>.
123. In summary, this is another error which means that the SHMA16 cannot be regarded as providing a full OAN. However, it can be remedied by making the market signals uplift already recommended. If the OAN is raised to 760dpa for market signals reasons, and between 30% and 40% affordable housing were achieved, this would deliver between 228 and 304 affordable homes per annum. That would meet at least two-thirds of the identified need for affordable housing (332 dpa)<sup>110</sup>. This scale of increase is what would be necessary to demonstrate that affordable housing has been an important influence on the OAN figure, in line with the *Kings Lynn* approach.

#### *Error 3 - employment-led needs*

124. The SHMA16 concluded that no uplift was required to reflect job growth. Yet both the SHMA16<sup>111</sup> and Mr Leather's evidence<sup>112</sup> revealed a shortfall in labour supply. This could only be made good by an increase in commuting, which is one of the outcomes the Guidance seeks to avoid. In fact there was broad agreement on employment numbers. However, the Council decided not to make any uplift, citing uncertainty over the prospects for the economy. By contrast, the appellant's evidence follows the Guidance and shows that some 553 to 583dpa would be needed to support additional jobs<sup>113</sup>. This assessment was based on tried and tested approaches using publicly available assumptions, notably from the OBR's Economic Activity Rate projections<sup>114</sup>.
125. If the appellant's case on market signals is accepted then no additional uplift would be needed to support employment growth. However, it should be noted that the appellant's employment-led OAN is greater than the OAN promoted in the SHMA16 and in the Council's evidence<sup>115</sup>.

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<sup>109</sup> CD K25, paragraph 39; CD K10, paragraphs 33 to 36

<sup>110</sup> Proof of evidence of Mr Spry, paragraphs 5.66 to 5.67; CD G1, table 8.7

<sup>111</sup> CD G1, table 6.9 (shortfall of 1,000 workers across the Housing Market Area)

<sup>112</sup> Proof of evidence of Mr Leather, table E (shortfall of 4,000 workers in Elmbridge – with improved rates of economic participation)

<sup>113</sup> Proof of evidence of Mr Spry, paragraph 5.62 and appendix 6

<sup>114</sup> APP5

<sup>115</sup> Proof of evidence of Mr Leather, page 16, table F

### *Government consultation on standard methodology for calculating OAN*

126. As referred to above, the Government's consultation<sup>116</sup> on a proposed methodology for calculating OAN would require an uplift of 71% in Elmbridge if no cap was applied (or 40% with the proposed cap). Given that this is only a consultation proposal, little weight can be attributed to the actual figure. However, weight can be attached to the messages inherent in the consultation:

- the objective of the proposed methodology is to stop local authorities from ducking difficult decisions by coming up with their own way of calculating OAN<sup>117</sup>
- the proposed standard methodology goes further than LPEG<sup>118</sup> (which proposed bands of 10%, 20% and 25%) signalling an intention to do even more in the least affordable areas
- the common theme in the Guidance, the LPEG proposals and the consultation is the need to increase supply to address affordability (with the greatest increase in the least affordable areas)
- publishing the indicative OAN for each local authority sends a message to those with Green Belt constraints that they will need to look positively for additional land within the Green Belt to meeting housing needs

### *Conclusions*

127. The Council cannot demonstrate a 5YrHLS even on its own figures. The precise deficit depends on which figures are preferred but it is substantial in any event. It follows that the Council's housing policies are out-of-date, thereby engaging the tilted balance of paragraph 14 of the Framework. There is no basis to suggest that anything less than very substantial weight should be attached to the housing benefits of the scheme. This would be consistent with the decisions in *Castle Point*<sup>119</sup> and *Watery Lane, Lichfield*<sup>120</sup>. In the light of those decisions, the Council's suggestion that only moderate weight should be attached suggests a flaw in Mr Tunnell's planning judgement. By contrast, Mr Spry compared the housing problems in Elmbridge with those in Castle Point and concluded that overwhelming weight should be attached.

128. The housing crisis in Elmbridge is much worse than the Council believed when it considered that there were '*exceptional circumstances*' justifying the release of Green Belt land for housing. More releases are required and the appeal site is top of the list.

### ***The consequences of delay***

129. The earliest a new local plan can be expected to be adopted is at the end of 2020, although delays could easily take this to the end of 2021. The appellant's evidence shows the implications of such delays<sup>121</sup>:

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<sup>116</sup> CD L8

<sup>117</sup> CD C3, page 14

<sup>118</sup> CD C8

<sup>119</sup> CD K18

<sup>120</sup> CD K19 (very substantial weight attached in a situation where there was a 5YrHLS)

<sup>121</sup> Proof of evidence of Mr Spry, paragraphs 7.23 to 7.29

- with adoption in winter 2020, based on the SHMA16 OAN, the annual requirement would be 557dpa (at the point of adoption)
  - with adoption in winter 2020, based on Mr Spry's OAN, the annual requirement would be 938dpa
  - with adoption in winter 2020, based on the proposed standard methodology (612dpa), the annual requirement would be 709dpa
  - with adoption in 2022, based on Mr Spry's OAN, the annual requirement would be 989dpa
130. While housing needs remain unmet, Elmbridge will face significant risks including difficulty in attracting and maintaining workers and families, potential loss of jobs due to reduced resilience of local businesses and/or unsustainable patterns of commuting, severe and worsening affordability constraints, increases in the number of overcrowded and concealed families and an increasing backlog of affordable housing need.
131. Mr Spry went on to illustrate the implications for housing delivery and affordability<sup>122</sup>. Using the most optimistic housing delivery assumptions against the Council's own OAN, he demonstrated that without the release of Green Belt sites the Council would fail to meet its OAN for every year of the plan period (2015 to 2035). There would be a total shortfall of 5,433 dwellings. In this scenario, the lower quartile (workplace-based) affordability ratio would worsen from 14.9 (in 2016) to 21.0 (in 2035)<sup>123</sup>.
132. Mr Spry set out four possible housing trajectories to illustrate what could reasonably be expected to happen depending upon when the Local Plan was adopted and the possible times that delivery of housing from the Council's three potential Green Belt release sites might occur. Based on each assumed trajectory, he then used the OBR/University of Reading affordability model to test the affordability implications and identified the scale of affordable housing backlog.
133. Based on the plan being adopted in winter 2020, assuming only 3.95 years from submission of applications on the Green Belt sites to delivery of first homes, there would be a backlog of nearly 1,000 dwellings over the plan period (against the Council's OAN). Using Mr Spry's OAN, there would be a backlog of almost 7,000 dwellings<sup>124</sup>. In fact this delivery timescale for the Green Belt sites is optimistic, being half of the national average for such sites. However, even if the sites were delivered at that rate the plan would still fail to deliver the full OAN over the plan period.
134. If the average lead in time for sites of 1,500-1,999 units were utilised the situation would be worse. Assuming the same timescale for adoption of the local plan, the backlog against the Council's OAN would be around 2,200 homes<sup>125</sup> by the end of the plan period. Under this trajectory the lower quartile workplace-

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<sup>122</sup> Proof of evidence of Mr Spry, paragraphs 7.42 to 7.51

<sup>123</sup> Proof of evidence of Mr Spry, figure 7.8 and paragraphs 7.34 to 7.35

<sup>124</sup> Proof of evidence of Mr Spry, page 82, table 7.1

<sup>125</sup> Proof of evidence of Mr Spry, page 83, table 7.2

based affordability ratio would worsen to 19.2 and there would be a backlog of 3,725 affordable homes by 2035.

135. Based on the plan being adopted in autumn 2021, the lower quartile workplace-based affordability ratio would worsen to 18.8 and there would be a backlog of 3,401 affordable homes by 2035. If the average lead in time for sites of 1,500-1,999 units were used, the lower quartile workplace-based affordability ratio would worsen to 19.5 and there would be a backlog of 3,887 affordable homes by 2035<sup>126</sup>.

136. The conclusion is unavoidable. This Council is on a road to housing disaster and unless the Secretary of State intervenes now, real and calculable harms will be caused.

### ***The approach to decision making***

137. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 require planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is but one of the material considerations. It does not replace the statutory test but sits within it, including with respect to the presumption in favour of sustainable development.

138. Paragraph 14 of the Framework states:

*'At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.*

The second bullet under decision-taking is engaged whenever any relevant policy is out-of-date, as the housing policies are in Elmbridge. Once engaged, that bullet has two limbs. First, the requirement (under limb 1) to grant planning permission 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 (known as the tilted balance). Second, the requirement (under limb 2) to grant planning permission unless specific policies in the Framework indicate development should be restricted. It should be noted that footnote 9 goes on to identify such policies and that they include policies relating to land designated as Green Belt.

139. The appeal site falls in land designated as Green Belt so we are in limb 2 territory. However, the mere fact that the Framework's Green Belt policies fall to be considered does not exclude application of the tilted balance if, once considered, those policies come down in favour of development. This was made clear in *Forest of Dean*<sup>127</sup>. It can also be seen in the decision letters relating to *Weyburn Works* and *Oaklands College* which have been referred to above<sup>128</sup>.

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<sup>126</sup> Proof of evidence of Mr Spry, page 84, tables 7.3 and 7.4

<sup>127</sup> CD K5 - Forest of Dean District Council v Secretary of State for Communities and Local Government and Gladman Developments Ltd [2016] EWHC 421 (Admin), paragraph 37

<sup>128</sup> CD K16; APP9

### ***The Green Belt reason for refusal***

140. The Council has previously accepted that '*exceptional circumstances*' exist sufficient to justify the release of some sites from the Green Belt for housing. We have also seen that the Council is not planning to meet its own assessment of the full OAN and that the true scale of the shortfall is very large. This means that the pivotal contribution that the appeal scheme can make towards addressing those harms should attract significant weight on the positive side of the planning balance. The judgement in *Phides* makes clear that the extent of the shortfall, and how long it is likely to persist, must be taken into consideration<sup>129</sup>.
141. Turning to the negative side of the planning balance, there are ten points to be made. The first point is that it would be appropriate to attach reduced weight to the Green Belt objections given the extent to which they contribute towards the housing shortfall (see *Suffolk Coastal*<sup>130</sup>).
142. The second point is that there is an urgent need to search for sites which are within the Green Belt but which, on careful reflection (having regard to paragraphs 80, 83 and 84 of the Framework), do not need to be kept permanently open and can accommodate sustainable development to meet housing needs.
143. The third point is that the appeal site is an exemplar of such a site. Its character and appearance are undistinguished and are not recognised as being of any national or local landscape value<sup>131</sup>. It does not have the visual qualities of pristine countryside. Rather, it is a man-made landscape created through restoration after mineral extraction. Its surroundings comprise a man-made urban fringe landscape consisting of a canalised section of the River Mole, a post-war housing estate, an elevated landfill site (Molesey Heath), the raised embankments of the Queen Elizabeth II Reservoir, the stadium and pitches of the Esher rugby club, the North Weylands and Hersham trading estates, an extensive re-cycling plant and the elevated embankment of the main line railway into London.
144. Extensive boundary vegetation creates a strong sense of enclosure and visual separation from the adjacent landscape. There is only a limited zone of visual influence around the landholding. Consequently, it makes a reduced contribution to any wider perception of Green Belt openness. The appeal scheme would change that perception significantly, for the better, by opening up a new park and making better connections to the wider green infrastructure in the locality.
145. The *Weyburn Works* decision letter<sup>132</sup> is also significant in this regard. Despite attaching substantial weight to the definitional and actual harm to Green Belt, the Inspector allowed the appeal and concluded that the cumulative benefits clearly outweighed the harm such that very special circumstances were found to exist. However, the appellant does not agree with the Inspector's interpretation of *Turner* in paragraph 51 of the decision letter. Any visual assessment must take into account existing natural landscape elements affecting visibility within a

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<sup>129</sup> CD K6, paragraph 60

<sup>130</sup> CD K4, paragraphs 54 to 61

<sup>131</sup> CD G3

<sup>132</sup> CD K16

Green Belt site and its immediate setting. Tree belts, hedgerows and woodlands that screen or filter views must have a direct influence on the perception of a Green Belt landscape and its visual openness. The existing vegetation in and around the site, in combination with the proposed planting, would not only protect the integrity of the surrounding Green Belt but also allow a greater appreciation of the attractive public open spaces within the proposed development.

146. The fourth point is that the proposals would cause little harm to the five purposes of the Green Belt. With regard to Purpose 1, the Council's landscape officer agreed that the appeal scheme had been well thought out and that it would use existing landscape features and create new landscape amenity and biodiversity opportunities to create a sense of identity and place. This would not amount to '*sprawl*' according to the dictionary definition of the term. Nor would it amount to *sprawl* as the term is defined in the GBBR<sup>133</sup> ('*the outward spread of a large built-up area at its periphery in a sporadic, dispersed or irregular way*') or as it was used by the Inspector in the *Oaklands College*<sup>134</sup> decision.
147. With regard to Purpose 2, whilst the proposal would join Fieldcommon and Walton-on-Thames, Fieldcommon cannot be regarded as a town for the purposes of the Framework. It is not identified as such in Policy CS1 and the approach of the GBBR was incorrect in this respect. So far as the north/south separation between West Molesey and Hersham is concerned, the proposed development would extend no further north than Fieldcommon so that gap would be preserved. So far as the east/west separation between Walton-on-Thames/Hersham and Esher is concerned, there would be a clear separation created by the River Mole corridor. This would be enhanced by the provision of the proposed park, which would enable the sense of separation between the settlements to be even better appreciated.
148. With regard to Purpose 3, the appeal site is enclosed and unattractive land typical of the urban fringe. Accordingly, this part of the Green Belt cannot reasonably be regarded as safeguarding the countryside from encroachment. With regard to Purpose 4, the site does not adjoin any historic towns and does not contribute to this purpose. Finally, turning to Purpose 5, the Council is proposing to identify locations in the Green Belt to address housing needs. It must follow that all land within the urban area that can be satisfactorily developed for housing has already been identified by the Council for this purpose. Consequently, preventing development on the appeal site would do nothing to encourage the recycling of derelict and other urban land.
149. The fifth point is that the site is part of the urban fringe. It has no productive use and has an unmanaged, abandoned appearance. The appearance of the site would be greatly improved by its development as proposed.
150. The sixth point is that the proposal would enable other Green Belt land, more recognisably rural in nature, to continue to be protected. This would be consistent with the most efficient use of land as a finite resource and would meet the objective of using land with the least environmental or amenity value<sup>135</sup>. The

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<sup>133</sup> CD E5, page 36, paragraph 4.4.1.

<sup>134</sup> APP9, paragraph 162 of Inspector's report

<sup>135</sup> The Framework, paragraph 110

appeal site compares favourably with all three of the Council's proposed release sites in landscape and visual terms<sup>136</sup>.

151. The seventh point is that the landscape proposals would create an attractive and enduring boundary to the proposed new settlement edge, clearly defined by recognisable landscape features. This would be consistent with the approach to altering Green Belt boundaries set out in the Framework<sup>137</sup>. Moreover, the appeal proposals would contribute towards the objective of promoting sustainable patterns of development.
152. The eighth point is that, insofar as the appeal scheme would result in definitional harm or harm to openness, those harms will occur in any event. On the Council's own approach, release of Green Belt land is unavoidable to meet housing needs.
153. The ninth point is that the appeal site will avoid the possible use of other Green Belt sites which perform much better as Green Belt and/or are far less sustainable. The GBBR identifies three Strategic Areas with differing characteristics. Strategic Area B is described as the '*first sizeable swathe of countryside outside Greater London*'<sup>138</sup>. Much of Strategic Area C is described as retaining an unspoilt and open, rural character. By way of contrast, the *Review of Absolute Constraints* document, contains the following in relation to Strategic Area A<sup>139</sup>:
- 'The importance of the Strategic Area as part of the wider Green Belt network must be acknowledged, yet there is a sense that, in some of the more fragmented and/or degraded parts of the Green Belt, change could be accommodated without causing any further harm to its integrity'*
154. Although the pattern of settlement in Strategic Area A is indeed fragmented, this pattern would be improved by connecting Fieldcommon with Walton-on-Thames. By providing greater interconnectivity, the existing fragmentation of the Green Belt in Strategic Area A would be positively addressed. Developing alternative sites in Strategic Areas B or C may well be less sustainable (being further from a railway station or a main settlement) and may cause greater visual harm in areas more properly described as countryside. For all these reasons, the appeal site is not one that needs to be kept permanently open<sup>140</sup>.
155. The tenth point is critical. The proposals would not only help to meet housing needs, they would do so in a way which would positively enhance the use, appearance and the functioning of the Green Belt. The new park would form a hub to wider connectivity within a strategically important arc of Green Belt that is currently harmed by fragmentation and degraded land. That would be a remarkable and distinguishing feature, setting these proposals apart from many others.

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<sup>136</sup> Proof of evidence of Mr Allen

<sup>137</sup> Paragraphs 83 and 84

<sup>138</sup> CD E5, Annex Report 1 – *Strategic Area Assessment Pro-forma*, page 8

<sup>139</sup> CD F11, Appendix 4 – *Green Belt Boundary Review Parcels – Absolute Constraints Assessment*, page 104

<sup>140</sup> The Framework, paragraph 85

156. The Guidance advises that unmet housing needs alone will be unlikely to amount to very special circumstances. However, this is a case where not only are those needs overwhelming<sup>141</sup> but they can be met in a way which improves the Green Belt rather than harming it. The appellant submits that very special circumstances are therefore made out. It follows that the footnote 9 policies do not indicate that this development should be refused and the tilted balance is re-engaged.

### ***Conformity with the development plan***

157. The remaining reason for refusal refers to two policies. The appellant considers that there is no breach of Policy DM17 because it has been demonstrated that very special circumstances exist. Moreover, Policy CS1 is substantially complied with as well. The proposals accord with the spatial strategy which seeks to direct new development to the most sustainable locations, including Walton-on-Thames. Policy CS1 also states that the Borough's green infrastructure network, including the Green Belt, will continue to be a key determinant in shaping settlements and development patterns. The proposals reflect those considerations and would enhance the Green Belt through the provision of public open space and improved connectivity.

### ***Response to the third party objections***

158. The appellant appreciates the strength of local opposition which will have weighed heavily on elected members. However, planning decisions should be made on the best available evidence. The two principal objections raised by third parties (in addition to those covered above) are highways and flooding. The evidence on these matters is clear.

### ***Highways and transport***

159. The highways reason for refusal was withdrawn during the Inquiry because the issues identified within that reason were resolved between the appellant and SCC, the Highway Authority. As Ms Trower (the Council's transport witness) confirmed<sup>142</sup>, that reason for refusal could now be rewritten as follows:

*'It has now been demonstrated that the transport impact of the development can be sufficiently mitigated, such that a development of this scale in this location can be considered sustainable in transport terms in accordance with the objectives of the NPPF and Policy CS25 of the Elmbridge Core Strategy 2011'*

160. Mr Stilwell (the appellant's transport witness) provided written and oral evidence which comprehensively addressed the concerns raised by the third parties. He undertook a comprehensive assessment of TRICS data on traffic generation and correctly distributed that traffic onto local roads. The Secretary of State can have confidence in this assessment, which was agreed by SCC. It is accepted that there are existing problems in the area, especially at the junction near the station bridge. Whilst those queues can sometimes be long, the flexibility of the MOVA signalling means that they can usually be dealt with in two cycles. However, the proposals would add just a handful of cars to the existing queues during the peak hour. This would not result in a significant adverse effect.

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<sup>141</sup> Proof of evidence of Mr Spry, paragraph 9.8

<sup>142</sup> Inspector's note – confirmed by Ms Trower in answer to questions from Mr Stinchcombe

161. The appellant therefore agrees with the evidence of Ms Trower that SCC and Elmbridge have undertaken a review of the submitted information and concluded that the transport impact would be manageable<sup>143</sup>. It follows that the transport impact would come nowhere near the high threshold set in paragraph 32 of the Framework. The same is true for the sites that the Council has proposed for release from the Green Belt, except that the appeal site has the advantage of being located close to Hershams Station. It is also close to Walton-on-Thames, one of the most sustainable settlements in the Borough.

### *Flooding*

162. The Council raised no concerns in relation to flood risk. However, Mr Brooke (the appellant's witness on flooding issues) provided written and oral evidence to answer the concerns raised by many local residents. The site itself is not at any material risk of flooding. Moreover, the proposals would provide an overall improvement in managing surface water flows with the introduction of sustainable drainage techniques. They would also introduce attractive water features which would enhance biodiversity.

### ***The tilted balance***

163. The appellant submits that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. On the contrary, there would be huge planning benefits in terms of meeting overwhelming housing needs in a sustainable way. This would include the provision of a significant amount of affordable housing in a very expensive Borough. There would be many other benefits, not the least of which would be the functioning and enjoyment of the Green Belt itself.

### ***Sustainable development***

164. The proposals pass the tests of paragraph 14 of the Framework and thus benefit from the presumption in favour of sustainable development in any event. However, it is right to check that against the three pillars of sustainability - social, economic and environmental. All three would be achieved:

- Social - through providing the homes people need, including an enormous number of affordable homes, together with the targeted provision of new social and transport infrastructure which will connect an existing isolated community and address social exclusion
- Economic - through the delivery of housing, jobs (including construction jobs) community facilities and growth in an area where these would provide greatest benefit
- Environmental - through the enhancement of a poorly restored gravel pit and landfill site to provide a new public park, with biodiversity enhancements and through addressing the impact of climate change by offering low carbon, energy efficient, homes in a sustainable location which will reduce the need to travel by car

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<sup>143</sup> Rebuttal proof of Ms Trower, paragraph 1.2

***Who will deliver – the Council or the appellant?***

165. The Council has questioned the ability of the appellant to deliver the homes it proposes in the timescale envisaged. In particular, the Council's planning witness dismissed the letters of commitment provided as no more than statements of intent<sup>144</sup>. However, significant weight should be attached to statements of intent on the part of an appellant which has:

- devised a carefully considered proposal, backed with a full ES
- secured the agreement of the Council and key statutory consultees to the principles of the layout and key parameters of the scheme, including size and tenure mix
- demonstrated that the scheme could be delivered with limited scope for further detailed studies – there are no absolute constraints
- assembled an outstanding team of professionals who have advised in the delivery of tens of thousands of homes across the UK, including schemes larger than the appeal proposals
- agreed in principle with two suitably experienced development companies, Paragon and Countryside, to deliver the units proposed
- indicated a rate of delivery which is broadly in line with the evidence on large site delivery presented by Mr Spry and therefore realistic, especially given that 50% of units would be presold to Paragon
- prepared a realistic program for reserved matters and delivery of the proposed bridge
- commenced work on developing details of the reserved matters - for example the proposed landscape strategy
- entered into land acquisition contracts which are structured so that the land would be acquired following any grant of permission – thereafter the costs of holding the land would incentivise the commencement of building works as soon as possible.

166. By way of stark contrast, there can be no confidence in the Council's commitment to produce a sound plan. Little weight should be attached to any statement of intent by the local planning authority, given that:

- five and a half years after the Framework was published the Council still has no up-to-date local plan
- the Council delayed more than two and a half years after publication of the Framework before taking any steps towards preparing an up-to-date local plan and has yet to get to an identified preferred option
- the Council has further delayed the timetable set out in its LDS by more than a year

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<sup>144</sup> Rebuttal proof of Mr Fidgett, appendix 1

- the Council has not formally published the revised local plan timetable it advanced for the first time at this Inquiry
- the Council has included within both its LDS and its revised local plan timetable wholly unrealistic indications of timings such as the four months allowed between its preferred option and submission - two months shorter than the time taken to merely read and summarise the consultation responses to the strategic options
- the Council has even sought to back away from the Regulation 18 consultation it conducted - it has given evidence to this Inquiry that it still does not know whether it will be releasing any Green Belt to meet housing needs<sup>145</sup>

167. In summary, the Council has no position on where it is heading and the issues seem to be getting wider rather than narrower. If more housing is ultimately proposed, this would open up far more objections than the 50,000 already generated by just three Green Belt release sites. If less housing is proposed, the prospect of the plan being found unsound (or requiring substantial modifications) would increase dramatically. Based on track record, relevant expertise and conduct, there is every reason to conclude that the appellant's statements of intent in relation to the delivery of the appeal scheme are more reliable than those made by the Council in relation to its long-delayed local plan.

### ***Overall conclusions***

168. This local planning authority has been ducking the hard question as to how to meet its housing needs for far too long. The baton has now been passed to the Secretary of State. The appellant respectfully invites him to make the following points clear:

- housing needs do need to be met
- in Elmbridge that means that Green Belt land will be built on
- there will be both definitional harm and an impact on openness come what may
- the proposals offer significant Green Belt enhancements to balance against that, including the provision of a new 70 acre park<sup>146</sup> and improved interconnectivity to wider green infrastructure on degraded land where the Green Belt is currently fragmented - such that very special circumstances have been demonstrated.

169. Elmbridge is facing a housing crisis but is burying its head in the sand as to how to address it. The time for action is now. For all of the above reasons, the appellant respectfully requests the Secretary of State to allow this appeal.

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<sup>145</sup> Inspector's note – see footnote 48 above

<sup>146</sup> Inspector's note – see footnote 50 above where I noted that I had converted Mr Stinchcombe's reference to a '70 acre park' to 28 hectares for consistency with other measurements in this report. The statement of common ground notes that approximately 30ha of the site would comprise green space. That figure includes public open space, the lake, a meadow and woodland (paragraph 5.26 of ID5)

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## THE CASE FOR THE LOCAL PLANNING AUTHORITY – ELMBRIDGE BOROUGH COUNCIL<sup>147</sup>

170. The issues between the Council and the appellant are as follows:

- the effect of the proposal on the Green Belt, including any effects on openness, character and appearance and the purposes of including land in the Green Belt
- the available housing land supply
- whether the harm by inappropriateness, and any other harm, is clearly outweighed by other considerations that amount to very special circumstances, justifying inappropriate development in the Green Belt

171. It is now common ground that the impacts on the Weylands waste site and biodiversity can be adequately addressed by the imposition of suitable planning conditions. The Council is content that the revised plans submitted by the appellant to address reason for refusal 3 can be accepted. It is also agreed that the available opportunities for sustainable modes of travel can be achieved by a suitably worded planning obligation. The detail of the contributions, and their justification, is set out within the proof of evidence of Ms Trower.

### ***Approach to decision making***

172. The lawful way to determine the appeal is in accordance with the statutory development plan, comprising the policies of the CS and DMP, unless material considerations indicate otherwise. Other material considerations may affect the weight to be attached to a conflict with the development plan but they cannot alter whether there is a breach in the first place. The Council considers that the scheme conflicts with CS Policy CS1 and DMP Policy DM17. Those are plainly the dominant policies regulating the principle of development in this instance. As such, a conflict with them amounts to a conflict with the development plan taken as a whole<sup>148</sup>.

173. The Appellant's case pays little regard to the statutory development plan. Indeed, the evidence of Mr Fidgett (the appellant's planning witness) does not even answer the essential question which is whether the proposals accord with the development plan taken as a whole. The conflict with the development plan is plain and obvious. It should have been acknowledged but Mr Fidgett did not do so. Indeed, he even suggested that the proposals comply with the settlement hierarchy in Policy CS1. The site is not in the settlement of Walton-on-Thames, nor even well related to it. It is obvious that the proposals are in conflict with Policy CS1 because the appeal site is in the Green Belt and not on previously developed land. This is one of a number of serious flaws in the appellant's approach.

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<sup>147</sup> This is a summary of the full closing submissions which are at LPA14

<sup>148</sup> R(Cummins) v Camden BC [2001] EWHC Admin 1116, paragraph 164 (appended to LPA14)

174. There is a sizable public interest in the plan-led system. This is reflected in the Framework and in a decision of the Court of Appeal<sup>149</sup>:

*'A plan-led system of planning control promotes the coherent development of a planning authority's area, allowing for development to be directed to the most appropriate places within that area, and enables land-owners, developers and the general public to have notice of the policies to be applied by the planning authority to achieve those objectives. It is not in the public interest that planning control should be the product of an unstructured free-for-all based on piecemeal consideration of individual applications for planning permission.'*

175. The Council acknowledges that there is now no up-to-date housing land supply policy in the development plan. However, it does not follow that the development plan can be set aside. Policies CS1 and DM17 are consistent with the Framework and should therefore carry significant weight<sup>150</sup>. Mr Fidgett's suggestion that CS1 is inconsistent with the Framework (because it is predicated on an approach where growth is constrained) is simply wrong<sup>151</sup>. The Framework acknowledges that the Green Belt is a constraint to meeting full OAN, as does the Guidance. The appellant's failure to acknowledge that national policy retains the importance of the Green Belt has caused it to make assumptions about long term housing requirements in Elmbridge which are wholly unrealistic.

176. The Council accepts that paragraph 14 of the Framework is engaged as a consequence of the shortfall in housing land against the OAN and the operation of paragraph 49. However, the tilted balance is not to be applied in this instance because there are specific policies in the Framework (relating to the Green Belt) which need to be applied first<sup>152</sup>:

*'... the specific policy in question has to be applied – and, where that specific policy requires it, planning judgment exercised – before the decision-maker can ascertain whether the "presumption in favour of sustainable development" is available to the proposal in hand'*

177. Accordingly, the Council invites the Secretary of State to consider the appeal by reference to DMP Policy DM17 (which reflects paragraphs 87 and 88 of the Framework) and to the harm which arises from a departure from the spatial strategy in conflict with CS Policy CS1.

### **Issue 1 – harm to the Green Belt**

178. The Council understands the important policy objective of boosting the supply of housing. However, the appellant has failed to acknowledge three salient points:

- the radical change in the Framework relating to the need to boost housing delivery had no bearing on Government policy on the Green Belt – this has not changed in terms of the test of very special circumstances

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<sup>149</sup> Gladman Developments Ltd v Daventry DC [2016] EWCA Civ 1146, paragraph 6 (appended to LPA14)

<sup>150</sup> Proof of evidence of Mr Tunnell, paragraphs 30 to 32 and 70

<sup>151</sup> Rebuttal proof of Mr Fidgett, paragraph 17

<sup>152</sup> Barwood Strategic Land II LLP v East Staffordshire BC [2017] EWCA Civ 893, paragraph 22(ii) (appended to LPA14)

- paragraph 47 of the Framework makes clear that the objective is not to be sought irrespective of other material considerations - housing needs are to be met as far as is consistent with the policies set out in the Framework
- the Framework makes clear that the Government places great importance on the Green Belt - it also emphasises the permanence of the Green Belt

179. The Framework explains that it is for local planning authorities, in their local plans, to consider the need for boundary changes together with the assessment of development needs and sustainable development patterns. The question of Green Belt releases in Elmbridge can be considered through the local plan process and many potential allocation sites can be considered, one against the other, in terms of their overall planning merits. The GBBR forms part of the evidence base for this process.

180. Mr Baker (the appellant's Green Belt witness) made two criticisms of the GBBR. First, that land in a location which would '*not meet basic pre-requisites of sustainable development might nonetheless be found preferable in Green Belt terms*'. That is an invalid concern because the GBBR is just one element in the local plan evidence base<sup>153</sup>. Secondly, he asserted that the GBBR took no account of the visual dimension in Green Belt assessment because it pre-dated the *Turner* case. Mr Tunnell refuted that assertion<sup>154</sup>.

*Is there definitional harm?*

181. The starting point is that the scheme comprises inappropriate development in the Green Belt. Paragraph 87 of the Framework states that such development is by definition harmful to the Green Belt and paragraph 88 states that '*substantial weight*' should be afforded to any level of harm.

182. Mr Baker's contention that, in the absence of actual harm, no definitional harm can arise is unsustainable<sup>155</sup>. As he accepted, the corollary of his logic was that an inappropriate development in the Green Belt could give rise to no harm<sup>156</sup>. Such a construction amounts to an impermissible rewriting of national policy. That is because, on Mr Baker's construction, in some circumstances inappropriate development might not be '*by definition, harmful*', thus turning the plain wording of paragraph 87 on its head. Case law provides further confirmation of the erroneous nature of Mr Baker's approach<sup>157</sup>:

*'the distinction between development that is 'inappropriate' in the Green Belt and development that is not 'inappropriate' (i.e. appropriate) governs the approach a decision-maker must take in determining an application for planning permission. 'Inappropriate development' in the Green Belt is development 'by definition,*

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<sup>153</sup> CD E5, page 76

<sup>154</sup> Rebuttal proof of Mr Tunnell, pages A1 to A2

<sup>155</sup> Proof of evidence of Mr Baker, section 4.2

<sup>156</sup> Inspector's note – in answer to questions from Mr Howell Williams, Mr Baker confirmed his view that the use of the words '*potential harm*' in paragraph 88 of the Framework means that in a case where there was no actual harm there would be no definitional harm either. (In this exchange the term 'actual harm' was being used as a shorthand for harm to the Green Belt other than definitional harm)

<sup>157</sup> R(Lee Valley Regional Park Authority) v Epping Forest DC [2016] EWCA Civ 404, paragraph 18 (appended to LPA14)

*harmful' to the Green Belt – harmful because it is there – whereas development in the excepted categories in paragraphs 89 and 90 of the NPPF is not'*

183. Use of the word 'potential' in paragraph 88 of the Framework is not an indication of any change in national policy. Such a radical change in national policy can be expected to have been accompanied by a clear statement<sup>158</sup>. No such statement has been identified here. Indeed, paragraph 87 expressly states that there is no change from the previous policy. The word 'potential' simply refers to the harm that would be occasioned if the development were to be permitted and implemented. The correct starting point is that there is a powerful policy presumption against the grant of permission. The appeal scheme is by definition harmful, and substantial weight is to be applied to that harm. The appellant's starting point is therefore seriously flawed. As a result the appellant's overall planning balance is wrongly struck.

*Is there actual harm?*

184. Mr Tunnell (the Council's planning witness) identified harm to the openness of the Green Belt and to the purposes of including land within it.

*Harm to openness*

185. The fundamental aim of the Green Belt is to prevent sprawl by keeping land permanently open. Openness and permanence are its two key characteristics<sup>159</sup>. The Court of Appeal has recently confirmed that<sup>160</sup>:

*'the concept of openness [in the Framework] means the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact'*

Mr Tunnell concludes that, currently, the appeal site is both open and permanent. This conclusion is hardly surprising because the first thing that strikes one when looking into the site is that it is flat and open. Those are its key characteristics. Moreover, its value as open land is enhanced because is an integral part of a wider area that performs a strategic Green Belt role<sup>161</sup>.

186. There are two main reasons why the appellant's evidence on the question of openness and permanence is inadequate and flawed. First, there is little analysis of the current absence of built form on the land. Mr Baker, who purported to give evidence on this matter, devoted only 4 short paragraphs to this aspect. His approach relied heavily on what he termed the perception of openness. The Appellant's case is therefore disproportionately focused on visual matters rather than the primary concern of the question of openness – whether and to what extent the land is free from built development. Secondly, it relies on the flawed approach of Mr Allen (the appellant's landscape witness) who stated, wrongly, that his approach to the question of openness accorded with the law as established by *Turner*<sup>162</sup>.

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<sup>158</sup> CD K14 - Redhill Aerodrome Ltd v SSCLG [2014] EWCA Civ 1386, paragraph 16

<sup>159</sup> Framework, paragraph 79

<sup>160</sup> R(Lee Valley Regional Park Authority) v Epping Forest DC [2016] EWCA Civ 404, paragraph 7 (appended to LPA14)

<sup>161</sup> Proof of evidence of Mr Tunnell, paragraphs 149 to 159

<sup>162</sup> CD K1 - Turner v SSCLG [2016] EWCA Civ 466

187. In *Turner* the Court of Appeal considered the proper approach to the concept of openness and, in particular, the extent to which visual impact is relevant to that question. Their Lordships made no criticism of the judgment in *Lee Valley*, which was handed down the month before. The essential quality of openness therefore remains its freedom from built development. There are eight key propositions which flow from the judgment in *Turner*:

- the concept of openness is not narrowly limited to the volumetric approach (paragraph 14)
- a number of factors are capable of being relevant to the issue of openness - prominent amongst these is '*how built up the Green Belt is now and how built up it would be if redevelopment occurs*' (paragraph 14)
- such factors can include spatial/physical factors (paragraphs 23 and 25)
- there are a range of spatial factors, of which volumetric matters may be a material concern, but they are by no means the only one (paragraph 14)
- openness can have a visual dimension (paragraphs 14 to 16)
- however, an absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt (paragraph 25)
- visual impact is of relevance in only one respect, namely the impact of the development on a perception of openness of the Green Belt - '*factors relevant to the visual impact on the aspect of openness which the Green Belt presents*' (paragraph 14)
- other planning factors relating to visual impact – such as whether the appearance of the proposed development would be aesthetically attractive or the impact on residential amenity - are not relevant to the issue of openness (paragraph 16)

Consistent with those principles, it was held in *Goodman Logistics*<sup>163</sup> that when assessing the effects of a development on openness, the primary focus is likely to be on the extent of the spatial impact rather than on visual perception as a mitigating factor.

188. It follows that, whilst vegetation may help to mitigate the effects of a given development on openness, it does not affect the contribution that land in an undeveloped state makes to the openness of the Green Belt or to the prevention of the sprawl of built form. The Council asks the Secretary of State to assess, first, the contribution made by the site to the Green Belt in its present form. That requires an assessment of how built up this part of the Green Belt is now. Secondly, the effects of the proposals on the contribution made by the site to the Green Belt should be assessed. That should include an assessment of how built up the site would be if the redevelopment took place. Within that analysis it should be borne in mind that development of itself amounts to a loss of openness although a lack of visual intrusion can serve to mitigate the perception of that loss of openness.

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<sup>163</sup> LPA4 - Goodman Logistics Developments (UK) Limited v SSCLG [2017] EWHC 947 Admin, paragraph 107

189. That was the approach taken by the Inspector in the *Weyburn Works* appeal decision<sup>164</sup> who found that the existence of ruderal and other vegetation should not feature in the assessment of Green Belt openness since such vegetation is a common feature of Green Belt land. Mr Allen did not draw this decision to the attention of the Inquiry. He provided no basis to distinguish the Inspector's approach, simply asserting that he disagreed with it<sup>165</sup>.

190. In this case the only conclusion that can reasonably be reached is that the site contributes very significantly to the openness of the Green Belt as may be seen from a cursory examination of the site boundary. Moreover, the appellant's Landscape and Visual Impact Assessment (LVIA) introduces the site as '*open grazed land*' to which open views are evident<sup>166</sup>. The LVIA records various representative viewpoints around the site and notes that<sup>167</sup>:

- from the north (Fieldcommon Lane and footpath 26) – there are open views right across the site to the eastern tree lined boundary (viewpoints 3 to 5)
- from the south (bridleway 10) – there are views across the site, including distant views to the reservoir (viewpoints 12 and 13)
- from the east (river walk footpath 9) - there is a rural outlook across open horse grazed paddocks – there are views right across the site to features including Esher Rugby Club and dwellings on Fieldcommon Lane (viewpoints 7 to 11)

Mr Allen conceded that the site is also readily visible from the railway line although this had not been recorded in his evidence<sup>168</sup>.

191. When considering the effect on openness, it is important to recall the design philosophy which has informed the masterplan. Mr McDonnell (the appellant's urban design witness) explained that the intention was to open up the site to views so that good quality buildings could be seen<sup>169</sup>. There were later attempts by other witnesses to qualify or alter that stated objective which suggested that the scheme had not been thought through by the development team. In any event, it is inevitable that significant built form will be visible from many locations outside the site, whatever approach is taken to boundary planting.

192. This inevitable reduction in openness is also confirmed in the LVIA. Almost all of the key viewpoints are recorded as experiencing a high magnitude of change<sup>170</sup>, which is defined in the LVIA as being:

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<sup>164</sup> CD K16, paragraphs 51 and 56

<sup>165</sup> Inspector's note – Mr Allen had given evidence at the *Weyburn Works* Inquiry. In answer to questions from Mr Howell Williams he accepted that the Inspector in that case had rejected his argument that vegetation could reduce the contribution a site makes to openness

<sup>166</sup> CD A21, paragraph 11.1.4

<sup>167</sup> CD A21, paragraphs 11.2.80 to 11.2.82; 11.2.89 to 11.2.90 and 11.2.84 to 11.2.88

<sup>168</sup> Inspector's note – In answer to questions from Mr Howell Williams, Mr Allen accepted that the site could be seen from the railway although this would be a fleeting view

<sup>169</sup> Inspector's note – this was confirmed by Mr McDonnell in answer to questions from Mr Howell Williams

<sup>170</sup> CD A21, page 330, Summary of Visual Effects; definitions in table 6 of technical appendix 2

*'a total loss or major alteration to the existing key visual elements, features or characteristics of the view. The introduction of prominent elements of a scale, form and colour uncharacteristic or distinct from the surrounding landscape'*

That is consistent with the conclusions of the Council's Heritage, Landscape and Tree Manager who observed that 50% of the appeal site would have built development on it, which would alter its sense of openness<sup>171</sup>.

193. The fact is that most of the main part of the appeal site (Area A) would be built upon or heavily influenced by built form. The loss of openness would be radical. In this context it is misleading to say that 50% of the appeal site would remain open. That figure includes Areas B and C, to the east of the river, and would be very different if calculated for Area A alone. Moreover, the public space created in the middle of Area A would not be open in Green Belt terms. It would itself include hard development, as shown in Mr McDonnell's photographs from other schemes, and would be seen in the context of the significant buildings around it.
194. The substantial loss in spatial and visual openness that would be caused is self-evident from the landscape masterplans and the Parameter Plan (Building heights)<sup>172</sup>. Along the visually open eastern boundary (by the River Mole), two sets of four storey buildings are shown (up to 15m high). Along the southern and western boundaries five storey buildings are shown (up to 18.4m high), with 2.5 to 3 storey buildings (up to 12.2m high) shown along the northern boundary with Fieldcommon Lane. However the scheme is to be landscaped, these buildings would be readily visible. The wide open extent of the site, which is currently appreciable from many viewpoints as an open rural scene, would be lost. Even Areas B and C would be affected by the significant built form in Area A and by associated development such as the proposed bridge, car park and vehicular access for maintenance.
195. The only rational conclusion is that the development would result in the near total loss of the significant contribution currently made by the site to the permanent openness of the Green Belt in this location, causing very substantial harm.

#### *Purpose 1 - Prevention of sprawl*

196. Mr Tunnell has assessed the contribution that the appeal site makes to this purpose by reference to the GBBR. The appeal site is within Strategic Area A, described in the GBBR as a narrow and fragmented band of Green Belt which closely abuts the edge of south west London<sup>173</sup>. The GBBR concludes that Strategic Area A performs very strongly against Purpose 1. Turning to the local area assessments, the site is in local area 59a which was assessed as performing strongly against the Green Belt purposes<sup>174</sup>. Mr Tunnell explained that the appeal site plays an integral role within local area 59a in terms of preventing the unrestricted sprawl of large built up areas. He considered that development of the appeal site would cause further harmful fragmentation of the Green Belt.

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<sup>171</sup> CD J9, page 2

<sup>172</sup> CD A46, plan 4368/007/B

<sup>173</sup> CD E5, paragraph 5.1.1

<sup>174</sup> CD E5, Annex Report 2, page 180

Moreover, it would lead to the outward sprawl of Walton-on-Thames and further coalescence with London.

197. Mr Tunnell demonstrated that the appeal scheme would lead to a continuous corridor of built form through the Green Belt stretching from London to Woking and beyond<sup>175</sup>. This could lead to the unravelling of the entire Metropolitan Green Belt policy, with consequential development either side of the rip through the Green Belt represented by the appeal scheme. This factor should carry very substantial adverse weight against the appeal scheme.

198. The appellant has pointed to a sentence in the GBBR which says (in relation to Strategic Area A) that:

*'there is a sense that in some of the more fragmented and/or degraded parts of the Green Belt changes could be accommodated without causing harm to its integrity'*

The tentative nature of this view should be noted. Moreover, it is not reflected in the assessment for local area 59a, which makes no suggestion that the area can accommodate development without harm.

199. The appellant argued that the appeal site makes no contribution to Purpose 1. Mr Baker considered that the appeal proposals were well planned, such that they would not amount to sprawl. His judgment on this matter should be rejected for the following reasons. First, he did not take into account the question of openness. His approach was that openness should play no part in the assessment of the contribution that the appeal site makes to Green Belt purposes<sup>176</sup>. That is an irrational approach.

200. Secondly, his view that Purpose 1 is *'anachronistic'* is plainly misplaced<sup>177</sup>. It was an attempt to water down this purpose. There is nothing to show that this purpose has been diluted over time. The Government has not indicated any such thing. Thirdly, Mr Baker's approach was based on his view that this purpose was now sub-ordinate to sustainable development. Again, there is no policy support for this proposition. Mr Baker failed to understand that Green Belt policy is very much part of the Government's policy on sustainable development.

201. Fourthly, the assertion that the appeal site can be developed without harm to this purpose is proved to be false by the appellant's own evidence. Mr Baker and Mr Fidgett both said that it would be up to the Council to decide where to draw the Green Belt boundary if the appeal site were developed. However, it is up to the appellant to demonstrate that the proposals would be suitable in planning terms. That includes the need to show that they would permit a sensible Green Belt boundary. Neither Mr Baker nor Mr Fidgett was able to do that.

202. The lack of a coherent future Green Belt boundary is a clear indicator of sprawl via a lack of permanence. The development would leave *'a finger of land'* by the Esher Rugby Club enclosed on three sides by development with the reservoir to

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<sup>175</sup> Rebuttal proof of Mr Tunnell, figure 1

<sup>176</sup> Inspector's note – in answer to questions from Mr Howell Williams, Mr Baker said that none of the purposes relate to openness

<sup>177</sup> Inspector's note - in answer to questions from Mr Howell Williams, Mr Baker said that the terminology of Purpose 1 was anachronistic but that the purpose itself had validity

the north<sup>178</sup>. To the east, the appellant appears to have settled on the boundary shown in APP19, introduced with Mr Fidgett's oral evidence. That would leave the middle of the appeal site within the Green Belt, even though it would have ceased to perform any Green Belt function because of its highly managed appearance and substantial built development on three sides. The pressure to release further land from the Green Belt would therefore be irresistible, further undermining Purpose 1.

203. The appellant's conclusion that the appeal site makes no contribution to Purpose 1 is untenable. The conclusion that we invite the Secretary of State to reach is that the appeal site makes a significant contribution to this purpose and that the harm caused would be serious.

*Purpose 2 – Prevention of neighbouring towns from merging into one another*

204. Mr Tunnell's evidence explains the critical location of the appeal site in terms of separating Walton/Hersham and Esher. He concludes that, whilst development on the appeal site would not physically link the settlements, this would be due only to the River Mole. The proximity of built development on either side of the river would mean that the sense of separation would be lost. Elmbridge is vulnerable to its towns merging. The CS Inspector noted that the Green Belt is closely interwoven with the Borough's settlements and is generally fragmented, making it particularly vulnerable to erosion. Nevertheless, she found that, in addition to serving fundamental Green Belt purposes, the Green Belt makes a significant contribution to environmental character as part of a green network. She concluded that<sup>179</sup>:

*'In this context the impact of even small-scale deletions from the Green Belt would be likely to be harmful and undermine its longer-term protection'*

205. Mr Baker was wrong to argue that there are no separate towns that would merge if the appeal site were developed. Walton/Hersham and Esher are clearly separate towns, currently divided by a slim gap. This is exactly the type of location the CS Inspector must have had in mind. Mr Baker's conclusion seems to have been influenced by his view that separation is mostly about the identity of the towns in question<sup>180</sup>. Plainly that is not the correct test. Mr Tunnell demonstrated that there would be coalescence between the settlements of Walton/Hersham and Esher, that Purpose 2 would be undermined and that the pressure for further development would be increased<sup>181</sup>.
206. Mr Baker made a further point that the appeal proposals would create a more sustainable pattern of development by '*embracing*' Fieldcommon. That point was not made out because the appeal scheme is inchoate in its design relationship with Fieldcommon. In any event, the point is not relevant to Purpose 2.

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<sup>178</sup> Inspector's note: Mr Baker referred to a '*finger of land*' by the Rugby Club in answer to a question from Mr Howell Williams

<sup>179</sup> CD E10, paragraphs 26 to 27

<sup>180</sup> Proof of evidence of Mr Baker, paragraph 4.5.9

<sup>181</sup> Rebuttal proof of Mr Tunnell, figure 1

### *Purpose 3 – Safeguarding the countryside from encroachment*

207. The appeal site appears and functions as countryside. Plainly, the appeal scheme would encroach onto it. The appellant's answer to this obvious point is simply to redefine the appeal site as not being countryside. There are a number of points to make in response to that incorrect approach:

- the Appellant said the site is countryside during the application process - the LVIA regards the land as having rural outlook and setting and the Planning Statement treats Purpose 3 as being relevant
- the land is in agricultural use<sup>182</sup>
- Mr Allen could not bring himself to say the land is not countryside, he could only say it was not pristine countryside and that he regarded it as urban fringe<sup>183</sup>
- the Council's Heritage Landscape and Tree Manager observed that the site has its own distinct character - investment and different management regimes could improve its landscape quality<sup>184</sup>
- local people consider the land to be countryside – shown, for example, in the evidence of Cllr Elmer and Cllr Cross who referred to grazing animals evoking a countryside feel

### *Conclusion on harm to the Green Belt*

208. The proposals would amount to inappropriate development in the Green Belt. That would be harmful by definition, simply '*because it is there*'<sup>185</sup>. Added to that definitional harm there would be substantial further harm to the openness and permanence of the Green Belt, together with very serious harm to three of its five purposes. To that collective harm, national policy requires that '*substantial weight*' is attributed<sup>186</sup>. The scales are therefore set very significantly against the grant of planning permission.

### ***Issue 2 – housing land supply***

209. Paragraph 47 of the Framework states that local planning authorities should identify a supply of deliverable sites sufficient to provide 5 years of housing against their requirement, with the consequences at paragraph 49 where that requirement is not met. As the Court of Appeal held in *Daventry*, only the second bullet point of paragraph 47 relates to decision taking. The remainder of that paragraph, in particular the reference to the longer term beyond five years, relates to plan making. That is especially the case when a Local Plan is highly

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<sup>182</sup> Town and Country Planning Act 1990, section 336 - grazing is defined as being within agricultural use

<sup>183</sup> Inspector's note – in answer to questions from Mr Howell Williams, Mr Allen accepted that whether or not countryside is pristine is not relevant to Purpose 3 and that an urban fringe appearance does not preclude land from being regarded as countryside. He declined to endorse use of the word '*unattractive*', commenting that he preferred '*undistinguished*'

<sup>184</sup> CD J9, page 2

<sup>185</sup> R(Lee Valley Regional Park Authority) v Epping Forest DC [2016] EWCA Civ 404 paragraph 18 (appended to LPA14)

<sup>186</sup> The Framework, paragraph 88

likely to be in place within five years and where the housing requirement is likely to be constrained due to Green Belt.

*The requirement figure*

210. The CS housing requirement pre-dates the Framework. In such circumstances, the Guidance advises that '*information provided in the latest full assessment of housing needs*' should be considered as the starting point<sup>187</sup>. Mr Spry (the appellant's witness on housing land supply) accepted that the latest full assessment of housing needs is the SHMA16<sup>188</sup>. The SHMA16 identifies that the OAN for Elmbridge is 474 dpa. That is the figure that the Council invites the Secretary of State to adopt. On that basis the Council can demonstrate a 3.2 year supply<sup>189</sup>.

211. The SHMA16 was commissioned on behalf of the Council and the neighbouring authorities of Epsom and Ewell Borough Council, Mole Valley District Council and the Royal Borough of Kingston upon Thames. It is a recently published document, prepared in accordance with the Framework and the Guidance, based on extensive research and informed by full consultation in accordance with the duty to co-operate. It should therefore carry significant weight and the bar facing those who wish to challenge its findings should be a high one. It must be shown that the calculation of need is '*either unreliable or unreasonable*', the test adopted by the Inspector and the Secretary of State in the *Castlemilk* appeal decision<sup>190</sup>. There is nothing in *West Berkshire*<sup>191</sup> which alters that proposition. The facts in that case were highly specific and not comparable to this appeal.

212. Strategic housing assessments are designed for the local plan process. They are properly considered as a part of that process. The appeal process provides a relatively limited forum for such consideration, as recognised in *Hunston*<sup>192</sup>:

*'it is not for an Inspector on a s78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. An Inspector in that situation is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done'*

213. The issues between the Council and the appellant have narrowed to three principal points of dispute:

- whether market signals justify an uplift to the demographic projections
- whether an uplift to the open market housing should be made to accommodate some or all of the affordable housing need

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<sup>187</sup> CD C2, Ref ID: 3-030-20140306

<sup>188</sup> CD G1 - Inspector's note – in answer to questions from Mr Howell Williams, Mr Spry accepted that the SHMA16 is the latest full assessment of need, adding that it should be considered alongside the appellant's evidence on housing need

<sup>189</sup> Rebuttal proof of Mr Tunnell, paragraph 49

<sup>190</sup> LPA5, paragraphs 77 and 143 of the Inspector's report and paragraph 24 of the Secretary of State's letter

<sup>191</sup> CD K8, *West Berkshire DC v SSCLG* [2016] EWHC 267 Admin

<sup>192</sup> CD K2, *St Albans DC v Hunston Properties Ltd* [2013] EWCA Civ 1610, paragraph 26

- whether employment led needs justify an uplift to the demographic projections

In addition, the appellant criticised the choice of housing market area and the use of the 2012 based household projections. There was also a general criticism that the SHMA16 omitted key factors required by the Guidance. However, the SHMA16 followed the methodology of the Guidance throughout, taking into account all relevant factors in a properly structured way.

214. Mr Spry suggested that Kingston-upon-Thames ought not to have been within the housing market area for the SHMA16 because it has been assessed as part of London's housing market area in the London Plan process. The SHMA16 analysed a range of objective evidence to support the definition of its housing market area including migration, travel to work patterns and house prices<sup>193</sup>. Its conclusions were confirmed by neighbouring authorities as well as the GLA. The criticism is therefore without foundation. The point is of no significance in any event because Mr Spry did not identify any practical effect of excluding Kingston-upon-Thames from the calculation of the OAN figure for Elmbridge.

215. Mr Spry argued that the SHMA16 was out of date in so far as it does not take account of more recent projections. However, Mr Leather explained that the SHMA16 used 2012 based projections which were the most up-to-date projections then available<sup>194</sup>. The 2014 based projections, which were released subsequently, would make a very small difference amounting to only 21 dpa. The Guidance advises that<sup>195</sup>

*'a meaningful change in the housing situation should be considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued'*

Mr Leather was therefore right to say that the difference was not meaningful and did not cast doubt on the SHMA16. This is another non-issue.

216. The Guidance is clear that decision takers should use published demographic projections as a starting point to calculating an OAN. Furthermore, the extent to which authorities co-operate with one another to accept an apportionment of housing needs is not a matter generally to be taken into account in the s78 process<sup>196</sup>. No evidence was offered to support the appellant's contention that an allowance of 5% should be added to the household projections to allow for suppressed household formation. This matter had been addressed in the OAN by the inclusion of an adjustment for concealed households<sup>197</sup>. For all these reasons it would be wholly inappropriate to uplift the demographic projections.

*Whether market signals justify an uplift to the demographic projections*

217. The appellant argued for an uplift of 64% to address market signals, resulting in an OAN of 760 dpa. That would be an unprecedented uplift which is not

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<sup>193</sup> Proof of evidence of Mr Leather, pages 17 to 18, rebuttal proof paragraph 3

<sup>194</sup> Proof of evidence of Mr Leather, section 4

<sup>195</sup> CD C2, Ref ID 2a-016-20150227

<sup>196</sup> CD K11, Oadby & Wigston BC v SSCLG [2016] EWCA Civ 1040, paragraph 41

<sup>197</sup> Proof of evidence of Mr Leather, paragraph 76

supported by reliable evidence. The Guidance includes comments on market signals<sup>198</sup> on which the Council makes the following observations:

- the Guidance is not intended to be applied without judgment
- the signals and indicators might vary in their significance - their importance will depend on the circumstances of a given case
- house prices and rental levels are of limited use on their own without comparison to earnings – a rise in house prices or rents does not by itself necessarily mean an uplift is required
- affordability is likely to be the important market signal - it is the '*relative affordability of housing*' that is to be assessed<sup>199</sup>
- the Guidance should not be applied so that any increase in prices, rents or worsening of affordability would automatically lead to an uplift – '*appropriate*' comparisons need to be drawn

218. Mr Spry was adamant that paragraph 020 of the Guidance<sup>200</sup> indicates that an uplift should always be made to tackle affordability. That is too simplistic. Paragraph 020 expressly recognises that an uplift should only be made where there is a '*reasonable assumption ... [it] could be expected to improve affordability*'. Furthermore, an uplift is to be '*consistent with the principles of sustainable development*'. An uplift that was not likely to improve affordability would not be consistent with the Guidance. In particular, if an uplift was proposed by a single authority in isolation it would not be reasonable to assume that it would improve affordability. That could have an adverse effect on other sustainable development considerations<sup>201</sup>.

219. The appellant's analysis of trends in house prices and rental levels is brief<sup>202</sup>. The SHMA16 on the other hand provides a thorough appraisal<sup>203</sup>. It acknowledges that prices in the housing market area are high but notes that there is no indication of any long term widening of the gap relative to other areas. It also acknowledges that private rents are high, with some evidence of upward pressure, but notes that this is widespread in the south of England. Mr Leather observes that the existence of higher and lower value areas is an established feature of the housing market, arising from location, actual or perceived differences in the housing stock, local amenities and other factors<sup>204</sup>. The SHMA16 therefore concludes that the case for an uplift, by reference to these indicators alone, is not made out. It rightly focuses on the question of affordability.

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<sup>198</sup> CD C2, Ref ID: 2a-019-20140306

<sup>199</sup> Inspector's note – the propositions in the first four bullet points were accepted by Mr Spry in answer to questions from Mr Howell Williams

<sup>200</sup> CD C2, Ref ID: 2a-020-20140306

<sup>201</sup> CD G1, paragraph 7.42; proof of evidence of Mr Leather, paragraphs 80 and 83; CD L10, page 20

<sup>202</sup> Proof of evidence of Mr Spry, pages 36 to 37

<sup>203</sup> CD G1, pages 120 to 127 and paragraphs 7.39 to 7.42

<sup>204</sup> Proof of evidence of Mr Leather, paragraph 38; rebuttal proof of Mr Leather, paragraph 17

220. Affordability was thoroughly examined in the SHMA16 which concluded that there was no indication of any long term widening of the gap in affordability between the housing market area and other areas<sup>205</sup>. It had regard to measures of affordability (in particular the ratio of median house prices to median earnings) in Elmbridge compared with the national position over a period covering an economic cycle. On this basis it was clear that there was no consistent upward trend over the period 2001 to 2014 and there was no evidence to suggest that an addition to OAN was required<sup>206</sup>.
221. However, the SHMA16 recommended that the affordability position should be monitored. A trigger was put forward for uplifting OAN if the Elmbridge affordability ratio were to exceed 2.1 times the national affordability ratio. This trigger was selected following examination of historic data. This indicator reached a peak of 2.2 in 2001. As Elmbridge was approaching this peak again in 2015, the threshold was set to pick this up. An uplift of 10% was suggested in the light of the draft LPEG report. Mr Leather explained that the relative affordability position has in fact improved slightly since then, with the longer term evidence suggesting that Elmbridge prices are not worsening relative to the national average<sup>207</sup>.
222. For the reasons summarised below, the Council considers that Mr Spry's proof, tables and graphs are not a reliable basis to support an uplift<sup>208</sup>. First, he relies heavily on the third sentence of paragraph 020 of the Guidance, taking the approach that any worsening trend of any indicator will require an uplift. That is not the correct interpretation, as may be seen when the sentence is read in context. Secondly, three year averages are not useful since they will mask trends rather than reveal them.
223. Thirdly, Mr Spry's tables focus on absolute affordability ratios rather than comparative trends. However, the second sentence of paragraph 020 advises that comparisons should be made with '*longer term trends*' nationally. Comparisons of absolute figures can be considered but comparisons of relative rates of change over the longer term (including economic cycles) are more useful. It is known that prices are high in Elmbridge, which means that the affordability ratio will always be high relative to the national average. The SHMA16 approach takes changes in that relative position as the important indicator. Mr Spry's tables and figures do not illustrate those relative trends.
224. The Council considers that the more useful indication of what the market is saying is provided by comparing what is happening to affordability in Elmbridge with the national average. The SHMA16 does this and Mr Leather has provided the updated position which shows that there is variation in the severity of affordability problems over time<sup>209</sup>. His evidence shows the following points:
- although Elmbridge and national ratios have both risen, the relationship has been cyclical with prices in the South East (including Elmbridge) rising

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<sup>205</sup> CD G1, pages 129 to 131 and paragraphs 7.39 to 7.42

<sup>206</sup> Proof of evidence of Mr Leather, paragraph 39

<sup>207</sup> Rebuttal proof of Mr Leather, paragraph 17

<sup>208</sup> Proof of evidence of Mr Spry, paragraphs 5.13 to 5.16 and appendix 2

<sup>209</sup> Proof of evidence of Mr Leather, figure C

faster than elsewhere for a while and then the rest of the country catching up

- the severity of affordability problems peaked in 2014 and is now weakening - even in 2014 it did not reach the severity of the position in 2002
- over the longer term affordability in Elmbridge has not materially worsened when compared to the national average
- the trend in Elmbridge has followed the same broad path as other authorities in the housing market area

225. For all these reasons the Council contends that no uplift is necessary at the present time. Even if an uplift was found to be required, the Council's firm submission is that Mr Spry's figure of 64% is wholly unjustified. He sought to justify this unprecedented figure by reference to three sources which are commented on below.

#### *Literature*

226. Mr Spry asserted that research indicates that (nationally) between a 20.9% and 44% uplift on household projections is needed. He argued that this suggests that a range of between 560 dpa and 667 dpa might be relevant for Elmbridge. However, the documents should be read in full. No reliance should be placed on the incomplete summaries in Mr Spry's appendix 3. None of the documents relate to Elmbridge or to any individual local authority. The majority relate to the national position. Others relate to the regional/sub-regional level. None recommends any specific affordability ratio figure to be applied at a national level, let alone at local level, and none of the documents provides a model that can be used to calculate an amount of housing needed to improve affordability in a local authority area.

227. The Bramley and Watkins report is of some relevance. It looked at a sub-regional model relating to affordability impacts of increases in supply. However, the report actually warns against an assumption that increasing the supply of housing at the local level will improve prices<sup>210</sup>. This is because increasing supply in one area might serve only to attract demand from another area with no effect on affordability and potentially undesirable effects in terms of inward migration<sup>211</sup>. It should be noted that (for the purpose of this study) the relevant housing market area included Greater London and parts of the former Outer Metropolitan Area. So when the report refers to the tendency for one housing market area to pull in households from other areas it is talking about very large areas indeed.

228. The Bramley and Watkins report concluded that concerted action at a regional level is the way forward rather than action on any one site. Mr Spry's approach is inconsistent with that conclusion. He advocates the imposition of uplifts at the local level (in the context of a single appeal case) irrespective of the position in the other housing market area authorities.

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<sup>210</sup> CD L7, page 57

<sup>211</sup> Mr Leather refers to this point at paragraphs 80 and 83 of his proof of evidence

229. A report from the University of Reading is of particular significance. Far from supporting Mr Spry's arguments, the document warns against his approach. Professor Meen, an eminent leader in the field, concludes as follows<sup>212</sup>:

*'A final point to note is that balanced increases in housing supply, i.e. across all regions or groups of regions, are capable of producing an increase in affordability, although modest unless increases are large and long-lasting. Nevertheless, it may be difficult, or impossible, to achieve affordability targets at sub-regional levels. This is because local authorities, for example, may be close substitutes in terms of location for many households, so that increasing construction in a small number of areas generates strong population inflows, offsetting any improvement in affordability. Simulations were conducted in ODPM (2005), where increases in supply in two local authorities – Reading and Knowsley were considered. In the former – a wealthy southern town – little improvement in affordability occurred due to migration, whereas deprived northern Knowsley experienced few population inflows'*

230. There is nothing in the literature review to support any specific uplift that ought to be applied to the OAN in Elmbridge to improve affordability. Indeed, the two reports quoted above warn against this approach for the very same reasons given in the SHMA16<sup>213</sup>. The application of assumptions and uplifts derived from these national studies to a local level is therefore unjustified.

#### *Simple apportionment*

231. Mr Spry carried out an exercise whereby he apportioned a national needs figure across the country. This resulted in an uplift for Elmbridge of between 26% and 68%. For the reasons already given, there is no basis for this approach in the literature referred to above. Mr Leather has pointed out that the House of Lords Report (on which the exercise is based) makes no suggestion that an apportionment of this kind would have the effect claimed by Mr Spry<sup>214</sup>. The width of the range indicates that the exercise is unstable and of no use in the circumstances of a particular case.

#### *Mr Spry's model*

232. Finally, Mr Spry put forward his own model to justify his proposed 64% uplift<sup>215</sup>. Notwithstanding the labels attached to this model, it is neither an OBR model nor a University of Reading model. Mr Leather explained in his oral evidence that there are fundamental flaws with this approach. The inputs to the model include assumptions on growth in house prices (4.8% per annum) and growth in earnings (3.7% per annum)<sup>216</sup>. It appears that the first figure is an average taken from OBR forecasts up to 2022 and the latter is a specific figure taken from the OBR forecasts for the year 2022. This raises two serious concerns.

233. First, the OBR produces short term forecasts. It is wrong to use figures from the forecasts up to 2022 and simply project them to 2035. The OBR does not

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<sup>212</sup> CD L10, page 20

<sup>213</sup> CD G1, paragraph 7.42

<sup>214</sup> Rebuttal proof of Mr Leather, paragraph 21

<sup>215</sup> Proof of evidence of Mr Spry, appendix 5

<sup>216</sup> APP18

intend that they should be used in this way. The results based on this method have extreme sensitivity to variations in these assumptions<sup>217</sup>. There is simply no basis for a sensible calculation going forward so far into the future.

234. Secondly, the assumption about the relationship between supply and prices in Elmbridge has no basis. Mr Spry's proof of evidence says that this elasticity applies at regional level but there is no demonstration that this can simply be shifted to the local level. It should be noted that Professor Meen, whose work on elasticity is drawn on by Mr Spry, advises that increasing supply at local level in an area like Elmbridge will just attract people from outside the area with no effect on affordability.
235. In summary, Mr Spry's model wrongly applies OBR forecast figures over a timescale far greater than the OBR intended, uses assumptions that are very sensitive to even minor changes to prices and earnings and uses an assumption about the link between supply and prices that is not supported by the author. The Council submits that the model is so flawed that it is not safe for use in any circumstances.
236. It is acknowledged that the Inspector at the Mid-Sussex examination accepted Mr Spry's model<sup>218</sup>. However, there is no clear indication precisely how the Mid-Sussex Inspector considered the criticisms of the model that were presented to him. The Inspector at this Inquiry has the benefit of Mr Leather's expert opinion. Neither he, nor the Secretary of State, is obliged to accept Mr Spry's model. Questioned about his model, Mr Spry said that it was only an illustration. That appears to be a fall-back position in recognition of the fact that the Inspector might well find Mr Leather's criticisms valid. Mr Spry's sanguine attitude that an oversupply of housing could only improve affordability forgets the requirement (at paragraph 020 of the Guidance) that any uplift should be consistent with principles of sustainable development.

#### *The recent Government consultation*

237. Mr Leather explained that the recent consultation document *Planning for the Right Homes in the Right Places*<sup>219</sup> does not purport to provide an OAN<sup>220</sup>. The indicative figure for Elmbridge (29%) should not be understood as an uplift to OAN for market signals. Rather, it is a policy-on approach by Government to simplify the process of housing needs assessments and speed up the system. The statement of common ground confirms the agreed position that the consultation document can only attract limited weight at this stage. It lends no support for the imposition of an uplift of up to 64% as proposed by the appellant.

#### *Conclusions on affordability*

238. An examination of long-term trends against the national picture, as required by the Guidance, reveals that affordability in Elmbridge has not materially

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<sup>217</sup> Inspector's note – the following figures were put to Mr Spry in cross-examination: at 4.8% per annum for house prices £375,000 (in 2015) becomes £914,000 in 2035; with an assumption of 3% it becomes £677,000 (a difference of £237,000); and with an assumption of 5.8% it becomes £1,203,000 (a difference of £289,000)

<sup>218</sup> CD L5

<sup>219</sup> CD L8

<sup>220</sup> Proof of evidence of Mr Leather, page 9

worsened against the national trend. The Guidance, when applied correctly, does not justify an uplift. However, if an uplift is to be made, the appellant's suggested uplift is wholly unjustified:

- the uplift is higher than ever suggested in the literature (as Mr Spry himself concedes<sup>221</sup>)
- the uplift is over twice as high as the highest suggested uplift (10-25%) suggested by LPEG (a group which Mr Spry contributed to)
- Mr Spry seeks to translate assumptions made at a national level to Elmbridge - contrary to the express injunctions of the leading contributors to the literature
- Mr Spry's model is seriously flawed
- a cautionary approach should be taken because there is no evidence of the position of the other housing market area authorities on this issue - nor any clear view about the potential effects of a unilateral uplift on affordability or on other sustainable development considerations

*Whether affordable housing need should be reflected in the OAN*

239. The extent to which open market housing should be increased to help deliver some or all of the identified affordable housing need is a question of policy, not part of the OAN. That was resolved in *Barker Mill*<sup>222</sup>. The appellant's argument that the reasoning in *Barker Mill* is confined to plan making is incorrect as a matter of law. The Court of Appeal in *Solihull*<sup>223</sup> identified that the local planning authority must first establish the OAN as an objective exercise, disregarding policy considerations and other matters such as the availability of land.

240. At the second stage, the local planning authority may consider whether policy or other considerations justify constraining (or increasing) the OAN so as to arrive at the amount of housing which the new plan will provide. The conclusion in *Barker Mill* that meeting affordable housing need falls within the second step means that it is not relevant to this s78 process. This is for all the reasons identified in *Hunston*<sup>224</sup>. Mr Leather was therefore correct not to uplift the OAN figure to address affordable housing needs. In any event, Mr Leather explained that the extent to which such an uplift would be deliverable, viable or sustainable cannot be ascertained from the information before the Inquiry. Affordable housing need should not be reflected in the OAN for this appeal.

*Whether employment led needs justify an uplift to the demographic projections*

241. There was broad agreement that the growth in employment will be around 10,000 new jobs between 2015 and 2035. The key difference is the appellant's use of the Annual Population Survey (APS) compared with the Council's use of the Office of National Statistics (ONS) projections. This has led to the difference between the parties as to the available labour force over the plan period. Mr Spry

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<sup>221</sup> Proof of evidence of Mr Spry, paragraph 5.39

<sup>222</sup> CD K25, *Barker Mill Estates Trustees v Test Valley BC* [2016] EWHC 3028 (Admin), paragraphs 36 and 37

<sup>223</sup> *Solihull MBC v Gallagher Estates Ltd* [2014] EWCA Civ 1610

<sup>224</sup> CD K2, *St Albans DC v Hunston Properties Ltd* [2013] EWCA Civ 1610, paragraph 26

accepted that the APS figures contain a 5% error range (a variation of 9,500). The Council considers that the ONS projections are more reliable. Accordingly, the SHMA16 conclusions should be preferred. These demonstrate a surplus reducing to a parity of jobs and labour force. No uplift is needed.

*Overall conclusion on the housing requirement*

242. In the absence of a Framework-compliant figure in an adopted plan, the Secretary of State is required to identify a housing requirement for the purposes of resolving the issues in this appeal. However, he is not required to <sup>225</sup>:

*'undertake the kind of detailed analysis which would be appropriate at a Development Plan inquiry and he was not making an authoritative assessment which would bind the local planning authority in other cases'*

243. Great weight should therefore be attached to the SHMA16. Where there are competing expert opinions regarding the steps set out in the Guidance, substantial caution should be exercised before departing from the SHMA16 in favour of an approach which would cause a substantial increase in the identified OAN, so as to justify large scale development in the Green Belt. The appellant has failed to demonstrate that the recently adopted SHMA16 is either unreliable or unreasonable. Accordingly, the Council considers that the appropriate OAN (for the purposes of this appeal) is 474 dpa, to which a 5% buffer should be applied.

244. The Council makes the following comments on Mr Spry's approach to the question of the OAN:

- he has taken a narrow approach to the question of the need for a market signals uplift, without properly considering the longer-term trend against the national average
- he has conjured up an uplift without precedent, unsupported by the literature he relies on
- it is not possible to know whether an uplift in Elmbridge would improve affordability without knowing the intentions of the other authorities in the housing market area
- his model relies on the relationship between two percentages remaining constant beyond their intended five-year period - that is almost guaranteed not to be the case
- his cavalier attitude (that any over-supply would simply help affordability) is inappropriate in the context of an appeal where a claimed housing shortfall is being used to justify large scale development in the Green Belt
- his use of the APS data to justify an uplift for employment-led trends shows a similarly worrying lack of attention to the accuracy of the figures he relies on
- his justification for increasing OAN to meet affordable housing needs is based on an error of law

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<sup>225</sup> Shropshire Council v SSCLG [2016] EWHC 2733 (Admin), paragraph 30 (appended to LPA14)

245. The trajectories supplied by Mr Spry fail to acknowledge some important matters. First, much of the delay in plan preparation elsewhere has been caused by the need to calculate an OAN. This source of delay will be resolved by the introduction of a standardised methodology. Secondly, given that 57% of Elmbridge is Green Belt, it is highly likely to end up with a constrained housing figure. Mr Spry's projected long-term shortfall against an unconstrained OAN is therefore unhelpful. Thirdly, his trajectory for the adoption of a plan is unduly pessimistic. It is perfectly possible that a plan with a housing requirement figure will be in place by the end of 2019<sup>226</sup>.

*The deliverable supply*

246. It is agreed that the available supply is 1,635 units, which represents a supply of 3.20 years based on the SHMA16 OAN. There is a dispute whether the shortfall of 234 since the base date of the Local Plan needs to be spread over the entire plan period (the Liverpool approach) or made up in the first five years (the Sedgefield approach). The Guidance states that the Sedgefield approach should be used '*where possible*'. However, either method can be appropriate.

247. In Elmbridge the emerging plan is proceeding upon a preferred option of three strategic locations in the Green Belt. Those sites would require site assembly and provision of infrastructure. Moreover, the OAN represents a step-change in the housing requirement. Given the acknowledged constraints on meeting the full OAN, a shortfall is not wholly surprising. Accordingly, the Council invites the Secretary of State to adopt a Liverpool approach to making up the shortfall.

***Issue 3 – whether the harm by inappropriateness, and any other harm, is clearly outweighed by other considerations***

248. The Framework states that very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is '*clearly outweighed*' by the benefits of the scheme. The decision-taker has to exercise a qualitative judgment and ask whether the circumstances, taken together, are very special. Mr Fidgett accepted that this is a high bar<sup>227</sup>. The Courts have not defined '*very special*', beyond confirming that the words must be given their ordinary and natural meaning<sup>228</sup>:

*'The words 'very special' must be given their ordinary and natural meaning. Since the expression 'very special' is so familiar, any attempt at definition is probably superfluous, but for what it is worth, the Shorter Oxford English Dictionary tells us that special means:*

*Of such a kind as to exceed or excel in some way that which is usual or common; exceptional in character, quality or degree*

*The circumstances must be not merely special in the sense of unusual or exceptional, but very special'*

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<sup>226</sup> Rebuttal proof of Mr Tunnell, paragraph 75

<sup>227</sup> Inspector's note –accepted by Mr Fidgett in answer to questions from Mr Howell Williams

<sup>228</sup> R(Chelmsford BC) v First Secretary of State [2004] EWHC 2978 (Admin), paragraphs 55 to 56 (appended to LPA14)

249. The Courts have, however, held that features of the development would have to go beyond the satisfaction of development control policies to form a part of a very special circumstances case<sup>229</sup>. The Guidance states that unmet housing need is unlikely to constitute very special circumstances justifying inappropriate development within the Green Belt<sup>230</sup>. It follows that a shortfall against the OAN in a Borough constrained by Green Belt is even more unlikely to amount to very special circumstances. In circumstances where a district is subject to Green Belt (or other) constraints the Courts have held that<sup>231</sup>:

*'it may be wholly unsurprising that there is not a five year supply of housing land when measured simply against the unvarnished figures of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgment, that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable. That may well affect the weight to be attached to the shortfall'*

250. Social and economic benefits, such as construction jobs and contributions towards schools or recreation, are typically associated with new housing. Incidental benefits of this nature must all have been taken into account when the policy referred to above was formulated. Such benefits are equally unlikely to amount to very special circumstances. Nothing in the Housing White Paper or the recent consultation alters that position. Indeed, both documents reiterate the importance of Green Belt policy<sup>232</sup>. A shortfall against the OAN is not surprising in a Borough which is highly constrained by Green Belt. Mr Fidgett accepted that these circumstances are not unique to Elmbridge and that other authorities are in a similar position<sup>233</sup>. Nor is Elmbridge alone in seeking to have in place a local plan that will govern the provision of housing land in a sustainable way.

251. The local plan process has included consultation on three options, two of which contemplate revisions to the Green Belt boundary. These options relate to locations assessed by the GBBR to be weakly performing Green Belt. In contrast, the appeal site sits within an arc of land which is of critical importance to the Green Belt. Permitting inappropriate development here would drastically undermine public confidence in the ability of the planning system to deliver a locally shared vision of sustainable development. In *Hunston*, it was observed that<sup>234</sup>:

*'Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers'*

252. The Council adopted the CS in 2011 to meet the Borough's needs to 2026. The DMP was adopted in 2015 to guide that strategy. The publication of the Framework soon after the CS was adopted triggered the need to start work on a

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<sup>229</sup> R(Lee Valley Regional Park Authority) v Broxbourne BC [2015] EWHC 185 (Admin), paragraph 71 (appended to LPA14)

<sup>230</sup> CD C2, Ref ID: 3-034-20141006

<sup>231</sup> CD K2, St Albans DC v Hunston Properties Ltd [2013] EWCA Civ 1610, paragraph 29

<sup>232</sup> CD C3, page 18; CD L8, page 8

<sup>233</sup> Proof of evidence of Mr Fidgett, paragraphs 1.9 to 1.13

<sup>234</sup> CD K2, St Albans DC v Hunston Properties Ltd [2013] EWCA Civ 1610, paragraph 31

new local plan to meet the new national policy requirements. The Council has not been sitting on its hands and is currently carrying out considerable work in the course of preparing its local plan. The Framework seeks to deliver sustainable development within a plan-led system. It does not provide licence for speculative and damaging development whilst the statutory process for adopting a new local plan follows its course.

### *Benefits*

253. There is considerable repetition in the appellant's references to the so-called benefits of the appeal scheme. In truth, the benefits are not numerous, nor are they significant. It is Government policy that the contribution to unmet housing need is unlikely to amount to very special circumstances. The contribution of a particular tenure and mix does not advance the matter any further. It is simply a contribution to the particular housing need which has been identified locally. The contribution of 50% affordable housing goes no further than the requirements of CS Policy CS21. As such, it cannot lawfully amount to a contribution to a very special circumstances case<sup>235</sup>.

### *Highways works and transport contributions*

254. Mr Stillwell (the appellant's transport witness) accepted that all of the highway improvement works and transport contributions would address policy requirements. They would be necessary either to ensure a safe and suitable access to the site or to maximise the opportunities for use of sustainable modes of transport. Without addressing those policy requirements there would be planning harm. In particular:

- road widening at Rydens Road is necessary to promote walking, following the observation in the TA that pedestrians are put off walking along that road due to its narrow footway<sup>236</sup>
- improvements to footways and cycle links are necessary to encourage sustainable transport and to minimise conflicts between vehicles and cyclists<sup>237</sup>
- the contribution towards the cycle strategy is necessary to ensure that the highway works in and around the site connect up to the wider cycle network, thereby encouraging sustainable transport
- cycle storage at Hershams Station is necessary to encourage sustainable transport
- Kassel kerbing at bus stops is necessary to address the transport needs of people with disabilities
- the diversion of the bus route into the appeal site is necessary to ensure that no household would be more than 400m from a bus stop in accordance with the Surrey Transport Plan<sup>238</sup>

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<sup>235</sup> R(Lee Valley Regional Park Authority) v Broxbourne BC [2015] EWHC 185 (Admin), paragraph 71 (appended to LPA14)

<sup>236</sup> Framework, paragraphs 32 and 34; CD A31, paragraph 10.3

<sup>237</sup> Framework, paragraphs 32, 34 and 35; CD A31, paragraph 10.9

<sup>238</sup> Proof of evidence of Ms Trower, Annex ZT/3, paragraph 5.3.1

- the extension of the 30mph speed limit along Molesey Road is necessary to ensure a safe approach to the new roundabout - otherwise a safe and suitable access to the appeal site would not be achieved

255. All of these measures are necessary to mitigate the transport impacts of the appeal scheme. They are needed to address the requirements of local and/or national policy. Without them there would be planning harm. These measures cannot amount to very special circumstances. The contribution to lifts at Hersham station merits limited, if any, weight. There is no guarantee of funding beyond the contribution in the Agreement. There is no agreed match-funding partner if the costs exceed that estimate. The approval to these works relied on by the appellant is no more than an acceptance in principle to such an improvement taking place<sup>239</sup>. There is no guarantee of the timescale.

#### *Community facilities*

256. The provision of accessible and sustainable social and community infrastructure is a requirement of CS Policy CS16. Unless the doctors, dentists, pharmacy, shop and community space were provided on or near the site these facilities would be beyond the acceptable walking distances for sustainable communities<sup>240</sup>. The provision of these facilities would therefore simply mitigate harm which would otherwise arise.

#### *Recreational facilities*

257. There is great uncertainty about the eastern park. Access is dependent upon a proposed bridge, for which neither Environment Agency consent nor planning permission has been obtained. There is no certainty about any link between the eastern park and the Lower Green recreational ground. The *Oaklands College* decision does not assist the appellant regarding the weight to attach to these elements of the scheme. In that case the Secretary of State attached only 'moderate weight' to the combined benefits of ecological enhancements, footpaths and bridleways, landscaping and the visual improvements<sup>241</sup>.

#### *Connectivity*

258. There is nothing in the suggestion that the development would increase connectivity through the Green Belt. It is quite possible to pass by the appeal site on existing public rights of way. Providing the public with an option to walk through a housing estate, rather than along the existing public rights of way with open views of the countryside, is of no benefit.

#### *Fieldcommon*

259. The appellant has emphasised the social and economic needs of Fieldcommon, as compared with the Borough as a whole. However, although one of the objectives of the scheme was to reduce the isolation of Fieldcommon<sup>242</sup>, the connection to Fieldcommon would be poor. The proposed layout would not integrate the two communities, nor would it encourage use of new facilities by

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<sup>239</sup> Proof of evidence of Mr Stillwell, appendix 7

<sup>240</sup> Proof of evidence of Mr Stillwell, table 5.1 and sustainability map at appendix 5

<sup>241</sup> APP9, paragraph 22 of the decision letter

<sup>242</sup> CD A6, page 8

existing residents. The number of objections to the scheme throws considerable doubt on this claimed benefit. Limited weight can be placed on this matter.

*Present appearance*

260. The appellant drew attention to the neglected nature of the boundary hedgerow but it was not suggested that it was beyond the financial capacity of the owners to undertake boundary treatment. The Appellant should get no credit for neglecting the boundary vegetation simply to enhance a landscape and visual case in favour of the scheme. No weight should be attached to the present untidy nature of the boundary.

*The potential alteration of Green Belt elsewhere*

261. It is common ground that very limited weight can be attached to the emerging local plan at this stage<sup>243</sup>. The Council's preferred option was to amend the Green Belt boundary in three locations where the land performed weakly against the Green Belt purposes. To inform that consultation, the Council published its Exceptional Circumstances Case<sup>244</sup> which set out the circumstances which might justify revision of the Green Belt boundary in the three strategic locations. The appellant argued that this supports the case for the appeal. That is wrong for the following reasons:

- the test for permitting inappropriate development in the Green Belt is a stricter test than the test for revision of Green Belt boundaries through a local plan<sup>245</sup>
- neither housing need nor suitability are lawfully capable of amounting to exceptional circumstances by themselves - a combination of factors must be considered, including the nature and extent of harm to this particular part of the Green Belt<sup>246</sup>
- it follows that the presence of factors which might combine to justify exceptional circumstances at a potential strategic location cannot be read across to justify granting inappropriate development in another Green Belt location
- in any event, the Council has yet to finalise its position on the three strategic locations - that is a planning judgment the Council is still to make, having regard to the responses to consultation

*Education contribution*

262. The proposals would generate a need for one form entry of primary school capacity. The Agreement provides for land to be offered to the education authority. However, Mr Fidgett accepted that provision may be made

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<sup>243</sup> ID5, paragraph 4.12

<sup>244</sup> CD F7

<sup>245</sup> CD K21, R(Luton BC) v Central Bedfordshire Council [2015] EWCA Civ 537, paragraph 54

<sup>246</sup> Calverton PC v Nottingham City Council [2015] EWHC 1078 (Admin), paragraphs 42, 50 and 51 (appended to LPA14)

elsewhere<sup>247</sup>. The lack of certainty about what (if anything) would be delivered on site means that very limited weight can be attached to this factor.

### *Alternatives*

263. The appellant carried out a '*high level*' analysis of the three strategic locations which were the subject of consultation<sup>248</sup>. The GBBR shows that harm to the Green Belt would be less on those sites because they perform less well than the appeal site against the purposes of the Green Belt<sup>249</sup>. Mr Tunnell made clear that what distinguishes the appeal site from the other sites is its specific strategic importance. The appellant's case in relation to these sites was tentative. The most that Mr Baker could bring himself to say was that the appeal site is '*at least as suitable in Green Belt terms for development as the areas that the Council is proposing for release*'<sup>250</sup>.

264. Similarly, in transport terms, Mr Stillwell considered that the appeal site is '*at least as sustainable*' as the others<sup>251</sup>. That is hardly a compelling case of equal benefits for less harm. Moreover, the Council's identification of the three strategic locations within a preferred option is not a final decision as to their release. This was a consultation document which can only carry limited weight at this stage. The local plan process, which will include a more refined Green Belt review, is continuing. The appeal scheme might well result in a far less preferable alteration to the Green Belt than the local plan process would produce.

### *Whether this a highly sustainable site*

265. Mr Stilwell's proof stated that the appeal site is in a '*very sustainable location*'<sup>252</sup>. This extraordinary claim was not reiterated in his oral evidence. He accepted that most of the appeal site is, currently, at or beyond the maximum walking distance of 400m from a bus stop<sup>253</sup>. The TA identified necessary improvements to the walking and cycling routes to encourage modal shift and minimise conflict<sup>254</sup>.

### *Fast delivery*

266. The appellant suggested that the appeal proposals would be deliverable in the short term<sup>255</sup>. That assertion is highly questionable. The appellant is not the landowner. There was said to be a land option held by Lawson Miller Limited. The

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<sup>247</sup> Inspector's note – in answer to questions from Mr Howell Williams, Mr Fidgett accepted that needs may change over time and that the education authority would have the option not to take the land

<sup>248</sup> Inspector's note – in answer to questions from Mr Howell Williams, both Mr Baker and Mr Allen agreed that they had carried out high level assessments

<sup>249</sup> CD E5, Annex 2 – Local Area Assessment pro-formas, parcel 14 (2/5) page 47; parcel 20 (2/5) page 68; parcel 58 (2/5) page 177; parcel 59(a) (3/5) page 180

<sup>250</sup> Proof of evidence of Mr Baker, paragraph 5.3.1

<sup>251</sup> Inspector's note – confirmed by Mr Stillwell, in answer to questions from Mr Bowes

<sup>252</sup> Proof of evidence of Mr Stillwell, paragraph 8.1

<sup>253</sup> Inspector's note – in answer to questions from Mr Bowes, Mr Stilwell agreed that, in the absence of mitigation, the eastern part of the site would be more than 400m from the existing bus stops

<sup>254</sup> CD A31, section 10

<sup>255</sup> Proof of evidence of Mr Fidgett, paragraph 3.1.6.

relationship between that company and the appellant is entirely unclear. There was no evidence as to whether an equalisation agreement had been agreed between Lawson Miller and the landowners.

267. There would be much to do prior to a commencement on site, including significant matters such as:

- the design and approval of reserved matters
- contamination investigation and remediation works
- the design of the bridge and obtaining of any necessary consents
- satisfaction of the Thames Water Grampian condition
- off-site and site access highways works

268. The *Start to Finish* document states that (for schemes up to 1,500 units) none of the schemes reviewed delivered over 100 units per year<sup>256</sup>. Much would depend on the number of sales outlets. Mr Fidgett was unable to say how many sales outlets he had assumed to substantiate his suggestion of 150 to 200 units per year. It is reasonable to assume that the Secretary of State's decision will not be until December 2018. Even if an optimistic lead-in time of two years is assumed, start on site would not be until December 2020. With a realistic delivery rate of 100 units per year that would amount to only around 200 market homes within the current 5 year trajectory.

269. A local plan will be in place in 2019 providing a locally-led spatial strategy for Elmbridge. As the emerging plan becomes more advanced, it is likely that applications will come forward on the allocated sites, boosting significantly the local supply of housing. Allowing the appeal would erode public confidence in the plan-led system by granting permission for proposals which conflict with the evidence base informing the local plan. The Secretary of State needs to consider whether this would be justified, given that the proposals would not be able to make a significant contribution within the 5 year period.

*Do the benefits clearly outweigh the harm and are they very special?*

270. The Council's firm submission is that the benefits do not clearly outweigh the substantial harm which would arise from developing this site. Nor do they come close to being sensibly described as '*very special*'. Accordingly, the Council considers that the proposals conflict with DMP Policy DM17 and with paragraphs 87 to 88 of the Framework.

271. It is Mr Tunnell's evidence that, even if the appellant's figure for OAN was accepted, the resulting shortfall in supply would still not amount to the very special circumstances needed to justify inappropriate development. That conclusion is supported by the decision of the Secretary of State in the *Jotmans Lane*<sup>257</sup> appeal where there was found to be a supply of just 0.4 to 1.1 years. Mr Spry's attempt to distinguish *Jotmans Lane* ignored the simple fact that the housing need position was worse there than it is said to be here, even on the

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<sup>256</sup> CD L9, page 14

<sup>257</sup> CD K18

appellant's case. On the Council's assessment of the OAN, the shortfall was very substantially worse.

### **Conclusion**

272. The scheme conflicts with the development plan. The benefits of the scheme do not clearly outweigh the harm to the Green Belt, nor can they be said to be very special. As there are no material considerations indicating that the appeal scheme should be determined otherwise that in accordance with the development plan, the Council respectfully requests that the appeal is dismissed.

## **THE CASE FOR COBHAM GREEN BELT GROUP – THE RULE 6 PARTY<sup>258</sup>**

### *Introduction*

273. The planning application should be refused for the following reasons:

- harm to the Green Belt which is not justified by very special circumstances
- there are no public benefits which outweigh the strong presumption against the grant of planning permission
- a severe impact on the local road network and no evidence that the proposed mitigation would help
- a severe impact on local air quality, which is already so bad it is illegal
- the appellant has failed to carry out proper independent assessments of traffic or air quality, which must therefore mean no approval of this project can be possible

274. The late submission of the statement of common ground, the draft s106 agreement, the proposed conditions and various notes have severely prejudiced this appeal. The residents have struggled to do more than point out obvious errors and inconsistencies in these documents. Therefore the Secretary of State cannot be confident that the appellant's evidence has been fully and properly assessed. Even now, the scheme in its entirety has not been fully considered.

275. The scheme involves significant works outside the application site, including highways works, sewage works and a bridge over the River Mole. Plans have not been submitted for these works, nor have the relevant consents been obtained. It is necessary to consider whether all these works can be carried out and what impacts they may have. There is a significant risk that the scheme might not proceed or might be only partly completed. The appellant cannot know the likely cost and timescale of the works and therefore whether the scheme is viable.

276. The impact on traffic and air quality has not been properly assessed so it is not possible to find for the appellant at this appeal. While plainly concerned, the relevant public authorities have remained silent. The appellant has recognised that the impact would be severe, by proposing a long list of bus subsidies, train improvements and so forth. None of these would address the real problem, which is a lack of capacity.

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<sup>258</sup> This is a summary of the full closing submissions which are at CGG3

277. The appellant accepted that the traffic modelling of the Hersham station railway arch ignored the effects of two side roads. This resulted in figures for queue lengths that were unrepresentative and misleading. It also explains the failure of SCC to calibrate the traffic model. The appellant also admitted that the traffic modelling ignored the effects of the inbound traffic flow (around 300 vehicles per hour). It is obvious that inbound flows would add to problems at the railway arch. This failure means none of the modelling data presented can be relied upon.
278. There are three traffic routes to/from the site. It is common ground that these already experience traffic loads above their design capacity, even without the expected growth in traffic and other local developments. It is also common ground that nothing is planned to be done to expand the capacity of these routes. One of the side roads close to the railway arch serves Travis Perkins (builder's merchant) which generates many lorry movements during peak periods. This adds significantly to congestion and queue lengths. Nothing is planned to expand the capacity of the railway arch which Mr Stilwell said '*had been a problem for 100 years*'.
279. No air quality data has been provided and no air quality modelling has been carried out. The Council's monitoring along Molesey Road, and that carried out by Mr Kirkman, shows levels of nitrogen oxide that exceed the legal limits. That situation will worsen because of general traffic growth and further development in any event. It will be made even worse by the appeal scheme. Data for acid, particulates and other pollutants is simply missing. It would be unconscionable to allow this appeal in the face of these traffic and related pollution problems.

#### *Green Belt*

280. The proposals would constitute inappropriate development in the Green Belt. Inappropriate development causes harm to the Green Belt by definition. The Framework states that substantial weight should be given to any harm to the Green Belt. Consequently, substantial weight must be given to this definitional harm. In this case the definitional harm caused by up to 1024 homes, employment, education, retail and other development would be very substantial. The mere presence of a new building harms openness. In this case some of the buildings would be five storeys high. The scheme would dramatically change the visual appearance of the land. It would be visible from the public rights of way which run around the site. This visibility would add to the harm to the openness of the Green Belt.
281. The site is part of the Metropolitan Green Belt and serves all the Green Belt purposes very well. Allowing the Green Belt to be breached here could have major consequences all around London. The appellant refers to the scheme being an urban extension of Walton-on-Thames. This would amount to the sprawl of Walton further south. This is just what Purpose 1 seeks to prevent. The scheme would integrate Walton-on-Thames with Esher. Those towns would be joined, with just the River Mole between them. A new bridge would be provided to link them together. Spatially and visually this would be coalescence which Purpose 2 seeks to prevent.
282. The proposals would involve taking countryside for development, contrary to Purpose 3. They would also affect the view from Waynefleete's Tower, which is a historic monument. This would mar the historic setting of Esher, which Purpose 4

seeks to protect. The proposed dwellings would be in place of dwellings which might otherwise be built on brownfield sites or in town centres. This is just what Purpose 5 is designed to discourage.

283. At present there are open views over the site from Fieldcommon Lane (to the north) and a bridleway (to the south). The proposals would result in a 4 storey dwelling block, a 2.5 storey dwelling block and an area of 2.5 storey housing along Fieldcommon Lane. The bridleway would be lined by long 5 storey blocks of flats and by 2.5 storey housing. The landscaping plan proposes hedgerows and trees on the perimeter of the site to obscure views of these buildings. The effect of all this would be to lose the sense of openness experienced by adjoining residents and users of the public rights of way.

#### *The need for housing*

284. Whilst it is common ground that there is a need for housing, the amount of need is in dispute. Although Mr Spry looked at this issue in various ways, at the Inquiry he relied on the figure he derived from his affordability model. This resulted in the highest of his claims, a suggested need for 71,950 dwellings by 2035 (760 dpa)<sup>259</sup>. The DCLG's figure for households is only 62,482 by 2035. These figures cannot both be correct. It is to be expected that there would be fewer dwellings than households due to households sharing dwellings. A plan that calls for thousands of empty homes cannot be right.

285. Mr Spry's model is critically dependent upon the assumptions he makes regarding growth in house prices, growth in earnings and elasticity. Small changes in any of these assumptions make large changes to the results of his model. He assumes that house prices will grow at 4.8% per annum (commencing in 2015). This has already been proved wrong, with the evidence showing small reductions in local house prices since 2015. The Royal Institute of Chartered Surveyors has recently forecast little change in house prices in the South East for the next five years. Moreover, the starting point for the calculation is a figure for the total housing stock which is unreliable. All of this may explain why the result of Mr Spry's calculations is unprecedented, being over 60% higher than the Council's OAN.

286. The Council's assessment of OAN is 9,840 additional houses by 2035 (492 dpa)<sup>260</sup>. This includes an adjustment for market indicators of 606 dwellings by 2035. Failing any reliable alternative regarding overall housing need this appeal should be considered against the Council's assessment.

287. The proposals are not in accord with local need either in terms of dwelling size or tenure. The SHMA16 identifies the required mix of dwelling sizes to be 28% one bedroom, 42% two bedroom, 29% for three bedroom and 1% 4 or more bedrooms<sup>261</sup>. The proposals are for 38% of the dwellings to have 4 or more bedrooms. These unneeded large houses would simply exacerbate the existing

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<sup>259</sup> Proof of evidence of Mr Spry, tables at appendix 5

<sup>260</sup> Inspector's note – this was the submission made by CGBG. However, the Council's assessment of OAN was actually 9,480 (474 dpa) (see table C on page 8 of Mr Leather's proof)

<sup>261</sup> CD G1, annex 4 - local authority profiles, page 14, table 32

housing problems and have consequences in terms of more commuting and congestion.

288. The SHMA16 sets out a breakdown of the 492 dpa by tenure as 267 social rent, 9 affordable rent, and 56 shared ownership. This implies that there would be 160 market homes<sup>262</sup>. This means a total of only 3,200 market homes are required in Elmbridge by 2035 yet it is common ground that between 2015 and 2016 over 600 market homes were built. There is an expected delivery of over 1600 market homes in the five year land supply. Even without the appeal scheme Elmbridge will have provided 2200 additional market homes by 2021. Nobody can seriously suggest that the need for market homes will not be met (and probably greatly exceeded) through to 2035 whether or not the appeal scheme goes ahead.

289. The Agreement provides for up to 65% of the proposed 1024 dwellings to be open market dwellings with the remaining 35% to be affordable rent dwellings<sup>263</sup>. With a total need for only 180 affordable rent homes until 2035 this would provide far too many houses of this tenure. This would not be in accordance with local needs. Moreover, for affordable rent dwellings the rent (plus service charge) must be no more than 80% of the local average full market rent (plus service charge). It is questionable whether these homes would qualify, given the high service charge likely to be needed to pay for the maintenance of private roads and parkland. This calls the funding of these affordable rent dwellings into question.

#### *Other claimed benefits*

290. The other benefits relied on by the appellant are dubious. The land being made available for a primary/nursery school will most likely not be taken up as there does not seem to be a need in the area. The education authority has no funds to build another school. At the Inquiry local residents made clear that the proposed pub, surgery, shops and cycle routes would be for the benefit of the new residents. They are not seen as necessary by existing residents. Other matters covered by the Agreement are seen as 'nice to have' rather than carrying great weight.

#### *Prospects for early delivery*

291. The appellant argued that the appeal scheme could deliver houses sooner than the local plan process. This is doubtful, given the outline nature of the scheme and the need to resolve reserved matters and numerous conditions. The land ownership is yet to be finalised and the finances are unknown. Even the proposed house builder has only expressed an interest via a letter of intent.

292. Many technical complexities are likely to be encountered. The site will require remediation, having previously been used for land fill. There will have to be

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<sup>262</sup> CD G1, page 159, table 8.8. Inspector's note – this was the submission made by CGBG. In fact, table 8.8 provides a breakdown of the affordable housing need, not a breakdown of the OAN. For example, the need for the social rent sector is given as 267 dpa, which is 80% of the total affordable housing need of 332 dpa

<sup>263</sup> Inspector's note – this is the submission made by CGBG. In fact the Agreement provides for 50% of the dwellings to be open market with the remaining 50% to be a mix of social rent, shared ownership and affordable rent (PID5, Schedule 7)

negotiations with the Environment Agency over the position and design of the proposed bridge across the River Mole. A significant new factor emerged during the Inquiry. The appellant only discovered the need to expand the sewage treatment works when this issue was raised by a local resident<sup>264</sup>. Expanding the treatment works may not be possible. Even if it is, the improvements would have to be designed, funded and implemented in time for the new dwellings. This could add years to the project, bringing the claimed benefit of early housing delivery into question. This crucial oversight also brings into question the appellant's suitability to lead such a complex project. Bonnar Allan is a young company with no track record.

### *Conclusions*

293. The combined weight of the benefits does not come close to offsetting the combined weight of the harms. This is a site which could not be selected for release as part of a local planning process. That is exactly what the Council has concluded in the emerging local plan. The site was assessed as being one of the strongest performing pieces of Green Belt in the Borough and other sites were selected for possible release.

294. This planning application is being considered outside of the local plan process. This means that all factors cannot have been considered fully during the development of the proposal. Very special circumstances must be shown if the appeal is to be allowed. Housing need, including affordable housing need, is unlikely to amount to the very special circumstances required. In this case no single very special circumstance has been suggested by the appellant save that of meeting housing needs. For the avoidance of doubt:

- building more houses than has been achieved recently is a challenge for all local authorities
- the challenges of building more houses in areas with a lot of Green Belt are shared by many Boroughs all around London
- most Boroughs do not yet have a new local plan – although Elmbridge will have one relatively soon
- many Boroughs have a pressing need for affordable housing

295. None of the above factors are special, let alone very special. Many Boroughs share all of the above characteristics. Even when taken together these are not special, still less very special, circumstances. The Secretary of State is therefore asked to refuse planning permission.

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<sup>264</sup> BK2

## **OTHER PARTIES WHO APPEARED AT THE INQUIRY**

### **Barrie Kirkman<sup>265</sup>**

#### *Missing appeal documents*

296. Key documents relating to bore hole data, contamination, dust monitoring and traffic monitoring have not been put before the Inquiry. This gives rise to grave concerns that information which could influence the Inquiry is not available. Many of the appeal documents were out of date. For example, the traffic analysis was based on data from 2013/2014. Information about community consultation covered the period up to 2014 when residents' interest was only lukewarm. It did not include more recent views, such as the local opposition expressed at information days held in October 2016.

#### *Fieldcommon Estate*

297. The appellant thought that residents would welcome the joining of built up areas. However, they do not. The estate has its own identity and yet is still part of Walton-on-Thames. Although the appellant has tried to downgrade the estate it is much valued by residents. It consists of approximately 500 houses. There is a local supermarket, plus a Texaco garage shop, and there is easy access to a new Tesco Express a few hundred metres away. There was a previous application in 2007 for a golf course and clubhouse. Many residents supported the application. Local residents are open to the right type of development but believe that this proposal is totally inappropriate. This was shown by the 1038 objections sent to the Council and over 300 written representations on the appeal.

#### *Green Belt*

298. The appellant's attempt to equate open space within the scheme with the current openness of the Green Belt should be rejected. At present views from Fieldcommon Lane extend right across the site to Weylands. Trains arriving at Hersham station can clearly be seen. There are over 80 horses grazing on the site all year round. In the summer fishermen enjoy the plentiful fish in the lake and locals walk their dogs around the site. Wild birds are in abundance with migrating flocks landing when the site is flooded. Pheasants run in the long grass and bats are regularly seen feeding. In summary the site functions very well as Green Belt and the wildlife corridor is still very active.

299. The GBBR by Ove Arup is fully supported. This study ranked the Green Belt next to Fieldcommon Estate (with two other areas) top out of 76 areas assessed. There is a cluster of 7 strongly performing areas around Fieldcommon Lane Farm. This combined Green Belt strength prevents the unrestricted sprawl of large built up areas, prevents neighbouring towns from merging and assists in safeguarding the countryside from encroachment. If the appeal site were developed there would be a potential domino effect. Esher Rugby Club has publicly declared that it will seek release of Green Belt land for housing. There are also two proposals for housing in Fieldcommon Lane.

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<sup>265</sup> This is a summary of the presentation and documents at BK1 to BK3. Mr Kirkman also made a written representation in response to the appeal

300. The appeal proposals would destroy the openness of the site and fragment a currently strong Green Belt area. Hersham, Molesey and Walton-on-Thames would merge. The appellant has not demonstrated exceptional circumstances to justify the development. The right way to meet housing needs is through the involvement of local residents in a proper local planning process.

#### *Traffic and transport*

301. The residents' traffic analysis has concluded that the appellant's assumptions, traffic counts and traffic modelling are grossly inadequate. The pinch points identified by the residents are Molesey Road to Hersham railway arch, Barley Mow to Hersham railway arch and the Halfway traffic lights. The residents have carried out many hours of monitoring at these points. The survey effort by the appellant is inadequate. For example, their traffic count data for Hersham railway arch in 2014 is lower than that used for the golf course application.

302. Mr Stilwell described the railway arch as operating within capacity with traffic queues clearing within one or two signal phases<sup>266</sup>. This does not reflect the actual situation. The junction is over capacity in the peak hours. Average queuing time is 6 to 9 minutes and can be up to 55 minutes. The appellant has stated that the maximum average queue is 17 vehicles whereas the residents' surveys show a maximum average of 150 vehicles. The model is incorrect and is not refined enough to take account of traffic entering Molesey Road from Weylands and Walton Park.

303. Moreover, the developer has underestimated the traffic generated by the scheme and the effects of the proposed roundabout and toucan crossing. Residents do not agree that traffic would be distributed evenly between the three routes – more traffic would travel south on Molesey Road. For all these reasons, the appellant's conclusion that the development traffic would add just 5 vehicles to the queue is an underestimate. The residents conclude that there would be a major impact with queues of up to 260 vehicles.

304. The appellant has not properly considered the local accident record or the high incidence of vehicles striking the railway arch. Traffic through the single track arch would increase by 20% to 40% as a result of the appeal scheme. No safety improvements are proposed in the vicinity of the arch. There has been no independent certification of the appellant's traffic analysis which consequently has no credibility. The appellant concludes that the traffic impact of the scheme would not be severe in the terms of paragraph 32 of the Framework. The contrary view offered by the residents is proven by extensive surveys, photographs and videos. The proposals would have a severe impact on the highway network.

#### *Air quality*

305. The residents installed a diffusion tube close to the Molesey Road/Walton Park junction to check the appellant's air quality assessment. The result was 46.3 ug/m<sup>3</sup> of nitrogen dioxide (NO<sub>2</sub>)<sup>267</sup> which is above the annual limit of 40 ug/m<sup>3</sup>.

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<sup>266</sup> Proof of evidence of Mr Stilwell, paragraph 7.21

<sup>267</sup> Inspector's note – following comments from the appellant (in APP13) this figure was updated to 45.6ug/m<sup>3</sup> (in BK3)

This confirms that, contrary to the appellant's traffic assessment, there are long periods of stationary vehicles at this point. The residents' survey result can be seasonally adjusted and compared with the appellant's air quality model for receptor 27, which is in the same location. This comparison shows that the appellant's air quality predictions are grossly in error.

306. Moreover, the air quality assessment shows the baseline conditions improving between 2014 and 2019<sup>268</sup>. The residents' monitoring shows that the predicted improvement is not happening at this location. The assumptions on which the assessment is based are incorrect and the predicted effects cannot be relied upon. The proposals would not have a minor adverse or neutral effect. There would be a high adverse impact on air quality.

### *Biodiversity*

307. The appeal site has been a Site of Nature Conservation Interest (SNCI) since 1996 and this status has only recently been removed. The Surrey Wildlife Trust changed its position following a letter from the appellant's consultants. It is of grave concern that this letter has not been made public. The removal of SNCI status has not been independently verified. A truly independent review of this complex area of biodiversity should be carried out.
308. Nevertheless, the proposals will have consequences for the remaining wildlife and it is now even more important that wildlife corridors should be protected. The proposals for mitigation of noise, dust and construction traffic would be ineffective. Habitat areas would be destroyed and existing wildlife would be driven away. The arrival of humans and pets would also harm wildlife. Use of the lake for surface water management runs the risk of harming the existing habitat.

### *Contamination*

309. An environmental information request has established that, although the site was licensed only for receipt of inert waste, there were breaches of this condition. For example SCC made an order in 1990 requiring removal of steel drums, wood, plastic bottles and tyres from water. Concerns about underground methane have arisen in the context of proposals for adjoining land. Local residents recall violations of the waste licence which were not formally recorded including disposal of cooking oil from restaurants, engine oils from garages, tyres and asbestos.
310. The recorded import of 1,000,000 m<sup>3</sup> of waste is in itself very large and the actual amount may be significantly greater. A resident has commented that the capping layer of topsoil is too shallow and cannot sustain substantial vegetation growth. The health and safety risks of building on this site should not be underestimated. The developer has undertaken a contamination study and has chosen not to release the results. This is of concern to residents who may be affected by contamination so close to their homes. The ES is far too optimistic in stating that it is safe to build on the land. The health of residents is at risk with gases such as ammonia, sulphides, methane and carbon dioxide being of most concern.

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<sup>268</sup> CD A34, page 44, table 9.1 (see results for receptor 27)

### *Surface water and flood risk*

311. The site is subject to surface water flooding. The River Mole came within 300mm of flooding in 2007 when Fieldcommon Estate residents received an orange warning from the Environment Agency. The appellant's proposals have not considered the interface with adjoining areas such as the Fieldcommon Estate, the River Mole flood alleviation scheme and the Dead River. Raising land levels in flood zone 2 could increase flood risk for existing housing. An inadequate allowance has been made for the intensity of peak rainfall events.

### *Noise*

312. Noise measurements at Rydens Road were taken between 1000hrs and 1700hrs. This was outside the peak hours when traffic is very high with many HGVs traveling from Weylands along Molesey Road. The noise level would be significantly higher at these times. Again, this highlights the appellant's lack of knowledge of the surrounding area. The noise report should be rejected<sup>269</sup>.

### *Conclusions*

313. Consideration of the appeal should give particular attention to:

- continued protection of the Green Belt
- rejection of the appellant's traffic and air quality assessments
- a severe impact on the local highway network, which would not be mitigated by the provisions of the Agreement
- the appellant's lack of local knowledge in relation to Green Belt use, biodiversity, surface water flooding and noise

314. The residents request the Secretary of State to support their strong concerns and dismiss this appeal.

### **Mick Flannigan**<sup>270</sup>

315. The Halfway junction is already subject to excessive daily congestion at peak times and there are no proposals to alleviate the situation. The TA has not appreciated the extent of the congestion and the consequential impacts on other roads. It is not feasible for drivers to choose alternative routes or modes of transport. The situation will get worse with the development of other sites which already have planning permission. Cars idling in traffic queues are particularly harmful in terms of air pollution. The TA has not addressed the congestion which occurs between 1500hrs and 1600hrs at the end of the school day. The TA comments that traffic levels have reduced in recent years. A resident has pointed out that DfT monitoring at Hersham Road shows that traffic has in fact been increasing since 2013<sup>271</sup>.

316. The proposals for mitigation agreed between SCC and the appellant would not resolve the severe traffic impacts of the appeal scheme. The changes proposed at

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<sup>269</sup> The appellant's response to these concerns are at APP14

<sup>270</sup> This is a summary of MF1. Mr Flannigan also made written representations on the appeal

<sup>271</sup> Written representation of Andrew Reid

Hersham station would not create additional capacity on trains that are already overcrowded. The station works would be cosmetic and would not cause people to switch to public transport. It is proposed to extend the bus service later into the evening and at the weekends. This would not reduce weekday peak hour congestion. In any event the support for bus services would only be for a limited period. The mitigation proposals have been drawn up in private without the benefit of local knowledge or the involvement of ward councillors or residents.

317. The new amenities proposed by the appellant are scarcely needed by existing residents and would not compensate for the loss of open land. Contrary to the appellant's evidence, the land is attractive and much visited by local people who enjoy the tranquillity and open views. The most impressive aspect is the uninterrupted expanse of the land. The openness and permanence of the site would be destroyed by the appeal proposals. Mr Flannigan also made similar points to Mr Kirkman in relation to queue lengths on Molesey Road, the accuracy of data used in the TA and the independence of the appellant's consultants. He made similar points to Mr Wise in relation to housing need and similar points to the Council regarding the importance of the plan-led system.

**Councillor Christine Elmer**<sup>272</sup>

318. Cllr Elmer is a ward member for Walton South and a local resident. The overwhelming feeling of local residents is that there are no special circumstances that necessitate building on strongly performing Green Belt land. The land fulfils the prime function of Green Belt which is to prevent sprawl by keeping land permanently open. Building on the land would lead to coalescence of Walton-on-Thames, East/West Molesey, Hersham and Esher. The land is not unattractive. It offers the feeling of being out in the countryside, along the paths and by the river, with views of grazing horses providing a welcome respite to a busy town life. It is seen as a green lung and is readily accessible to people without cars.

319. The TA, and its review by SCC, was essentially a desk top exercise. This contrasts with the extensive survey information provided by local residents. That detailed work contradicts the findings of the TA. The appeal scheme could generate 3,000 to 4,000 vehicles per day on local roads which are effectively small lanes. The traffic generation suggested in the TA is simply not credible. The queues approaching the Hersham railway arch stretch back to Rydens Road, far longer than the 15 to 17 vehicles claimed in the TA. All the junctions in the locality are bottlenecks at peak times. The station improvements would not increase the capacity of the rail services which are already extremely busy at peak times. The buses would be caught in the same queues as the cars so would not be attractive to new residents. Molesey Road is already an accident blackspot for cyclists.

320. From the beginning residents have feared that the proposals would lead to gridlock on local roads. Many questions have been asked of SCC. The answers confirmed that SCC has relied on information from the TA and has not carried out any surveys of its own. Councillors were disappointed that SCC officers were not present at their meeting to answer questions. The traffic impact of the scheme has been grossly underestimated. Access to the scheme would be constrained by

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<sup>272</sup> This is a summary of CE1. Cllr Elmer also made written representations on the appeal

the single lane Hersham railway arch and neither the appellant nor SCC have got their assessments right.

321. The third reason for refusal relates to the allocated waste site at Weylands. This matter is not being pursued by the Council following an amendment to the scheme to create a 50m buffer zone. Cllr Elmer was opposed to a proposed anaerobic waste digester at Weylands on the grounds of traffic and air quality<sup>273</sup>. Work on air quality in Elmbridge has identified that Walton-on-Thames has its own micro-climate. People with respiratory conditions suffer greatly from poor air quality in this area. The addition of traffic from the appeal scheme on the congested local roads would be a travesty. The previous plan for Weylands had a 25m stack which is indicative of the nature of the emissions. Air pollution does not respect a 50m boundary.
322. There has been insufficient information submitted on biodiversity. The clearance of vegetation from the site in the period following the Council's decision was environmentally irresponsible in that it removed wildlife habitats. Nevertheless, it is accepted that the SNCI designation has been removed and that Surrey Wildlife Trust is satisfied with the proposed mitigation. Cllr Elmer made similar comments to Mr Kirkman regarding surface water and flood risk.

#### **Councillor Christine Cross<sup>274</sup>**

323. Cllr Cross is a ward member for Walton South and a local resident. Over the years the openness of the locality has been affected by the loss of pockets of open space within the Fieldcommon Estate and the replacement of bungalows with multiple dwellings. This Green Belt land is crucial to local residents who have lost so much space through infill. The appellant is wrong to say that the site is visually enclosed. From Fieldcommon Lane there is a magnificent view right across the site. The bridleway is part of the Surrey network. It is a safe and well used route from the Rydens area to Sandown Park and Esher. Why would anyone want to make a lengthy diversion through a housing estate? Cllr Cross supported comments by other speakers regarding traffic, bus services, the proposed footbridge and the need for improvements to the sewerage system.

#### **Pamela Ling**

324. Walton-on-Thames has seen a large amount of development in recent years. The roads and the infrastructure cannot cope with the impact of over 1000 houses at the appeal site. Whilst the proposed pedestrian crossing on Molesey Road is welcomed, provision of this should not be dependent on the appeal scheme. The proposals for Hersham station will not ease the congestion on the rail services. Access to the site would be very difficult. The key junctions are already operating above capacity and there have been many accidents in the locality.

### **WRITTEN REPRESENTATIONS**

325. The written representations in response to the appeal were, in the main, objections to the proposals. The grounds of objection generally related to matters

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<sup>273</sup> That particular scheme did not proceed but the site remains allocated for waste management

<sup>274</sup> This is a summary of CC1

which have already been referred to above. The Campaign to Protect Rural England (Surrey Branch) (CPRE) drew attention to the *Jotmans Lane* appeal decision (which has been referred to above) highlighting the Secretary of State's reference to the Written Ministerial Statement of 2015<sup>275</sup>. The CPRE supports the findings of the GBBR in relation to the contribution that the appeal site makes to the purposes of Green Belt. It considers that the benefits put forward by the appellant would not outweigh the harm to the Green Belt. The occupiers of Fieldcommon Farmhouse objected on the grounds that they would suffer overlooking, loss of privacy and that the scheme would have an unduly overbearing effect. There were two representations in support which referred to the need for housing.

326. The officer's report notes that the responses to the Council on the planning application included 1140 objections, 41 representations in support and 9 observations. These are summarised in the officer's report<sup>276</sup>. The grounds of objection/support generally related to matters which have been covered above.

## CONDITIONS

327. By the end of the Inquiry there was agreement between the Council and the appellant regarding most of the conditions which should be imposed if the appeal is allowed. This is recorded in the schedule of suggested conditions<sup>277</sup>. I have considered the suggested conditions in the light of the Guidance. In some cases I have adjusted detailed wording or merged conditions in the interests of clarity and/or to avoid duplication. The schedule of conditions that I recommend should be imposed if the appeal is allowed is at Annex D.

328. Conditions 1 and 2 are standard for outline planning permissions. The wording has been adapted to enable a phased submission of reserved matters. Condition 3 requires development to be carried out in accordance with the access plans and the parameter plans. This is needed in the interests of clarity and to ensure that the scheme as implemented is consistent with the parameters for which the environmental effects were assessed. Conditions 4 and 6 relate to a site wide masterplan and design code. They are needed to ensure that the reserved matters for individual phases will contribute to a coherent and comprehensive design for the site as a whole.

329. Condition 5 specifies the timing of delivery of some of the non-residential uses. It is needed to ensure that the mixed use nature of the scheme is delivered as envisaged in the application. Condition 7 requires the achievement of Secured by Design in the interests of good design and community safety. Condition 8 requires non-residential buildings to achieve a specified BREEAM rating in the interests of sustainable development. Condition 9 requires the approval of facing materials in the interests of the character and appearance of the area. Condition 10 requires the approval of the housing mix to ensure that the scheme reflects the identified need for a range of house types.

330. Condition 11 requires approval of a drainage scheme in the interests of ensuring that there is adequate capacity in the sewerage system to

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<sup>275</sup> CD K18, paragraph 27 of the decision letter

<sup>276</sup> CD B1, page 1 (numbers of representations as of deadline for the officer's report)

<sup>277</sup> ID11

accommodate the flows generated by the proposed development. Condition 12 requires a sustainable surface water drainage scheme. It is needed to manage risks of flooding and pollution. Condition 13 controls the finished floor levels of dwellings to manage flood risk to future occupiers. Condition 14 controls any raising of ground levels in flood zones 2 or 3 to ensure that flood risk is not increased elsewhere. Conditions 15, 16 and 17 relate to the implementation of the approved access, the closure of an existing access and the need to seek approval for any access from Fieldcommon Lane. They are needed to ensure that there is a safe and suitable means of access to the site.

331. Condition 18 requires details of vehicle parking and turning, in the interests of making proper provision for the vehicles of the occupiers of the development. Conditions 19, 21 and 22 relate to details of the bus route within the site, cycle parking and a travel plan. They are needed in the interests of ensuring that the opportunities for sustainable transport modes are taken up. Condition 20 requires submission of a Construction Transport Management Plan in the interests of highway safety and the living conditions of nearby residents. Conditions 23 and 24 relate to the protection of trees, condition 25 relates to details of earthworks and Condition 26 requires the submission of a Landscape and Ecological Management Plan. They are needed in the interests of the character and appearance of the area and to protect biodiversity.
332. Condition 27 would prevent the commencement of development until such time as planning permission has been granted for the proposed bridge linking Area A with Area B. Condition 28 requires the bridge to be delivered at a specified stage in the development. These conditions are needed because the recreational facilities to be located in Area B would not be readily accessible from the proposed housing unless a bridge is provided. It is clear from the masterplan and parameter plans that the bridge is an integral part of the comprehensive design approach. The bridge would be on third party land and would require planning permission in its own right, so its delivery cannot be assured. However, there have been discussions with the Environment Agency regarding the design requirements for such a bridge so this is not a case where there is no prospect of the condition being fulfilled.
333. Condition 29 relates to the timing of works which may affect nesting birds and Condition 30 requires the submission of a Construction Environmental Management Plan. They are needed in the interests of biodiversity. Condition 31 requires details of public open spaces to be submitted for approval, in the interests of ensuring that proper provision is made for outdoor recreation. Condition 32 requires details of street lighting, in the interests of the character and appearance of the area and biodiversity. Condition 33 relates to land contamination, in the interests of managing risks of pollution. Condition 34 requires a scheme to mitigate the impacts of the Weylands waste treatment works in the interests of protecting the living conditions of future occupiers of the appeal site.
334. Some conditions require details to be approved before development commences. This is necessary in the case of Conditions 4, 6, 7, 9 to 12, 22, 25, 26, 31 and 34 because these conditions relate to matters which could affect the design and/or layout of the scheme. It is necessary in the case of Conditions 20, 23, 24, 30 and 33 because these conditions seek to mitigate impacts arising during construction.

335. A suggested condition relating to river buffer zones is not needed because it would duplicate other conditions relating to the design of open spaces and the Landscape and Ecological Management Plan. Suggested conditions relating to off-site highway works and the multi-use games area are not needed because they would duplicate matters covered in the Agreement. Suggested conditions relating to a tree survey and tree planting are not needed because they would duplicate other conditions, including those requiring submission of reserved matters.

## **INSPECTOR'S CONCLUSIONS**

*The numbers in square brackets [n] refer to earlier paragraphs in this report*

336. Taking account of the oral and written evidence, the Secretary of State's reasons for recovering the appeal and my observations on site, the main considerations are:

- the need for housing and the supply of housing land
- the effect of the proposals on the Green Belt, including any effects on openness and the purposes of including land in the Green Belt
- the effect of the proposals on the transport network, including the opportunities for sustainable modes of transport
- whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations such as to provide the very special circumstances required to justify development in the Green Belt

### ***Policy context***

337. The development plan includes the Elmbridge Core Strategy 2011 (CS), the Elmbridge Local Plan Development Management Plan 2015 (DMP) and the Surrey Waste Plan 2008 (SWP). CS Policy CS1 states that new development will be delivered with a clear spatial strategy which provides the most sustainable way to accommodate growth. It goes on to say that the Green Belt will continue to be a key determinant in shaping settlements and development patterns. DMP Policy DM17 states that inappropriate development in the Green Belt will not be approved unless the applicant can demonstrate very special circumstances. Both the CS and the DMP contain a number of other policies which are relevant to the appeal proposals. These include policies relating to biodiversity, community infrastructure, design, housing mix, affordable housing, transport, flooding and riverside development. [23, 24]

338. The SWP is the adopted Minerals and Waste Plan for the area. Policy WD2 of the SWP allocates some of the land to the south of the appeal site for waste recycling, storage, transfer, materials recovery and processing at the Weylands Treatment Works. [25]

339. The Council has commenced the preparation of a new local plan. A Strategic Options Consultation, published in December 2016, set out 3 strategic options. The preferred option (Option 2) sought to meet development needs as far as possible by amending the Green Belt boundaries where the designation is thought to be at its weakest. Three strategic areas of weakly performing Green Belt were identified. The Council and the appellant agreed that the emerging local plan carries very little weight at this early stage. I share that view. [26]

### ***The need for housing and the supply of housing land***

340. The Kingston and North Surrey Strategic Housing Market Assessment 2016 (SHMA16) forms part of the evidence base for the emerging local plan. Although it has yet to be tested through an examination, it does provide the latest full assessment of housing needs by the local planning authority. It is therefore an important part of the evidence for this appeal, although it should be read alongside any other relevant evidence. It relates to the period 2015 to 2035.

Using the DCLG 2012 based household projections, it identifies a demographic starting point of 428 households per annum. Adjustments are then made, for example for concealed households, resulting in an objectively assessed need (OAN) of 474 dwellings per annum (dpa). The DCLG 2014 based projections were not available when the SHMA16 was prepared. If they were used instead of the 2012 based projections that would increase the demographic starting point by 20 households per annum and the OAN would increase to 495 dpa.

[28, 48, 102, 210]

341. The Council and appellant agreed that the supply figure was 1,635. It was also agreed that a 5% buffer should be applied, in accordance with paragraph 47 of the National Planning Policy Framework (the Framework). Using the SHMA16 figure for OAN, the Council's position was that it could demonstrate a supply of 3.20 years. Consequently, there was no dispute that the available supply falls short of the 5 years required by the Framework. It follows that paragraph 49 of the Framework is engaged and that relevant policies for the supply of housing should not be considered up-to-date. [51, 101, 246]

342. Notwithstanding the agreement on that point, it is necessary to consider the likely extent of the shortfall in supply because this may affect the overall planning balance. By the end of the Inquiry there were three main areas of disagreement between the Council and the appellant:

- whether market signals justify an uplift to the demographic projections
- whether an uplift should be made to accommodate some or all of the affordable housing need
- whether an uplift should be made for employment

There were two further points of disagreement relating to whether or not the 2014 based household projections should be used and how the shortfall in delivery for 2015/16 should be accounted for. It is convenient to deal with these points first, before turning to the main areas of disagreement.

343. Use of the 2014 based projections would result in only a minor change in the OAN. Consequently, mindful of Planning Practice Guidance (the Guidance), I do not consider that the SHMA16 is rendered out of date merely because new projections have been issued since it was prepared. The scale of change is simply too small to support the proposition that the demographic starting point set out in the SHMA16 is no longer reliable or reasonable. [102, 211, 215]

344. Delivery in 2015/16 fell below the OAN, leaving an element of undersupply to be accounted for. The Council's approach was to spread the undersupply from 2015/16 across all the remaining years of the plan period. This is sometimes referred to as the Liverpool approach. I note that the Guidance states that any undersupply should be dealt with in the first 5 years where possible. However, the Guidance is not prescriptive on this point. It seems likely that a significant component of future supply in Elmbridge will come from larger strategic sites. Given that such sites typically have longer lead-in times, the Council's approach seems reasonable. [102, 246]

*Whether market signals justify an uplift to the OAN*

345. The SHMA16 acknowledged that house prices and rents in Elmbridge are high but concluded that there is no long term widening of the gap relative to other areas. With regard to affordability, the SHMA16 looked at the ratio of median house prices to median personal earnings. The affordability ratio for Elmbridge was compared with the affordability ratio for England over the period 1999 to 2016 (the Elmbridge/England ratio). Looked at over an economic cycle, it was concluded that there has been no consistent upward trend and therefore no evidence of need for a market signals uplift. Nevertheless, the SHMA16 recognised that prices in Elmbridge are rising more rapidly than in London as a whole. It stated that it is in Elmbridge that the case for an addition to the OAN to increase affordable supply is strongest. The SHMA16 recommended that if the Elmbridge/England ratio were to exceed 2.1 the OAN should then be increased by 10%. [109, 219, 220, 221]
346. The Guidance states that appropriate comparisons of indicators should be made, having regard to both absolute levels and rates of change. The comparisons should include longer term trends in the housing market area, similar areas and nationally. The SHMA16, and the Council's case at the Inquiry, focused on the Elmbridge/England ratio. On this basis the Council argued that the severity of affordability problems in Elmbridge peaked in 2014 and is now weakening. I agree that the Elmbridge/England ratio falls to be considered within the range of appropriate indicators suggested by the Guidance. However, in my view the SHMA16, and the Council's case, placed too much emphasis on this single indicator. [104, 224]
347. The absolute levels of house prices and rents are high in comparison with other areas. For house prices, Elmbridge was the 9<sup>th</sup> most expensive local authority in England in 2016. For rents, it was the 24<sup>th</sup> most expensive local authority in England (March 2017). Looking at rates of change, house prices in Elmbridge have risen 65% in the last 10 years compared with an average for England of 33%. Rents have risen by 36% since 2011 compared with an average for England of 18%. [106, 108]
348. When the Elmbridge/England ratio peaked in 2001 the affordability ratio in Elmbridge was about 7. This figure has got steadily higher since that time<sup>278</sup> and is now around 15. So, while it is true that the affordability ratio in Elmbridge is still not greater than twice the England ratio, the actual affordability ratio in Elmbridge is very high indeed. I do not agree with the Council's assessment that the affordability problem in Elmbridge has peaked and is now weakening. To my mind that characterisation of the present situation highlights the problem of placing too much reliance on one indicator. [107, 112, 217]
349. Drawing on the work of Professor Meen, the Council argued that an increase in supply made by one planning authority acting in isolation might be ineffective. It might simply draw in population from elsewhere, offsetting any improvement in affordability. It was suggested that a cautionary approach should be adopted in the absence of evidence of what other local planning authorities in the housing market area might do. However, this line of argument is inconsistent with the Guidance which is clear that individual planning authorities should respond to

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<sup>278</sup> This can be seen in figure 7.3, on page 130 of the SHMA16 (CD G1)

market signals, having regard to the indicators referred to above. No doubt this is on the basis that other planning authorities, also operating within the Guidance, will be making their own responses to market signals in their respective planning processes. Moreover, this argument is inconsistent with the SHMA16 itself. The SHMA16 does recommend an uplift in Elmbridge in response to market signals, albeit only if the Elmbridge/England ratio were to exceed 2.1. [118, 218, 229, 230, 238]

350. My overall assessment is that there is a worsening trend in a number of relevant indicators. In my view this suggests that there should be an uplift to the OAN to reflect market signals. The conclusion of the SHMA16, that no market signals uplift is required, is not supported by the evidence before this Inquiry.
351. Turning to the question of the amount of the uplift, there were widely diverging opinions before the Inquiry. The Council's position was that there should be no uplift whereas the appellant proposed an uplift of 64%. Although the appellant's written evidence discussed three methodologies, its position at the end of the Inquiry relied on an affordability model. Consequently, I need comment only briefly on the other two methods. Both relied on academic reports which advocated raising housing delivery at the national level. However, it was not demonstrated convincingly that these recommendations could be translated into prescriptions for an uplift within an individual local planning authority area. I attach little weight to these approaches. [226, 231]
352. With regard to the affordability model, at times this was referred to as an Office of Budget Responsibility (OBR)/University of Reading model. In fact the author of the model was Mr Spry, the appellant's witness on housing need. The inputs to Mr Spry's model include projections of house prices and earnings provided by the OBR and an elasticity factor which has been calculated by the University of Reading. [114, 226 to 232]
353. Mr Leather, the Council's witness on housing need, set out his concerns about Mr Spry's model. In particular, he identified that the OBR projections are short term (to 2022) and he argued that there is no basis for projecting them to 2035. Mr Leather also commented that the model is very sensitive to small changes in the input assumptions and that the elasticity factor was never intended to be applied at the level of an individual planning authority. The Cobham Green Belt Group (CGBG) pointed out that, contrary to the model inputs, there have been small reductions in prices since 2015 and little change is expected in the next 5 years. [232 to 235, 285]
354. To my mind there is considerable force to these criticisms. Mr Spry's model relies on projections for prices and earnings which are very likely to be subject to fluctuations. Moreover, these projections are then extended into the future far beyond the period OBR has published them for. Importantly, it is the relationship between these two uncertain figures which forms the basis for Mr Spry's calculations. I consider that the uncertainties inherent in this approach are such that very little weight can be attached to the outputs of the model.
355. I note that the Inspector conducting the examination of the Mid Sussex Local Plan accepted the use of an essentially similar model in that examination. However, I do not know whether the criticisms made of the model there had the same force as those made at this Inquiry. In any event, I note that the Inspector in Mid Sussex had corroborating evidence. He commented that the model pointed

to a range that had a '*sense of realism about it*'. He thought that it correlated reasonably well with other forecasts and a comparative analysis of other authorities. The context for those remarks was that the Inspector concluded that an uplift of 20% was appropriate, which was within the range suggested by the affordability model<sup>279</sup>. That is very different to the situation at this Inquiry where the appellant was promoting an uplift of 64%. There was no evidence before the Inquiry of a similar uplift for market signals being adopted anywhere. Consequently, whilst I note the Mid Sussex experience, it does not alter my conclusion with regard to the use of Mr Spry's model in this case. [114, 115, 236]

356. Whilst I have found that there should be an uplift to reflect market signals, for the reasons given above I attach very little weight to the appellant's evidence regarding what that uplift should be. The Mid Sussex Inspector's Interim Findings noted that there was evidence of action being taken across a broad range of authorities in response to worsening affordability. Market signals uplifts were mostly of 10% to 20%. In general, evidence of what has been done elsewhere may be less satisfactory than sound evidence which is specific to the area in question. Nevertheless, in this case I consider that evidence of what has been done elsewhere is the best evidence before me.

357. The Guidance indicates that the larger the improvement in affordability needed, the larger the supply response should be. Clearly affordability is a significant issue in Elmbridge. Consequently, I consider that it would be appropriate to increase the SHMA16 OAN by 20% to reflect market signals. This is the top of the range of uplifts applied in the broad range of authorities referred to in the Mid Sussex Inspector's Interim Findings. It would increase the OAN to 569 dpa.

#### *Whether an uplift should be made for affordable housing*

358. The SHMA16 identifies a need for 332 affordable dwellings per annum. Assuming that, on average, 35% of all housing is delivered as affordable housing, the Council's OAN of 474 dpa would deliver around 50% of the identified affordable housing need. The Council and the appellant disagreed as to whether consideration should be given to increasing the OAN to deliver more of the identified need for affordable housing. [50, 123]

359. The Council relied on *Barker Mill*, arguing that this exercise should be carried out when the housing requirement is considered as part of the local plan process. The appellant relied on *Kings Lynn*, arguing that the exercise should be done now, as part of the assessment for this appeal. I am not a lawyer and make no comment on the competing legal submissions. Nevertheless, I note that *Kings Lynn* was decided in the context of a planning appeal, whereas *Barker Mill* (as it related to this matter) was decided in the context of plan making. For the purpose of my assessment I have assumed that the appellant's approach is correct. [120, 121, 122, 239, 240]

360. I have concluded above that there should be an uplift of 20% to reflect market signals. That would increase the OAN to 569 dpa. Assuming that, on

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<sup>279</sup> Mid Sussex District Plan – Inspector's Interim Findings, pages 5 and 6 (appendix 4 to the rebuttal proof of Mr Spry)

average, 35% of all housing is delivered as affordable housing, this would amount to 199 affordable dwellings per annum which would be about 60% of the identified need. That would be a significant increase in the delivery of affordable housing compared with the Council's OAN. I consider that this would be an appropriate and realistic response to affordable housing needs.

*Whether an uplift should be made for employment*

361. The appellant used Experian employment forecasts which indicated a growth in jobs in Elmbridge of 10,100 over the period 2015 to 2035. This figure was not disputed by the Council. The appellant then applied activity rates derived from the Annual Population Survey (APS) to calculate a need for 553 dpa to maintain current patterns of commuting. This would imply the need for an uplift to the SHMA16 OAN of 474 dpa. The appellant also considered a continuation of past job growth trends but it seems to me that the Experian forecast (which was agreed by the Council) would provide a more reliable basis. [124, 125, 241]

362. At the end of the Inquiry the Council emphasised the findings of the SHMA16, which, taking account of improving economic participation rates, concluded that there would be a balance between job growth and population growth by 2035. However, Mr Leather's written evidence updated the SHMA16 employment scenarios using more recent Experian projections<sup>280</sup>. Assuming improving economic participation rates, that exercise indicated a shortfall of labour of 4,000 by 2035. However, Mr Leather did not advocate any uplift to OAN on the basis that there is uncertainty regarding the future growth prospects nationally as a result of Brexit. [241]

363. The Council argued that the APS figures are subject to an error range. Even so, leaving aside the question of economic uncertainty, it seems to me that there is some convergence between the appellant's analysis and that of Mr Leather's written evidence. With regard to economic uncertainty, I see no reason to think that the Experian forecasts have not taken account of any external factors which may affect the national economy. I therefore consider that the appellant's employment led figure of 553 dpa is reasonable. As this would be contained within the market signals uplift referred to above no further adjustment is required. [124, 125, 241]

*Five year housing land supply*

364. The *Elmbridge Local Plan – Authority Monitoring Report 2015/16* identifies a supply of 1,614 for the 5 years from April 2016<sup>281</sup>. The statement of common ground notes that some minor corrections to the components which make up that figure are needed and records that the agreed supply position is 1,635<sup>282</sup>. I set out below my assessment of the 5 year supply position, having regard to the various factors discussed above<sup>283</sup>.

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<sup>280</sup> Proof of evidence of Mr Leather, paragraph 59 and table E

<sup>281</sup> CD E6, paragraph 4.12

<sup>282</sup> ID5, paragraph 5.13

<sup>283</sup> Inspector's note – all calculations have been rounded to the nearest whole number

OAN from SHMA	474 dpa
Add 20% for market signals $474 \times 1.2 = 569$	569 dpa
5 year requirement $569 \times 5 = 2,845$	2,845
Share of undersupply from 2015/16 $569 - 240 = 329$ $329 \div 19 \times 5 = 87$	87
5 year requirement with share of undersupply from 2015/16 plus 5% buffer $(2,845 + 87) \times 1.05 = 3,079$	3,079
Supply from statement of common ground	1,635
Years of supply $3,079 \div 5 = 616$ $1,635 \div 616 = 2.65$	2.65 years

365. The above calculation results in a figure of 2.65 years. This should be regarded as a broad indication of the likely level of supply relative to the OAN. It should not be interpreted as a precise figure.

*Planning for the Right Homes in the Right Places*

366. The Government has consulted on a standardised methodology for assessing housing need. The statement of common ground notes that if the proposed formula were applied to Elmbridge it would result in a figure of 612 dpa. However, the Council and the appellant agreed that, as this is a consultation document, little weight can be placed on its proposals. That remains the position at the time of writing this report. [116, 126, 237]

*Progress on the local plan and the prospects for improving the supply position*

367. The Council's Local Development Scheme 2016 (LDS) indicated that consultation on a preferred approach to spatial strategy, including site allocations, would take place in 2017 with the new local plan being adopted in 2018. In July 2017 the Council published a Position Statement which stated that this timetable would not be met due to the scale of responses to the Strategic Options Consultation and the need to take on board changes to national policy set out in the Housing White Paper. It went on to say that consultation on a preferred approach local plan was unlikely to be before early 2018. No revision to the LDS had been published at the time of the Inquiry. [27, 94 to 96]

368. The Council suggested that a new local plan could be adopted by the end of 2019 whilst the appellant argued that the end of 2020 would be the earliest realistic date. The Council's suggested timescale seems optimistic, given the amount of work still to be done to arrive at a preferred option plan, the likely scale of consultation response to that plan and the time typically required for examination. I also take into account that there has been slippage in relation to the previous LDS and that no new LDS has been adopted. On balance, the appellant's suggested timescale seems more realistic. [97, 245]
369. The appellant's evidence set out various trajectories which sought to show the impact of the local plan process on the delivery of housing beyond the 5 year period. The severity of the impact varies according to which assumptions are preferred. The general point made was that the backlog of unmet need at the point of adoption would be so great that it would not be possible to meet it in what remained of the plan period. It was argued that the position on affordability would get significantly worse. Some of these trajectories are predicated on the appellant's OAN of 760 dpa, which I have not agreed with. Nevertheless, even on the Council's OAN the appellant calculates that there would be a backlog of nearly 1,000 homes over the plan period. [129 to 136]
370. In my view the backlog over the plan period cannot be quantified with any certainty because it depends on the outcome of the local plan process. It is not for me to pre-judge that process. However, 57% of the Borough is covered by Green Belt. That being so it is entirely possible that the housing requirement in the adopted local plan will be a constrained one. In any event, it seems unlikely that the plan could be found sound unless it had identified a housing requirement which could be delivered within the plan period. [245]
371. Moreover, the appellant's trajectories assume that no planning applications will be made on newly allocated sites until the new local plan has been adopted. Experience suggests that is not always the case. Once sites have been identified in a draft plan it is not unheard of for the development management process to begin before the development planning process has been completed. For all these reasons I attach limited weight to the appellant's specific calculations in relation to backlogs beyond the 5 year period. Having said that, the appellant's evidence does illustrate an important general point which I now turn to.
372. A significant proportion of new housing in Elmbridge, beyond that identified in the current housing land supply, is likely to come from strategic sites. However, the Council and the appellant agreed that little weight can be attached to the emerging plan at this stage. The emerging local plan may promote sites within the key strategic areas identified in the Strategic Options Consultation or it may promote sites elsewhere. Either way, specific sites have yet to be identified. When they are identified there will inevitably be a lead-in time before they start to deliver new houses. Even if planning applications were submitted before the new plan is finally adopted, it seems unlikely that there would be significant delivery from new strategic sites within, say, around 5 years from now. Consequently, there seems to be little prospect of a significant improvement in the supply position within that timeframe. [26, 60, 133]

*Conclusions on the need for housing and the supply of housing land*

373. I have carried out an assessment of OAN for the purposes of this appeal, without prejudice to any assessments of OAN or the housing requirement that

may be made in the context of the emerging local plan. My assessment is that the OAN is around 569 dpa. This implies that the likely level of deliverable supply is somewhere around 2.65 years. Without the appeal scheme there seems to be little prospect of a significant improvement in the supply position in the short term. I return to the prospects for early delivery of the appeal scheme and the weight to be attached to housing delivery later in my conclusions.

### ***The effect of the proposal on the Green Belt***

374. The appeal site is located within the Metropolitan Green Belt. The Council has commissioned a Green Belt Boundary Review (GBBR) which forms part of the evidence base for the emerging local plan. The GBBR has not been tested through examination and it has been criticised by the appellant. Nevertheless, it forms part of the evidence base for this appeal, to be read alongside other relevant evidence, and I have taken it into account accordingly.
375. The GBBR identifies three strategic areas of Green Belt in Elmbridge. The appeal site lies within Strategic Area A which is described as a narrow and fragmented band of Green Belt, closely abutting the very edge of south west London. The GBBR considers this to be a strategically important arc providing a narrow break between the built form of outer London and the Surrey towns of Ashford, Sunbury-on-Thames, Walton-on-Thames/Hersham, Esher and Claygate. This broad description of Strategic Area A was not disputed by any party at the Inquiry and I see no reason to disagree with it<sup>284</sup>. [28]

### *Harm by reason of inappropriateness*

376. There was no dispute that the introduction of a large amount of urban development into this largely undeveloped site would amount to inappropriate development, as that term is used in DMP Policy DM17 and the Framework. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework states that local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.
377. The appellant emphasised the words '*potential harm*' in the second sentence of paragraph 88. It was argued that these words signal a change from the pre-Framework approach and require an assessment of other harms (such as harm to openness or purposes) before deciding how much weight to attach to harm by reason of inappropriateness (or definitional harm as it is sometimes known). The Council argued that the appellant's approach would amount to an impermissible rewriting of national policy. [81, 181 to 183]
378. In my view paragraph 88 is clear that substantial weight should be given to any harm to the Green Belt. Logically that must include harm by reason of inappropriateness. It follows that substantial weight should be attached to the harm by reason of inappropriateness in this case. However, even if the appellant's approach was correct, it would make little difference to my overall reasoning. That is because I have concluded that there would be substantial

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<sup>284</sup> There are maps of the Green Belt in CD E5. The general extent is shown on drawing 4.1 (page 27) and the Strategic Areas are shown on drawing 4.2 (page 29)

harm to openness and to the purposes of including land in the Green Belt, for reasons set out below.

*The effect of the proposals on openness*

379. My attention has been drawn to a number of legal authorities on the question of openness, including *Lee Valley* and *Turner*. In *Lee Valley* the Court of Appeal found that:

*'the concept of openness [in the Framework] means the state of being free from built development, the absence of buildings – as distinct from the absence of visual impact'*

In *Turner* the Court of Appeal found that:

*'The concept of "openness of the Green Belt" is not narrowly limited to the volumetric approach suggested by Mr Rudd. The word "openness" is open-textured and a number of factors are capable of being relevant when it comes to the particular facts of a specific case. Prominent amongst these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.'*

[82, 185 to 187]

380. The total site area extends to about 60ha, the larger portion (Area A) being to the west of the river and two smaller parcels (Areas B and C) being to the east. Area A includes a small group of buildings where commercial activity takes place. There is also a lake and some woodland. However, most of Area A is open grassland. Area B is mostly grassland although there are some vehicles and trailers parked on part of it. Area C is woodland. If one looked at the whole site and asked the question how built up is the Green Belt now, the answer would be that it is not at all built up. [16, 17]

381. The appellant argued that the appeal site makes a reduced contribution to the wider perception of Green Belt openness due the presence of boundary vegetation which (it was suggested) creates a strong sense of enclosure. The first point to note is that the appellant's overall approach to the question of openness paid very little attention to openness as a state of being free from built development (or the volumetric approach as it was called in *Turner*). It was firmly focused on visual matters. However, even leaving that important point on one side, I consider that there are some difficulties with the appellant's arguments on the perception of openness. [144, 186]

382. First, the idea that a parcel of Green Belt land must be visible from adjoining land if it is to make a meaningful contribution to openness makes little sense in practical terms. For example, if there was a patchwork of open fields divided by hedgerows and woodlands, on the appellant's approach that landscape would make a reduced contribution to openness because each individual field is visually enclosed. Moreover, the appellant disregards the sense of expansive open space which is experienced from within Area A, apparently on the basis that the land is not accessible to the general public. Paragraph 81 of the Framework encourages local planning authorities to plan positively to provide access to the Green Belt.

However, it does not follow that land which is not generally accessible cannot contribute to openness in a visual or perceptual sense.

383. Second, the appellant's analysis is based on a series of static viewpoints. It is true to say that the site is not visible from some of those viewpoints. However, in reality one's perception of an area is typically gained from moving through it. No-one who lives in this area or uses the footpaths and the bridleway which run along the boundaries of Area A would be unaware of the open nature of the appeal site.
384. Third, and most importantly, the appellant has considerably overstated the extent to which Area A is in fact visually enclosed. The Landscape and Visual Impact Assessment (LVIA) identifies views right across the site from Fieldcommon Lane and the footpath to the north, from the bridleway to the south and from the riverside footpath to the east. Local residents and Councillors drew attention to the extensive views across the site which they enjoy. My observations confirmed that the open nature of Area A can readily be appreciated from the north, east and south. Views from Molesey Road are more restricted, due to the well vegetated grounds of Weylands House and due to boundary vegetation. Nevertheless, there are some filtered views of the site from Molesey Road in which the open nature of the site can be seen. [190, 298, 318, 323]
385. My overall assessment encompasses both the amount of built development on the land and the extent to which the land is seen as being open. I find that all three components of the appeal site make a very significant contribution to the openness of the Green Belt.
386. I turn to the question of how built up the site would become if the proposals were implemented. Area A would see the introduction of 1,024 residential units in buildings of 2 to 5 storeys. In addition there would be a supermarket, pub/restaurant, offices, medical facilities and a primary school. The amount of non-residential accommodation stated on the application form is 7,764 sqm and the parameter plans indicate that the local centre would be up to 12.5m in height. Although there were no statistics on the footprint or volume of development before the Inquiry, it is clear from the above that the proposals would have a major impact on the openness of Area A in terms of the footprint, height and volume of built development.
387. Some buildings which are currently used for commercial purposes would be demolished. Although no floor space or volume figures were provided, no party at the Inquiry suggested that the removal of this small group of buildings would have any material impact on the overall assessment of openness. Given the scale of development proposed, I agree that the demolition of the existing buildings would be of little consequence.
388. The proposals would have a significant impact on the visual appreciation of openness described above. The LVIA assessed that there would be a high magnitude of change from many viewpoints. The parameters plans show that there would be buildings up to 18.4m high along the southern boundary, up to 15m high close to the eastern boundary and up to 12.2m high along the northern boundary. The new roundabout would open up views of the proposed local centre. The proposed pub/restaurant and supermarket are likely to require visibility from Molesey Road if they are to be commercially successful. Whatever approach is taken to landscaping, I consider that it is highly likely that there

would be significant views of the new buildings from multiple viewpoints outside the site. [191 to 194]

389. About half of the total site area (including Areas B and C) would be developed. No figure was given for the proportion of Area A that would be developed but it can be seen from the parameter plan (land use)<sup>285</sup> that it would be significantly greater than 50%. The undeveloped parts of Area A would include perimeter landscaping which would have the character of incidental open space within a built up area. A park is proposed in the centre of Area A. This would be a larger block of open space but it too would be framed by buildings. However naturalistic the landscaping might be, this space would be a park in an urban setting. It would not have the same feeling of wide open space that Area A has now. [31, 168, 193]

390. Area B is proposed to be used for outdoor recreation. There might be some impact on openness, for example from a new skate park or fencing/lighting to a multi-use sports pitch. Area C would remain as woodland.

391. In summary, Area A would become very built up if the appeal scheme were to be implemented. The very significant contribution that it currently makes to the openness of the Green Belt would largely be lost. This would cause significant harm to the openness of the Green Belt. There might be a relatively minor loss of openness in relation to Area B. Area C would be unchanged.

*Purpose 1 – checking the unrestricted sprawl of large built-up areas*

392. The GBBR found that Strategic Area A performs strongly in relation to Purpose 1 by acting as an important barrier to potential sprawl, both from Greater London and large built-up areas within Surrey, such as Walton-on-Thames/Weybridge/Hersham. The appeal site is located adjacent to Hersham, which is part of a larger built-up area including Walton-on-Thames. At the more local level, the site falls within local area 59a which the GBBR also found to be performing strongly in relation to Purpose 1. [196]

393. The GBBR also notes that, as a result of rapid and weakly controlled development during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, this part of the Green Belt is narrow, fragmented and frequently punctuated by areas of built form. That description is pertinent to the locality of the appeal site. The Fieldcommon Estate is an isolated area of mainly residential development surrounded by Green Belt on all sides. In my view the appeal scheme would have the effect of further fragmenting this narrow band of Green Belt by extending the Fieldcommon Estate southwards. It would also extend Hersham northwards, thereby significantly extending the built up area of Walton-on-Thames/Weybridge/Hersham into the Green Belt. In my view this would result in significant harm to Purpose 1<sup>286</sup>. [196]

394. The appellant argued that there would be no harm to Purpose 1 because, as the scheme would be well-designed, it would not amount to sprawl. My attention was drawn to an appeal decision at *Oaklands College* where the Secretary of

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<sup>285</sup> Drawing 4368/004/B (CD A46)

<sup>286</sup> The location of the site relative to the wider Green Belt and existing built-up areas is shown in figure 1 on page A5 of Mr Tunnell's rebuttal proof

State agreed with the Inspector that the development in question would not amount to sprawl. I note that the Council's landscape officer commented that this appeal scheme had been well thought out. No party at the Inquiry raised objection to the urban design approach reflected in the masterplan and parameters plans and I see no reason to take a different view. [146]

395. The question of whether a particular proposal would amount to sprawl requires a site-specific judgement taking account of context, location and scale as well as design. Consequently, the decision on an appeal elsewhere is of little assistance. In this case I take account of the potential for this outline scheme to achieve good design at reserved matters stage. Nevertheless, that does not outweigh my finding that the scheme would further fragment an already narrow band of Green Belt and would result in significant harm to Purpose 1.

*Purpose 2 – preventing neighbouring towns from merging*

396. The Inspector who conducted the examination of the CS noted that the Green Belt is closely interwoven with the Borough's settlements and, being generally fragmented, is particularly vulnerable to erosion. Nevertheless, she found that it serves the fundamental Green Belt purpose of preventing neighbouring towns from merging into one another. The appeal site lies within a narrow section of Green Belt which performs the role of separating Walton-on-Thames/Weybridge/Hersham from Esher. Sandown Industrial Park, on the eastern side of the river, is part of the built-up area of Esher. As noted above, development on the southern part of the appeal site would extend the built-up area of Walton-on-Thames/Weybridge/Hersham. [204]

397. The appellant argued that coalescence would not occur because there would be a clear separation created by the River Mole corridor. I do not share that view. Whilst it is true that the river and its banks would prevent the towns actually meeting, the separation between them would be very much reduced. Housing in the south eastern part of Area A would be physically and visually close to the Sandown Industrial Park. The sense of separation, which can currently be experienced by those using public rights of way, would be eroded. This would amount to significant harm to Purpose 2. [147, 205]

*Purpose 3 – safeguarding the countryside from encroachment*

398. The appellant contended that the site should not be regarded as fulfilling this purpose because it is enclosed and unattractive land, typical of the urban fringe. As discussed above, in my view the appellant considerably overstated the extent to which Area A is in fact visually enclosed. Moreover, the contention that the site is unattractive was not supported by the evidence before the Inquiry. The appellant's landscape witness declined to use the term '*unattractive*', preferring to characterise the land as '*undistinguished*'. He also said that the land was not '*pristine countryside*', whilst accepting that the question of whether or not it is pristine is not relevant to Purpose 3. [148, 207, 298]

399. I saw that the landscape character of the site is affected (to varying degrees) by adjoining land uses. This is particularly so in the south western part of Area A where the nearby industrial units are readily visible beyond the site boundaries. This part of the site could be said to be more affected by urban influences. This effect varies considerably across Area A with urban influences being much less

strong in the eastern and northern parts of the area. These parts of the site have a more secluded and tranquil feel.

400. Local residents described the way that the land is perceived by those who experience it regularly. One of the local Councillors stated that the land offers the feeling of being out in the countryside, with views of grazing animals providing a welcome respite to a busy town life. She described the land as a '*green lung*'. Other speakers referred to a sense of tranquillity and the opportunities to view wildlife. From what I saw, I have no reason to doubt that these are commonly held perceptions. [298, 317, 318]

401. I consider that the site should be regarded as countryside, as that term is used in paragraph 80 of the Framework. The site therefore contributes to Purpose 3. The appeal scheme would amount to a large scale encroachment into the countryside, thereby resulting in significant harm to Purpose 3.

#### *Purposes 4 and 5*

402. The Council did not raise any objection to the appeal in relation to Purpose 4 (preserving the setting of historic towns) or Purpose 5 (assisting urban regeneration). The CGBG argued that the proposals would harm the view from Waynefleete's Tower, a Grade I listed building, thereby harming the historic setting of Esher. The ES identified the location and designation of Waynefleete's Tower, which was outside but adjacent to the study area. There was no evidence before the Inquiry to show that development at the appeal site, which would be at some distance from the Tower, would have any material impact on its setting or its significance as a designated heritage asset. In any event, Purpose 4 is focused on the settings of settlements rather than the settings of individual heritage assets. [282]

403. The CGBG also suggested that the proposals would harm Purpose 5. However, I have no doubt that the emerging local plan will take account of the potential for accommodating housing within the existing built-up areas before concluding on how much (if any) Green Belt should be released. My consideration of Purposes 4 and 5 does not add materially to the cases for or against the appeal. [282]

#### *Alternative sites and the likelihood of Green Belt harm in any event*

404. The Council has consulted on a preferred strategic option which would involve the release of sites within 3 areas assessed as being weakly performing Green Belt. The evidence base for the emerging local plan includes an Exceptional Circumstances Case report which sets out why release of Green Belt to meet housing needs would be justified. The appellant argued that the release of Green Belt land is inevitable, with the consequence that any definitional harm arising from the appeal scheme would not be unique to this location. It was also argued that the appeal site compares favourably with the 3 strategic areas in terms of Green Belt considerations, landscape impact and locational sustainability. [26, 67, 142, 150, 152]

405. The appellant's case fell well short of demonstrating that the appeal scheme would avoid the need to release any specific site which would be more harmful. The evidence presented was a high level assessment of the 3 strategic areas. In terms of Green Belt, the conclusion was that the appeal site would be at least as suitable as the strategic areas. In terms of locational sustainability, the

conclusion was that the appeal site would be at least as sustainable. Although the appeal site was found (on the appellant's view) to be preferable in landscape and visual terms, this would only be one component of any thoroughgoing comparative exercise. [150, 263, 264]

406. The appellant's exercise was bound to be confined to a high level because site specific allocations have yet to emerge, even in a draft plan. Indeed the Council has yet to respond to consultation on the strategic options so it cannot be said with certainty that the emerging local plan will promote the release of any Green Belt land. Any sites that are proposed for release may be within the strategic areas or elsewhere. Those matters will all be determined through the local plan process and it is not my role to pre-judge that process in any way. Moreover, the Council and the appellant agree that very little weight can be attached to the emerging local plan at this early stage. Nevertheless, the Secretary of State may feel it is appropriate to give some thought to what might emerge from the local plan process, in order to consider the appellant's case on this point. [26, 60, 261]
407. Having regard to all the evidence before the Inquiry, including the Exceptional Circumstances Case report and the evidence on housing need, it seems to me more likely than not that the emerging local plan will promote some Green Belt sites for housing. It follows that allowing the appeal scheme could avoid the need for some other site (or sites) to be released from the Green Belt. However, it is not known where such a site (or sites) would be. Consequently, it cannot be said whether the appeal site would be preferable in terms of impacts on the Green Belt or in relation to any other material planning considerations. In my view this is not a factor which should weigh significantly for or against the appeal.

#### *Other Green Belt matters*

408. At the Inquiry there was some discussion about precisely where the Green Belt boundaries might be drawn if the appeal proposals were approved and implemented. However, that is a discussion which, to my mind, had little bearing on the merits of the appeal. The whole of the appeal scheme would be within the Green Belt, resulting in the effects I have described above. The redrawing of boundaries in one position or another following development would not alter or mitigate the change which would by then have taken place. [151, 201, 202]
409. Having said that, I do not agree with the appellant's suggestion that future boundaries might be an improvement on those that exist now in terms of permanence. In the main, Area A is bounded by land which is also in the Green Belt. The proposals would be likely to create new boundaries where none are currently needed. The exceptions are part of the northern boundary, by the Fieldcommon Estate, and a relatively small part of the southern boundary, by the Weylands Industrial Estate. In both locations the Green Belt boundary is currently defined by roads. These are readily recognisable features that are likely to be permanent. [151]
410. In contrast to the existing situation, the appeal scheme would leave some relatively isolated parcels of Green Belt land, such as land at Esher Rugby Club which would become enclosed by development on three sides. I see no reason to think that the objective of creating boundaries which are enduring would be furthered by the appeal proposals. [202]

411. The proposals include the provision of public open space and opportunities for public access. Having regard to paragraph 81 of the Framework, these are matters which are relevant to the management of land within the Green Belt. However, they do not alter my assessment of impacts on openness and Purposes 1 to 3. I return to these matters below.

#### *Conclusions on Green Belt*

412. The proposals would amount to inappropriate development in the Green Belt. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 states that substantial weight should be given to any harm to the Green Belt. Substantial weight should therefore be attached to the harm by reason of inappropriateness.

413. Area A would become very built up if the appeal scheme were to be implemented. The very significant contribution that it currently makes to the openness of the Green Belt would largely be lost. That would cause significant harm to the openness of the Green Belt. There might also be a relatively minor loss of openness in relation to Area B. In addition, the proposals for Area A would cause significant harm in relation to the purposes of including land in the Green Belt. In particular, significant harm would be caused to Purposes 1, 2 and 3.

#### ***The effect of the proposals on the transport network, including the opportunities for sustainable modes of transport***

##### *Baseline conditions*

414. Access to the locality is constrained by the river, the railway line and the reservoirs. There are three routes to/from the site, Molesey Road (to the north and south) and Rydens Road (to the west). The transport assessment (TA) identified that the Halfway junction on the Rydens Road route is currently operating over capacity. [19, 35]

415. Local residents and the appellant had differing views as to the current operation of the Hersham station railway arch on Molesey Road, to the south of the appeal site. The width of the arch limits traffic to a single lane, which is controlled by traffic signals. Two side roads, Walton Park and an access to the Weylands industrial area, have junctions with Molesey Road which are close to the railway arch. The TA suggested that the junction is operating within capacity with a mean maximum queue of 15 to 17 vehicles<sup>287</sup>. Surveys carried out by the residents found that, at peak times, queues are typically very much longer with a maximum average queue of 150 vehicles. [301, 302, 319]

416. In response to my questions the appellant produced additional information about surveys of queue lengths which it had carried out. These found that the peak hour queue was typically in the range 30 to 40 vehicles. The difference between this figure and the residents' figure is partly explained by the fact that the appellant's figure represents the mean maximum queue within a typical signal cycle, averaged over all cycles within the modelled time period. The appellant accepted that extensive queuing does occur, as far back as Rydens

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<sup>287</sup> CD A23, page 494, table 9.4, existing traffic (2014) plus growth factor to 2019 (AM/PM peak, rounded)

Road, as the residents have observed. The appellant suggested that this happens only on isolated occasions during the peak period.

417. The appellant also accepted that the LinSig model used in the TA did not (and could not) take account of the interaction between traffic from Walton Park and the Weylands access and the traffic signals through the arch. It seems that the appellant reached an agreement with SCC that, whilst the model may not represent accurate queue lengths, it allows like for like comparison with existing and future scenarios<sup>288</sup>.
418. There was no dispute that, in reality, the flow of traffic through the arch is affected by vehicles turning in and out of Walton Park and the Weylands access. Nor was it disputed that actual queues are significantly greater than those predicted by LinSig. Clearly the model does not represent accurate queue lengths because it models a theoretical railway arch with no side roads to complicate the situation. In my view little weight should be attached to the outputs of the LinSig model and I do not think it can be relied on to provide a comparison between before/after development scenarios.
419. The appellant suggested that any queues that form in the peak hour generally clear within 1 or 2 signal phases (which would equate to 1 to 2 minutes). That assertion was first made in the TA, which was suggesting unrealistically short queues. It was repeated in the context of the appellant's later evidence which accepted that in reality queues are longer than LinSig predicts. Local residents have carried out numerous surveys which have been well documented. These surveys found that average queuing time in the peak hours is 6 to 9 minutes. I consider that the evidence provided by local residents on this point should attract more weight than that of the appellant. [160, 302]
420. Bringing together all of the evidence relating to the Hersham station railway arch, including my own observations, it is clear that this junction is currently subject to significant congestion and queuing at peak periods.
421. There are bus services running along Molesey Road although these do not run into the later evening period or on Sundays. Hersham station, which is 1.2km from the centre of the site, provides frequent train services on the London Waterloo to Woking line. [19]

#### *Network impacts*

422. The TA was based on traffic surveys carried out in 2014 to which a growth factor was applied. An assessment of the vehicular trips for the proposed development was made using the TRICS database for each of the proposed land uses. The distribution of the generated traffic to the three routes to/from the site was modelled by reference to the surveyed patterns of turning movements. Local residents argued that the TA underestimated the amount of generated traffic. However, the use of TRICS is an established approach. SCC, as highway authority, agreed the scope of the baseline traffic surveys, the traffic growth factor to be applied, the committed developments to be taken into account and the methodology for calculating the amount and distribution of the generated

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<sup>288</sup> APP11, paragraphs 2.15 to 2.24

traffic. I therefore accept the conclusions of the TA in relation to the amount and distribution of traffic likely to be generated by the appeal scheme. [35, 303]

423. The Halfway junction is operating over capacity now and traffic growth, committed developments and the appeal scheme would all increase queueing at this junction. The TA suggests that, in the AM peak, the queue on Rydens Road approaching the junction would increase from 99 vehicles to 129 vehicles as a result of the scheme proposals<sup>289</sup>. However, the TA itself notes that queue lengths predicted by LinSig become increasingly unrealistic once 90% saturation is exceeded. This junction was already at 104% saturation in 2014 and was predicted to increase to 123% saturation by 2019 as a result of general traffic growth and committed developments. Consequently, the increase in queue length predicted in the TA should be regarded as no more than a general indication of the likely impact. [35]
424. The appellant suggests that the appeal scheme would add no more than 5 vehicles to the existing peak hour queues at the Hersham station railway arch. However, that is based on the LinSig model which does not accurately represent the operation of this junction. Consequently, I do not regard this as a figure which should be relied on. [160]
425. Both the Halfway junction and the Hersham station railway arch are subject to significant congestion and queuing at peak periods. No capacity improvements have been identified at either junction. Each junction is expected to take around one third of the traffic generated by the appeal scheme in the AM peak. The precise impact of that increase cannot be calculated due to the limitations of the LinSig model. However, it is clear that at both junctions there is likely to be a material increase in the level of congestion and queuing already experienced.

#### *Mitigation of transport impacts*

426. The proposals include a package of transport measures which would be secured by the section 106 Agreement (the Agreement), the unilateral undertaking (the UU) and planning conditions. These would include measures to encourage cycling such as cycle paths along Molesey Road, further cycle improvements to be carried out by SCC and cycle parking at Hersham station. Measures to encourage walking would include widening the footway along Rydens Road and a Toucan crossing on Molesey Road to the north of Hersham station. [36]
427. The contribution to bus services would provide a half hourly service (including weekends) from 0600hrs to 2300hrs. As local residents pointed out, this would not amount to an increase in frequency during the AM or PM peak hours. Nevertheless, bus services would be accommodated within the proposed layout, such that there would be a bus stop within 400m of all dwellings. Combined with the extended hours of service, this would make bus transport a more attractive option for a proportion of the new residents. [37, 316]
428. The Agreement and the UU would provide for enhancements to Hersham station. These would improve passenger comfort but they would not increase the capacity of rail services. In my view the enhancements are unlikely to have a

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<sup>289</sup> CD A23, table 9.5 on page 495

significant impact on the transport choices of future occupiers of the appeal site. The proposals include lifts from street level to platform level. No doubt such lifts would be of benefit to persons with limited mobility. However, this benefit is tempered by the fact that there is no firm timescale for delivery in the Agreement or the UU. [255, 316]

429. The proposed travel plan includes targets to increase the use of walking, cycling and public transport. For example, the target for residential uses is to reduce the proportion of trips made by car from 75% in the opening year to 60% after 5 years. Thus, even if the target is met, 60% of the additional residential trips would be by car and many of those trips would pass through one or other of the junctions discussed above. [38]

#### *Conclusions on transport*

430. Due to the constrained access within the locality, the congestion and queueing which occurs and the limitations of the existing bus services I do not consider this to be a highly accessible location. However, the proposed package of transport measures would provide improved infrastructure to support walking and cycling and would secure an adequate level of bus services. The Council and SCC (as highway authority) both accept that, with the transport measures in place, the proposals would comply with CS Policy CS25 which seeks to promote improvements to sustainable travel and improve transport infrastructure. I share that view. [161, 171]

431. With regard to paragraph 32 of the Framework, I consider that the proposals have taken up the opportunities for sustainable transport modes and that safe and suitable access can be achieved. Notwithstanding my conclusions regarding the Halfway junction and the Hershams station railway arch, I do not think that the evidence supports a conclusion that the residual cumulative impacts would be so great as to be severe. Overall, the proposals would achieve compliance with the Framework insofar as it relates to transport.

432. In my view the package of transport measures, as a whole, is no more than is necessary to mitigate (as far as practicable) the transport impacts of the scheme. Even with that mitigation in place, there would be a residual harmful effect insofar as there is likely to be a material increase in the level of congestion and queueing already experienced at the Halfway junction and the Hershams station railway arch. The level of harm would not be such as to indicate that the appeal should be dismissed on these grounds. Nevertheless, in my view this is a factor which should attract some weight in the overall planning balance.

#### ***Whether the harm to the Green Belt is clearly outweighed by other considerations***

433. In this section of my report I discuss those considerations to which I attach material weight either for or against the appeal scheme. I then consider the balancing exercise required by DMP Policy DM17 and paragraph 88 of the Framework.

#### *Housing delivery*

434. I have concluded that the likely level of deliverable supply (in relation to my assessment of the OAN) is somewhere around 2.65 years. That is well below the 5 years required by the Framework. The appellant contended that the first

houses could be delivered on the appeal site by 2020, thereby making an early contribution to the shortfall in supply. That timetable was disputed by the Council and the CGBG. [69, 165]

435. The appellant is not the land owner and, although there has been an expression of interest from a house builder, at the time of the Inquiry there was no development agreement in place. Area A would require remedial earthworks, potentially including excavation and backfilling of road corridors and clean soil capping. The extent of such works would not be known until such time as further site investigations had been carried out. It would be necessary to design the proposed bridge, secure planning permission for it and negotiate with the land owner (or owners) for whatever rights may be required. It would also be necessary to carry out the design of the scheme and to secure reserved matters approvals together with discharge of pre-commencement conditions. The proposed roundabout access would need to be constructed at an early stage. [44, 266, 267, 291, 292]

436. Whilst first delivery in 2020 might be technically feasible, each of the above factors represents a significant risk to that timetable. I consider that it would be more realistic to assume that first delivery would be later on in the 5 year period. Consequently it seems likely that only a small proportion of the proposed houses would be delivered within 5 years. However, it does not follow that the contribution the appeal site could make to housing supply would be unimportant. As noted above, a significant proportion of new housing in Elmbridge is likely to come from strategic sites that have yet to be identified. On balance it seems probable that, notwithstanding the factors referred to above, the appeal site would start to deliver housing sooner than sites which have yet to be identified.

437. In summary, whilst it is unlikely that the appeal site would make an early contribution to supply, it does offer the prospect of making a significant contribution sooner than other sites which are as yet unidentified. Having regard to the degree of shortfall against the OAN, I attach significant weight to the benefit of housing delivery.

#### *Affordable housing*

438. The Agreement provides for 50% of the dwellings to be delivered as affordable housing. Whilst the total number of affordable houses would be large, it is also relevant to consider the mix of affordable dwelling types. Schedule 7 of the Agreement stipulates that social rented housing would comprise no more than 9% of the affordable housing, with shared ownership dwellings comprising no more than 30% and affordable rent housing comprising 61% to 70%. The CGBG draws attention to the need for affordable housing as identified in the SHMA16. Table 8.8 provides a breakdown by tenure type. It indicates that the need is for 80% of the affordable housing in Elmbridge to be social rented housing with the remainder split between affordable rent and shared ownership. [69, 288]

439. By contrast, the Agreement provides for a maximum of just 9% to be social rented housing. Moreover, schedule 7 sets no minimum so there is no certainty that the scheme would provide any social rented housing whatsoever. The tenure mix provided for in the Agreement is therefore poorly aligned with the need as identified in the SHMA16. The shared ownership and affordable rent units would be affordable housing as defined in the Framework and should therefore be counted amongst the social benefits of the appeal scheme. It is also important to

record that the Council raised no objection to the tenure mix. Nevertheless, it is my view that the weight to be attached to the benefit of affordable housing should be tempered by fact that there would be limited (if any) provision for the tenure type for which there is the greatest need. I therefore attach moderate weight to this factor.

#### *Economic benefits*

440. The proposals would bring economic benefits in terms of employment during construction. There would also be employment, estimated by the appellant to be 240 jobs, associated with the proposed supermarket, offices, pub/restaurant and medical facilities. This estimate was not disputed by other parties at the Inquiry. The appellant pointed out that the new employment opportunities would be in an area where the level of economic/social need is higher than elsewhere in Elmbridge. Whilst that is so, this is a relative measure of economic/social need. The evidence does not suggest that the area around the appeal site suffers high levels of deprivation compared with national indices. [21, 70, 164]

441. Overall, I attach significant weight to these economic benefits.

#### *Recreation, community facilities and access to the Green Belt*

442. The Framework states that local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access and opportunities for outdoor sport and recreation. The proposals include formal sports pitches and a public park. The Agreement makes provision for improvements at the nearby Lower Green Recreation Ground, the replacement of the Community Hall at Lower Green and the delivery and subsequent management arrangements for a public park within Area A.

443. There are existing parks and open spaces at Fieldcommon Estate and Lower Green. Most of the Fieldcommon Estate is already within 400m of a park although a small part of it is not. Parts of Walton-on-Thames and Hersham are also more than 400m from a park. The proposed park would be centrally located within Area A and would be an integral element of the appeal scheme. Whilst it would be primarily of benefit to the new residents I have no doubt that it would also be used by existing residents of the Fieldcommon Estate and other nearby residential areas. This would be a social benefit in terms of access to outdoor recreation. However, from the perspective of the existing residents, there would also be a loss of an existing recreational opportunity. [20]

444. Other than those who use the fishing lake there is currently no recreational use of the site itself and there is no public access to it. However, the evidence provided by residents and Councillors shows that the site does contribute to outdoor recreation in that it is seen and enjoyed by people using the public footpaths and the bridleway which adjoin it. A sense of tranquillity, openness and the feeling of being out in the countryside are part of that experience. Those who spoke at the Inquiry were firmly of the view that any benefits of the new facilities would not outweigh the loss of the experience of the site which they have now. [298, 317, 318, 323]

445. There is currently no community meeting facility at Fieldcommon Estate or in nearby parts of Walton-on-Thames or Hersham. The Lower Green Community Hall was closed (temporarily) at the time of the Inquiry. Normally it would

accommodate a range of local groups and the Agreement would provide for a replacement building. The hall is reasonably accessible on foot from Area A and the replacement hall would meet the needs of the new population for community meeting facilities. It would also be a social benefit to the existing residents of Lower Green, in that it would be an enhancement to the building that currently exists.

446. The Regulation 122 Compliance Statement<sup>290</sup> notes that the sports pitches that would be provided within the appeal site would fall short of the area required for the new residents. This shortfall would be addressed by improving existing sports pitches at the Lower Green Recreation Ground. The proposed relocation of a skate park from Lower Green to Area B would enable sports pitches to be reconfigured, in support of that objective. I conclude that the provision of new sports pitches would be required to meet part of the need from the new residents. The improvements to the Lower Green pitches would be required to increase the capacity of existing pitches to accommodate part of the need from the new residents.
447. The appellant argued that the current lack of access to the appeal site represents a barrier to wider connectivity which would be resolved by the appeal scheme. However, one of the Councillors gave evidence that the bridleway already provides a safe and well used route from the Rydens area to Esher. I saw that residents of Lower Green wishing to access the Molesey Heath nature reserve can do so easily by using the existing footpaths along the river and to the north of the appeal site. This point is not supported by the evidence and I do not regard it as a factor weighing in favour of the appeal. [67, 168, 258, 323]
448. My overall assessment under this heading is that the proposed public park would represent a social benefit in that it would be available for the wider community to use. The value of that benefit would however be tempered by the loss of an existing recreational resource, namely the passive enjoyment of the site in its existing condition as seen from public rights of way. The replacement of the Lower Green Community Hall would also be a social benefit to the wider community. I attach moderate weight to these benefits.

#### *Harm to the Green Belt and other harm*

449. I have concluded above that the proposals would amount to inappropriate development in the Green Belt and that substantial weight should be attached to the harm by reason of inappropriateness. In addition, the proposals would result in significant harm to the openness of the Green Belt. They would also cause significant harm in relation to the purposes of including land in the Green Belt. In particular, significant harm would be caused to Purposes 1, 2 and 3. In deciding how much weight to attribute to the harm to openness and the purposes of including land in the Green Belt it is important to recall that the site lies within a strategic arc of Green Belt which is already narrow and fragmented. In my view very substantial weight should be attached to these harms.
450. There would also be harm in relation to transport. Notwithstanding the proposed mitigation, I have concluded that there would be a residual harmful effect insofar as there is likely to be a material increase in the level of congestion

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<sup>290</sup> ID15

and queuing already experienced at the Halfway junction and the Hersham station railway arch. In my view this is a factor which should attract some weight in the planning balance.

*Whether very special circumstances exist*

451. This matter falls to be considered in the light of development plan policy and national policy. Although the wording of DMP Policy DM17 does not exactly follow the wording of the Framework, for the purposes of this decision I consider that the balancing exercise required is essentially the same. Both Policy DM17 and the Framework require an assessment of whether there are considerations which clearly outweigh the harm to the Green Belt. [24]

452. The Secretary of State's decision at *Jotmans Lane, Benfleet* confirmed his view that:

*'In the light of the Chief Planner's letter of 31 August 2015 and the Written Ministerial Statement of 17 December 2015, he considers that it is national policy that (subject to the best interests of the child) personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and other harm so as to establish very special circumstances.'* <sup>291</sup>

453. The development plan and national policies are to be applied having regard to the particular circumstances of the case. For the reasons given above, I do not think it is right to characterise the benefits of this appeal scheme as confined solely to meeting housing need. However, in my view meeting housing need, together with the economic benefits of the proposals, would be the most important benefits, with other benefits being of much less importance.

454. In summary, I attach significant weight to the benefits of housing delivery and to the economic benefits of the proposals. I attach moderate weight to the provision of affordable housing, a public park and a replacement community hall. On the other hand I attach very substantial weight to the harm to the Green Belt. In addition, I attach some weight to the harm I have identified in relation to transport. My overall assessment is that the considerations weighing in support of the appeal would not clearly outweigh the harm to the Green Belt. The fact that I have found other harm, in relation to transport, reinforces that conclusion.

455. It follows that the very special circumstances required to justify development in the Green Belt do not exist. The proposals would be contrary to DMP Policy DM17. They would also be contrary to national policy, as expressed in the Framework and the Written Ministerial Statement of 17 December 2015.

**Other matters**

*Biodiversity*

456. There are statutory designated nature conservation sites in the locality including the South London Waterbodies (Special Protection Area and RAMSAR site), the Knights and Besborough Reservoirs (Sites of Special Scientific Interest) and Molesey Heath and West End Common (Local Nature Reserves). The

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<sup>291</sup> CD K18, paragraph 12 of the decision letter (see also the Guidance, Ref ID 3-034-2014006)

Environmental Statement (ES) states that no significant effects were identified in relation to any of these sites. No party at the Inquiry disputed that assessment. [52]

457. The site is no longer subject to any nature conservation designations. Nevertheless, it does include habitat types that support wildlife. Appropriate surveys have been carried out and mitigation measures have been proposed. Clearly there would be negative effects in terms of loss of open areas used for foraging and disturbance from traffic and external lighting. The ES concluded that, following mitigation, there would be some residual negative impacts although in general the effects on habitats and species were found to be beneficial. That assessment relied on benefits to biodiversity from open spaces and drainage features that have yet to be designed in detail. I consider that the proposed measures are likely to provide adequate mitigation for the harm to biodiversity that would arise from the scheme. However, I do not think that the evidence demonstrates that there would be a net beneficial effect. [42, 43, 53, 298, 307, 308]

#### *Character and appearance*

458. The appellant argued that the proposals would bring about an improvement in the character and appearance of the area. The LVIA identified that there would be a high magnitude of change from many viewpoints, with the effect of that change being beneficial. The site is not subject to any landscape designations. As noted above, parts of it are subject to urban influences from adjoining land uses. Nevertheless, I do not share the appellant's view that the site is enclosed and unattractive in its current condition. The appellant's analysis overstates the impact of man-made features outside the site and fails to take account of the positive attributes that the site itself has. These include expansive open views, a sense of tranquillity and a feeling of being in the countryside. [143, 148, 317, 318]

459. To my mind the LVIA did not take sufficient account of the loss of openness and the change to an essentially urban character that the proposals would bring about. Much emphasis was placed on the attractiveness of planting and buildings which have yet to be designed. I have noted above that the Council's landscape officer considered that the appeal scheme had been well thought out. At the Inquiry no party raised objection to the urban design approach reflected in the masterplan. I agree that the masterplan and the parameters plans offer the potential for good design to be achieved at reserved matters stage. Even so, good design is no more than would be necessary to accord with the Framework and to mitigate adverse landscape and visual effects. In my view the effect on character and appearance should be regarded as a neutral factor in the planning balance. [146]

#### *Weylands waste treatment works*

460. Policy WD2 of the SWP allocates land to the south of the appeal site at the Weylands treatment works for waste recycling, storage, transfer, materials recovery and processing. There was a proposal for an anaerobic waste digester which did not proceed. The site remains allocated but there was no evidence before the Inquiry of any further specific proposals. There are waste handling and transfer operations currently taking place at Weylands. [25, 321]

461. The Council's 3<sup>rd</sup> reason for refusal alleged that the proposals would prejudice the development of the allocated site due to potential impacts of noise, dust and odour on the proposed residential units close to the southern boundary. This reason for refusal was not pursued at the Inquiry. It had been resolved by an amendment to the parameter plans showing an increased separation between the southern edge of the residential area and the waste treatment works. The Council and the appellant had also agreed a suggested condition requiring the submission of a scheme of mitigation measures. Following the Inquiry, I sought clarification on the wording of this condition. [3, 6, 7, 13]
462. The amended parameter plans would provide a buffer zone along the southern boundary. This is intended to include an earth bund and planting. In response to my questions, the Council and the appellant have put forward revised wording for the suggested condition. The intention is that there would be some further monitoring of the impacts of the existing waste handling operations. This would inform the detailed design of measures to mitigate the impacts of those operations on the proposed dwellings. Whilst I have amended the wording of the suggested condition, in the interests of clarity, I agree with the substance of what has been suggested<sup>292</sup>.
463. It may be that the allocated site is redeveloped for new or more intensive waste handling operations. If that were to happen, it is likely to involve operations contained within a building, subject to modern environmental standards. Any impacts on the appeal site are likely to be less than those of the existing open air operations. The Council and the appellant agree that any mitigation designed for the existing operations would continue to be effective if the site were redeveloped. I see no reason to disagree.

#### *Education*

464. The proposals would generate a need for one form entry of primary school capacity. Single form entry schools are not considered to be viable so the Agreement provides for land for a two form entry primary school to be offered to the education authority. However, there may well be sufficient capacity in existing schools by the time there was a need for school places arising from the appeal site. In that case, the education authority would not take up the land. Consequently, the Agreement ensures that the educational needs arising from the proposals would be met one way or another. However, there is no certainty that there would be any provision at the appeal site so this is a neutral factor. [11, 33, 262]

#### *Air quality, dust and noise*

465. The ES concluded that the proposals would be air quality neutral in relation to building emissions. The impact of road traffic on air quality in the locality has been modelled. The assessment concluded that the impact on particulate matter would be negligible. Adverse effects were predicted for nitrogen dioxide (NO<sub>2</sub>) at some receptors. Overall there was considered to be a moderate adverse impact on the Walton Air Quality Management Area and along Molesey Road and Rydens

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<sup>292</sup> The appellant's suggested wording is at PID12 and the Council's suggested wording is at PID13. The appellant's response at PID14 confirms that ultimately there was little between the parties on this point. My recommended condition is Condition 34 at Annex D.

Road. Having regard to the proposed mitigation, the ES concluded that the impact on local air quality would be reduced to minor adverse. [39, 40]

466. Local residents carried out air quality monitoring using a diffusion tube. They concluded that levels of NO<sub>2</sub> are significantly higher than predicted in the ES. However, these measurements were carried out over a relatively short period and are not therefore comparable with the appellant's figures for annual mean concentrations. Moreover, it has not been shown that the figures were correctly adjusted to allow for the difference between the kerbside location of the measuring point and the nearest residential façade, which is the relevant location for the assessment. [305, 306]

467. There would be potential impacts from dust during construction. However, these could be adequately mitigated by planning conditions. As noted above, the noise assessment considered the baseline conditions and did not identify the need for any specific mitigation measures. Although local residents questioned the noise survey methodology, the appellant demonstrated that the time periods selected were in accordance with relevant guidance. [41, 312]

#### *Flood risk*

468. There have been comprehensive flood defence and alleviation works along the River Mole. The site is primarily within flood zone 1, the area which is at least risk of flooding. The most likely source of fluvial flooding is the Dead River, on the opposite side of Molesey Road. The northwest corner of Area A is in flood zone 2 and is regarded as being at low risk of flooding. Only non-residential development would be located in this part of the site. There would be no requirement to raise ground levels to protect development from flooding and hence no additional risk to adjoining residential areas. A conceptual design for a sustainable drainage system has been provided. This would allow surface water to be discharged to the River Mole at a controlled rate. Any excess water accumulating during a storm event could be attenuated within the site. [45, 46, 311]

#### *Land contamination*

469. Residents have drawn attention to the large volume of waste material that has been imported into the site. There is also evidence of some breaches of the site license. The ES identified potential contamination of soils, localised impact on groundwater and localised concentrations of methane. Further work was recommended, including groundwater monitoring, soil sampling and ground gas monitoring. The ES concluded that, although the site presents a number of geotechnical and environmental constraints, it is suitable for residential development. [44, 309, 310]

470. I have commented above that the full extent of remediation works would not be known until further work had been carried out. Nevertheless, there are established techniques for addressing the types of contamination which are anticipated. Subject to a scheme of remediation, which could be controlled by a condition, the proposed development should not pose unacceptable risks to nearby residents or future occupiers. However, there is no evidence that the site poses any pollution risks whilst undisturbed. The need for remediation only arises in the event that the site is developed. Consequently this should be regarded as a neutral factor in the planning balance.

### *Effect on living conditions at Fieldcommon Farm*

471. The occupiers of Fieldcommon Farm are concerned that the proposals would have an overbearing visual impact and would result in harmful overlooking. The proposals are in outline and the relationship of new buildings to neighbouring properties would be controlled at the reserved matters stage. There is no reason to think that a satisfactory relationship with Fieldcommon Farm could not be achieved. [325]

### *Criticisms of the appellant's information*

472. The CGBG and local residents raised concerns about documents which were not put before the Inquiry and information that was provided at a late stage. It is true to say that some important information emerged during the Inquiry. In some cases further information was produced specifically to address concerns raised by third parties or questions asked by me. That is a normal part of the Inquiry process. Overall, I am satisfied that all parties had a reasonable opportunity to consider the information that was submitted during the course of the Inquiry. Moreover, I am satisfied that the total body of evidence which is now before the Secretary of State is sufficient for him to make an informed decision on this appeal. [274, 296, 317, 322]

### *Conclusion on the other matters*

473. I conclude that none of the other matters discussed in this section of my report add materially to the case for or against the appeal.

### **Public Sector Equality Duty**

474. There was no formal equalities assessment before the Inquiry, nor was there any evidence or submissions specifically directed to equalities impacts. Nevertheless, I have considered the protected characteristics set out in the Equality Act 2010.

475. The proposals include lifts from street level to platform level at Hershams station. I have commented above that such lifts would be of benefit to persons with limited mobility. That could include those with limited mobility due to age, disability, pregnancy or maternity, all of which are protected characteristics. However, this potential benefit is limited by the fact that there is no firm timescale for delivery of the lifts in the Agreement or the UU. I have not identified any negative equalities impacts.

### **Conclusions**

476. The proposals would be inappropriate development in the Green Belt. I have found that the very special circumstances required to justify inappropriate development do not exist. Accordingly, the proposals would conflict with DMP Policy DM17 which seeks to protect the Green Belt. The proposals would also conflict with CS Policy CS1 which states that the Green Belt will continue to be a key determinant in shaping settlements and development patterns. Whilst the proposals would accord with a range of other development plan policies, I regard the conflict with these fundamental locational policies to be of such importance that the proposals should be regarded as being in conflict with the development plan as a whole. [23, 24]

477. It is therefore necessary to consider whether there are other considerations that indicate that the appeal should be determined other than in accordance with the development plan. The Framework can be one such consideration. I have found that the Council cannot demonstrate a 5 year supply of housing sites, relative to my assessment of the OAN. In these circumstances paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date and paragraph 14 of the Framework is engaged.

478. However, I have also found that the proposals would conflict with national policy on Green Belts, as set out in the Framework. Green Belt is listed in footnote 9 as one of the examples of specific policies that may indicate that development should be restricted. It follows that the balance set out in the second bullet point (first indent) of the decision-taking part of paragraph 14 is not engaged. Taken as a whole, the policies of the Framework do not indicate a decision other than in accordance with the development plan.

479. The proposals would bring social benefits, including housing delivery, affordable housing, a public park and a replacement community hall, together with economic benefits. However, my overall assessment is that these benefits are not sufficient to indicate a decision other than in accordance with the development plan. I shall therefore recommend that the appeal be dismissed.

## **RECOMMENDATION**

480. I recommend that:

- 1) The appeal be determined in accordance with the revised parameter plans listed in Condition 3 of the schedule at Annex D
- 2) The appeal be dismissed
- 3) If, however, the Secretary of State considers that the appeal should be allowed, and planning permission granted, the recommended planning conditions are at Annex D.

*David Prentis*

Inspector

## ANNEX A – APPEARANCES

### APPEARANCES

#### FOR THE LOCAL PLANNING AUTHORITY:

Craig Howell Williams Ashley Bowes	Queen's Counsel and of Counsel, instructed by Catriona Herbert, Law Practice Manager, Elmbridge Borough Council
They called Philip Leather MA MSc Zoe Trower MSc BSc Christopher Tunnell BSc MPhil MRTPI	Cobweb Consulting  Arcadis UK Ltd  Director, Ove Arup and Partners Ltd
<i>Assisting with S106 and Conditions</i> Catriona Herbert Nancy El-Shatoury	Law Practice Manager for the Council Principal Lawyer, Highways and Planning, Surrey County Council Principal Planning Officer for the Council
Edward Chetwynd- Stapylton Ian Gayton Colin Waters Melanie Harris	Green Spaces Manager for the Council Housing Strategy Manager for the Council Schools and Learning, Surrey County Council

#### FOR THE APPELLANT:

Paul Stinchcombe Richard Wald	Queens' Counsel and of Counsel, instructed by Hogan Lovells International LLP
They called Clive McDonnell BA(Hons) DipLA David Allen DipLA CMLI John Baker BEng MSc DipTE David Brooke HNC FIHE MCIHT Nick Stilwell BSc CEng MICE MIHT FIHE FAIRSO Eur Ing Matthew Spry BSc(Hons) DipTP MRTPI MIED FRSA Steven Fidgett BSc(Hons) DipTP MRTPI MIQ	Murdoch Wickham  Allen Pyke Associates  Point Consultancy  The Stilwell Partnership  The Stilwell Partnership  Lichfields  Union4 Planning

*Assisting with S106 and  
Conditions*

Michael Gallimore  
Ben Simpson

Hogan Lovells International LLP  
WYG

COBHAM GREEN BELT GROUP - THE RULE 6 PARTY

Adrian Wise

INTERESTED PERSONS:

Barrie Kirkman BSc CEng MIMechE	Local resident
Pamela Ling	Local resident
Mick Flannigan	Local resident
Councillor Christine Elmer	Ward Councillor
Councillor Christine Cross	Ward Councillor

**ANNEX B – ABBREVIATIONS USED IN THE REPORT**

APS	Annual Population Survey
CD	Core Document
CGBG	Cobham Green Belt Group
CS	Elmbridge Core Strategy 2011
CPRE	Campaign to Protect Rural England (Surrey branch)
DMP	Elmbridge Local Plan – Development Management Plan 2015
dpa	Dwellings per annum
ES	Environmental Statement
Framework	National Planning Policy Framework
GBBR	Green Belt Boundary Review
Guidance	Planning Policy Guidance
ha	Hectares
LDS	Local Development Scheme
LPEG	Local Plan Expert Group
LVIA	Landscape and Visual Impact Assessment
NO <sub>2</sub>	Nitrogen Dioxide
OAN	Objectively assessed need
OBR	Office for Budget Responsibility
ONS	Office for National Statistics
SCC	Surrey County Council
SHMA16	Kingston and North Surrey Strategic Housing Market Assessment
SNCI	Site of Nature Conservation Interest
SuDS	Sustainable drainage system
SWP	Surrey Waste Plan 2008
TA	Transport assessment
UU	Unilateral undertaking
5yrHLS	5 year housing land supply

**ANNEX C – DOCUMENTS*****Proofs of evidence***

<i>For the Council</i>	
Philip Leather	Proof of evidence, summary and rebuttal
Zoe Trower	Proof of evidence and rebuttal
Christopher Tunnell	Proof of evidence, summary, appendices and rebuttal
<i>For the appellant</i>	
Clive McDonnell	Proof of evidence and appendices
David Allen	Proof of evidence, summary and appendices
John Baker	Proof of evidence and summary
David Brooke	Proof of evidence, summary and appendices
Nick Stilwell	Proof of evidence, summary, appendices and rebuttal
Matthew Spry	Proof of evidence, appendices and rebuttal
Steven Fidgett	Proof of evidence, summary, appendices and rebuttal
<i>For the Rule 6 party</i>	
Adrian Wise	Proof of evidence and rebuttal

***Documents submitted at the Inquiry***

<i>The Council</i>	
LPA1	List of appearances
LPA2	Email correspondence between Philip Leather and Matthew Spry regarding proposed uplifts to the OAN for Elmbridge (22 September to 30 October 2017)
LPA3	Elmbridge Commercial Property Market Study Update Final Report July 2017
LPA4	Goodman Logistics Developments (UK) Limited v SSCLG and Slough Borough Council [2017] EWHC 947 (Admin)
LPA5	Land West of Castlemilk, Moreton Road, Buckingham Inquiry Ref APP/J0405/V/16/3151297
LPA6	Opening statement
LPA7	Letter from Robert Moran and Ray Lee to Steven Fidgett dated 17 October 2017, and email from Steven Fidgett to Robert Moran and Ray Lee dated 30 October 2017
LPA8	Philip Leather's note on projections of economic activity rates
LPA9	Zoe Trower's note in response to the Inspector's questions
LPA10	Extract of Hansard questions in the House of Commons 18 July 2016
LPA11	Extract from Annual Population Survey
LPA12	SCC's note on education
LPA13	Response to APP15 – Lichfield's document headed 'Corrected Council 5 Year Housing Land Supply Scenarios'
LPA14	Closing submissions and additional legal precedents
<i>The appellant</i>	
APP1	List of appearances
APP2	List of plans to be approved in the event the appeal is allowed

APP3	Summary of the Council's and appellant's positions on OAN and 5YrHLS for Elmbridge
APP4	A worked example of the affordability modelling
APP5	Lichfields note on economic activity rates for Elmbridge
APP6	Opening statement
APP7	Planning Resource article titled 'Sharma defends standardised methodology focus on affordability' dated 1 November 2017
APP8	Clive McDonnell's Landscape Masterplan presentation slides
APP9	Land at Oaklands College, St Albans Campus, St Albans - Ref APP/B1930/W/15/3051164 – Inspector's Report and Secretary of State's Decision Letter
APP10	David Brooke's note responding to questions on flood risk and drainage
APP11	Nick Stilwell's supplementary rebuttal note responding to the Inspector's questions and residents' concerns
APP12	Sarah Hodgson's note responding to Barrie Kirkman's statement in relation to dust
APP13	Sarah Hodgson's note responding to Barrie Kirkman's statement in relation to air quality
APP14	Roger Jones' note responding to Barrie Kirkman's statement in relation to noise
APP15	Corrected Council Five Year Housing Land Supply Scenarios
APP16	Annual Population Survey Data
APP17	Extracts from the Report on the Examination of the Canterbury District Local Plan
APP18	Sources for affordability modelling
APP19	Drawing highlighting potential amendments to the Green Belt
APP20	Closing submissions
<i>The Rule 6 party</i>	
CGG1	Opening statement
CGG2	Summary of evidence of Adrian Wise
CGG3	Closing submissions
<i>Other parties</i>	
BK1	Barrie Kirkman's presentation
BK2	Letter from Thames Water to Elmbridge Borough Council dated 11 July 2017
BK3	Barrie Kirkman's note of 11 November 2017
MF1	Statement of Mick Flannigan
CE1	Statement of Cllr Christine Elmer
CC1	Statement of Cllr Christine Cross
<i>Inquiry documents</i>	
ID1	Draft section 106 agreement with both Surrey County Council's and Elmbridge Borough Council's amendments
ID2	Revised list of plans to be approved in the event the appeal is allowed
ID3	Revised draft section 106 agreement (clean and tracked changes)
ID4	Draft Statement of Common Ground

ID5	Statement of Common Ground dated 7 November 2017
ID6	Draft section 106 agreement plans
ID7	Draft schedule of suggested planning conditions
ID8	Revised draft Section 106 agreement (including form of transfer) 10 November 2017
ID9	Revised draft Section 106 agreement with SCC's comments 10 November 2017
ID10	Draft CIL Compliance Statement (including open space and play space table) with EBC's and SCC's comments
ID11	Revised schedule of suggested planning conditions dated 13 November 2017
ID12	Final draft section 106 agreement (with track changes)
ID13	Final draft section 106 agreement (clean copy)
ID14	Agreed CIL Regulation 122 Compliance statement (track changes)
ID15	Agreed CIL Regulation 122 Compliance statement (clean copy)

***Documents submitted after the Inquiry***

PID1	Email from Hogan Lovells of 16 November 2017 with draft UU
PID2	Email from Adrian Wise of 27 November 2017
PID3	Email from Hogan Lovells of 6 December 2017 with associated email trail, final draft UU and note on positive planning obligations
PID4	Email from Hogan Lovells of 13 December 2017 with associated emails confirming agreement to minor changes to the section 106
PID5	Section 106 Agreement dated 12 December 2017
PID6	Unilateral Undertaking dated 12 December 2017
PID7	Email from SCC of 14 December 2017
PID8	Email from the Planning Inspectorate of 15 December 2017
PID9	Email from SCC of 15 December 2017 confirming delivery of UU
PID10	Email from the Council of 4 January 2018
PID11	Email from PINS of 4 January 2018
PID12	Email from Hogan Lovells and attached letter of 10 January 2018
PID13	Email from the Council and attached letter of 10 January 2018
PID14	Email from Hogan Lovells of 11 January 2018

***Core Documents A – Application Documents***

CD A1	Covering Letter dated 4 July 2016 prepared by WYG
CD A2	Planning Application Form prepared by WYG
CD A3	Climate Neutral Checklist
CD A4	Model Surface Water Drainage Statement dated 8 May 2015
CD A5	<p>Planning Drawings prepared by WYG and The Stilwell Partnership</p> <p><u>Location Plan</u></p> <p>Site Location Plan Drawing No. TSP_BAL_P2593_001A</p> <p><u>Indicative Masterplan</u></p> <p>Indicative Masterplan Drawing No. 205-14-01_REV C</p>

<p>Indicative Masterplan – Housing Type Layout Drawing No. 205-14-02_REV C</p> <p><u>Parameter Plans</u></p> <p>Parameter Plan – Access – Drawing No. 4368-003A Rev B</p> <p>Parameter Plan – Land Use – Drawing No. 4368-004A Rev A</p> <p>Parameter Plan – Density – Drawing No. 4368-005A Rev A</p> <p>Parameter Plan – Bus Routes – Drawing No. 4368-006A Rev A</p> <p>Parameter Plan – Heights – Drawing No. 4368-007A Rev A</p> <p>Parameter Plan – Character &amp; Legibility – Drawing No. 4368-008A Rev A</p> <p>Parameter Plan – Phasing – Drawing No. 4368-009A Rev A</p> <p>Parameter Plan – Cycle/Pedestrian Routes – Drawing No. 4368-010A Rev A</p> <p>Parameter Plan – Drainage – Drawing No. 4368-011A Rev A</p> <p><u>Landscape Plans</u></p> <p>Landscape Masterplan – Drawing No. DRK001 Rev1</p> <p>Landscape Strategy – Drawing No. DRK001A Rev2</p> <p>Amended Parameters Plan – Drawing No. DRK002 Rev2</p> <p>Green Areas – Landscape – Drawing No. DRK003A Rev2</p> <p>Sections 1 &amp; 4 – Drawing No. DRK004 Rev1</p> <p>Sections 2, 3A and 3B – Drawing No. DRK005</p> <p>Section 5 – Drawing No. DRK006</p> <p>Section 6 – Drawing No. DRK007</p> <p>Sections 7,8 &amp; 9 Drawing No. DRK008</p> <p>Zone A – Community Hub – Drawing No. DRK009 Rev1</p> <p>Zone B – Avenue &amp; Residential – Drawing No. DRK010 Rev1</p> <p>Zone C – Piazza &amp; Residential - Drawing No. DRK011</p> <p>Zone D – Open Meadow – Drawing No. DRK012</p> <p>Zone E – Park &amp; Play – Drawing No. DRK013 Rev3</p> <p>Zone F – Green Space Entrance – Drawing No. DRK014 Rev0</p> <p>Tree Typology Zone A – Drawing No. DRK015 Rev1</p> <p>Tree Typology Zone B – Drawing No. DRK016 Rev1</p>
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<p>Tree Typology Zone C – Drawing No. DRK017 Rev0 Tree Typology Zone D – Drawing No. DRK018 Rev0 Tree Typology Zone E – Drawing No. DRK019 Green Avenue View Open Space &amp; Landform Piazza View 1 Piazza View 2 Piazza View 3 Cafe Park View Community Hub View</p> <p><u>Sections Plans</u></p> <p>Masterplan and Sections Zone 1 Section AA-BB Zone 1 /2 Section CC-DD Zone 2 Section EE-FF Zone 2 Section GG-HH Zone 2 Section II-JJ Zone 2 Section KK-LL Zone 2 / 3 Section MM-NN Zone 3 Section OO-PP Zone 3 Section QQ-RR Zone 4 Section SS-TT Zone 4 / 5 Section UU-VV Zone 5 Section XX-WW Zone 5 Section YY-ZZ</p> <p><u>Transport Plans</u></p> <p>Redline Plan Drawing No. TSP_BAL_P2593_008 B Access Dimensions Drawing No. TSP_BAL_P2593_101C Walking and Cycling Route Improvements Drawing No. TSP_BAL_P2593_231B Rydens Road Drawing No. TSP_BAL_P2593_503C Site Accesses Drawing No. TSP_BAL_P2593_504D</p>
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CD A6	Design and Access Statement June 2016 prepared by Lime Associates and WYG
CD A7	Planning Statement July 2016 prepared by WYG
CD A8	Energy Statement June 2016 prepared by The Stilwell Partnership
CD A9	Retail Statement July 2016 prepared by WYG
CD A10	Statement of Community Involvement March 2015 prepared by Snapdragon Consulting
CD A11	Environmental Statement Chapter 1 Introduction and Appendices July 2016 prepared by WYG
CD A12	Environmental Statement Chapter 2 Site Description July 2016 prepared by WYG
CD A13	Environmental Statement Chapter 3 Proposed Development July 2016 prepared by WYG
CD A14	Environmental Statement Chapter 4 Assessment of Environment Effects and Appendices July 2016 prepared by WYG – includes: <ul style="list-style-type: none"> <li>• Archaeological and Historic Environment Statement May 2015</li> <li>• Further correspondence on Archaeological Statement August 2015</li> </ul>
CD A15	Environmental Statement Chapter 5 Socio Economics July 2016 prepared by WYG
CD A16	Environmental Statement Chapter 6 Alternatives July 2016 prepared by WYG
CD A17	Environmental Statement Chapter 7 Air Quality July 2016 prepared by WYG
CD A18	Environmental Statement Chapter 8 Ecology and Appendices July 2016 prepared by WYG – includes: <ul style="list-style-type: none"> <li>• Preliminary Ecological Appraisal 2014</li> <li>• Preliminary Roost Assessment 2014</li> <li>• Protected Species Surveys 2014</li> <li>• SNCI Status Assessment 2016</li> <li>• Winter Bird Surveys 2014-2015</li> </ul>
CD A19	Environmental Statement Chapter 9 Flood Risk, Water and Contamination and Appendices July 2016 prepared by WYG – includes: <ul style="list-style-type: none"> <li>• Drainage Strategy June 2016</li> </ul>
CD A20	Environmental Statement Chapter 10 Geotechnical Contamination and Appendices July 2016 prepared by WYG
CD A21	Environmental Statement Chapter 11 LVIA and Appendices July 2016 prepared by WYG
CD A22	Environmental Statement Chapter 12 Noise July 2016 prepared by WYG
CD A23	Environmental Statement Chapter 13 Transport and Appendices July 2016 prepared by WYG – includes:

	<ul style="list-style-type: none"> <li>• Construction Logistics Plan Framework (version 2) June 2016</li> <li>• Travel Plan Framework (version 3) June 2016</li> </ul>
CD A24	Environmental Statement Chapter 14 Conclusions and Residual Impacts July 2016 prepared by WYG
CD A25	Environmental Statement Non-Technical Summary July 2016 prepared by WYG
CD A26	Air Quality Assessment (version 1) June 2016
CD A27	Arboricultural Statement June 2016 prepared by ACS (Trees) Consulting
CD A28	Flood Risk Assessment June 2016 prepared by The Stilwell Partnership
CD A29	Geoenvironmental and Geotechnical Review July 2014 prepared by Patrick Parsons
CD A30	Noise Assessment (version 1) June 2016 prepared by The Stilwell Partnership
CD A31	Transport Assessment (version 2) June 2016 prepared by The Stilwell Partnership
CD A32	Transport Assessment Appendices (version 2) June 2016 prepared by The Stilwell Partnership
	<u>Further information submission to Elmbridge Borough Council – 30 August 2016</u>
CD A33	Covering emails between WYG and Elmbridge Borough Council from 20 July to 30 August 2016
CD A34	Air Quality Assessment (version 2) August 2016 prepared by The Stilwell Partnership
CD A35	Construction and Logistics Plan Framework (version 3) June 2016 prepared by The Stilwell Partnership
CD A36	LVIA Appendix 3 – Figure 1 Study Plan Area August 2016
CD A37	Noise Assessment (version 2) June 2016 prepared by The Stilwell Partnership
CD A38	Transport Assessment Appendices (version 3) June 2016 prepared by The Stilwell Partnership
CD A39	Travel Plan Framework (version 4) June 2016 prepared by The Stilwell Partnership
CD A40	<u>Landscaping Plans</u> Landscaping Strategy - Drawing No. DRK001A Rev3 Masterplan - Drawing No. DRK001 Rev3 Amended Parameters Plan - Drawing No. DRK002 Rev3 Green Area - Drawing No. DRK003 Rev3 Sections 1 and 4 - Drawing No. DRK004 Rev 2 Section 5 - Drawing No. DRK006 Zone A - Community Hub - Drawing No. DRK009 Rev2 Zone B - Avenue and Residential - Drawing No. DRK010 Rev1 Zone E - Park and Play - Drawing No. DRK013 Rev3 Zone F - Green Space Entrance - Drawing No. DRK014 Rev1

	Tree Typology - Zone A - Community Hub - Drawing No. DRK015 Rev2 Tree Typology - Zone E - Park and Play - Drawing No. DRK019 Rev3 Tree Typology - Zone F - Green Space - Drawing No. DRK020 Rev1
	<u>Further information submission to Elmbridge Borough Council and Surrey County Council – 14 September 2016</u>
CD A41	Covering Letter dated 14 September 2016
CD A42	Transport Assessment Addendum (version 1) September 2016 prepared by The Stilwell Partnership
CD A43	Travel Plan Framework with Appendices (version 5) August 2016 prepared by The Stilwell Partnership
	<u>Further information submission to Elmbridge Borough Council and the Planning Inspectorate – 29 September 2017</u>
CD A44	Covering emails to the Planning Inspectorate and Elmbridge Borough Council dated 29 September 2017
CD A45	Indicative Masterplan – Housing Type Layout Drawing No. 205-14-02_REV F
CD A46	Revised Parameter Plans: Parameter Plan – Access – Drawing No. 4368-003 Rev C Parameter Plan – Land Use – Drawing No. 4368-004 Rev B Parameter Plan – Density – Drawing No. 4368-005 Rev B Parameter Plan – Bus Routes – Drawing No. 4368-006 Rev B Parameter Plan – Heights – Drawing No. 4368-007 Rev B Parameter Plan – Character & Legibility – Drawing No. 4368-008 Rev B  Parameter Plan – Phasing – Drawing No. 4368-009 Rev B Parameter Plan – Cycle/Pedestrian Routes – Drawing No. 4368-010 Rev B  Parameter Plan – Drainage – Drawing No. 4368-011 Rev B

***Core Documents B – procedural/administrative documents***

CD B1	Report to Joint North and East Area Planning Sub-Committee dated 9 November 2016
CD B2	Consultation Late Letters and Update Sheet to Joint North and East Area Planning Sub-Committee dated 21 November 2016
CD B3	Minutes of Sub-Committee Meeting of 21 November 2016
CD B4	Decision Notice dated 22 November 2016
CD B5	Appeal Form dated 24 March 2017 and email correspondence with the Planning Inspectorate dated 27-28 March 2017
CD B6	Planning Inspectorate's Letter dated 12 May 2017
CD B7	Secretary of State's Recovery Letter dated 19 June 2017

CD B8	Inspector's Pre-Inquiry Note dated 4 September 2017
CD B9	Bespoke Timetable

***Core Documents C – National Policy and Guidance***

CD C1	National Planning Policy Framework dated 27 March 2012, as amended
CD C2	Extracts from Planning Practice Guidance: <ul style="list-style-type: none"> <li>Housing and economic development needs assessments: Paragraph 001 (ID: 2a-001-20140306) to Paragraph 037 (ID: 2a-037-20140306)</li> <li>Housing and economic land availability assessments Paragraph 001 (ID: 3-001-20140306) to Paragraph 042 (ID: 3-042-20140306)</li> </ul>
CD C3	Housing White Paper – Fixing Our Broken Housing Market dated February 2017
CD C4	Office for Budget Responsibility's Working Paper No. 6: Forecasting House Prices dated July 2014
CD C5	National Planning Policy for Waste dated October 2014
CD C6	Planning Policy Guidance 2: Green Belts
CD C7	MHLG Circular 42/55
CD C8	Local Plans Expert Group Report to the Communities Secretary and to the Minister of Housing and Planning and Appendix 6 dated March 2016

***Core Documents D – London Policy and Guidance***

CD D1	Inspector's Report to the Mayor of London on the Further Alterations to the London Plan dated 18 November 2014
CD D2	The 2013 London Strategic Housing Market Assessment (extracts only – Section 3)
CD D3	Chapter 3 (London's People) of the London Plan dated March 2016
CD D4	Housing Supplemental Planning Guidance to the London Plan March 2016 (extracts only – paragraph 1.1.15 and Part 3)

***Core Documents E – Elmbridge Borough Council Policy and Guidance***

CD E1	Core Strategy dated 2011
CD E2	Core Strategy Addendum: Regional Spatial Strategy Conformity Statement dated December 2010
CD E3	Development Management Plan dated April 2015
CD E4	Design and Character Supplementary Planning Document, the Companion Guide: The Character of Elmbridge (An Overview), and the Companion Guide: Walton on Thames dated April 2012
CD E5	Green Belt Boundary Review (including annexes) prepared by ARUP dated 14 March 2016
CD E6	Authority Monitoring Report 2015/2016 dated November 2016
CD E7	Elmbridge Strategic Flood Risk Assessment (and appendices)

	dated June 2015
CD E8	Elmbridge Land Availability Assessment dated September 2016
CD E9	Elmbridge's Countryside Sites
CD E10	Inspector's Report on the Examination into the Elmbridge Core Strategy and Development Plan Document dated 13 June 2011
CD E11	Elmbridge Corporate Asset Management Plan 2014-2017

***Core Documents F – Emerging Local Plan Documents***

CD F1	Elmbridge Local Plan: Draft Local Development Scheme 2016 - 2019 dated September 2016
CD F2	Elmbridge Local Plan: Strategic Options Consultation (Regulation 18) dated December 2016
CD F3	Elmbridge Local Plan: Alternative Development Options dated September 2016
CD F4	Letter from Elmbridge Borough Council to the Secretary of State dated 22 February 2017 and Response Letter from the Secretary of State to Elmbridge Borough Council dated 20 March 2017 regarding the Housing White Paper and Elmbridge's Local Plan
CD F5	Elmbridge Local Plan: Position Statement dated July 2017
CD F6	Representations made by the owners of the Weylands Waste site to the Elmbridge Local Plan Strategic Options Consultation
CD F7	Elmbridge Local Plan: Exceptional Circumstances Case dated September 2016
CD F8	Elmbridge Local Plan Policy Topic Paper dated December 2016
CD F9	Elmbridge Local Plan: Sustainability Appraisal Scoping Report and Initial Assessment of Spatial Strategy Options dated December 2016
CD F10	Elmbridge Open Space and Recreation Assessment Final Report dated October 2014
CD F11	Elmbridge Local Plan: Review of Absolute Constraints Methodology and Report (and appendices) dated September 2016

***Core Documents G – Other policy and guidance***

CD G1	The Strategic Housing Market Assessment for Kingston-upon-Thames and North East Surrey Authorities dated June 2016
CD G2	Surrey Waste Plan 2008
CD G3	Surrey Landscape Character Assessment: Elmbridge Borough dated April 2015
CD G4	Surrey Transport Plan – Executive Summary dated February 2016
CD G5	Surrey Transport Plan – Passenger Transport Strategy – Part 1 – Local Bus dated July 2014
CD G6	Surrey Transport Plan – Passenger Transport Strategy – Part 2 – Information dated July 2014
CD G7	Surrey County Council – Surrey Rail Strategy dated

	12 September 2013
CD G8	Surrey Transport Plan – Cycling Strategy 2014-2026
CD G9	Surrey Transport Plan – Congestion Strategy dated July 2014
CD G10	Surrey County Council Corporate Strategy 2017-2022
CD G11	Surrey Transport Plan Elmbridge Local Transport Strategy and Forward Programme dated September 2014
CD G12	Surrey County Council – Local Transport Review 2016
CD G13	Streets Apart: Growing up on the margins in Elmbridge

***Core Documents H – Appellant's Core Documents***

CD H1	Appellant's Updated Statement of Case dated June 2017
CD H2	Minutes of Surrey Local Sites Partnership Meeting of 29 March 2017 (extract)
CD H3	Representations made by the Appellant to the Elmbridge Local Plan Strategic Options Consultation
CD H4	Drake Park – Site Green Belt Connectivity drawing

***Core Documents I – Elmbridge Borough Council's Core Documents***

CD I1	Elmbridge Borough Council's Statement of Case dated 23 June 2017
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***Core Documents J – Correspondence/documents relating to the application***

CD J1	Letter from WYG to EBC dated 11 October 2016 regarding response to consultee comments
CD J2	Letter from WYG to EBC dated 27 October 2016 regarding the Construction Management Plan and secondary access to/from Fieldcommon Lane
CD J3	Letter from WYG to EBC dated 2 November 2016 regarding further response to consultee comments
CD J4	Emails between WYG and EBC dated 10-26 January 2017 regarding SNCI status
CD J5	Emails between WYG, EBC, SWT and SLSP dated 6 November 2015 to 10 February 2017 regarding SNCI review
CD J6	Third Party comments/representations (under cover of Planning Inspectorate letter dated 18 July 2017)
CD J7	Surrey County Council's Highways Consultation Response dated 23 September 2016
CD J8	Surrey Wildlife Trust's Consultation Response dated 3 November 2016
CD J9	Clare Smith, Elmbridge's Heritage, Landscape and Tree Manager, Consultation Response dated 3 August 2016
CD J10	Third Party comments/representations (under cover of Planning Inspectorate emails and received on 4 and 5 October 2017)
CD J11	Comment from Mr Mick Flannigan (under cover of Planning Inspectorate email of 12 October 2017)

**Core Documents K – Cases and appeal decisions**

CD K1	John Turner v SSCLG and East Dorset Council [2016] EWCA Civ 466
CD K2	St Albans and District Council v Hunston Properties Ltd and SSCLG [2013] EWCA Civ 1610
CD K3	Suffolk Coastal District Council v Hopkins Homes Limited and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2016] EWCA Civ 168
CD K4	Suffolk Coastal District Council v Hopkins Homes Limited and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37
CD K5	Forest of Dean District Council v SSCLG and Gladman Developments Ltd [2016] EWHC 421 (Admin)
CD K6	Phides Estates (Overseas) Limited v SSCLG, Shepway District Council and David Plumstead [2015] EWHC 827 (Admin)
CD K7	Gallagher Homes Limited and Lioncourt Homes Limited v Solihull Metropolitan Borough Council [2014] EWHC 1283
CD K8	West Berkshire District Council v SSCLG & HDD Burghfield Common Ltd [2016] EWHC 267
CD K9	Satnam Millennium Limited and Warrington Borough Council [2015] EWHC 370
CD K10	Kings Lynn and West Norfolk Borough Council v SSCLG and Elmpark Holdings Ltd [2015] EWHC 2464
CD K11	Oadby and Wigston Borough Council and SSCLG and Bloor Homes Ltd [2016] EWCA Civ 1040
CD K12	Wainhomes (South West) Holdings Limited and SSCLG v Wiltshire Council and Christopher Cornell and Sarah Cornell [2013] EWHC 597
CD K13	Reigate and Banstead Borough Council v SSCLG and Amtrose Limited [2017] EWHC 1562 (Admin)
CD K14	SSCLG, Reigate and Banstead Borough Council, Tandridge District Council v Redhill Aerodrome Limited [2014] EWCA Civ. 1386
CD K15	St Modwen Developments Limited v SSCLG, East Riding of Yorkshire Council, and Save Our Ferriby Action Group [2016] EWHC 968 (Admin)
CD K16	Former Weyburn Works Inquiry ref APP/R3650/W/16/3150558
CD K17	Money Hill Inquiry ref APP/G2435/A/14/2228806
CD K18	Land south of Jotmans Lane, Benfleet Inquiry ref APP/M1520/A/14/2216062
CD K19	Watery Lane, Curborough, Lichfield Inquiry ref APP/K3415/A/14/2224354
CD K20	Two sites at land to the west of Langton Road Inquiry: Site A (ref APP/Y2736/W/15/3136233) and Site B (ref APP/Y2736/W/15/3136237)
CD K21	Luton Borough Council v Central Bedfordshire Council and Ors

	[2015] EWCA Civ 537
CD K22	Stane Gate, Surrey Inquiry ref APP/C3620/W/16/3155493
CD K23	Two sites at land at Colden Common Inquiry: land adjacent to Main Road (ref APP/L1765/W/16/3141664) and land to east of Lower Moors Road (ref APP/L1765/W/16/3141667)
CD K24	Land off Burndell Road Inquiry ref APP/C3810/V/16/3158261
CD K25	Trustees of the Barker Mill Estates v Test Valley Borough Council and SSCLG [2016] EWHC 3028 (Admin)

### ***Core Documents L - Miscellaneous***

CD L1	Planned and Deliver – Local Plan-making under the NPPF: A five-year progress report by Lichfields dated April 2017
CD L2	Inspector's Report on the Examination into East Hampshire District Local Plan Joint Core Strategy dated 15 April 2014
CD L3	Inspector's Report on the Examination into Eastleigh Borough Local Plan dated 11 February 2015
CD L4	Inspector's Report on the Examination into the Lichfield District Local Plan: Strategy dated 16 January 2015
CD L5	Inspector's Interim Conclusions on the Mid Sussex District Plan 2014-2031 Housing Requirement dated 20 February 2017
CD L6	Wider Bristol Housing Market Area Strategic Housing Assessment 2015: Commentary by Glen Bramley
CD L7	Housebuilding, demographic change and affordability as outcomes of local planning decisions; exploring interactions using a sub-regional model of housing markets in England, Bramley & Watkins dated 2 October 2014
CD L8	Planning for the right homes in the right places: consultation proposals (Sep 2017)
CD L9	Start to Finish: How quickly do large scale housing sites deliver? by Lichfields dated November 2016
CD L10	A Long-Run Model of Housing Affordability by the University of Reading dated May 2011
CD L11	Review of Housing Supply – Delivering Stability: Securing our Future Housing Needs prepared by Kate Barker dated March 2004
CD L12	Developing a target range for the supply of new homes across England prepared by NHPAU dated October 2007
CD L13	Building more homes, House of Lords Select Committee on Economic Affairs dated 15 July 2016
CD L14	The Redfern Review into the decline of home ownership dated 16 November 2016
CD L15	Forecasting UK house prices and home ownership – a report for the Redfern Review into the decline of home ownership, Oxford Economics dated November 2016
CD L16	Abellio Surrey Service Change Release 2 September 2017
CD L17	Planning on the Doorstep: The Big Issues – Green Belt,

	prepared the Local Government Association and the Planning Advisory Service dated February 2015
CD L18	Home Affront: Housing across the generations by Resolution Foundation and Intergenerational Commission dated September 2017
CD L19	Certificate of Lawful Use or Development dated 6 December 1996 in respect of land at Weylands Sewage Treatment Works (ref EL96/0896)
CD L20	Planning and Regulatory Committee Summary Report dated 23 April 2014 in respect of the Weylands Treatment Works (ref EL/2013/1251)
CD L21	Decision Notice dated 30 April 2014 in respect of the Weylands Treatment Works (ref EL/2013/1251)
CD L22	Objectively Assessed Need and Housing Targets Technical Advice Note by the Planning Advisory Service dated July 2015
CD L23	House of Lords Oral Answers on Housing: Planning Laws

***Core Documents M – Cobham Green Belt Group's Statement of Case***

CD M1	Cobham Green Belt Group's Statement of Case dated 25 July 2017
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## ANNEX D – CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority in respect of each phase of the development before any development takes place within the relevant phase and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters for the first phase of the development shall be made to the local planning authority not later than one year from the date of this permission. Application for all of the remaining phases of the development shall be made to the local planning authority not later than three years from the date of this permission.

The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters for the first phase.

- 3) The development hereby permitted shall be carried out in accordance with the following list of approved plans:

TSP/BAL/P2593/008 rev B - Red Line Plan

4368/003/C - Parameter Plan – Access and Movement

4368/004/B - Parameter Plan – Land Use

4368/005/B - Parameter Plan – Density

4368/006/B - Parameter Plan – Bus Routes

4368/007/B - Parameter Plan – Building Heights

4368/008/B - Parameter Plan – Character Zones and Legibility

4368/009/B - Parameter Plan – Phasing

4368/010/B - Parameter Plan – Cycle Routes

4368/011/B – Parameter Plan – Drainage Strategy

TSP/BAL/P2593/101 rev C - Proposed Site Access Plan

TSP/BAL/P2593/504 rev D – Proposed Road Improvements Molesey Road

TSP/BAL/P2593/503 rev C - Rydens Road Highway Improvements

- 4) Prior to the submission of the first of the reserved matters application(s), a Site Wide Master Plan shall be submitted to and approved in writing by the local planning authority. The Site Wide Master Plan shall reflect the broad principles shown on drawing number 205-14-02\_REV F and provide (but not be limited to) the following elements:
  - a) layout of all internal roads
  - b) layout of public footpaths and cycleways
  - c) layout of public realm
  - d) layout of open space

- No development shall commence (apart from enabling works that have first been agreed in writing by the local planning authority) until such time as the Site Wide Master Plan has been approved in writing by the local planning authority.
- 5) The doctor's surgery, dentist's surgery, pharmacy and office space shall be completed to shell and core ready for tenant fit-out together with associated car parking and servicing in accordance with any relevant reserved matters approval prior to the occupation of the 400th dwelling hereby approved.
  - 6) Prior to the submission of the first of the reserved matters application(s) a detailed Design Code and Design Statement shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Design Code and Design Statement.
  - 7) No development shall commence until details of how the development is to meet the requirements of Secured by Design have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and permanently retained as such thereafter.
  - 8) No non-residential building shall be occupied until a certificate has been issued certifying that BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme) rating '*Very Good*' has been achieved for this development.
  - 9) No development in any phase shall be carried out until a schedule and samples of materials and finishes to be used for the external walls and roofs of the proposed buildings in the relevant phase have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 10) No development shall commence until a site wide housing mix has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved site wide housing mix.
  - 11) No development shall commence until a drainage scheme detailing all on-site and off-site drainage works has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved drainage scheme and no discharge of foul or surface water from the site shall be accepted into the public system until the approved drainage scheme has been implemented.
  - 12) No development shall commence until a sustainable drainage scheme has been submitted to and approved in writing by the local planning authority. The sustainable drainage scheme shall include:
    - a) a ground investigation report including infiltration rates, groundwater levels and any soil contamination
    - b) a report of proposed catchment areas and corresponding storage volumes for each infiltrating/attenuating sustainable drainage feature (including swales, detention basins and permeable paving) that

corresponds with the micro drainage calculations and drainage layout plan

- c) a report of the proposed volume control and method of discharge from the site into the River Mole

Development shall be carried out in accordance with the approved sustainable drainage scheme.

- 13) The finished floor levels of the dwellings shall be set a minimum of 300mm above the 1: 100 year plus climate change flood level.
- 14) Ground levels shall not be raised in any part of the site within flood zone 2 or 3 unless a scheme which demonstrates that flood mitigation in the form of compensation can be provided has first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with any such approved scheme.
- 15) The development hereby approved shall not be first occupied until the proposed vehicular accesses to Molesey Road have been constructed and provided with visibility zones in accordance with the approved drawing TSP/BAL/P2593/101 revision C. Thereafter the visibility zones shall be permanently retained as approved and kept clear of any obstruction over 1.05m high.
- 16) The development hereby approved shall not be first occupied until the existing vehicular access from the site to Fieldcommon Lane has been permanently closed and any kerbs, verges and/or footways have been reinstated.
- 17) Notwithstanding what is shown on the Parameter Plans, no vehicular accesses shall be formed to Fieldcommon Lane unless details of any such access have first been submitted to and approved in writing by the local planning authority.
- 18) No phase of the development hereby approved shall be first occupied until a scheme for vehicles to be parked, for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave the site in forward gear has been submitted to and approved in writing by the local planning authority. The parking, loading and unloading and turning areas shall be laid out as approved prior to the first occupation of the relevant phase and shall thereafter be permanently retained and kept available for their designated purposes.
- 19) No phase of the development hereby approved shall be first occupied until a suitable internal road layout (to include any bus stops and any necessary parking restrictions) has been provided within the relevant phase to enable a bus route to penetrate the site in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 20) No development shall commence until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include:
  - a) parking for vehicles of site personnel, operatives and visitors
  - b) loading and unloading of plant and materials
  - c) storage of plant and materials

- d) programme of works (including measures for traffic management)
- e) provision of boundary hoarding behind any visibility zones
- f) hours of operation for construction vehicles and deliveries or collection of plant, materials and site waste
- g) vehicle routing
- h) measures to prevent the deposit of materials on the highway
- i) before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused
- j) on-site turning for construction vehicles

The approved CTMP shall be adhered to throughout the construction of the development hereby permitted.

- 21) No phase of the development hereby approved shall be first occupied until facilities for the secure parking of bicycles within the relevant phase have been provided in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. Thereafter the approved facilities shall be permanently retained and kept available for the parking of bicycles.
- 22) No development shall commence until a site wide travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be generally in accordance with the sustainable development aims and objectives of the National Planning Policy Framework, Surrey County Council's *Travel Plans Good Practice Guide* and the *Travel Plan Framework* (document V5.0 dated August 2016) submitted as part of the Transport Assessment. The approved travel plan shall be implemented before the first occupation of the development hereby approved and shall thereafter be implemented as approved.
- 23) No development shall commence until a Tree Survey and an Arboricultural Impact Assessment have been submitted to and approved in writing by the local planning authority. The Tree Survey and Arboricultural Impact Assessment shall conform to BS5837:2012 and shall include details of:
  - a) existing trees and hedges to be retained
  - b) existing and proposed hard surfaces, walls, fences, access features and ground levels
  - c) measures to be taken to protect existing trees and hedges during demolition, site remediation and construction (including a tree protection plan and an arboricultural method statement)
  - d) arrangements for a pre-commencement meeting between the Council and the applicant's project arboriculturalist to allow inspection and verification of the tree protection measures

The approved tree protection plan and arboricultural method statement shall be adhered to throughout the demolition, site remediation and construction phases of the development.

- 24) In this condition 'retained tree' means an existing tree or hedge which is to be retained in accordance with the details approved pursuant to condition

23(a). Paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the first occupation of the development.

- a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority. Any pruning shall be carried out in accordance with British Standard 3998 (tree work) and in accordance with the approved arboricultural method statement.
  - b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place in the next planting season and that tree shall be of such size (subject to a maximum 35cm girth) and species as may be specified in writing by the local planning authority.
- 25) No development shall take place within any phase until details of earthworks for that phase have been submitted to and approved in writing by the local planning authority. The details shall include the proposed grading and mounding of land, the levels and contours to be formed and the relationship of the earthworks to existing vegetation and surrounding landform. Development shall be carried out in accordance with the approved details.
- 26) No development shall commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall be generally in accordance with the ecological measures for mitigation, compensation and enhancement set out in section 8.7 of the Environmental Statement and shall include the following:
- a) description and evaluation of features to be managed
  - b) ecological trends and constraints that might influence management
  - c) aims and objectives of management
  - d) management options for achieving aims and objectives
  - e) prescriptions for management actions, together with a plan of management compartments
  - f) a work schedule (including an annual work plan capable of being rolled forward over a five year period)
  - g) arrangements for securing the implementation of the LEMP
  - h) arrangements for monitoring and remedial action if the results from monitoring show that the conservation aims and objectives of the LEMP are not being met
- The LEMP shall be implemented as approved.
- 27) No development shall commence until a planning application for the proposed bridge over the River Mole (shown indicatively on approved drawing 4368/003/B) has been submitted to the local planning authority and planning permission for the bridge has been granted.

- 28) No more than 400 of the dwellings hereby approved shall be occupied until the bridge referred to in Condition 27 has been constructed in accordance with the relevant planning permission and made available for use.
- 29) No demolition, site remediation, ground clearance or vegetation clearance works shall take place within the bird nesting season (between 1 March and 31 August inclusive in any year) unless (in the event that such works cannot be undertaken outside the nesting season) a nesting bird check has first been undertaken by a suitably qualified ecologist immediately prior to the works taking place. If any active nest sites are identified, these nests should remain undisturbed until all the young have fledged naturally.
- 30) No development shall commence (including demolition, remediation, ground works or 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 be generally in accordance with the measures for mitigation, compensation and enhancement set out in section 8.7 of the Environmental Statement and shall include the following:
- a) risk assessment of potentially damaging construction activities
  - b) identification of biodiversity protection zones
  - c) measures to avoid or reduce impacts during construction (both physical measures and sensitive working practices)
  - d) the location and timing of sensitive works to avoid harm to biodiversity features
  - e) the times during construction when specialist ecologists need to be present to oversee works
  - f) responsible persons and lines of communication
  - g) the role and responsibilities on site of an ecological clerk of works
  - h) use of protective fences, exclusion barriers and warning signs
- The approved CEMP shall be adhered to throughout the construction period.
- 31) No development within any phase shall commence until details of public open spaces within the relevant phase have been submitted to and approved in writing by the local planning authority. The details shall include the layout and boundaries of such areas, their proposed use, any items of equipment, means of enclosure, any other structures to be installed and a timetable for provision of the public open spaces. Development shall be carried out in accordance with the approved details.
- 32) No development in any phase shall be occupied until street lighting has been installed in accordance with a scheme for the relevant phase which has been submitted to and approved in writing by the local planning authority. The scheme shall generally accord with the Institute of Lighting Engineers guidance notes for the reduction of obtrusive light.
- 33) No development shall commence until step [A] below has been carried out. The other steps set out below shall be carried out within the timescales indicated.

[A] *Site investigation, Method Statement and remediation*

- i. A written desk top study of the site shall be carried out and a scheme of site investigation shall be designed using the information obtained from the desk top study. This shall provide details of investigations for soil, gas and controlled waters where appropriate and shall be submitted to and approved in writing by the local planning authority.
- ii. The scheme of site investigation shall be undertaken as approved. Based on the results of the site investigation, a refined conceptual model and a risk assessment of any contamination found shall be submitted to and approved in writing by the local planning authority.
- iii. A written Method Statement detailing any remediation requirements shall be submitted to and approved in writing by the local planning authority.

[B] *Development in accordance with the Method Statement*

The development of the site shall be carried out in accordance with the approved Method Statement and any addenda submitted to and agreed in writing by the local planning authority. Any post remediation monitoring identified in the Method Statement shall be installed, maintained and operated in accordance with the timescales identified in the Method Statement.

[C] *Unsuspected contamination*

If, during development, contamination not previously identified is found to be present then no further development shall be carried out until a written addendum to the Method Statement detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the local planning authority.

[D] *Imported material*

Clean, uncontaminated rock, soil, brick rubble, crushed concrete or ceramic only shall be permitted as infill material. No material shall be imported until a sampling program has been submitted to and approved in writing by the local planning authority.

[E] *Piling*

No development shall commence until the method for piling foundations (if piling is to be used) has been submitted to and approved in writing by the local planning authority. Piling shall be undertaken only in accordance with the approved method.

[F] *Completion of remediation*

Upon completion of the remediation detailed in the Method Statement, and before occupation of any part of the site by any end user, a written report shall be submitted to and approved in writing by the local planning authority. The report shall provide verification that the remediation works and the installation of post remediation monitoring have been carried out in accordance with the approved Method Statement and any addenda thereto.

[G] *Certificate of completion*

Before occupation of any part of the site by any end user a certificate of completion shall be provided to the local planning authority. The certificate shall be signed by an appropriately qualified person and shall state that remediation has been carried out in accordance with the approved Method Statement and that the site is suitable for the permitted end uses.

- 34) No development shall commence until a Scheme to mitigate the impacts of the adjoining Weylands waste treatment works on the dwellings hereby approved has been submitted to and approved in writing by the local planning authority.

Prior to submission of the Scheme, monitoring of the impacts of the adjoining Weylands waste treatment works shall be carried out in accordance with details which have first been submitted to and approved in writing by the local planning authority.

The monitoring shall establish the nature and intensity of any impacts of noise, vibration, dust and odour. The Scheme shall demonstrate how those impacts would be mitigated.

The Scheme shall be implemented as approved prior to the occupation of any of the dwellings hereby approved and shall thereafter be permanently retained as such.

*End of conditions*



# Ministry of Housing, Communities & Local Government

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

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

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

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

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

## **SECTION 2: ENFORCEMENT APPEALS**

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

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

## **SECTION 3: AWARDS OF COSTS**

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

## **SECTION 4: INSPECTION OF DOCUMENTS**

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