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## Appeal Decision

Inquiry held on 21 - 24 and 27 - 29 June 2016

Site visits made on 20, 27 and 29 June 2016

**by David L Morgan BA MA (T&CP) MA (Build Con) (IoAAS) MRTPI IHBC**

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

**Decision date: 24 August 2016**

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**Appeal Ref: APP/N1730/W/15/3127962**

**Moulsham Lane, Yateley, Hampshire GU46 7RA**

- 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 Wellbeck Strategic Land LLP against the decision of Hart District Council.
  - The application Ref 14/02281/MAJOR, dated 26 September 2014, was refused by notice dated 24 February 2015.
  - The development proposed is outline permission for the development of the site for residential use together with associated landscaping, open space and details of access.
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### Decision

1. The appeal is allowed and planning permission is granted for the development of the site for residential use together with associated landscaping, open space and details of access at Moulsham Lane, Yateley, Hampshire GU46 7RA in accordance with the terms of the application, Ref 14/02281/MAJOR, dated 26 September 2014, subject to the conditions set out in the schedule attached to this decision.

### Procedural matters

2. The planning application was submitted in outline with all matters save access reserved. I have therefore determined the appeal on this basis. Although the Statement of Common Ground (SoCG) refers to only one plan, 'the parameter plan' ref:1213/C101G, at the Inquiry it was confirmed that detailed matters of access to the site as set out in drawing nos. ITB7035-GA-111A and ITB7035-GA115B were also presented for determination. Again therefore this is the basis on which I have determined the appeal. However, a considerable number of supplementary plans, including layouts, have been submitted with the evidence. In respect of general matters, these are to be considered as indicative, except insofar as where they relate specifically to obligations set out in the section 106 Agreement, to which I refer further below.
3. A signed and dated section 106 agreement has been submitted by the appellant facilitating financial contributions to and provision of local infrastructure, specifically in respect of education, the monitoring and provision of highway infrastructure, the management of the proposed Suitable Alternative Natural Green space (SANG) and the provision of affordable housing on the site. I consider these in more detail below in the fourth main issue.

4. In light of the submission of the section 106 agreement and as set out in the SoCG and the Transport Statement of Common Ground (TSoCG), reasons for refusal nos. 4, 5 and 6 as set out on the Council's 24 February 2015 decision notice were no longer defended by the Council. With specific regard to leisure provision set out in reason for refusal 4, the Council also confirmed at the Inquiry that they no longer wished to pursue a contribution in this regard and this is not addressed in the section 106 agreement.
5. It is also agreed in the SoCG that the issues identified in reason for refusal no 2 of the decision notice, specifically the effect of the development on highway safety, its impact on the local transport network and the effect of highway improvements on the character and appearance of the area, would also no longer be defended by the Council. The residual elements of reason for refusal no 2, specifically the effects on the living conditions of local residents and the location of the development in respect of access to public transport modes, are addressed in main issues b) and c) below. Notwithstanding the Council's view, third parties continued to express concerns in respect of highway safety and the character of the area and these are accordingly addressed under 'Other matters' below.
6. Similarly the SoCG also confirms that reason for refusal 3 in respect of flooding, subject to the attachment of conditions, has also been overcome, and is therefore no longer defended by the Council. This position is not however accepted by third parties, and is consequently also addressed below.
7. It was also agreed in the SoCG that reason for refusal 7 on the decision notice 'is capable of being overcome through the provision of the SANG and appropriate mechanisms for its subsequent transfer and management. Through the provisions of the section 106 agreement the Council accepted at the Inquiry that reason for refusal 7 had been overcome, and consequently no longer sought to defend it. I nevertheless address this and the other matters relating to the section 106 agreement in main issue d) below.

### **Main Issues**

8. These are a) The effect of the proposed development on the Blackwater Gap between Yateley and the County boundary (both physically and visually) and its effect on the character and setting of the countryside, b) the effect of the proposed development on the living conditions of occupiers of dwellings in Coombe Road, 36 Moulsham Lane and 2 River Road, with specific regard to the 'subjective impacts' of the development with regard to these properties, c) whether or not the proposal can be considered a sustainable location for development with specific regard to public transport nodes, d) Whether the proposal makes provision for financial contributions and physical infrastructure to mitigate the effects of the development, so making the development acceptable in planning terms and e) whether there are any other material considerations, including any benefits the development would bring, and specifically whether the policies of the development plan can or cannot be considered up to date and whether the presumption in favour of sustainable development set out in paragraph 14 of the Planning Policy Framework (henceforth referred to as 'the Framework') is engaged, thus justify the development being determined other than in accordance with them.

## Reasons

### *Site and context*

9. The appeal site comprises a parcel of just over 11 hectares located on the northern periphery of Yateley. This is a substantial settlement which, although having the large open Green at its heart accompanied by a scattered collection of attractive historic buildings, is essentially defined by extensive areas of post-war housing. The site itself abuts both part of the northern boundary of the settlement and the Yateley Green Conservation Area.
10. For approximately three quarters of its length the western boundary of the site abuts the rear gardens of properties along Moulsham Lane. Here the leafy character of the approaches to the site is maintained, though with a greater degree of rusticity. At its junction with Moulsham Copse Lane this sense of growing rurality is most apparently perceived, with an attractive enclave of grass and trees providing the approach to the bridle path that heads north into the woods and lakes of the Blackwater River valley floor.
11. However, on each side of this enclave the modern high density suburban housing of River Road, Coombe Road and Blaire Park push on north beyond the limits of Moulsham Lane, clearly defining this northern spur or headland of the settlement where it meets the valley floor. To the east, off Chandlers Way, the substantial houses of Broome Close skirt the lower eastern boundary of the appeal site, whilst the higher density modern development returns along the southern side of Chandlers Way, again reaching an apex at its junction with Mill Lane, where it almost matches the most northerly extent of the development at Blaire Park to the west. This residential formation in effect comprises a second spur or headland, with the appeal site forming a *coomb* or *bay* between the two. The remaining eastern and northern elements of the site boundary are enclosed by the Yateley Golf Club, where the third and fifth holes lie beyond a belt of mature deciduous planting.
12. The site itself, almost completely skirted by trees along its boundary, comprises two essential elements. The greater part is formed of open unimproved grassland, apparently used for both the keeping of horses and the production of fodder, and an inner enclave, comprising the now infilled former quarry or pit and a collection of utilitarian structures, apparently used for vehicle storage and the quartering of the horses. The former pit area currently facilitates the storage of heaps of spoil, abandoned agricultural or plant machinery and processed firewood. This area is itself bounded by stands of mature deciduous trees.

### *The proposals*

13. Although the application was submitted in outline with matters of access only to be determined, the parameters plan (1213/C101G) unambiguously separates the site into two elements. Housing, comprising up to 150 units of which 40% will be affordable houses, is to be located on 5.91 hectares on the northern part of the site. The remaining southern component, comprising 5.11 hectares, will form an area of the SANG, open to the public and accessed from the main vehicular access from Coombe Road and a pedestrian/emergency access located to the south along Moulsham Lane.

*The effect of the proposed development on the Blackwater Gap between Yateley and the county boundary and its effect on the character and setting of the countryside.*

14. The appeal site lies outside the settlement boundary of Yateley as defined in the Hart District Local Plan (Replacement) 1996 and the First Alteration to the Hart District Local Plan (Replacement) 1996-2006 (LP) proposals map and, by the same reference, within what the plan terms 'open countryside'. Management of development in this context is covered by policies RUR1, which explains that settlement boundaries have been drawn to 'enclose the built fabric of the settlement or the separate clusters of dwellings', although the explanatory text advises that an exception to this tightly drawn demarcation will be where 'land is allocated in the Plan for development, when it is included in the defined boundary in anticipation of its incorporation into the built fabric of the settlement'.
15. Policies RUR2 and RUR3 further explain that development beyond these boundaries will not be permitted unless the Council is satisfied, amongst other matters, that it does not have a significant detrimental effect on the character and setting of the countryside. RUR3 adds further detail in respect of development provided for under other policies of the plan. Insofar as the proposals are beyond the established settlement boundary, and therefore in the 'open countryside', they are in clear conflict with policies RUR2 and RUR3, and insofar as these are framed by RUR1 that policy also.
16. The site partly lies within both one of the district's Strategic Gaps and The Blackwater Gap as defined on the LP proposals map. Here development is managed through the application of policies CON19 and CON20, the first stating that 'development will not be permitted which would diminish (The Blackwater) Gap physically and visually', and the second that ....'permission will not be granted for development which would diminish the gap both physically or visually, in order that the separate identity of settlements either side of the County boundary are retained'. The latter goes on to state proposals that retain the open nature of the gap, promote recreation as a primary use without ill-effect to ecology and landscape will be permitted. It is agreed by both main parties that these 'gap policies' are not landscape designations as such, but rather, as I interpret them, are strategic spatial policies to complement the control of development beyond settlement boundaries in these specific parts of the district.
17. This interpretation is also reflected in the Council's evidence, their case in respect of the defence of the gap being 'policy led' and the gaps being a 'product of function not landscape value'. Indeed, it is the substantive element of the Council's case in this regard that the very physical encroachment of the appeal proposals into the gap is what signifies a breach of policies CON19 and CON20. However, the Council rightly point out it is 'the extent of diminution (of the gap that) goes to the weight to be given to the conflict with policy rather than whether there is a conflict'<sup>1</sup>. I agree, and it is to these detailed matters I now turn.
18. It is not disputed that the greater part of the site lies within the designated gap, the boundary lying approximately between the limits of the gardens of houses in Broome Close to the east and the junction of Ives Close on Moulsham Lane to the west. Moreover, on the basis of the parameters plan

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<sup>1</sup> Council's closing submissions, paragraph 8.

illustrating the demarcation between the built and open elements of the site, all but approximately the lower eighth of the built element would be within the gap. Reading the policies on their faces therefore, *any* diminution of the physical area of the gap would, like development of this type in a Green Belt reducing openness, result in a physical diminution of the gap. I find it difficult to refute the elemental logic of such an argument, and accept therefore that the proposals technically breach policies CON19 and CON20. However, it is the degree to which the applied purpose of the policies are breached which is determinative in this case; these purposes being that the 'setting and separate identity of settlements... are retained'.

19. It is the case that when the proposals are viewed cartographically, and judged against the parameters of the extent of the northerly limit of dwellings in Millbridge Road to the west and Broome Close in the east, the built form of the site would obtrude into the space between. However, if the line is taken from the dwellings in Blaire Park to the west and those at the junction of Chandlers Lane and Mill Lane to the east, the site lies entirely within the limits of these 'headlands' forming the 'coombe' between. This may indeed again be cartographically seen as a partial occlusion of this space, but it would not, by any means, bring the limits of built development of Yateley any closer to the County boundary to the north. Moreover, nor would the proposals at any point lessen the distances between the key settlements identified to the north, specifically Finchampstead, Sandhurst and Crowthorne.
20. In these terms, although the proposals would result in some small physical loss of space between these settlements, there would be no material degree of coalescence between them and Yateley. On this basis, the separate identities of the settlements on each side of the County boundary would be retained, and therefore preserved. In this respect therefore, and given that the overriding strategic purpose of this gap and gaps generally, is the prevention of the coalescence of neighbouring settlements<sup>2</sup>, there would be no conflict with these purposes of policies CON19 and CON20.
21. The second purpose of CON20 is that the setting of settlements is retained. This in turn resonates with the wording of policy RUR2 that indicates development will be permitted where it does 'not have a significant detrimental effect on the character and setting of the countryside'. However, unlike 'identity' referred to above, 'setting' merits no exploration in the supporting texts of any of the policies engaged. Moreover, neither is the term 'setting' in the context of Yateley explained in the Council's evidence.
22. In a conventional interpretation of the word this would mean the surroundings or environment of something or object. By my interpretation, particularly in a planning context, the term should express some element of experiential understanding or, to paraphrase part of Annex 2 of the Framework<sup>3</sup> the surroundings in which a settlement, or part of a settlement, is experienced. Such an approach also engages the matter of visual diminution also made explicit in the wording of the policy.

<sup>2</sup> Local Plan Inspectors conclusions on the criteria for defining strategic gaps, Hart District Council (Replacement) Local Plan Report of the Public Local Inquiry into Objections, Wood Appendix 5.

<sup>3</sup> Page 56, Annex 2: Glossary National Planning Policy Framework.

23. The setting of this part of the northern boundary of Yateley is most evidently experienced by the public through the use of the bridle path towards the river from the junction of Moulsham Lane and Moulsham Copse Lane. From here, as I heard in evidence and from my experience during my site visit, you get a strong sense of the dense wooded cover of the valley floor and the frequent proximity of water. The appeal site plays no part in this experience as it is lost beyond the dense cover of the valley floor to the east.
24. Insofar as one gets a sense of the 'open countryside' beyond the settlement boundary when walking along Moulsham Lane, Vicarage Road and Chandlers Lane, it is of momentary and fleeting glimpses between dwellings above established planting. This is the greatest extent to which the appeal site forms part of the experience of this part of the setting of the settlement. Where this view does open up at the entrance to the golf course off Chandlers Lane there is a sense of openness, but this prospect is one of part of a designed and maintained recreational facility with its attendant structures and car parking, not the picturesque qualities experienced on the path to the west.
25. This brings us to the golf course itself, and more specifically the third and fifth holes thereof, the two key areas where, according to the Council, the proposal would be visible, and indeed experienced, in the context of the setting of this part of the settlement. From points along the approaches and the greens there would indeed be glimpses of the appeal site beyond through gaps between mature deciduous trees and beneath the canopies of others. Here, to a greater degree than anywhere else, users of the course would get the sense of the presence of development where hitherto there was none. Their experience of the surroundings, or setting, of this part of the settlement would be changed.
26. Here the Landscape Visual Impact Assessment (LVIA)<sup>4</sup>, submitted by the appellant, assesses the magnitude of visual change as low and of moderate adverse significance. Whilst the Council present no such formal assessment, they conclude, supported by photographic evidence, that this part of the course constitutes a 'viable public vantage point' from which the visual encroachment of the development on to the gap, would be perceived. Insofar as golfers, when not focused on their game or socially engaged with their co-participants, may have occasion to observe and consider their surroundings, I agree.
27. However, the golf course is used by members and the paying public, it is not an unfettered open recreational resource for everyone to enjoy. Moreover, the primary purpose of users would be to play golf, their focus being the task in hand. That is not to say they would be entirely unaware or oblivious to their surroundings but during the spring and summer months the dense cover of the borders of the course, in conjunction with the players' focus, would significantly diminish any awareness of the housing beyond the parameters of the course. My conclusion is that perceptions of the proposed development would be limited, especially if conditioned by an awareness of development in relation to other parts of the course, particularly for example the dwellings in Broome Close more proximate to holes one and two.

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<sup>4</sup> LVIA Scarp. CD1.3.

28. The macro context of the gap is also relevant to any consideration of whether the setting or separate identity of settlements on either side of the Country boundary is retained. It may be from these wider topographic rather than cartographic points that both can be seen in visual context, and where any proposed development maybe judged in relation to them. Aside from the analysis undertaken by the appellant on this wider landscape assessment<sup>5</sup>, which is uncontested by the Council, I was also advised to consider the site from the Finchhampstead Ridges, an elevated escarpment above the river valley to the north. However, even from this elevation, which I visited during the Inquiry, the dense tree cover of the lower slopes obscured the valley floor. Whilst small clusters of development on the fringe of Yateley were discernable, the appeal site itself could not be discerned with any clarity. Certainly in the visual context from this perspective, there would be no discernable diminution of the gap or erosion of the setting or identity of the settlement.

29. To conclude on this matter, the development would result in a technical breach of policies CON19 and CON20 insofar as the site lies within the strategic gap. However, both the purpose and the objectives of the policies are sustained. The setting and separate identities of settlements are very substantively retained. There would be therefore no discernable or quantifiable harm in respect of these matters. Whilst a breach of policy is a breach of policy, the weight apportioned to it in the particular circumstances of this case has to be limited.

*The effect of the proposed development on the living conditions of occupiers of dwellings in Coombe Road, 36 Moulsham Lane and 2 River Road*

30. Vehicular access to the development would be solely by means of Coombe Road, a Cul-de-sac of eleven dwellings arranged as three terraces with modest garage courts to the rear of each group. Each of the three terraces has areas of front garden and or forecourt parking separating the front facades from the road. This separation distance is in the region 7.5 – 8.5 metres (m), though the northern terrace is set at a greater distance, in the region of 12-15m. The River Road property has a flank gable wall facing Coombe Road whilst no 36 Moulsham Lane also has a lightly windowed gable facing River Road.

31. There is no dispute that using Coombe Road as the only vehicular access to the site would significantly increase the levels of vehicular activity in the road. The figures speak for themselves, current peak flow numbers are below ten vehicles per hour (VPH), whilst post-development VPH numbers are projected to rise to a little over one hundred. This being so I have no difficulty in accepting the Council's point, and those made by third parties, that in relative terms this would amount to significant change.

32. However, with the Council disavowing any material harm to the living conditions of occupiers, and accepting in the SoCG there would be no unacceptable impacts in respect of noise, air quality, vibration and light pollution, it remains unclear where precisely any degree of material harm might lie. I can readily accept resident's apprehension of a significant change in circumstance as the cul-de-sac adapts as an access to the development. But the peak flows anticipated would still amount to less than two per minute,

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<sup>5</sup> Appendix 2 Mr Cooper's Proof of Evidence, pages 7 and 8.

and less at quieter times of the day. To put this in context, levels of vehicular activity in Coome Road post-development would be no greater than those in Moulsham Lane at present. By almost any general standards, this is a lightly trafficked environment, as I was able to see for myself during my three visits to the site, two of which were at peak flow times.

33. This is not to say that the day to day experience of residents would remain unchanged, rather, it is much more that because of the very specific circumstances of Coombe Road, even a modest increase in vehicles using it would have a perceptible effect. Perceptible effect, or indeed 'major change', as the Council term it, do not necessarily equate to material harm, or 'material detriment', as criterion (viii) of GEN1 of the LP seeks to safeguard against.
34. In my view, because of the relatively low numbers and frequency of vehicles anticipated using the road (even at peak flow times), because of the reasonably generous distances by which the dwellings are set back from the road edge, the attenuation of the flanking wall and the planting along the north side of it, there would be no material harm, or detriment, to the amenities, or living conditions of its occupiers or those in the adjacent properties. It follows therefore that there would be no conflict with criterion (viii) of GEN1 of the LP, a policy I confidently afford full weight to because of its consistency with the fourth bullet point of paragraph 17 of the Framework, which anticipates the provision of a good standard of amenity for all existing and future occupiers of land and buildings.
35. The two appeal decisions referred to, Beech Tree Close<sup>6</sup> by the appellant, and Spode Close<sup>7</sup> by the Council are useful, if only insofar as they underline that such judgements are ones of informed professional assessment based on the particular circumstances of each case. Each of the cases unsurprisingly reflects the preferred outcomes of their respective sponsors. That said, in both cases the number of houses proposed was less than in the case before me (85 and 114 respectively), thus implying lesser traffic volumes.
36. However, there are other significant differences. Beech Tree Close appears from the aerial photograph to be both longer and more sinuous, whilst the houses appear detached and angled to the road. Although the Spode Close configuration appears more similar, the dwellings appear to have forecourts and integral modern garaging. One factor of note however in respect of both cases (as far as I am able to judge from the evidence presented at the Inquiry) is that the distances of the façade of dwellings to the back of the road was both less, by a margin of 1.5m and 2.5m respectively, than is the case of the Coombe Road properties. So whilst useful examples of decisions relating to generically similar circumstance, their material differences allow only limited weight to be afforded each of them. Neither therefore alters my conclusions to any significant degree in respect of the second main issue.

*Whether or not the proposal can be considered a sustainable form of development with specific regard to its location*

37. A wide range of matters relating to locational sustainability are covered in both the SoCGs and in previous assessments of the site, including those

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<sup>6</sup> APP/H1705/W15/3005729.

<sup>7</sup> APP/Y3425/A14/2220297.



commissioned by the Council themselves<sup>8</sup>. The Council's previous Strategic Housing Land Availability Assessments affirm this conclusion, and such a view is confirmed by officers of the Council in their pre-application advice to the appellant.<sup>9</sup> By a wide range of indices, the site is considered well located in sustainability terms. From the evidence, and from what I learned from my site visits to the area, it is apparent there are a number of key services and facilities that are within a reasonable walk or cycle ride from the site. These include convenience shops, schools, medical services and recreational facilities. Moreover, whilst the proposals are in outline, there is clear intent that layouts have been considered that would encourage the use of sustainable modes of transport to those services, and these could be secured through reserved matters.

38. The closest bus service is the No 3, which runs to Camberley, Blackwater and Aldershot, with services running between twice and four times per hour on weekdays depending on the destination. This frequency is maintained on Saturdays, with a service back to Yateley terminating around 2100 approximately. This No 3 service also runs at a reduced level on Sundays. The proposals also include provision of a relocated stop within 800m of the southerly pedestrian access to the site on Moulsham Lane, the time taken for me to reach during my site visit being just on three minutes.
39. It is the case that Yateley does not have a railway station, the nearest alternatives being Blackwater, Sandhurst or Fleet. Third parties, including The Yateley Urnfield Residents Action Group (YURAG), question the sustainability credentials of the site, suggesting most trips from it will be undertaken by car, especially those in relation to commuter travel to London, Reading or further afield. Third parties also argue that access to the No 3 bus service would be deterred by having to cross the Reading Road and that alternative modes of travel, such as cycling, are also discouraged because of the levels of traffic along this route.
40. However, and notwithstanding the lesser frequency of the No 3 bus service at weekends, this service, with the enhanced proximity of the stop to the site, is by most reasonable standards, a good one. It offers a frequency above that identified in relation to other example development proposals in Hampshire drawn to my attention<sup>10</sup> during the Inquiry and is, without challenge, the most frequent service in Yateley. Moreover, whilst we may all have our own perceptions on what constitutes reasonable accessibility, my observations of the traffic on Reading Road, at peak and off peak time, do not lead me to conclude there would be a significant barrier to future occupiers seeking to use this service. On this basis therefore I am satisfied that a significant proportion of trips by future occupiers will be undertaken by public transport.
41. For the same reasons I conclude there is a credible prospect that occupiers will choose alternative modes of transport to access a good range of local services, the indicative layout will encourage them to do this and that prevailing conditions on the local network will not significantly deter them from these choices. Taking all of these matters into account therefore, the proposal is sited in a sustainable location.

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<sup>8</sup> Adams Hendry Consulting Ltd, Sustainability Appraisal of High Level Housing Site Assessments June 2015.

<sup>9</sup> Letter from the Council dated 21 January 2014 (CD7.3).

<sup>10</sup> Razors Farm Basingstoke – referred to in evidence by Mr Edmonds.

42. On this basis I conclude the proposals would accord with policy T14 of the LP, which permits development in areas that are served effectively by public transport, cycling and walking (criterion i) and where choice in transport mode can be provided, including a significant proportion by public transport (criterion ii). On the same basis the proposals also accord with paragraph 34 of the Framework, which anticipates development being located where travel will be minimised and use of sustainable transport modes can be maximised.

*Whether the proposal makes provision for financial contributions and physical infrastructure to mitigate the effects of the development*

*Education*

43. It is accepted that the suggested sum of development proposed will generate a need for additional school places within the area. Whilst capacity for secondary schools is considered adequate, there is currently a shortfall in available provision at primary level. The development falls within the catchment of Cranford Park CE (controlled) Primary School, which is indicated as having only 5% surplus capacity. Based on an assumption that properties will be three bed dwellings, and applying agreed developer contribution policy, a sum of £758,250 is agreed to fund capacity improvements to Cranford Park Primary School. It was confirmed at the Inquiry that the school has not been in receipt of any prior pooled contributions. It is also apparent that the contribution has been calibrated in accordance with established policy, that it is related to the development and in respect of education, makes it acceptable in planning terms. I conclude therefore that the contribution accords with both Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations, and so may be properly taken into account.

*Open space and leisure provision*

44. Development of the scale proposed will generate increased demand for leisure opportunities, both within and adjacent to the site and in the local area. In respect of formal leisure facilities, as indicated above, there is considered to be sufficient capacity at the Frogmore leisure facility in Yateley to accommodate demand in this respect<sup>11</sup>. In respect of the site itself (excluding the SANG provision) to mitigate demand for open play space, the appellant also proposes a Locally Equipped Area of Play (LEAP). This will be secured through a scheme submitted for approval to the Council and funded through an agreed contribution of £160,000 with a further £40,000 committed to future maintenance. In addition to the LEAP further open space for the casual recreation of future residents is also provided for within the agreement. Such provision makes the development acceptable in these terms, is proportionate inasmuch as the extent of the provision is agreed and is directly related to the development. Such provision therefore accords with Regulation 122 of the CIL regulations and may be taken into account.

*Affordable housing*

45. Policy ALT GEN13 of the LP indicates that the Council will negotiate the proportion of affordable housing on a site by site basis based on an overall guideline target of 40% of dwellings being affordable. The section 106 agreement makes provision for 40% affordable housing, with a mix of

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<sup>11</sup> CIL Compliance Statement ID50.

tenures which the Council have accepted are appropriate for the site. Insofar as the proposals would fulfil the upper threshold of the policy requirement, making the development acceptable in planning terms and making them proportionate, and that it would be directly related to the site, these provisions meet the criteria of Regulation 122 of the CIL Regulations and of paragraph 204 of the Framework. I am therefore duly able to take them into account. As to whether such provision merits any measure of weight in favour of the proposals beyond this mitigatory function, I address below.

#### *Highway improvements*

46. A large number of concerns have been raised in relation to highway safety and the location of the development in relation to work destinations and local services. To address these concerns the appellant has drawn up a Transport Statement of Common Ground (TSCSoCG) with Hampshire County Council, the Highway Authority. Key elements of the TSCSoCG and accompanying technical note include provision of the monitoring of Moulsham Lane to assess the necessity for footpath improvements and their implementation if necessary. Improvements to the crossing at the junction of Moulsham Lane and the Reading Road, improvements to the roundabout at the junction of Reading Road with Cricket Hill Lane and the relocation of the bus stop serving the No 3 bus service on The Link are also proposed. The necessity for a 'full form travel plan' based Framework Travel Plan was also presented in evidence. This makes provision for a range of measures to support and encourage sustainable travel modes for future occupiers of the development.
47. Such provisions are secured in the section 106 agreement, with a sum of £150,000 committed to the monitoring and potential improvements to Moulsham Lane, commitment to the undertaking of the highway improvement works and bus stop provision and contributions to the processing and management of the travel plan by the County Council to ensure compliance. Through the details set out in the TSSoCG I am satisfied that the provisions made will render the proposal acceptable in planning transport terms, that they are proportionate and that they directly relate to the development proposed. They therefore accord with Regulation 122 of the CIL and have not been the subject of prior contributions making them compliant with Regulation 123 of the same and so may be taken into account.

#### *Thames Basin Heaths Special Protection Area (the SPA)*

48. The site lies approximately 1.6km in linear distance from the nearest part of the boundary of the SPA. In order to manage and fully mitigate the effects of housing development on the SPA the Thames Basin Heaths SPA Joint Strategic Partnership Board undertake this through the provisions of their Delivery Framework endorsed in 2009. Hart District Council adopted their own Interim Avoidance Strategy for the Thames Basin Heaths SPA in 2010. This generally accords with the expectation of saved policy NRM6 of the South East Plan that advises that where a SANG is to be provided there should be a minimum of 8 hectares per 1,000 occupants.
49. Based on the analysis of the housing mix proposed the Council assess the total number of occupants of the proposed development to be approximately 394, thus generating a requirement of a minimum of 3.152 hectares (ha) of SANG. The SANG Management Plan, attached to the section 106 agreement, calculates the numbers, based on Natural England's guidance, as

approximately 360 residents requiring an area of 2.88ha. This latter number was not disputed at the Inquiry.

50. The section 106 agreement makes provision for a SANG comprising approximately 5.11ha, significantly above the minimum required. Additionally the SANG, aside from its open physical extent, will provide for car parking for users, leaflets, interpretation and a total of around 2.21km of paths for unleashed dog walking, walking and cycling. A pond will be created and the existing transitional habitat will be replaced (except for trees and other features to be retained) with planted areas of grassland. In addition the management plan makes further detailed provisions for the management of the space in the future. The section 106 agreement also makes provision for the transfer or future management of the site and makes provision for Strategic Access Management and Monitoring (SAMM), as required by the Council's Avoidance Strategy. As they state in correspondence,<sup>12</sup> Natural England confirm, 'through direct discussion with the applicant', that the provisions of the SANG and SAMM have overcome their previous objections. The Council also agreed at the Inquiry, as anticipated in the SoCG, that this had also overcome their initial objection, and that the seventh reason for refusal would no longer be defended.
51. Having studied the contents of the management plan and the provisions of the 106 agreement, I also conclude that the effects of the development on the SPA can confidently be judged to have been mitigated, there would therefore be no likely significant effects upon its interest features as a result. The proposals therefore accord with the Council's adopted Interim Strategy and policies CON1 and CON2 of the LP and policy NRM6 of the South East Plan. The terms of the section 106 agreement would also meet the criteria of Regulation 122 of the CIL, being necessary to make the development acceptable in planning terms, being proportionate and being directly related to the proposals. Again on this basis I am able to take them into account.

*Whether there any other material considerations that would justify the development being determined other than in accordance with the policies of the development plan.*

52. In order to significantly boost the supply of housing paragraph 47 of the Framework anticipates that local planning authorities will identify and annually update a supply of specific deliverable sites sufficient to provide five years worth of housing against an established requirement. This the Council are able, without challenge from the appellant, to demonstrate. However, the same paragraph also anticipates that local planning authorities identify a supply of specific, developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15. This the Council have also undertaken through a series of iterations of the Strategic Housing Land Availability Assessment (SHLAA) (2010, 2013 and 2015) and through the wider preparation of the evidence base for the emerging local plan, including a 'New Homes Booklet', that identifies such sites. These identified sites have been subsequently assessed in some detail by the Council's appointed consultants to consider their suitability. The appeal site has constantly been identified in these iterations as a reasonable candidate for accommodating such future growth, notwithstanding being located within the Strategic Gap.

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<sup>12</sup> Letter to the Council from Natural England dated 14 November 2014. Appeal Questionnaire.

53. The appeal proposals would deliver a mix of 150 market and affordable homes to meet future housing need in Yateley, identified in the Council's Local Development Framework background paper as a 'Tier Two settlement' (Primary Local Service Centres). The Council is currently able to demonstrate a five year supply of housing land, and indeed more going forward in the years 6-10. However, the five year delivery of specific sites is not a minimum, as the ongoing identification of specific developable sites subsequently referred to attests. This is especially the case in light of the Secretary of State's affirmation of the Inspector's statement in the Money Hill case<sup>13</sup> that 'there is also a current national imperative to boost the supply of housing' and his conclusion that 'significant weight (be attached) to the fact that the proposed development would provide ....new homes'. This was against a context where the Council could demonstrate a five year supply of housing land. Given the analogous circumstances here, where the Council are also able to demonstrate a five year supply, I too attach significant weight to the delivery of in this case up to 150 homes, 40% of which will be affordable and an element of which will be on land that has been previously developed.
54. Turning again to the matter of the affordable housing. It is right, as the Council state, that the proposal 'is not providing any more affordable housing than is required to be policy compliant'. In ordinary circumstances this would rightly be treated as neutral in the planning balance. However, it is clear that there has been a very substantial under delivery of affordable housing in the district in preceding years. The Council's own document Housing Development Options Consultation Paper (Hart Local Plan 2011 - 2032) acknowledges as much.<sup>14</sup> Moreover, the Council's Strategic Housing Market Assessment 2014 (SHMA) identifies an unmet past need for 1,700 households and a growing future need in Hart and the Housing Market Area (HMA) measured at around 355 each year within the plan period. The same document records a minimum need within Hart of 72 units per annum to meet current and future demand. Although delivery came close to that number in 2014/15 it has been considerably below it in the preceding two years. Indeed, as a percentage of all homes delivered, numbers of affordable units have consistently fallen significantly below the 40% expectation of policy ALT GEN13.
55. Again, the Council is right to point out that the provision of affordable housing in the longer term is a matter for the local plan. However, this remains some way off examination, let alone formal adoption. Those who have waited for such provision, and witnessed its under-provision, would have to wait longer still. In this context, and remembering again the expectation in paragraph 47 that Councils meet the full objectively assessed need for market and affordable housing in the market area, I also attach very significant weight to the delivery of up to 60 units of affordable housing that the appeal proposals would facilitate, almost a years worth of supply.
56. The proposals would generate in the region of 225 full time equivalent jobs during the construction phase of the development, which is anticipated to be over a period of three years. Whilst this is transient in relation to the permanence of the development, this boost to the regional economy can

<sup>13</sup> Appeal Ref: APP/G2435/A/14/2228806. Land North of Wood Street, Money Hill, Ashby-de-la-Zouch.

<sup>14</sup> Paragraphs 3.15, 3.16 page 24 CD6.8.

rightly be judged to weigh in favour of the proposals, albeit that weight being modest. Similarly, it can rightly be acknowledged that the proposals would give rise to New Home Bonus receipts of in the region of £1.5 million. Whilst modest in the wider scheme of local authority funding in general, it is nevertheless a positive receipt of moneys which again may rightly be afforded weight in favour of the proposals, though once again and in the absence of an indication as to where or how the receipts would be spent, the final apportionment must necessarily be considered modest.

57. Once again the Council are right that the extensive flood mitigation measures provided and refined through condition are necessary to safeguard access to the site in the event of inundation. Nevertheless, it is a matter of fact that through their provision the effects of flooding, especially along Moulsham Lane, will be alleviated. Insofar as this would safeguard the road, and possibly some properties along it from such an event, I consider it a positive outcome for residents in the area, who would otherwise see no such safeguard in place. Given the evident concerns of local people in relation to flooding, and the very real distress that it can cause, I give these considerations a medium degree of weight in support of the proposals.
58. Similar conclusions may be reached in respect of the highway improvements delivered in mitigation of increased traffic as a result of the development. Insofar as these may modestly increase the performance of the road network, and increase accessibility to public transport modes for local residents (through for example the relocation of the bus stop) they may also be judged to favour the proposals. Again however, such a benefit in this regard is modest, and proportionally may be given only limited weight.
59. The above matters can rightly be considered benefits that may weigh in favour of the scheme to a greater or lesser extent. There are however other very significant other considerations to take into account in the planning balance necessary to reaching a reasoned decision in this case. Critical amongst these is whether or not the development plan, in this case the LP, can or cannot be considered up to date. Such a judgement is critical, as it determines whether paragraph 14, and the presumption in favour of sustainable development, is engaged. It is also necessary to consider at that point whether there are any other considerations, such as foot note 9 (and the reference to paragraph 119 therein) that may further condition the final conclusions in the case. It is to these matters that I now turn.
60. The Council set a good deal of store by the fact that the key spatial policies in the plan that deal with the location of development are up to date, indicating such policies are 'at the heart of the development strategy set by the...Local Plan'<sup>15</sup>. Moreover, these policies are held to be consistent with the Framework and therefore not out of date. However, the evidence before me suggests a correct analysis of the position may not be so very simple and conventional.
61. It is accepted that the LP plan period ran from 1996 to 2006, a period that expired 10 years ago. At that time, as the supporting text of policy RUR1 makes clear in relation to settlement boundaries, these were closely drawn to 'avoid opening too widely the opportunities for further development...', also indicating exceptions to this being 'where land is allocated in the plan for

<sup>15</sup> Paragraph 4 Council's Closings, ID55.

development, when it is included in the defined boundary in anticipation of its incorporation into the built fabric of the settlement'. It is self-evident that these settlement boundaries were thus drawn to accommodate anticipated development within the plan period.

62. It is evident that by a straightforward chronological assessment, the plan is time-expired. Such a conclusion to a degree resonates with the decision of the Secretary of State, endorsing the reasoning of the Inspector in respect of the Money Hill decision<sup>16</sup>. Here the Council themselves accepted the logic of chronological out-of-datedness. The circumstances in this case are superficially analogous, not least in terms of both plans' chronological synchronicity. However, it is the consistency of the policies with the Framework that is critical to a definitive assessment of out-of-datedness and accordingly I give only limited weight to time-expiry of the plan in this regard.
63. Significantly, the Council accept this in the officer report in relation to these proposals, where they record that 'because of the age of the plan, and the guidance contained in the NPPF, it is necessary to carefully consider all other material planning considerations'. Such an approach is in fact consistent with and explained by the Council's own but apparently unpublished post-Framework audit of the saved policies of the plan<sup>17</sup>. In this audit policy RUR2 is assessed as only having a medium level of consistency with the Framework as it is 'negatively worded' and because the 'NPPF has a more positive approach to the types of development that might be permitted in the countryside'. This would also explain, at least in part, the Council's acceptance in the past that development could and indeed should be permitted beyond the settlement boundaries established by policy RUR2<sup>18</sup>. By their own account therefore, and specifically through the application of the assessment set out in paragraph 215 of the Framework, this policy may be apportioned, at the very best, only a medium degree of weight. I agree with the Council's conclusions in their audit of policies. It is negatively worded and applies a considerably more restrictive approach to the consideration of development that might otherwise be permitted. Accordingly such a conclusion renders policy RUR2, in my judgement, not up to date, thus invoking paragraph 14 of the Framework. Such a conclusion would be consistent with the judgement of the High Court in this regard.<sup>19</sup>
64. Whilst policies CON19 and CON20 are assessed as having a high level of consistency, this is measured against paragraph 109 of the Framework, which inter alia seeks to protect and enhance valued landscapes. Such a conclusion is however at odds with the Council's acceptance in the SoCG that these policies are not landscape policies as such and are, as the Council stated at the Inquiry, 'a product of function not landscape value'. Whilst these policies may draw weight from other parts of the Framework, these are not identified, and get no favour from paragraph 109. On the other hand these policies do find some resonance with elements of paragraphs 58, 60 and 61 of the Framework, which seek development to respond to local character, promote local distinctiveness and the integration of new development with the natural, built and historic environment. Again in relation to paragraph 215 of the

<sup>16</sup> Ibid.

<sup>17</sup> Hart Saved Local Plan Policies – Consistency with the National Planning Policy Framework April 2015 (unpublished) ID 37.

<sup>18</sup> Land adjacent to Reading Road Hook Officer Report 24 April 2014 ID32.

<sup>19</sup> *Daventry v SSCLG and Gladman* [2015] EWHC 3459

Framework therefore, there is a basis for maintaining the application of significant though perhaps not full weight to these gap policies.

65. Taking all of the above into account, the key strategic development management policy RUR2 cannot be considered up to date and on this basis the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged. I draw this conclusion in the full knowledge that the Council is currently able to demonstrate a five year supply of housing land, a position paradoxically that must in part, given the age of the plan, be as a consequence of a recognition of this, and the grant of planning permissions for housing developments outwith the settlement boundaries identified in the plan.
66. In concluding thus I am mindful that I do so differently to the Inspector in the Owens Farm case<sup>20</sup>.
67. Here the Inspector had not apparently been made aware of the Council's own audit of the consistency of its saved policies with the Framework. By their own admission policy RUR2, a key strategic development policy, and one relied upon by the Council in both the Owens Farm appeal and the one now before me, can only be held to have only at best a 'medium' degree of consistency with the Framework. Such a consideration alone significantly differentiates the consideration of this case from that of Owens Farm. Aside from the very specific differing issues of harm identified in the Owens Farm case, the key factor identified above determines that I give only limited weight to that decision as some form of precedent in relation to the one before me.
68. In reaching this view I have also taken into account the last consideration of paragraph 14. This is whether specific policies in the Framework indicate development should be restricted. Footnote 9 of this paragraph offers an interpretation on this matter, and makes specific reference to paragraph 119 of the Framework in this regard.
69. Paragraph 119 makes clear that the presumption in favour of sustainable development does not apply 'where development requiring appropriate assessment... is being considered, planned or determined'. The premise for an appropriate assessment being necessary is whether the proposed development is likely to have a significant effect on the interest features of the site. Such an assessment must be made on a precautionary principle, and serve to consider whether there is a probability or even risk of significant harm.
70. I have before me the detailed representations of Natural England, the views expressed by specialist officers of the Council in prior consultation, the acceptance by the Council in the SoCG and at the Inquiry that the provisions of the section 106 agreement in respect of the SANG and the SAMM provide full mitigation for the development.
71. From my own measured consideration of these provisions and those of the management plan that accompanies it, I conclude that, with committed mitigation there is no probability, nor indeed any risk of the development having any significant adverse effects on the interest features of the SPA. If

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<sup>20</sup> Appeal Ref: AAP/N1730/A/14/2226609 Appendix 3 Mr Wood's PoE.



there were any doubts as to the efficacy of the SANG, these could reasonably be off set by the acknowledgement that in terms of area it is significantly above that required as a minimum by Natural England. In these circumstances I, (being consistent with the Council's own Interim Avoidance Strategy), conclude no appropriate assessment is therefore required. It follows therefore that there is no reason under either paragraph 119, or indeed footnote 9 of paragraph 14, to disapply the presumption in favour of sustainable development anticipated therein. I find robust support for this conclusion in the judgement of the Court of Appeal in the case of *Smyth v Secretary of State for Communities and Local Government*<sup>21</sup>.

## Other matters

### *Flooding*

72. I heard a number of representations from third parties, including YURAG, expressing concerns over the potential for the development increasing the risk of flooding in the area. Apprehension and concerns over the prospect of flooding appear well founded on the basis of experience, where Moulsham Lane and adjacent properties have experience localised flooding in the past. However no robust or technical evidence was presented that would suggest the appellant's technical provisions for mitigation or betterment were flawed. Moreover, the detailed consideration of these measures by the Environment Agency has not sustained an objection to them, subject to the attachment of specific and comprehensive conditions to secure necessary outcomes.
73. Moreover, such apprehensions were at least in part overcome through a greater technical understanding of the efficacy of the flood relief channel and the acknowledged requirement for regular maintenance to ensure its full functionality. From the evidence before me and from what I heard at the Inquiry, with the appropriate conditions applied to the permission, the proposed development would not increase the risk of flooding within or in the vicinity of the site, thus rendering it compliant with policy GEN11 of the LP.

### *Highway safety*

74. The greatest amount of concern expressed by third parties was in respect of highway safety on the roads in the vicinity of the site and the capacity of key junctions at which traffic from the site would join the wider road network. Some though not all of these points are based on the Highway Access and Transport Sustainability Report prepared by Matrix Transport<sup>22</sup>, others being predicated on local experience of using the network. The Matrix report responded to the contents of the then planning application and therefore predates the evidence for the appeal, including the two SoCGs. Neither have its authors presented evidence on its contents, nor has it been subject to cross examination. These factors necessarily limit the weight I am able to afford it though I have taken account of its contents insofar as it is presented in YURAG's evidence.
75. In relation to the site access along Coombe Road, the main concern is safety of users. The number of parked cars and specifically the need for drivers to reverse either to allow egress into River Road or from the side garage courts where chief concerns here. I acknowledge these concerns, and accept that

<sup>21</sup> [2015] P.T.S.R. 1417.

<sup>22</sup> CD5.17.

the creation of a through access to the development of this scale will necessitate a modification in residents' behaviours. However, nothing that I heard at the Inquiry, or that I saw at my three visits to the site and its environs, leads me to conclude there would be a significant risk to highway users as a result of the development. The alignment of the road, its width, the degrees of visibility in relation to the garage courts and the junction with River Road, combined with the very low speed of traffic reasonably anticipated, all lead me to concur with the technical evidence presented. There would, in my view, be no substantive risk to highway users here as a result of the development.

76. Concerns over the safety of highway users, especially pedestrians, cyclists and horse riders in Moulsham Lane, Moulsham Copse Lane, Vicarage Road and Chandlers Lane offer another focus for residents' concerns. The specific issues relate to the practicability and safety of using these roads as shared surfaces, a necessity where there are no footways specifically on Moulsham/Moulsham Copse Lane. The apprehension here is on bends and in general in relation to vehicular speeds, in conjunction with the increased numbers of vehicles anticipated as a result of the development.
77. 'Near misses' and accidents are referred to in various locations, though no evidence or records are presented to support such events. Moreover, the primary apprehension is that an increase in numbers of vehicular movements will inherently increase risk, an assertion that again there is no evidence for. Neither do traffic speeds recorded and presented in evidence suggest predominant or excessive speeds within the environs of the site. As significantly, neither the Highway Authority, nor any other formal body, challenge the evidence presented by the appellant that the shared surface arrangement in these locations would result in a greater risk to non-car borne users of the highway. Moreover, whilst my experience of the highway environment cannot compare with local users, I repeatedly visited the site and its environs (including crossing the Reading Road) at varying times of the day over the duration of the Inquiry. Volumes and speeds of traffic on the Reading Road were at times moderately intimidating, but not such that would deter me from traversing it. By contrast, the leafy and verdant lanes and roads feeding the residential enclaves off the road were quiet and comfortable in comparison. In response to the rhetorical question asked: 'Do I feel safe?' The answer was 'yes'. Even accounting for the increases anticipated by development, I would not alter that view.
78. Concerns were also expressed over the capacity and safety of the junctions to the wider network and its capacity to accommodate increases of traffic. Again, none of the modelling undertaken by the appellant and agreed in the TSocG is challenged by counter evidence of technical substance. Moreover, this document also elaborates on the highway improvement measures in relation to the Moulsham Lane and Reading Road and the Reading Road / Cricket Hill roundabout, both of which are agreed to mitigate the effects of increased traffic resulting from the development. Having considered all these matters therefore I conclude the proposals would be in accordance with policies GEN1 and T14 of LP.

### *Local ecology*

79. YURAG and other third parties raised concerns over the harmful effect the development would have on the ecology of the site, surrounding nature conservation sites and the SPA. Concerns included the significant loss of foraging area for birds, bats and amphibians and the wider loss of habitat in general. The effectiveness of the proposed SANG as a compensatory habitat was also questioned and also that the evidence-base on which the SPA mitigation is predicated is no longer fit for purpose. However, such concerns on the one hand do not account for the selective areas within the site that are ecologically degraded and, more significantly, do not take into account the capacity to increase the biodiversity of the site through the 'repopulation' of the SANG with a range of species selected to enhance foraging opportunities for wildlife. No detailed technical evidence is presented to rebut this 'quality Vs quantity' argument presented in evidence<sup>23</sup>, nor is there objection on such grounds from the Council's Ecologist. In my view, although there will inevitably be a period of adjustment through the construction and maturation phase of the development and the SANG, overall I am persuaded there would be no real loss to the biodiversity or ecological value to the site as a whole.

### *The effect of development on the character and setting of the conservation area*

80. The principal concern of third parties in respect of the Yateley Green Conservation Area is the effect the development would have on its character because of the increase in traffic it would generate along Mousham Lane and Vicarage Road and Chandlers Lane. These lanes, characterised by the predominant absence of footways and leafy broad verges do indeed express a measure of rural character. Such attributes do in my view add positively to the character of the conservation area as a whole. I also accept that the development would increase the levels of traffic along these routes. However, such increases as they are, most acute during the morning and evening peak hours, would be relatively modest, especially when considered in the context of the conservation area as a whole. Indeed, such traffic levels would not be of a sufficient magnitude that they could be said to materially harm the character of the area.

81. Additionally, whilst there are very fleeting views of the site between dwellings and vegetation on Moulsham Lane and Vicarage Road, these would in effect afford views onto the replanted SANG which would inevitably filter any perception of the houses beyond. I therefore conclude that the character and appearance of the conservation area would be preserved, in accordance with the expectations of section 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990.

### **Planning balance and conclusions**

82. I have found that the proposals, by virtue of their location outside of the established settlement boundary, conflict with policy RUR2 of the LP. Their location within the Strategic and Blackwater Gaps and the physical diminution that would result, also renders them in conflict with policies CON19 and CON20 of the same. However, in respect of these two policies, I have found that the proposals do not materially offend their primary purposes, that is the retention of the setting and separate identity of settlements either side of the

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<sup>23</sup> Briefing Note Ecology Solutions Ltd ID 34.

County boundary. The actual harm that thus occurs (the annexation of a small enclave of land within two headlands within the gap) is modest. It follows that the measure of weight apportioned against the proposals is also equally calibrated.

83. Planning applications must, with regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, be determined in accordance with the development plan unless material considerations indicate otherwise. Policy RUR2 is of limited consistency with the Framework and therefore may rightly be considered out-of-date. This significantly limits the weight I apportion it in this case. Whilst not in full accordance with paragraph 215 of the Framework I am still able to afford significant weight to policies CON19 and CON20. However, the degree to which the proposals conflict with them is both modest and technical in scope.
84. I have listened to and understood the concerns of local people in relation to the matters they raised. On the one hand, I anticipate that a good number of these, including pressure on local infrastructure, flooding and the enhanced quality of natural habitat, may be overcome by the provisions of the conditions attached to the decision and those of the section 106 agreement. For the rest, on my best judge of the evidence before me, cannot be demonstrated as material harms to weigh against the proposal.
85. Paragraph 47 of the NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Appellant does not dispute that the Council has a five year supply of housing land. But the Framework makes clear that local planning authorities must also plan for housing supply beyond the five year period and, as set out in paragraph 47, identify a supply of sites for 6-10 years and, where possible, 11-15 years. There is also a current imperative to boost the supply of housing nationally, and this has been emphasised by the Secretary of State in his decision for Money Hill.
86. The proposals will bring forward up to 150 homes, 40% of which will be affordable. In an area of high housing demand this, particularly in relation to the affordable housing, is a substantial social benefit. It is able to do this in a locationally sustainable place without material harm to any matters of acknowledged environmental importance. Where harm may have been seen to arise, including to the SPA, this has been demonstrated to be fully mitigated. In light of the above, notwithstanding the demonstration of a five year supply of housing, I apportion such provision significant weight. Moreover, there would also be limited other environmental benefits both to ecology, additional capacity in the SANG and flood mitigation to which I also apportion modest measures of weight.
87. There would also be economic benefits that would accrue from the development, including the New Homes Bonus and a boost to the local economy during the construction period. To these matters too I apportion a modest degree of weight in favour of the proposal. Accounting for all of the above the proposals do satisfy the three elements, social, economic and environmental, that define sustainable development in paragraph 7 of the Framework.
88. Paragraph 49 of the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable

development. Paragraph 14 of the same, the appropriate mechanism for considering whether any such presumption applies, states that for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

89. I have found a modest measure of harm in respect of the breach of development plan policy in the specific circumstances of this case. However, the key housing constraint policy is out of date, whilst the two related constraint 'Gap' policies do not merit full weight when considered against those of the Framework. The modest harms identified do not significantly or demonstrably outweigh the substantial benefits, particularly housing delivery, that the scheme would bring when assessed against the policies of the Framework as a whole. The proposals can therefore be considered sustainable development, for which the Framework presumes in favour. Taken as a whole, this is a material consideration such that determination of this appeal may be made other than in accordance with the development plan.

### **Conditions**

90. The appeal being allowed, standard conditions are attached securing the submission of reserved matters and the commencement of development, in addition to a requirement that the development be carried out in accordance with the approved plans, to ensure certainty. In light of the concerns expressed by local residents in respect of road safety and local environmental impacts as a result of the anticipated construction period for the development conditions are required to manage construction, management of spoil or waste arisings and to regulate the hours of operation. The agreed Construction Method Statement needs to be comprehensively drawn and specifically focus on spoil disposal and construction traffic management planning so as to fully mitigate any possible harmful effects on local residents.
91. To safeguard the living conditions of future residents in specific areas of the site a condition is also attached to ensure dwellings within 20m of the proposed play area have appropriate sound mitigation measures in place.
92. Conditions are also required to secure details of roads, accesses, footway, surface water disposal and their phasing within the site, the prior provision of vehicular accesses, parking and turning areas serving dwellings and the provision of cycle parking within the site. All are required to ensure safe access and in the case of the latter to support other measures proposed to promote sustainable modes of travel from the site.
93. Conditions are required, notwithstanding the provisions of the reserved matters, to ensure a satisfactory appearance to the development. Thus a condition is attached to secure a full landscape impact assessment to be submitted which will govern key design parameters, including building heights, within the site. A condition is also attached securing details and samples of external surfaces within the development for the same purpose.
94. To overcome concerns over flooding expressed by the Environment Agency and local residents, a suite of conditions are necessary to fully mitigate any

such risk. A condition is therefore attached requiring the development to be carried out in accordance with the submitted Flood Risk Assessment, which requires the provision of a flood bypass channel to an approved design and an off-line pond. For the same purpose conditions are attached to secure the provision of a surface water drainage scheme for the site based on sustainable drainage principles and details of the crossings over the Southwalk Brook.

95. In order to mitigate the risk of ground water flooding and water course contamination, and so adverse impact environmental impact on the local community, conditions are also attached requiring the submission of a scheme to secure this and a drainage strategy detailing any on/off site works required.
96. In association with these technical measures a condition is also necessary to ensure that the new channel and pond are appropriately constructed to enhance the local environment and safeguard biodiversity. For similar and related reasons, a condition is also required to secure a method statement for the prevention of the spread of Himalayan Balsam on the site. Again, to safeguard the biodiversity of the site, a condition is attached requiring that all works and development are carried out in accordance with the recommendations of the submitted Ecology Report.
97. In order that any risks of ground contamination as a result of the past functions and back filling on the site are fully mitigated, conditions are attached requiring the submission of a scheme of mitigation and then a verification report demonstrating compliance with the requirements of the scheme. A condition is also attached prohibiting infiltration of surface water drainage into the area of historic infill, in order that controlled waters beneath are safeguarded.
98. In order that the extensive vegetative cover on the site, including mature deciduous trees and hedges, is safeguarded a condition is attached requiring the means of protection, including method statements where appropriate, to secure the management and retention of such vegetative cover on the site. Finally, to ensure that any archaeological interest of the site is appropriately safeguarded conditions are attached requiring the implementation of a programme of archaeological work to an agreed Written Scheme of Investigation and the deposit of any post-assessment analysis with the appropriate authority.
99. For the reasons given above, and having considered all matters raised in evidence and at the Inquiry, I conclude that the appeal should be allowed.

*David Morgan*

**Inspector**

### **Schedule of Conditions**

- 1) Details of the access, appearance of all buildings, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority

before any development begins and the development shall be carried out as approved.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:

1213-C101 Rev G, ITB7035-GA-111 Rev A and ITB7035-GA-115 Rev B.

- 5) No development shall commence on land to which the reserved matters relate until details of the width, alignment, gradient and type of construction proposed for the roads, footways and accesses, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting and the method of disposing of surface water, and details of a programme for the making up of roads and footways for that part of the site shall be submitted to and approved by the Local Planning Authority in writing before development in any phase commences. The development shall be completed in accordance with the details so approved.
- 6) A full landscape and visual assessment applying the Guidelines for Landscape and Visual Impact Assessment (LI/IEMA 2013) shall be submitted to and approved by the local planning authority with the Reserved Matters secured by condition No 1.
- 7) No site clearance, construction works or delivery or removal of materials to the site shall take place outside of 07:30 to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays or at any time on Sundays or National Holidays.
- 8) No development shall take place until a Construction Method Statement has been submitted to and approved, in writing, by the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) storage of plant and materials used in constructing the development
  - iv) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate
  - v) wheel washing facilities and the dispersal of water
  - vi) measures to control the emission of dust and dirt during construction
  - vii) details of the site office/compound

- viii) construction traffic management plan, to include details of how the site will be accessed and from what point(s), any works required to provide new access or upgrading of existing access routes, lorry routes, haul roads, parking and turning provision to be made on site and a programme for construction
  - ix) site waste management
  - x) details of the control measures for air quality, biodiversity, waste management and lighting.
- 9) No dwelling shall be occupied until all proposed vehicular accesses, driveways, parking and turning areas serving that dwelling have been constructed in accordance with details that have been submitted to and approved in writing by the local planning authority, and shall be retained for that purpose thereafter.
- 10) No dwelling shall be occupied until the approved cycle parking serving that dwelling has been provided on site by the local planning authority. This cycle parking provision shall be retained thereafter for their intended purpose.
- 11) No development hereby approved shall take place until details and samples of all external surfaces of roads and pathways have been submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with approved details.
- 12) No development hereby approved shall take place until details of how it is intended to relocate any spoil or waste arisings caused by the development of that part of the site, either on or off site, have been submitted to and approved in writing by the local planning authority. The works shall take place in accordance with the approved details.
- 13) The development hereby approved shall be carried out in accordance with the Flood Risk Assessment (FRA) September 2014, 23944/008, Revision E, produced by Peter Brett Associates and Technical Note, reference 23944\_4002, dated 23.02.2015, produced by Peter Brett Associates and the following mitigation measures detailed within these documents:
- 1. The provision of a flood bypass channel for the Southwark Brook complete with a high level overflow into the offline pond.
  - 2. Calculations demonstrating that any potential increase in downstream flows are being diverted into and safely contained within the offline pond.
  - 3. Channel to be built in accordance with the approved model design.
  - 4. Offline pond to be provided in accordance with updated master plan drawing and drainage strategy drawing provided in 150223 TN001 Response to EA comments of 29<sup>th</sup> January 2015.
  - 5. Buildings located in the north eastern part of the site are to be raised to the level indicated as necessary the groundwater monitoring results.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements



embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- 14) Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved, in writing, by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

The scheme shall also include:

- Drawing showing the detailed drainage layout with pipe numbers labelled showing a large range of SuDS.
  - Pipe system calculations with corresponding pipe numbers demonstrating that the drainage system can contain the 1 in 30 storm event without flooding and any flooding in the 1 in 100 plus climate change storm event can be safely contained on site.
  - No increase in surface water runoff rates for all storm events up to the 1 in 100 plus climate change storm events. Any increase in discharge volumes up to the 1 in 100 plus climate change storm event must be appropriately mitigated in accordance with the CIRIA SUDS Manual 2011.
  - Where relevant, the provision of mitigation measures to prevent the ingress of groundwater into the drainage system.
  - Details of how the drainage system will be maintained for the lifetime of the development.
- 15) No development shall take place until the details and design of any proposed crossings or amendments to existing crossings over Southwark Brook have been submitted to and approved, in writing, by the local planning authority. The crossings shall be implemented in accordance with the approved details before the completion of the development.
- 16) Prior to first beneficial occupation the proposed new channel and pond are to be constructed in accordance with a scheme to be submitted to and approved, in writing, by the local planning authority.

The scheme shall include the following features:

- The pond will be off-line to and separate from the new channel.
  - Planting in and within 8 meters of the proposed new channel, in and around the pond and in any other bio-retention areas, should be of appropriate native species only, of UK provenance.
  - The pond shall not be stocked with fish.
  - There should be no light spill on to the proposed new channel, to avoid interfering with the natural behaviour patterns of nocturnal wildlife such as bats.
- 17) No development shall take place until a detailed method statement for removing or the long-term management/control of Himalayan balsam

on the site has been submitted to and approved, in writing, by the Local Planning Authority. The method statement shall include measures that will be used to prevent the spread of Himalayan balsam during any operations e.g. mowing, strimming or soil movement. It shall also contain measures to ensure that any soils brought to the site are free of the seeds/root/stem of any invasive plant listed under the Wildlife and Countryside Act 1981, as amended. Development shall proceed in accordance with the approved method statement.

- 18) No development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
1. Compliance with the approved Phase 1 Contamination Assessment dated September 2014.
  2. A site investigation scheme, based on 1. to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  3. The results of the site investigation and detailed risk assessment referred to in 2. and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in 3. are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.

- 19) No beneficial occupation of any dwellings hereby approved shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation approved by condition 18 has been submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 20) No infiltration of surface water drainage into the ground in the area of the historic landfill shall be undertaken other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters or human health. The

development shall be carried out in accordance with the approved details.

- 21) The development hereby approved shall not be commenced until such time as a scheme to mitigate the risk of ground water flooding in the north eastern part of the site has been submitted to and approved, in writing, by the local planning authority.

The approved scheme shall include the following:

1. Provision of groundwater level monitoring results.
2. Provision of a groundwater flood risk assessment, based on these monitoring results and other available data, determining which elements of the proposed development, if any, could be affected in periods of high groundwater.
3. What mitigation measures will be provided for features identified as vulnerable to high groundwater levels to ensure that groundwater does not detrimentally impact the surface water drainage scheme, properties, site infrastructure or increase flood risk elsewhere due to its interaction with the development.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.

- 22) Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, including measures to protect the local environment from pollution, has been submitted to and approved, in writing, by the Local Planning Authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
- 23) All works must be carried out in accordance with the recommendations in the Ecology Report provided by Ecology Solutions Ltd (dated September 2014) unless otherwise agreed, in writing, by the Local Planning Authority.
- 24) No work shall take place until details of the means of protection, including method statements where appropriate, for all trees, hedges, hedgerows and shrubs on site, unless indicated as being removed, have been submitted to and approved in writing by the local planning authority. The trees, hedges, hedgerows and shrubs shall be retained and protected in accordance with the approved details for the duration of works on the site and retained for at least five years following occupation of the approved development. Any such vegetation immediately adjoining the site shall be protected on the site in a similar manner for the duration of works on the site.

Any such vegetation removed without the local planning authority's consent, or which die or become, in the Authority's opinion, seriously damaged or otherwise defective during such period shall be replaced and/or shall receive remedial action as required by the Authority. Such

works shall be implemented as soon as is reasonably practicable and, in any case, replacement planting shall be implemented by not later than the end of the following planting season, with planting of such size and species and in such number and positions as may be agreed with the Authority in writing.

- 25) No development shall take place on land to which reserved matters relate until the applicant has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation that has been submitted to and approved by the local planning authority for that part of the site. The works shall take place in accordance with the approved details.
- 26) Following completion of archaeological fieldwork a report will be produced in accordance with an approved programme including where appropriate post-excavation assessment, specialist analysis and reports and submitted for archive to Hampshire County Council to an agreed timeframe.
- 27) No dwelling located within 20 meters of any children's play area shall be occupied until a noise assessment has been undertaken by a suitably qualified acoustic consultant/engineer and a report submitted in accordance with a methodology first agreed with the local planning authority. The report shall include an assessment of noise likely to be generated from the use of the children's play area which may affect neighbouring residential properties and a detailed scheme of noise mitigation measures designed to minimise and mitigate any significant impacts identified, taking into account the relevant provisions of the NPPF and NPPG, and BS 8233: 2014 "Guidance on Sound Insulation and Noise Reduction for Buildings".

The approved scheme shall be implemented prior to the occupation of any dwelling within 20 meters of a play area and be permanently maintained thereafter.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Michael Bedford

Instructed by:

Queen's Counsel

Ms Lisa Kirkman, Shared Legal Services, Hart District and Basingstoke and Deane Borough Councils

He called

Simon Wood BA (Hons) BTP MRTPI

### FOR THE APPELLANT:

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Instructed by:

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He called

Mr Will Edmonds BA (Hons) MRTPI

Mr Christopher Gimingham BA (Hons),  
BTPCMILT, MCIHT

Mr Jullian Cooper BSc (Hons) DipLD FLI AiLA

Mr Paul Swindale BSc (Hons) C Eng CWEM  
CEnV MICE MCIWEM MCIHT

### INTERESTED PERSONS:

Mr Nicholas Godwin Yateley  
Urnfield Residents Action Group  
(YURAG)

Mr Alistair Sutherland YURAG

Mr Trevor Smithson

Mr Anthony Buckle

Mrs Pamela Reeves

Mrs Pat Bryant

Mr Richard Ashwell

Mr Ian Dallimore

Mr Leonard west  
Mr Steven Foster

Ms Fiona Laing

Mr Duncan Clark

Ms Joy McHale

Mr Frank Hecksher

Ms Hilde Bartlett

Ms Carol Carter

Mr Darren Phelps

Mrs Susan Smithson

Councillor Adrian Collett

Councillor Philip Todd (Eversley  
Parish Council and NE  
Hampshire Campaign for the  
Protection of Rural England)

Mr Barry Moody (Yateley  
Society)

Councillor Mr Robert Harward  
(Yateley Town Council)

### **Documents submitted at the Inquiry**

1. Appearances – Appellant
2. Draft section 106 agreement – Appellant
3. Appeal decision, Spode Close – Council
4. High Court Judgement (BDW) – Appellant
5. High Court Judgement (Renfrew Land) – Appellant
6. Statement, The Yateley Society
7. Openings – Appellant
8. Openings – Council
9. Summary of Mr Wood's Proof – Council
10. Cabinet report 2 June 2016 SANG Monitoring – Appellant

11. Hart Local Plan 19196 – 206
12. Statement Councillor Collett
13. Week day peak hour x2 way traffic flows – Appellant
14. Land at Oakley plan - Appellant
15. SofS decision Marnel Park, Popley – Appellant
16. Updated table 8.4 (Mr Gimmingham's Proof) – Appellant
17. Bus route No 3 timetable – Appellant
18. Stagecoach Aldershot – Yateley timetable – Appellant
19. Hart DC 5 yr land supply position statement 14 May 2014 – Appellant
20. E mail from Hampshire CC on parking in Coombe Road – Appellant
21. Beech Tree Close Street View images – Council
22. Beech Tree Close AP – Council
23. Spode Close Street View images – Council
24. Spode Close AP – Council
25. Minutes of Pre-App meeting 21 November 2014 – Appellant
26. E mail trail 10 Feb 2015 – Appellant
27. Planning Advisory Service guidance – Appellant
28. High Court Judgement (Wychavon) – Appellant
29. Hart District Interim Housing Delivery Strategy 1/10/2013 – Appellant
30. Planning Committee Meeting (Hart) 12/02/2014 – Appellant
31. Hart DC 5 yr Land Supply Position Statement 13/03/2014 – Appellant
32. Hart DC Planning Committee Agenda 24/04/2014 – Appellant
33. Draft document list – Appellant
34. Ecology Proof – Dominic Farmer – Appellant
35. Yateley Green Conservation Area Character Appraisal 07/2011
36. Plan long cross sections – Appellant
37. List of audited saved policies 04/2015 – Council
38. Statement: Mr Frank Heckscher
39. Statement: Mr Leonard West
40. Statement: Richard Ashwell
41. Statement: MR Duncan Clark
42. Statement: Mrs Susan Smithson

43. Guidelines for Landscape and Visual Impact Assessment – Council
44. Statement: Mr Ian Dallimore
45. Statement: Ms Carol Carter
46. Statement: Ms Fiona Laing
47. Statement; Mr Steven Foster
48. Statement: Councillor Mr Robert Harward
49. Withdrawal of Interim Housing Strategy – Council
50. CIL Compliance Statement – Council
51. Revised Condition No 6 – Appellant
52. Comments of Mr Le on amended conditions – Council
53. Amended list of conditions – Appellant
54. Closing Submissions: YURAG
55. Closing Submissions: Council
56. High Court Judgement (Daventry) – Appellant
57. Correspondence from natural England 24/09/2015 – Appellant
58. Travelling draft of section 106 agreement – Appellant
59. Closings Submissions: Appellant
60. House of Lords Judgement (Edinburgh) – Appellant
61. E mail on sec 106 contributions and CIL compliance – Council
62. V2 document list – Appellant
63. Final version of section 106 agreement - Appellant