Department for Communities and Local Government

Our Ref: APP/W1715/W/15/3130073

Mr Thomas Southgate
Terence O'Rourke Limited
Everdene House
Deansleigh Road
Bournemouth
BH7 7DU

30 November 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**
**APPEAL MADE BY GLEESON DEVELOPMENTS LTD, MILLER HOMES LTD AND WELBECK LAND**
**LAND TO THE NORTH WEST OF BOORLEY GREEN, WINCHESTER ROAD, BOORLEY GREEN, EASTLEIGH, HAMPSHIRE**
**APPLICATION REF: 0/15/75953**



1. I am directed by the Secretary of State to say that consideration has been given to the report of David Nicholson RIBA IHBC, who held a public local inquiry on 17-19 and 24-27 May 2016 into your clients' appeal against the decision of the local authority to refuse planning permission for the development of a new sustainable neighbourhood comprising of up to 680 residential units, a new local centre including provision for small scale retail and/or community/healthcare use, land for a two-form entry primary school, formal and informal open space and sports provision, access roads and all other associated and necessary on-site infrastructure including details of the new junction arrangement for the main point of access into the development, in accordance with application ref: 0/15/75953, dated 6 July 2015.

2. On 25 August 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 150 units, or on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

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

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

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Planning Casework
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**Environmental Statement**

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the addendum submitted for the amended scheme. Having taken account of the Inspector's comments at IR1.7, the Secretary of State is satisfied that the ES, including the Addendum, complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

**Procedural matters**

5. The Secretary of State notes that amended drawings were submitted refining some elements of the scheme. He agrees with the Inspector's conclusion at IR1.6 that, as these were limited in scope and had already been subjected to public consultations, no-one would be prejudiced by him taking them into account in coming to his decision.

6. An application for a partial award of costs was made by your clients against Eastleigh Borough Council ("the Council") (IR1.1). This application is the subject of a separate decision letter.

**Policy and statutory considerations**

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

8. In this case the development plan consists of the saved policies of the Eastleigh Borough Local Plan Review (LP) 2001-2011, adopted in 2006. The Secretary of State considers that the development plan policies of most relevance to this case are those described at IR3.2-3.6.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

*The Draft Plan and the Emerging Plan*

10. The Secretary of State notes that the draft plan, the Eastleigh Borough Local Plan 2011-2029, was found unsound by the Examining Inspector in February 2015 for reasons including an inadequate supply of housing land in the first 5 years and inadequate provision for affordable housing (IR3.7-3.8). That plan has not been withdrawn but it has not been adopted, and the Secretary of State affords it very little weight. The emerging local plan, the Eastleigh Borough Local Plan 2011-2036 (eLP), is only at Issues and Options stage and no policies have yet been published. Therefore, in terms of paragraph 216 of the Framework, the Secretary of State gives it very little weight.

11. There is no neighbourhood plan (NP) for the area. There is the prospect of an emerging NP for Botley Parish and a NP area has been designated (IR3.10) but, until a plan has been published, the Secretary of State gives it no weight.

**Main issues**

12. The Secretary of State agrees with the Inspector that the main issues are those set out at IR12.1.

13. The Secretary of State agrees with the Inspector that, for the reasons given at IR12.2 and IR12.57, the appeal scheme would be contrary to LP Policy 1.CO. The Secretary of State agrees with the Inspector that LP Policy 1.CO is a relevant policy for the supply of housing under paragraph 49 of the Framework and, in the absence of a 5 year supply of housing land, is not up-to-date.

14. Furthermore, for the reasons given at IR12.3-12.5, IR12.7, IR12.45, IR12.57 and IR12.59, the Secretary of State agrees with the Inspector's conclusion that the scheme would also be contrary to LP Policy 3.CO. He agrees that, not only does that policy affect housing land supply and, for that reason, should be regarded as out-of-date but that other factors also limit the weight to be given to the conflict. These include: the Inspector's findings with regard to the lack of harm to named settlements; the limited viewpoints from which harm to the local gap could be experienced; the proposal for a significant landscape buffer to complement the railway line separation; and the precedent of other development being allocated within local gaps (IR12.57). Thus, overall, the Secretary of State gives limited weight to the conflict with LP Policy 3.CO.

15. For the reasons given at IR12.6 and IR12.58, the Secretary of State agrees with the Inspector that, although the proposals would not accord with LP Policy 18.CO, only limited weight should be given to that conflict; and that the scheme would accord with Policy 59.BE. The Secretary of State also agrees with the Inspector at IR12.8 that the designation of a NP area for Botley Parish should carry no weight in the determination of this appeal and, as explained in paragraph 10 above, he gives very little weight to the draft and emerging Local Plans.

*Material considerations*

16. The Secretary of State agrees with the Inspector at IR12.9 that the Framework is a material consideration in planning decisions and that the presumption in favour of sustainable development and the objective of boosting housing supply through a five-year supply of deliverable housing sites are the policies of most relevance to this appeal.

*Housing supply*

17. The Secretary of State has given very careful consideration to the Inspector's analysis of the 5 year housing land supply position at IR12.10-12.20. He notes that it is common ground that the Council cannot demonstrate the 5 year housing land supply expected by paragraph 47 of the Framework (IR12.10); and agrees with the Inspector's conclusions at IR12.21 that, on the basis of the information presented at the Inquiry and assuming that this decision is issued within the statutory timetable set, the housing land supply should be regarded as standing at around 4 years. The Secretary of State also agrees with the Inspector's conclusion at IR12.22 that considerable weight should be attributed to the benefits which the scheme would bring through delivering affordable housing.

*Character and appearance*

18. The Secretary of State has also given very careful consideration to the Inspector's discussion of the character and appearance of the site at IR12.23-12.47. He agrees with the Inspector at IR12.23 that, as the appeal site lies outside the urban edge, this

represents a further reason why the scheme would be contrary to LP Policy 1.CO. He also agrees with the Inspector's conclusion at IR12.24 that the development would harm the landscape qualities of the site itself by permanently altering countryside into built development.

19. Furthermore, as indicated in paragraph 14 above, the Secretary of State agrees with the Inspector at IR12.45 that, in the circumstances of this case, although policy 3.CO is a relevant policy for the supply of housing, it is not up-to-date and, as the site is in the least important part of the relevant named gap - the purpose of which would be largely retained - the weight given to the gap should be greatly reduced. He also agrees with the Inspector (IR12.46-12.49) that the weight given to the gap affecting the appeal site should be further reduced because it has been down-graded from strategic to local and is more discernable on a map than on the ground; that any harm to the gap policy needs to be weighed against the benefits of a boost to the supply of housing; and that the separate identities of Hedge End and Boorley Green would be retained.

**Planning conditions**

20. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.3, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and he has therefore incorporated them in his decision as set out at Annex A to this letter.

**Planning obligations**

21. Having had regard to the Inspector's analysis at IR11.1-11.3, the planning obligation dated 16 June 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.3 that the obligation complies with Regulations 122 and 123 of the CIL Regulations and the tests at paragraph 204 of the Framework, is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.



**Planning balance and overall conclusion**

22. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with LP Policies 1.CO, 3.CO and 18.CO of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

23. Given that the development plan policies for the supply of housing are out-of-date and the Council cannot demonstrate a 5 year housing land supply, the Secretary of State considers that paragraphs 14 and 49 of the Framework are engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.

24. The Secretary of State gives considerable weight to the benefits of the scheme in delivering a new neighbourhood comprising of a large number of homes and facilities

including a new local centre and land for a primary school. The proposal would make a significant contribution in terms of helping to make up the deficit against the 5 year housing land supply and the need for affordable housing.

25. The Secretary of State acknowledges that the development of this site would harm the landscape and result in the loss of countryside, but he considers that this should be tempered by the very limited impact on views from outside the site and its immediate surroundings. He therefore gives only moderate weight to the harm caused to the landscape and by the loss of countryside.

26. The Secretary of State concludes that the adverse impacts would not significantly and demonstrably outweigh the identified benefits when assessed against the policies in the Framework taken as a whole. He therefore considers that, overall, the material considerations indicate that he should determine the proposal other than in accordance with the development plan, and he concludes that planning permission should be granted.

**Formal decision**

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the development of a new sustainable neighbourhood comprising of up to 680 residential units, a new local centre including provision for small scale retail and/or community/healthcare use, land for a two-form entry primary school, formal and informal open space and sports provision, access roads and all other associated and necessary on-site infrastructure including details of the new junction arrangement for the main point of access into the development, in accordance with application ref: 0/15/75953, dated 6 July 2015, subject to the conditions set out in Annex A to this decision letter.

28. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.



**Right to challenge the decision**

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. A copy of this letter has been sent to Eastleigh Borough Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by the Secretary of State to sign in that behalf

**Annex A**

## Schedule of conditions

1. No development shall start until details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters"), have been submitted to and approved in writing by the Local Planning Authority (LPA). The development shall be carried out in accordance with the approved details.

2 The development hereby permitted shall comprise no more than 680 dwellings.

3 The development hereby permitted shall be carried out in general accordance with the details shown on the Land Use Plan, drawing ref. 143405/LUB/003 Rev G, 143405/MA/008 Rev A, 143405/BH/006 Rev A, 143405/DEN/005 Rev A, 143405/LA/009 Rev A, ITB11055-GA-104 Rev D.

4 Application for approval of the reserved matters for the first phase of the development (of no less than 300 units) shall be made to the LPA not later than one year from the date of this permission, or one year from the conclusion of any subsequent Section 288 process, whichever is the later. Application for all of the remaining phases of the development shall be made to the LPA not later than three years from the date of this permission.

5 The development hereby permitted shall begin before the expiration of two years from the date of approval of the first of the reserved matters to be approved.

6 The reserved matters application for landscaping shall be accompanied by a Landscape Masterplan and Strategy to demonstrate that the landscaping proposals have taken account of, and been informed by, the existing landscape characteristics of the site and by any loss of existing vegetation on the site. The landscaping scheme shall include all hard and soft landscaping, including trees, boundary treatments and means of enclosure, car park layouts; proposed and existing functional services above and below ground; and shall provide details of timings for the provision of all landscaping and future management and maintenance. All hard and soft landscape works shall be carried out in accordance with the approved details and programme.

7. For a period of no less than 5 years after planting, any trees or plants which are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of the same species, size and number as originally approved in the landscaping scheme.

8. No development or site preparation prior to operations which have any effect on compacting, disturbing or altering the levels of the site shall take place on site until an Arboricultural Method Statement and Tree Protection Plan (prepared in accordance with B.S.5837:2012 Trees in Relation to Design, Demolition and Construction) is submitted to and approved in writing by the LPA for each phase of the development and a person qualified in arboriculture, and approved by the LPA, has been appointed on the behalf of the developer to supervise construction activity occurring on the site where such development will occur within, or adjacent to, a Root Protection Zone of any tree to be retained.

   This statement must include methodology for:
   - Removal of existing structures and hard surfacing
   - Installation of protective fencing and ground protection
   - Excavations and the requirement for specialised trenchless techniques where required for the installation of services. The default position is that all services should be situated outside of the RPA of all trees
   - Installation of new hard surfacing (no dig) – materials, design constraints and implications for levels

- Preparatory work for new landscaping
- Auditable system of arboricultural site monitoring including a schedule of specific site events requiring input or supervision, together with a mechanism for the submission of written evidence of monthly monitoring and compliance by the appointed Arboricultural Supervisor during construction.

The appointed Arboricultural Supervisor will be responsible for the implementation of protective measures, special surfacing and all works deemed necessary to ensure compliance with the approved Arboricultural Method Statement and Tree Protection Plan. A pre-commencement site meeting between the LPA's Arboricultural Officer, the appointed Arboricultural Supervisor and Site Manager shall take place for each phase of development, prior to any equipment, materials or machinery being brought onto the site for the purposes of development, to confirm the protection of trees on and adjacent to the site in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.

9. Following inspection and approval of the tree protection measures, no access by vehicles or placement of goods, chemicals, fuels, soil or other materials shall take place within fenced areas nor shall any ground levels be altered or excavations. The tree protection shall be retained in its approved form until the development is completed.

10. No development shall take place in any phase, including any works of demolition, until a Construction Method Statement and Construction Environmental Management Plan (CEMP) for that phase has been submitted to, and approved in writing by the LPA. The approved Statement and CEMP shall be adhered to throughout the construction period. The Statement shall provide for:

    i. Means of access for construction work

    ii. A programme and phasing of construction work, including roads, landscaping and open space

    iii. Location of temporary storage buildings, compounds, construction material and plant storage areas used during construction

    iv. The arrangements for the routing/turning of lorries and details for construction traffic access to the site

    v. The parking of vehicles of site operatives and visitors

    vi. Provision for storage, collection, and disposal of recycling/waste from the development during construction period

    vii. Details of wheel washing and measures to prevent mud and dust on the highway during demolition and construction

    viii. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate

    ix. Temporary lighting

    x. Protection of trees and ecology (to include Habitats Regulation Assessment requirements)

    xi. Noise generating plant

    xii. Measures to control the emission of dust and dirt during construction (having regard to the details contained in the "Best Practice Guidance – The Control of Dust and Emissions from Construction and Demolition", 2006 (London Authorities) and "Guidance on the assessment of dust from demolition and construction" 2014 (Institute of Air Quality Management)

    xiii. A noise and vibration assessment which takes into account the impact of demolition and piling works on existing and proposed noise sensitive properties, including a scheme of mitigation measures for protecting from noise and vibration

    xiv. Protection of pedestrian routes during construction

    xv. Safeguards to be used within the construction process to ensure surface water contains no pollutants on leaving the site, including suspended solids

    xvi. Safeguards to waterways adjacent to the site from pollution impacts

xvii. Hours of construction works restricted to 0800 - 1800 hours Monday to Friday, 0800 - 1300 on Saturday, and at no other time on Sundays, Bank and Public holidays

xviii. No burning on site during construction and fitting out of the development hereby permitted.

11. No development shall take place in any phase until a surface water drainage scheme for that phase, 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 LPA. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1:100 year event critical storm (plus 30% climate change allowance) will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

    Those details shall include:

    - Information about the design storm period and intensity, the method employed to deal and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
    - Control measures to limit pollutants leaving the site;
    - A timetable for its implementation; and
    - A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its life to maintain operational water quality.

12. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (by FMW Consultancy, FMW1467F, dated December 2014) and the following mitigation measures detailed within the FRA:

    - All buildings and development must be located within Flood Zone 1 only. The mitigation measures shall be fully implemented prior to occupation and in accordance with the timing / phasing arrangements embodied within the scheme.

13. Prior to the commencement of any phase, details of the construction proposed for the roads and footways within the development, for each phase, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels together with details of street lighting (designed to minimise spillage and avoid impacting on flight corridors used by bats), the method of disposing of surface water, and details of the programme of implementation for the making up of the roads and footways, including on-going management and maintenance of any roads, footpaths and accesses and any future plans for adoption, must be submitted to and approved by the LPA in writing.

14. The roads and footways must be laid out and made up in accordance with the specification, programme and details approved and in any event shall be so constructed that, by no later than the time any building erected within that phase on the land is occupied, there shall be a direct connection from it to an existing highway. The final carriageway and footway surfacing must be commenced within 3 months and completed within 6 months from the date upon which the erection is commenced of the penultimate dwelling herby permitted.

15. No surface alterations to the Public Right of Way, Botley Footpath no. 1, or any works that affect its surface, shall take place without the prior permission of Hampshire County Council, as the Highway Authority.

16. Development shall not begin in any phase until a noise assessment scheme has been submitted that demonstrates that the adverse impacts of noise on the development within that phase have been addressed through building layout and design, including where appropriate, mitigation measures to achieve acceptable levels of noise both externally and internally. The

noise mitigation measures, as approved in writing by the LPA, shall be fully installed and verified as performing as required in accordance with the approved scheme.

17. Any plant or equipment used for the purpose of air conditioning shall be provided with suitable acoustic attenuation, or sited at agreed locations, to mitigate the effects of noise as approved in writing by the LPA. The acoustic attenuation shall be installed and retained in accordance with the approved details.

18. No work shall commence on site until the following has been submitted to, and approved in writing by the LPA:

a) A Report of Preliminary Investigation comprising a Desk Study, Conceptual Site Model, and Preliminary Risk Assessment documenting previous and existing land uses of the site and adjacent land in accordance with national guidance and as set out in Contaminated Land Report Nos. 11, CLR11, and BS 10175:2011+A1:2013 Investigation of potentially contaminated sites - Code of Practice, and, unless otherwise agreed with the LPA;

b) A Report of a site investigation documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the Preliminary Investigation and in accordance with BS 10175:2011+A1:2013, and BS 8576:2013 and unless otherwise agreed with the LPA;

c) A detailed site specific scheme for remedial works and measures to be undertaken to avoid the risk from contaminants and/or gases when the site is developed and proposals for future maintenance a and monitoring.

Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

19. The development hereby permitted shall not be occupied / brought into use until there has been submitted to the LPA verification by the competent person approved under the provisions of condition 18(c) that any remediation scheme required and approved under the provisions of condition 18(c) has been implemented fully in accordance with the approved details (unless varied with the written permission of the LPA in advance of implementation).
Unless agreed in writing with the LPA such verification shall comply with the guidance contained in CLR11 and EA Guidance for the Safe Development of Housing on Land Affected by Contamination - R&D Publication 66: 2008. Typically such a report would comprise:
- A description of the site and its background, and summary of relevant site information;
- A description of the remediation objectives and remedial works carried out;
- Verification data, including - data (sample locations/analytical results, as built drawings of the implemented scheme, photographs of the remediation works in progress, etc;
- Certificates demonstrating that imported and / or material left in situ is free from contamination, gas / vapour membranes have been installed correctly.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 21(c).

20. No development shall take place until an Employment and Skills Management Plan has been submitted to and approved in writing by the Council. This Plan will include a mechanism for delivery of the approved Plan in a co-ordinated way by the developers and for a report to be submitted to indicate how the criteria set out in the approved Employment and Skills Management Plan are jointly being met.

21. Prior to the commencement of the Development, the developers shall implement the approved Employment and Skills Management Plan throughout the duration of the construction period and any subsequent variations shall be agreed in writing by the LPA.

22. No reptile translocation or development shall take place until a phased Ecological Protection and Mitigation Plan, including timetable of implementation, has been submitted to and

approved in writing by the LPA.
This plan shall include:
- a scheme of ecological enhancements and landscaping and safeguards to protect the identified badger sett from disturbance;
- incorporation of features suitable for use by breeding birds (including swifts and house sparrows), and bats;
- an assessment of the trees on site for bat roosts, undertaken by a licensed bat ecologist;
- a reptile translocation, mitigation management and monitoring plan;
- a detailed scheme for the provision of mains foul water sewerage disposal on and off site within each phase.

The Plan shall be carried out as approved.

23. No tree/shrub clearance works shall be carried out on the site between 1st March and 31st August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the LPA. If such a scheme is submitted and approved the development shall thereafter only be carried out in accordance with the approved scheme.

24. No development which would disturb Japanese knotweed on the site shall take place until a detailed method statement for removing or the long-term management/control of Japanese knotweed on the site shall be submitted to and approved in writing by the LPA. The method statement shall include measures that will be used to prevent the spread of Japanese knotweed 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

25. No development shall take place until a scheme for the provision and management of a 15 metre wide buffer zone alongside the Moorgreen Stream/Ford Lake Brook running through the development site shall be submitted to and agreed in writing by the LPA. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:
    - Plans showing the extent and layout of the buffer zone;
    - Details of any proposed planting scheme (for example, native species);
    - Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan;
    - Details of any proposed footpaths, fencing, lighting etc;
    - Where a green roof is proposed for use as mitigation for development in the buffer zone ensure use of appropriate substrate and planting mix.

26. No development shall take place until the applicant has secured the implementation of a programme of archaeological assessment and a programme of archaeological mitigation in accordance with the submitted Environmental Statement Appendix C, 'C3 Written Scheme of Investigation for a Scheme of Investigation for a Scheme of Archaeological Evaluation'.

27. Following the completion of the archaeological fieldwork, a report will be produced in accordance with an approved programme, including, where appropriate, post-excavation assessment, specialist analysis and reports, publication and public engagement. This report shall be submitted to the LPA and to the local Historic Records Office.

28. For reserved matters applications, residential buildings shall achieve the following:

    - In respect of energy efficiency, a standard of a 19% improvement of dwelling emission rate over the target emission rate as set in the 2013 Building Regulations being equivalent to

and not exceeding the requirement as set by Code Level 4 (as defined by ENE1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).

- In respect of water consumption, a maximum predicted internal mains water consumption of 105 litres/person/day, i.e. the equivalent requirement as set by Code Level 4 (as defined by WAT1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).

Any non-residential development must achieve a BREEAM New Construction 'excellent' standard.

29. Prior to the construction of any building above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing with the LPA), a BREEAM New Construction Interim Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) design stage SAP data and a design stage water calculator confirming energy efficiency and the predicted internal mains water consumption shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

30. Prior to the construction of any dwelling above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing by the LPA) a report shall be submitted to and approved in writing by the LPA which sets out how essential requirements set out within ESD 2-8 of Eastleigh Borough Council's Environmentally Sustainable Development SPD will be met within that phase. The development shall not be carried out otherwise than in accordance with the approved details.

31. Prior to the first occupation of each type of building within each phase a BREEAM New Construction Post Construction Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) an as built stage SAP data, and an as built stage water calculator confirming energy efficiency and the predicted internal mains water consumption; which shall meet the requirements set out in condition 24 above; shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

32. Prior to the first occupation of each type of building within each phase of development a report highlighting how the essential requirements set out within ESD2-8 of the Eastleigh Borough Council's adopted Environmentally Sustainable Development SPD, set out by condition 26 above, have been achieved in that phase of the development shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

33. A Design Code shall be submitted with the first reserved matters application, accompanied by a Masterplan, demonstrating how the reserved matters application, and the remainder of the outline permission (if reserved matters takes place in phases) meets the objectives of the Design & Access Statement (March 2016) and takes into account the drawings listed in condition 3 submitted with the outline planning application. It shall include details of:
    - Street Hierarchy and Character;
    - Green Infrastructure and Green Corridor Framework;
    - Urban Form, and;
    - The Character Areas, including boundary treatments and materials.

34. No development shall take place within each phase until the following details have been submitted to and approved in writing by the LPA for that phase:
    - Details and samples of the materials to be used in the construction of the external surfaces of the buildings (including fenestration, rainwater goods, meter boxes, fascias and soffits).
    - Plans including cross sections to show proposed ground levels and their relationship to existing levels both within the site and on immediately adjoining land.

- Any pumping stations and associated no build zone details
- External crime prevention measures for any flatted units.
  Development shall be carried out in accordance with the approved details.

35. A parking layout plan showing the unallocated parking spaces (for shared use by any residents or visitor of the site) for each phase shall be submitted and approved as part of the reserved matters. The identified unallocated parking spaces shall remain unallocated and available for shared use by residents and visitors to the site in perpetuity.

The Planning Inspectorate

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

**by David Nicholson RIBA IHBC**

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

**Date: 25 August 2016**



TOWN AND COUNTRY PLANNING ACT 1990

EASTLEIGH BOROUGH COUNCIL

APPEAL MADE BY

GLEESON DEVELOPMENTS LTD, MILLER HOMES LTD AND WELBECK LAND

Inquiry held on 17-19 and 24-27 May 2016

Land to the north west of Boorley Green, Winchester Road, Boorley Green, Eastleigh, Hampshire

File Ref: APP/W1715/W/15/3130073

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## GLOSSARY

| | |
|---|---|
| 5YHLS | 5 Year Housing Land Supply |
| AQMA | Air Quality Management Area |
| BPAG | Botley Parish Action Group |
| CD | Core document |
| CIL | Community Infrastructure Levy |
| DAS | Design and Access Statement |
| CLG | Communities and Local Government |
| DAS | Design and access statement |
| dpa | dwellings per annum |
| EBC | Eastleigh Borough Council (the Council) |
| eLP | Emerging Local Plan |
| EIA | Environmental Impact Assessment |
| ES | Environmental Statements |
| HCC | Hampshire County Council |
| HE | Highways England (formerly the Highways Agency) |
| IC | Examination in chief |
| LP | (Eastleigh Borough) Local Plan |
| LPA | Local Planning Authority |
| GLVIA | Guidelines for Landscape and Visual Impact Assessment, 3rd edition |
| NCA | National Character Area |
| NPPF | National Planning Policy Framework |
| OAN | Objectively Assessed Needs |
| ONS | Office for National Statistics |
| PPG | Planning Practice Guidance |
| RfR | Reason for Refusal |
| ReX | Re-examination |
| S106 | Section 106 of the Town and Country Planning Act 1990 |
| SHMA | Strategic Housing Market Assessment |
| SoCG | Statement of Common Ground |
| SNHP | Sub National Household Projections |
| SNPP | Sub National Population Projections |
| SPD | Supplementary planning document |
| WMS | written ministerial statement |
| XX | cross-examination |

**File Ref: APP/W1715/W/15/3130073**
**Land to the north west of Boorley Green, Winchester Road, Boorley Green, Eastleigh, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gleeson Developments Ltd, Miller Homes Ltd and Welbeck Land against the decision of Eastleigh Borough Council.
- The application Ref. O/15/75953, dated 30 January 2015, was refused by notice dated 6 July 2015.
- The proposal is for: The development of a new sustainable neighbourhood comprising of up to 680 residential units, a new local centre including provision for small scale retail and/or community/healthcare use, land for a two-form entry primary school, formal and informal open space and sports provision, access roads and all other associated and necessary on-site infrastructure. Details of the new junction arrangement for the main point of access into the development are not reserved.

**Summary of Recommendation: that the appeal should be allowed.**

## 1. Procedural Matters

1.1 At the Inquiry an application for costs was made by Gleeson Developments Ltd, Miller Homes Ltd and Welbeck Land (the appellants) against Eastleigh Borough Council. This application is the subject of a separate Report.

1.2 The appeal was recovered by the Secretary of State (SoS) for his own determination by way of a direction dated 25 August 2015[1]. The reason given for the direction was that: the appeal involves a proposal for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

1.3 The application to which the appeal relates was made in outline form except for access. All other matters (appearance, landscaping, layout and scale) were reserved. The application was refused by the Council for seven reasons[2]. These related to: development beyond the built up area, in the designated countryside and the local gap between Hedge End and Boorley Green; the existing transport network; road safety; Junction 7 of the M27; affordable housing; on and off-site infrastructure; and, impact on the Solent and Southampton Water Special Protection Area.

1.4 An Agreement was submitted under section 106 of the Town and Country Planning Act 1990 (s106 Agreement)[3]. I deal with the contents and justification for this below. Following agreement with Highways England (HE), and subject to the s106 Agreement being completed, the Council agreed that all but reason for refusal (RfR) 1 should be withdrawn.

1.5 Subject to mitigation included in the s106 Agreement, it was agreed that the scheme would not breach the Conservation of Habitats and Species Regulations 2010 and that no *appropriate assessment* under these was necessary.

[1] See main file
[2] Ibid
[3] Inquiry Document (ID) 37

1.6 Amended drawings have been submitted. These refined some elements of the scheme including the main site access junction and consequential reconfiguration of the local centre, a 100-space car park with access to the Hedge End railway station, and a bus link with Shamblehurst Lane North. Having studied these, I agree with the Council[4] that as the amendments[5] were limited in scope, and subject to public consultations, no-one would be prejudiced by me taking them into account and I have done so in reaching my conclusions.

1.7 The proposals are for development which requires an Environmental Impact Assessment (EIA). An Environmental Statement (ES) was submitted in accordance with the Town and Country Planning (EIA) (England and Wales) Regulations 1999 (The Regulations). Correspondence with the Council confirms the scoping and publicity. The ES includes a non-technical summary. Under *The Regulations*, planning permission cannot be granted for EIA development unless the environmental information has been taken into account. This includes not only the ES but also the written and oral evidence to the Inquiry. An ES Addendum[6] for the amended scheme, including a revised non-technical summary, was the subject of full consultation. There were no objections or concerns raised with regard to the adequacy of the ES or the ES Addendum[7].

1.8 The Botley Parish Action Group (BPAG) did not seek Rule 6 status but represented a large number of objectors as set out in its representations below. The Inquiry sat for 7 days from 17-27 May 2016. I held an additional evening session on Tuesday 24 May. I visited the area in advance of the Inquiry and conducted an accompanied site visit on 27 May 2016[8].

1.9 On 25 May 2016, the Office for National Statistics (ONS) published the 2014-based Sub-national population projections (SNPP) for England. The Council assessed that these result in a reduction of the starting point need from 523 to 518 dpa (2011-2036) but both parties agreed that this difference has no material effect on the evidence presented at the Inquiry[9] and so the new projections were not addressed any further in the closing submissions.

1.10 Changes were made to the Planning Practice Guidance (PPG) on 20 May 2016, during the Inquiry. A summary of the effects of the changes was submitted[10] and it was agreed that they were of limited relevance to the main issues.

1.11 The Council submitted five further documents[11] regarding two matters which arose after the Inquiry closed. I have also taken subsequent comments from the appellants[12], and final comments from the Council[13], into account.



[4] SoCG para 1.8
[5] See the drawing list at para 1.9 of the Statement of Common Ground (SoCG)
[6] Dated 11 March 2016
[7] In response to my question in opening, Day 1
[8] Roughly following the route on ID19, taking in the points from where the parties' photographs were taken
[9] ID30a and ID30b – SNPP Notes by Ireland and Coop
[10] ID33 – Changes to PPG
[11] Post-ID1: Further submissions and 4 appendices relating to a High Court Challenge with regard to *Land to the east of Grange Road* (see section 3 below) and housing figures
[12] Post-ID2: Further submissions from the appellants dated 11 July 2016
[13] Post-ID3: Response to appellants' further submissions, dated 13 July 2016

## 2. The Site and Surroundings[14]

2.1 The site description and its context were agreed to be as described in the ES Non-Technical Summary[15]. It comprises 45.4ha to the north west of Boorley Green, is bounded by a small number of residential properties along Winchester Road to the east, the railway line to the west and farmland to the north and south. Hedge End railway station is across Shamblehurst Lane North just beyond the north west corner of the site and the Botley Park Hotel and golf course is beyond Winchester Road. The latter has outline planning permission for 1,400 new dwellings and a local centre[16] referred to in this report as Boorley Fields.

2.2 Except for a farmhouse and associated buildings, the site itself comprises an undeveloped mosaic of grazed and ungrazed pasture with hedgerows and trees which slopes gently down from 33.5m Above Ordnance Datum (AOD) to the south to 19m AOD along a stream at the north end. A footpath[17], an unmade track lined by treed hedgerows, runs from close to Hedge End railway station to opposite the Botley Park Hotel.

2.3 The appeal site lies within National Character Area (NCA) 128 whose key characteristics include: *Mixed agricultural landscape dominated by pasture with small pockets of horticulture and arable. In parts, a very urban NCA dominated by the city and port of Southampton and other large towns …. The more rural hinterland is characterised by small, loosely clustered or dispersed settlements, intermixed with isolated farmsteads*[18]. The Partnership for South Hampshire (PUSH) Landscape Sensitivity Analysis[19] puts the sensitivity of the site at moderate. None of the site is within a Green Belt or National Park or has any landscape, nature conservation or historic designation[20]. It does lie within a designated local gap in the Local Plan (see below).

2.4 The character of the local settlements was considered in the DAS[21] and no issue was taken with any of the analysis there. Boorley Green is currently an almost exclusively residential triangle of housing and mature vegetation between the Winchester Road and Maddoxford Lane with a small green space in the middle and the Pear Tree Inn across the Winchester Road from the north point of the triangle. It was broken down into character areas for the 2008 Appraisals[22]. The Council described it as feeling like a village[23]. Just beyond this is the Boorley Fields site.

2.5 Hedge End comprises three distinct areas. To the south, the more established part of the town has a central mix of traditional shops and services which are



[14] See site location map at p8 in the updated A3 Design and Access Statement (DAS), March 2016, and the various maps in Williams Appendices Vol.2
[15] Confirmed in the SoCG para 2.1
[16] Ref. O/12/71514 to include a new roundabout on Winchester Road – see SoCG para 3.3
[17] Botley footpath No.1 - See CD3.1 para 2.6 and the DAS p13
[18] CD1.42 p6: Natural England (March 2014) NCA 128 'South Hampshire Lowlands'
[19] Williams appendices Fig 5
[20] It was common ground that the site is not excluded from considerations under NPPF14 by examples in footnote 9
[21] DAS section 3
[22] Character Area Appraisals Hedge End, West End and Botley, Supplementary Planning Document (SPD) HEWEB areas 40-44
[23] Nowak evidence-in-chief (IC)

surrounded by houses. Alongside the M27 is a substantial out-of-town retail development. To the north of the Botley Road, running up to a footpath and buffer alongside the railway line and adjacent to the appeal site, stands relatively recent residential development based on a layout of distributor roads and culs-de-sac, as was prevalent at that time[24], with some green spaces.

2.6 Botley is an historic settlement with the main concentration of services and facilities along the A334 High Street/Mill Hill. Away from this road the town is predominantly residential. As well as shops, pubs and restaurants, Botley has two schools, a GP's surgery, a recreation area, the Botley centre and a church. Botley High Street has been designated as an Air Quality Management Area (AQMA)[25].

2.7 Bubb Lane runs from the north west of Hedge End across the railway line to Winchester Road. The Decision for an Inquiry concerning *Land off Bubb Lane*[26] was issued during the Inquiry. The site in question lies at the western end of this road, close to Hedge End and the northern part of the Moorgreen Meadows Site of Special Scientific Interest, and within the Southampton – Hedge End strategic gap under LP Policy 2.CO (see below)[27].

2.8 Woodhouse Lane runs from the A334 roundabout near the centre of Hedge End out to the B3354 Winchester Road by the bridge over the railway at the south end of the appeal site and of Boorley Green. Together with another potential development site, the *Land West of Woodhouse Lane* is in the ownership of Hampshire County Council[28].

## 3. Planning Policy

3.1 The policies of the National Planning Policy Framework (NPPF) and the advice in the government's Planning Practice Guidance (PPG) are particularly relevant. Some of the important provisions in the NPPF, and their relationship with the development plan, were common ground[29].

3.2 The development plan for the area includes the policies in the Eastleigh Borough Local Plan Review (LP) 2001-2011, adopted in 2006, subject to the Saving Direction dated 14 May 2009. The relevant policies are listed in paragraph 4.7 to the SoCG. Of these, policies 1.CO, 3.CO, 18.CO and 59.BE are of particular relevance. The appeal site lies outside, but adjacent to, the urban edge and so is covered by LP Policy 1.CO which only grants planning permission outside the urban edge in specific circumstances, none of which applies here. Policy 2.CO applies further restrictions to strategic gaps if they would be either physically or visually diminished. LP Policy 3.CO states that: *Planning permission will only be permitted for appropriate development in a local gap, if:*

*i. it cannot be acceptably located elsewhere; and*

*ii. it would not diminish the gap, physically or visually*.

The LP Proposals Map[30] shows the locations and extent of strategic and local

[24] DAS section 3
[25] See ES technical appendix B and Air Quality Addendum, March 2016
[26] ID15: Appeal Ref: APP/W1715/W/15/3063753 *Land off Bubb Lane, Hedge End*, dated 24 May 2016
[27] Ibid paras 14, 26 and 28
[28] Ireland Housing supply rebuttal para 3.24-3.26
[29] Section 4 of the SoCG: CD3.1
[30] Relevant extract at CD1.2

gaps. The appeal site is shown as being covered by the designations 1.CO and 3.CO on the Proposals Map. Approximately 50% of the designated countryside in Eastleigh Borough lies within a strategic or local gap[31].

3.3 LP paragraph 1.6 lists the local gaps including Hedge End – Horton Heath, Botley – Boorley Green and Hedge End – Botley. Appendix 1 to the LP[32] identifies Strategic and Local Gaps adding a brief description and justification. Of these, the description for gap A. Botley – Boorley Green states that the western boundary lies along Winchester Road. The entry for gap B. Botley - Hedge End Local Gap is as follows: *The boundary of this gap, … has been drawn tightly to the western edge of Botley, … . Although this does not preclude appropriate extensions to existing buildings or redevelopment it should ensure that an intensification of built form can be resisted in what is a very narrow and potentially vulnerable part of the gap. The significance of the gap can be appreciated from several locations including Broad Oak, Brook Lane, Woodhouse Lane, Winchester Road and a number of public footpaths and bridleways which traverse the area. No changes to the boundary as identified in the adopted local plan are proposed, although its status has been changed from strategic to local gap*[33].

3.4 LP Policy 18.CO states that: *Development which fails to respect, or has an adverse impact on the intrinsic character of the landscape, will be refused*. Paragraph 12.5 adds that: *It is important that development proposals should reflect local landscape character by protecting, enhancing and restoring the key landscape characteristics*.

3.5 Paragraphs 4.26-28 promote good design. These lead to LP Policy 59.BE, which sets criteria for proposals, including that:
*i. they take full and proper account of the context of the site including the character and appearance of the locality or neighbourhood and are appropriate in mass, scale, materials, layout, density, design and siting, both in themselves and in relation to adjoining buildings, spaces and views, natural features and trees worthy of retention; …*
*iv. they provide a high standard of landscape design and appropriate planting where required. Development should use native plants in landscape schemes to benefit biodiversity. Development adjacent to or within the urban edge must not have an adverse impact on the setting of the settlement in the surrounding countryside; …*

3.6 Following the withdrawal of Network Rail's objection[34], subject to the requirements of its attached documents, the Council accepted that, subject to reserved matters, there would be no conflict with Policy 60.BE[35].

3.7 The Revised Submission Eastleigh Borough Local Plan Review 2011-2019 (eLP) was found unsound by the Examining Inspector[36] but has not been withdrawn. The Council has started to prepare a new local plan. In the Non-Technical

[31] Budden IC and XX
[32] Ibid p182
[33] Ibid p183
[34] Consultation response from Adrian Toolan, dated 19 March 2015, in the consultation responses to the Questionnaire, part 3 p16.
[35] Budden in XX
[36] CD1.6.3 Report dated 11 February 2015, para 90

Summary of his report the Inspector concluded that: *the* [eLP] *has a number of shortcomings in relation to housing need, the identified housing requirement and housing supply which are sufficient on their own to recommend non-adoption of the Plan. … the Council has not recognised the full extent of affordable housing need in the Borough and, as a consequence, has not considered all options to seek to better address that need. … market signals … indicate that some additional market housing is required … . The five year land supply position is inadequate, even for the housing requirement identified in the submitted plan, because a 20% buffer is required and the overall supply position is tight, with no flexibility to respond to changing circumstances*[37].

3.8 Within his detailed reasoning the LP Inspector found a need to take account of market signals and favoured exploration of a cautious uplift of 10%. He considered that increasing market housing to meet all the identified affordable housing (AH) need would not be realistic and accepted that the provision of AH would free up existing accommodation in the private rented sector. On delivery, he found that: *For the 10 year period 2001-2011 the Local Plan's annual average was met in only two years and overall delivery fell well short of the required total. This is clear evidence of persistent under delivery*[38]. In commenting on a possible MDA[39], he identified the concern that: *the severance effect of the rail line, which limits connectivity with the main urban area of Hedge End to one link across the railway line, or via the new access on Bubb Lane. … (T)he physical barrier of the rail line would be a severe constraint on integration of the two areas. As a result, I consider that this scheme would not help to build on the existing community in Hedge End.* He also commented on the site's relative isolation and the difficulty in creating a mixed development area around the rail station.

3.9 The former South East Plan (SEP)[40] aimed for 80,000 net additional dwellings for the South Hampshire sub-region up to 2026. Amongst other things, the Panel Report considered housing and Strategic Development Areas (SDAs)[41].

3.10 There is no neighbourhood plan (NP) for the area but there is the prospect of an emerging NP for Botley Parish and a NP area has been designated[42]. (See also the submissions in s8 below.)

3.11 The Report to the Communities Secretary and to the Minister of Housing and Planning by the Local Plans Expert Group (LPEG)[43] looked at how local plan making could be made more efficient and effective[44] and made a series of recommendations including how to boost supply, and a standard approach to 5 year supply calculations[45].

3.12 There is a significant difference between the household formation rates in the 2008-based and 2012-based projections. These are particularly noticeable in



[37] Ibid p3
[38] Ibid para 78
[39] CD1.4 paras 5.273, 5.277 and 5.282
[40] South Hampshire section at CD1.8
[41] Dated 6 August 2007. CD1.9 paras 16.64-16.67
[42] ID27 – Botley NP Designation Letter and Map comprising the whole of Botley Parish
[43] CD2.5 March 2016
[44] Ibid S1
[45] Ibid paras 41 and 43

the cohorts (or age ranges) of 25-34 and 35-44. The main parties agreed that there should be some adjustment to take account of this but could not agree on how it should be calculated.

3.13 The Council is one of 10 authorities in South Hampshire which make up PUSH. The PUSH Study, initially published in 2008 but revised in 2012[46], was supported by all 10 authorities and sets out to articulate a vision for South Hampshire's future and a strategy to align policies, actions and decisions with that overall vision. It is not a statutory plan but aims to provide a framework to inform and support the preparation of statutory local plans. It describes itself as a spatial strategy, with a scope beyond traditional land use planning, and founded on sound evidence that was formally adopted by the PUSH Joint Committee is therefore a pioneering example of the jointly prepared strategies envisaged by the NPPF[47].

3.14 The PUSH Study explains that the purpose of Gaps is to shape settlement patterns and to influence the location of planned development, not to stifle it altogether. It identifies 4 cross authority Gaps (two around Southampton) and sets out criteria for designating the location of other Gaps and to define the boundaries of all Gaps as follows:

a) *the designation is needed to retain the open nature and/or sense of separation between settlements;*

b) *the land to be included within the Gap performs an important role in defining the settlement character of the area and separating settlement at risk of coalescence;*

c) *the Gap's boundaries should not preclude provision being made for the development proposed in this Strategy;*

d) *the Gap should include no more land than is necessary to prevent the coalescence of settlements having regard to maintaining their physical and visual separation.*

It adds that, once designated, the multifunctional capacity of Gaps should be strengthened wherever possible[48]. The PUSH study has a separate Appendix[49] which identifies the importance of Green Infrastructure and Biodiversity, such as rivers, country parks, the coast and large tracts of woodland, and smaller scale features such as parks, play areas and the network of landscape features such as hedgerows.

3.15 There is no relevant planning history but an area including the appeal site has previously been identified as part of both a potential Major Development Area (MDA) as well as an SDA[50]. The PUSH study looked at the North-North East Hedge End SDA including the majority of the appeal site. As well as Boorley Fields, the Council has resolved to grant up to 950 dwellings on land at Chalcroft Farm and for up to 1,100 on land south of Chestnut Avenue[51].



[46] October 2012 CD1.11
[47] Ibid Foreword
[48] Ibid p35
[49] CD1.36
[50] Hampshire SP 2000 and South Hampshire Sub-regional Strategy within the SEP 2009 – see SoCG para 3.2
[51] Refs. O/14/75735 and O/15/76023 – SoCG paras 3.5-3.6

3.16 The appeal Decision for *Bubb Lane* provided the most up-to-date independent assessment of 5YHLS albeit on slightly different evidence[52]. The *Bubb Lane* Inspector found that: *The use of strategic gaps, as a planning instrument, has a long and respectable provenance in South Hampshire. There are clear indications that local planning authorities would like to continue to rely on such designations to assist in shaping future growth. What form these might take is a matter for the development plan process, but the concept of strategic separation of settlements, as an important planning policy tool, is a consideration which should not be dismissed in determining this appeal*.

3.17 With regard to 5YHLS, the *Bubb Lane* Inspector started with the latest DCLG household projections which indicate a need for 523 dwellings per annum (dpa). He took the appellant's view that household formation rates in Eastleigh have been affected by suppression caused by market factors[53]. He found the appellant's uplift of 10% for market forces, plus a further 10% for AH was reasonable. On the evidence before him, he found that the Objectively Assessed Needs (OAN) figure should be around 630 dpa roughly in line with the appellant's views at that Inquiry. He applied the buffer to both the requirement and the shortfall. He was circumspect regarding the appellant's arguments over lapse rates and contributions from large sites.

3.18 Overall, he found that, at the time of his Inquiry, the Council had something in the order of a four year supply, a considerable way to go to demonstrate a five year supply, and no convincing evidence that measures currently taken had been effective in increasing the rate of housing delivery. He concluded that the scale of the shortfall was a significant material consideration.

3.19 The *Bubb Lane* Decision was cited in terms of precedent. In his reasoning, the Inspector there noted[54]: *Views from these well-used footpaths are to open fields both sides of the alignment of Footpath 9 and the protected trees. … Residential development on this part of the appeal site would appear as an intrusive feature that would take away the sense of being in the open countryside for those using Footpaths 9 and 10*[55]. With regard to LP policies, he found both 1.CO and 2.CO were out-of-date but gave some weight to 2.CO.

3.20 At *Grange Road*[56], the Inspector found that policy 1.CO was not up-to-date but that policies 2.CO and 3.CO were not relevant policies for the supply of housing, and were not out-of-date for that reason. He found that the harm from a scheme for housing development in a strategic gap near Netley would significantly and demonstrably outweigh the benefits. This Decision was challenged but permission was originally refused but then resurrected by a renewal application[57].

3.21 Since publication of the NPPF there have been a large number of Court cases which, collectively and for the time being, establish much of the correct interpretation[58]. A large number of these Judgments were referred to,



[52] That of Nathaniel Lichfield & Partners for Gladman Developments Ltd
[53] Partly based on the Local Plan 2011-2029 Inspector's Final Report – CD1.6.3 to this Inquiry
[54] ID15 para 22
[55] Ibid para 22
[56] CD4.35
[57] See Post-ID1, appendix 2 dated 10 June 2106
[58] See the 22 Judgments listed in the Core Documents, s5

particularly with regard to the current law surrounding 5YHLS[59]. The relevant passages are summarised in the parties' statements. Of these, the most relevant is *Suffolk/Richborough*, which interprets NPPF49, usefully sets out the relationships between it and NPPF14 and NPPF47, and explains that the weight to be accorded to development plan policies which are out-of-date depends on the extent of shortfall, the action taken to address it, and the purpose of the policies such as the protection of a gap[60]. The Judgment in *Phides* identifies that the weight given to the benefit of increasing the supply of housing will depend on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet.

3.22 *Land west of Woodhouse Lane, Hedge End* was identified in Policy HE1 of the Revised Pre-Submission Draft Eastleigh Local Plan 2011-2029[61] as a strategic location for residential development on around 51ha of land between Woodhouse Lane and the railway line directly across from Boorley Green. The policy indicated that the development should accommodate around 800 new homes subject to, amongst other things, the retention of a countryside gap and landscape planting between Hedge End, Botley and Boorley Green. The Council has included a contribution from this site in its supply figures[62] while the appellants referred to the distance between this site and Boorley Green compared with that between the appeal site proposals and Hedge End.

## 4. Common ground

4.1 The General Statement of Common Ground (SoCG)[63]. Subject to a s106 Agreement, it confirms that the Council considered that only RfR1 still applies. It was common ground[64] that the ES and further information and consultation have covered the matters identified in the LPA's Scoping Opinion[65]. The General SoCG also identified the main areas of disagreement with regard to harm as: the impact on the countryside and the local gap, its effect on the policy 3.CO objective of protecting settlements, the relevance of the gap between Hedge End and Boorley Green, the significance of their coalescence, and the impact on their identities.

4.2 By the end of the Inquiry four additional SoCGs were submitted, two for transport[66] agreed with Highways England and with Hampshire County Council



[59] See CDs s5 and ID32. Those of particular relevance include: *Phides Estates (Overseas) Ltd v SoSCLG* [2015] EWHC 827 (Admin), *Tewkesbury BC v SSCLG* [2013] EWHC, *Hunston Properties v SoSCLG and St Albans City and District Council* (2013) EWHC 2678, *Borough Council of Kings Lynn and West Norfolk v Secret SoSCLG and Elm Park Holdings Ltd.* [2015] EWHC 2464, *Bloor Homes East Midlands Limited v SoSCLG* [2014] EWHC 754 (Admin), *Cheshire East Borough Council v SoSCLG* [2016] EWHC 571 (Admin), *Daventry District Council v SoSCLG and Gladman Developments Limited* [2015] EWHC 3459 (Admin), and especially *Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East BC* [2016] EWCA Civ 168.
[60] *Suffolk/Richborough* paras 32-47 and para 47 in particular
[61] CD 1.5.1 p194
[62] See Ireland's HLS evidence, Appendix D: Large Sites – Developments Under Negotiation; Appendix M: Strategic Land Availability Assessment Sites Submission Pro-forma; and Appendix N: Hampshire County Council Site Submission Document, February 2016
[63] CD3.1 General SoCG, signed and dated 13 May 2016
[64] Ibid para 1.6
[65] Dated 7 October 2015
[66] CD3.2 signed and dated 11/12 April 2016 and CD3.3 signed and dated 13 April 2016

(HCC) as Highways Authority on highways matters; and two on housing numbers detailing, amongst other things, agreement and disagreement over housing land supply (HLS)[67].

4.3 Extensive common ground was reached on the 5 year HLS[68]. With regard to the full OAN, it was agreed that the housing requirement is out-of-date as that in the LP was not 'saved'[69]. Most of the methodology for assessing the full OAN was also agreed[70], including the starting point of 523 dpa from the 2012-based Household Projections, and that this was not significantly altered by the 2014 Sub National Population Projections (SNPP)[71].

4.4 It was further agreed[72] that the number of completions between 2011/12 and 31 December 2015 was 1,501. The target figures for each of those years was not agreed but whichever figures are used the completions show a persistent record of under-delivery and there was no dispute that, under the NPPF, a 20% buffer should be applied. There was also much common ground on the supply side[73].

4.5 On landscape matters, it was agreed[74] that the proposals would cause a significant adverse landscape effect on the appeal site itself but that there would be no significant impacts beyond the site.

4.6 Subject to detailed design, it was common ground that the DAS provides the framework to achieve a high quality residential development.

## 5. The Proposals

5.1 The SoCG confirms that the application was as described above, and as amended by the drawings listed there, and that there would be significant benefits[75] notably the provision of market housing of which 35% would be AH. The proposals would change 45.4ha of undeveloped grazed and ungrazed pasture into a housing development with land for a mixed use area adjacent to and complementing the Boorley Fields local centre, a public square and open areas including allotments and attenuation basins with existing hedgerows and tree belts retained, enhanced and maintained. The illustrative masterplan[76] identifies 22 separate features, as well as the houses, including the buffer to the railway line. The development would be concentrated around the proposed extension to the Boorley Fields local centre with a higher density and buildings of up to 3 storeys. The scheme would have a lower density with houses of no more than 2 storeys away from this area[77].



[67] ID3 and ID4
[68] ID3, ID4, ID7, ID25 and ID26
[69] ID3 para 1.1
[70] Ibid para 1.7
[71] ID30a and 30b
[72] ID31
[73] ID4 s4. The disagreement over figures is usefully set out in s5 and limited to large sites with planning permission, or with a resolution to grant permission, and sites under discussion.
[74] CD3.1 para 2.5
[75] Listed at para 5.7
[76] DAS pp 35-36 fig 6.1
[77] DAS update p49

5.2 A Design and Access Statement (DAS)[78] provides a framework for the scheme, subject to detailed design, and explains that the conclusions were used to inform the masterplan. It also examined the identity of surrounding settlements[79]. Access points, which are not subject to reserved matters, would include a new roundabout on the Winchester Road, a further bus and pedestrian access close to the railway station, the existing footpath and provision in the s106 Agreement for a pedestrian/cycle link in the south east corner across the road from Boorley Green[80]. The Zone of Visual Influence[81] and the site visits show that there are very few viewpoints in which both Boorley Green and Hedge End can be seen together[82].

5.3 The Winchester with Eastleigh Design Review Panel[83] made a number of comments. It noted that although the scheme will be promoting bus and cycle routes, people are likely to use cars. It stressed the importance of the interface between the open space and the development, noting the road along the edge of the green space, but was pleased to see that there is outlook and engagement between the dwellings and green spaces. It highlighted the need for safe routes and connections through. The panel liked the fact that there is a local centre and considered that this is an important factor in creating a sense of place. Overall the panel liked the direction of the scheme and the different identity areas but stressed the importance of the spaces in between the identity areas and suggested that the different areas should take in streets, rather than use them as the boundary, in order to create cohesive spaces.

5.4 The amended bus and pedestrian improvements drawing[84] shows the extent of proposals opposite Hedge End railway station. These would include traffic lights over the bridge, 2.0m wide footways in part, new connections for the bus link and pedestrians, both alongside the bus route and via a stepped path, and new surfacing to the sides of the bridge. The traffic lights would be controlled[85] to detect pedestrians and, after a 30 second delay, prevent vehicles crossing the bridge while they walk over. Although not a reserved matter, the final design has yet to be finalised.



## 6. The Case for Eastleigh Borough Council

The gist of its case was as follows.

6.1 The appeal site is within open countryside and a designated local gap to which LP policies 1.CO and 3.CO apply. The Council does not have a 5YHLS. Following publication of the NPPF, there has been a welter of litigation concerning such circumstances and to decide whether such policies are 'relevant policies for the supply of housing' within NPPF49, and so out-of-date, and, if so,

[78] A3 brochure, dated March 2106
[79] Budden in response to IQs
[80] As seen on the site visit
[81] Williams Appendices Vol. 2, Figs 1 and 2
[82] Acknowledged by Nowak in XX
[83] Williams appendix B
[84] No. ITB11055-GA-008 RevB attached to the s106 Agreement
[85] Wall in answer to IQs: with a clear pedestrian advantage including a guard rail, pedestrian monitoring and a pedestrian 'hurry' phase and 25 second delay

whether such policies should be dis-applied. The proper approach here has recently been clarified by the Courts[86].

6.2 First, *relevant policies for the supply of housing* means *relevant policies affecting the supply of housing*[87]. These include LP policies 1.CO and 3.CO. They are therefore out-of-date and the relevant approach in NPPF14 applies. Second, however, it is now absolutely clear that an environmental protection policy can have very considerable, indeed determinative, weight even if it is out-of-date by reason of housing shortfall[88]. Policy 3.CO should still be given substantial weight because of the examples given: the shortfall is small and the supply is getting better, the Council is committed to boosting supply, and a gap policy was precisely the type of policy under consideration.

6.3 Not all of these considerations need to be satisfied for determinative weight as shown at *Bubb Lane*[89] where the Inspector thought the Council still had some way to go. Nevertheless, he found that residential development would harm landscape character and visual amenity, conflict with relevant policies and breach an out-of-date LP gap policy[90]. He further found that a dramatic and adverse alteration to the landscape would thwart the aims of policy and should be given substantial weight, such that it would significantly and demonstrably outweigh the benefits, and not amount to sustainable development[91]. This accorded with the findings of the Court in *Bloor Homes*[92] that a proposal which would harm a gap can be unsustainable for that reason alone. It follows that NPPF14 does not support unsustainable development which may arise because of harm to a gap. Moreover, NPPF footnote 10 means that the balance is still subject to the caveat *unless material considerations indicate otherwise*[93]. One such material consideration can be the effect on the separation of settlements.

6.4 The upshot of recent law, and other agreement, is that the issues have narrowed so that the appellants conceded that the gap between Boorley Green and Hedge End would be filled, that the housing need is agreed but for two adjustments, and that the supply is now a matter of when to apply the buffer and the extent of delivery on 9 sites.

Policy

6.5 LP policy conflict includes: Policy 1.CO as it is not for any of the stated exceptions; 3.CO as it would diminish the local gap and could be located elsewhere; and 18.CO as it would harm the landscape. Policy 59.BE lists criteria of which the context, character and appearance, and setting are relevant. Policy 60.BE concerns the effect of a rail corridor on the environment although this could be complied with in principle. Although it should only carry extremely limited weight, the emerging LP has not been withdrawn and shows a consistent direction of travel. As the Council cannot demonstrate a 5YHLS, it accepts that



[86] In *Suffolk/Richborough*: CD5.4
[87] Ibid para 32
[88] Ibid para 47
[89] ID15, para 45 – Appeal Decision for *Land off Bubb Lane* Ref: APP/W1715/W/15/3063753
[90] Ibid paras 25, 26 and 33
[91] Ibid para 56
[92] CD5.14: *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin)
[93] As clarified in *Cheshire East*: CD5.19 para 28

the contribution towards meeting and exceeding that shortfall would be a benefit. However, since determination, the Council's position has improved so considerably that it should shortly meet its 5 year requirement. This reduces the weight to be given to meeting the shortfall.

6.6 The *basic imperative of delivery* underlies the housing policies in the NPPF[94]. The driver for this is to deliver homes by allocating sufficient land which is suitable for development. The same focus runs through the PPG which sets out the methodology. This includes that councils do not need to consider hypothetical scenarios, only reasonable ones, and that any upward adjustment from household projections should be set at a reasonable level to improve affordability[95].

6.7 The housing situation can only be improved if the houses are delivered. To raise numbers to unrealistic, unreasonable and undeliverable levels would lead to a loss of control and to permissions for unsuitable sites. In response to the question[96] as to what harm would be caused by additional permissions, these would lead to an increased choice of sites but not to any overall increase in supply above that which the market can deliver. There would be no benefit but harm from permissions on inappropriate sites, slowing development in more suitable locations.

Full Objectively Assessed Needs (OAN)

6.8 The law in this regard is agreed to be that the requirement should be *policy off*[97], assessed for its own area[98], and exclude unmet needs from elsewhere[99] although the likelihood of this in due course may be a material consideration. The starting point in the PPG methodology for calculating OAN is the latest DCLG official household projections. This may then be adjusted through sensitivity testing to reflect local demographic characteristics. Further adjustments may be made for other factors including market signals and the need for affordable housing. However, it is clear[100] that caution should be exercised over adjustments as the household projections are statistically robust and based on nationally consistent assumptions. Any local changes therefore need *to be justified on the basis of established sources of robust evidence*.

6.9 There are essentially two areas of disagreement, both of which are matters of judgement. However, the appellants[101] have almost exactly followed the radical revisions proposed in the LPEG report particularly the 'partial catch-up' approach to household formation rates and an additional uplift for AH. These raise the full OAN to 675 dpa.

6.10 The evidence on household formation rates is mixed[102] and so a rounded approach has been taken resulting in a similar figure to that adopted recently at



[94] Paragraph 17, third bullet point
[95] PPG ID: 2a-003-20140306 and ID: 2a-020-20140306
[96] From the Inspector
[97] See CD5.1: *Hunston*
[98] CD5.10: *Satnam*
[99] Most likely Southampton – see CD5.11a: *Oadby* para 35
[100] PPG ID: 2a-015-20140306 and 2a-017-20140306
[101] Mr Coop
[102] See Council's closing ID34 paras 33-36

*Bubb Lane*. The Council has also accepted an uplift for AH but has combined this with that for market signals to avoid such an impact that it would probably be undeliverable and well above any housing delivery ever achieved in the Borough[103]. There is no suggestion in the extant PPG that an adjustment for AH should be 'stacked' on top of one for market signals[104] and the interrelationship between these is close so that any upward adjustment is likely to deliver more AH. Here again, both parties take the uplifts into account and the difference is one of judgement. With regard to *Bubb Lane*, the additional uplift for AH should not be followed as it would be too ambitious, undeliverable and it would be premature to adopt the LPEG report approach[105] on which the Government has not published any response.

6.11 The delivery of public sector housing and subsidised AH effectively ceased long ago. The country is now reliant on the private sector to deliver housing. This sector may be very competitive but is also flawed. The overwhelming majority of supply is delivered by just 10 housebuilders all of whom protect their margins. Increasing supply would reduce margins, be a disincentive to build, an incentive to block competitors and extract the maximum profit from s106 negotiations. These are the real blockages to delivery, not the lack of planning permissions. The other examples cited[106] refer to councils with no idea as to their OAN and so are completely different. Here the figure is independent, represents a 38% uplift on the historic figure of 426 completions pa, and will provide a significant boost.

6.12 There is no formal guidance as to how the buffer should be added. Three decisions[107] represent the Council's favoured approach and, at one point at least, that of the SoS. Following the conflicting approaches highlighted at this Inquiry, the SoS will have the opportunity to state, clearly, which he prefers[108].

5 year supply

6.13 As set out in the SoCGs, the Council's case is that there is a supply of 4.8 years. The appellants' disagreement is limited to a different OAN figure, the application of the buffer, and the deliverability on 9 sites for reasons of lead-in, build-out rates, a 1% lapse rate, and availability. On the points of principle, the lead-in times are based only on large sites, the build-out rate of 50 dpa ignores how the market is moving, the historic lapse is only 0.5%, and to be available only requires a realistic prospect not certainty. The appellants have been inconsistent in their use of comments from developers. Consequently the Council can demonstrate a supply of 4.8 years.

6.14 It is highly relevant to set out the action being taken by the Council to improve their HLS position. The change is as a result of its commitment to increasing delivery. The Council encourages pre-application discussions, proposals for appropriate sites, has granted permission for schemes totalling 2,553 since January 2014 (with a further 1,452 subject to a s106), established a builders' guarantee scheme, has its own development company, and is bringing forward

[103] Ireland rebuttal
[104] PPG ID: 2a-029-20140306 and 2a-025-20140306
[105] See Council's closing ID34 paras 50-53 for full arguments
[106] CD4.25 and CD4.27: *Fairford* and *Spencers Wood*
[107] CD4.32, CD4.24 and CD4.33: *Malpas, Gresty Lane* and *Oadby*
[108] See the full analysis in the Coucnil's closing paras 62-67

its own sites for development. The *Bubb Lane* findings are no more than a material consideration; the Inspector there was wrong with regard to OAN, and the Inspector and SoS here must reach their own findings on the evidence.

Policy breach

6.15 The proposals would not just impact upon the gap but would fill most of it[109], reducing it at one point to 80m[110]. The scheme would entirely urbanise the rural fields between Hedge End and Boorley Green leading to coalescence but for a narrow landscape buffer. The semantic point that the gap is entitled *Hedge End - Horton Heath* not *Hedge End - Boorley Green* will not do as all three settlements are named as protected by the gap policy[111]. Breaking this down into different gaps[112] does not follow the Proposals Map where it plainly separates all three settlements in order to separate their individual identities. It is inconsistent with the approach to the same gap in Policy S9 to the eLP.

6.16 The *Willaston* Decision is entirely distinguishable as there are no gaps mentioned in LP Policy 3.CO, there is only a brief description, and development there would not erode the gap. Furthermore, it would make no sense to protect the individual identity of Boorley Green from coalescence with Botley, but allow it to coalesce with Hedge End. Local gaps provide protection for settlement gaps which are not regional or sub-regional[113]. The appellants' approach is an argument they have to make because otherwise the proposals are profoundly in breach of policy.

Policy consistency

6.17 Whilst Policy 3.CO should be deemed out-of-date under NPPF49 it is not on any other basis. Policies cannot be deemed out-of-date simply through age[114]. Policy 3.CO is consistent with NPPF17 in that it takes account of different roles and recognises the intrinsic character of the countryside. Similarly, it is consistent with NPPF61 and NPPF109. The NPPF contains no definition of *valued landscape* but it is broader than *designated*[115]. The Guidelines for Landscape and Visual Impact Assessment (GLVIA) recognises this as well[116]. The role of Policy 3.CO in protecting identity is also consistent with NPPF156 and NPPF157.

6.18 The point was demonstrated in Test Valley where the Inspector for its LP DPD[117] stated in terms that a gap policy was in line with national policy. Nor can Policy 3.CO be out-of-date because the gap accorded with a previous spatial strategy with a different housing needs climate. Finally, the *Sovereign Drive* appeal[118] revealed substantial areas of countryside potentially suitable for housing so that it is not inevitable that the gaps must go.



[109] Mulliner in XX
[110] Williams in XX
[111] CD1.2: LP Appendix 1 p185
[112] Williams rebuttal Appendix D
[113] CD4.35.1 *Grange Road* including para 16
[114] CD5.16: *Wynn-Williams* paras 34-36
[115] CD5.12 *Stroud* para 13-14, notwithstanding any *verbal infelicity*
[116] CD1.45 paras 5.26 and 5.29
[117] CD7.7
[118] CD4.34 para 24

Harm to local gap and landscape

6.19 The local gaps are planning, not landscape, designations and do not need any special landscape qualities to merit protection, only to be undeveloped. Their importance is in maintaining the individual identity and character of settlements. Consequently, mitigation is not referred to in policy as no amount of landscaping can mitigate against the loss of openness. By preserving open countryside local gaps also function as landscape policies.

6.20 The LP Inspector did not see any evidence to justify the gaps but noted that the PUSH Study was a good place to start. This explains that the gaps are needed to shape the pattern of settlements[119], command wide public support, are essential to shape future settlement patterns, and can have other advantages in retaining open land for recreation and other green infrastructure purposes. The PUSH policy for gaps led to Policy 15 of the South Hampshire Strategy[120], adopted as a non-statutory document, which states that *the land to be included within the Gap performs an important role in defining the settlement character of the area and separating settlements at risk of coalescence; … Once designated, the multifunctional capacity of Gaps should be strengthened wherever possible.*

6.21 Notwithstanding the LP Inspector's comments[121], the appeal site is on land in an extant gap policy in an extant LP which has never been allocated for development. With regard to an up-to-date evidence base, the Council's witnesses, local residents' views, and the site visit provide the same level as at the *Bubb Lane* Inquiry where the appeal was dismissed[122].

6.22 The proposals would inflict substantial, permanent and irreversible harm on the character of the area, lead to the actual coalescence of two settlements, the permanent destruction of a local gap and fusion of two places with separate identities.

Decision consistency

6.23 It is in the public interest for planning decisions to be consistent[123]. The appeal at *Grange Road*[124] was dismissed due to conflict with Policy 2.CO taking an NPPF14 approach on a site with, as here, ordinary and medium landscape quality. Other impacts would have been similar except that here the impact would be far more severe as the dwellings would fill much of the gap. At *Bubb Lane* there would also have been environmental harm to the character and appearance of the area, warranting substantial weight, and the erosion of the separation between settlements so that the adverse impact would significantly and demonstrably outweigh the benefits. As above, there is no presumption in favour of unsustainable development. A scheme may be unsustainable simply because of harm to a gap. Here a gap would be destroyed in clear conflict with Policy 3.CO.



[119] CD1.38 paras 2.1-2.4
[120] CD1.11, published in October 2012 – after the NPPF
[121] Para 9 of his post-hearing note – see Mulliner paras 5.32-34 and CD1.62
[122] ID15 para 29
[123] *North Wiltshire DC v. Secretary of State for the Environment* (1993) 65 P&CR 137
[124] CD4.35

Benefits

6.24 The Council has accepted that the proposals would provide up to 680 dwellings, of which 35% would be affordable, within walking distance of shops, schools, community facilities and bus services. They would support social wellbeing by providing a mixed and balanced community and deliver the NPPF's aspiration of a wide choice of high quality homes in inclusive and mixed communities to meet the need of different people. Construction jobs and support for the local economy from an increased population, and a New Homes Bonus, would have economic benefits. With the completion of the s106 Agreement, assuming that it is CIL compliant, there would be social benefits from contributions towards improvements in sustainable transport measures on rail and road, land for public open space, and improvements in other local facilities and infrastructure.

6.25 However, while the economic and social benefits are significant, they are not unique to this site and could be delivered in a more appropriate location as correctly recognised in *Mans Hill*[125] but not in *Firlands Farm*[126]. With regard to the railway benefits, these are limited to expanding the car park which is not needed[127] for residents of the appeal site, never full, in a most sensitive location in landscape terms, and would serve a station that not many locals use as the services are slower and less frequent than those from Southampton Airport Parkway. It would therefore harm the gap and the landscape without providing a significant benefit. No other railway or station improvements are offered.

6.26 With regard to AH, no-one at EBC disputes that there is a crisis at national level or that very substantial weight should be given to its delivery at local level. However, there are errors in the appellants' evidence including criticising income levels[128]. Suggesting an affordable requirement of 711 dpa was based on wrong assumptions[129], unrealistically spreading the current need over 5 years rather than the plan period. The claim that households would have to wait 25 years for a home[130] was similarly without basis. Finally, as above, most development schemes in the Borough would be expected to contribute to AH and there is no offer above the 35% target.

Harms

6.27 As above, significant weight can be given to out-of-date housing policies. This has been confirmed by the Courts in *Suffolk/Richborough*[131] which (see s3 above) cited three particular examples. On the first, the Council has shown that its shortfall is small. Second, this is as a result of action taken by the Council. Third, the site is not just within a gap protected by Policy 3.CO but covers the whole of it. This was the foundation of the refusal and dismissal of the *Grange Road* proposal. Here, while the Inspector conceded that some areas of gap would need to be developed, and that some already had been, he afforded very



[125] CD7.2 paras 73 and 76
[126] CD4.22 para 71 – note that there is no inconsistency in considering a proposal in its own right but also recognising that benefits could accrue at other lcoations
[127] As Harris confirmed
[128] Stacey para 5.7 relies on his Ax10, the Annual Survey of Hours and Earnings, which is based on individuals rather than Ireland's which is based on households
[129] Addressing the current need over 5 years rather than spreading it over the plan period
[130] Stacey para 5.11 and CD4.31
[131] CD5.4 para 47

substantial weight to the protection afforded by Policy 2.CO. The same approach was taken at *Bodkin Farm* and *Bubb Lane.*

6.28 Rather than a flaw, the fact that the Council is prepared to grant permissions in gaps should reinforce the weight to be attached to those sites which it is seeking to preserve. Such decisions demonstrate the Council's positive attitude to boosting housing delivery. Indeed, with regard to the 3 examples in the *Suffolk/Richborough* Judgment, the Council's approach to development in gaps satisfies the first two while the decision here, to refuse permission where the impact would be unacceptable, accords precisely with the third example. In any event, not all three need to be satisfied. Even if the HLS position were worse, Policy 3.CO should still command substantial weight.

Balance

6.29 The Council's decision was that, on balance and despite its commitment to housing delivery, the benefits would not outweigh the harm to the local gap. Consequently, permission should not be granted, just as was found at *Grange Road*. Indeed, the case is now far stronger as here the proposals would actually lead to the physical coalescence of settlements and the destruction of the gap which separates them and protects their identities contrary to policies with considerable pedigree.

6.30 To follow the appellants' absurd argument that this is not the gap in question, and that the policy is only to protect one part of the gap and not another, would be to err in law. The locality has been considered previously but never been allocated because of its value as a gap. That hasn't changed in 30 years, the constant being the railway line as a firm settlement boundary to Hedge End as shown by the Inspector's Report commenting on a possible MDA that: *the severance effect of the rail line, which limits connectivity with the main urban area of Hedge End to one link across the railway line, or via the new access on Bubb Lane. … (T)he physical barrier of the rail line would be a severe constraint on integration of the two areas. As a result, I consider that this scheme would not help to build on the existing community in Hedge End*[132]. In his view, *the MDA would be a harmful intrusion into the narrow area of countryside between Horton Heath, Hedge End and Boorley Green that should be avoided if at all possible*.

6.31 The appellants' claim, that it is not intended to connect with Hedge End, is only because it cannot do so. Instead, it would damage the identity of Boorley Green, and destroy the gap, while the resultant enlarged, single settlement could never function as an integrated community as it would be severed by the railway line. This must be bad master planning.

6.32 In stark contrast, the Boorley Fields development is in designated countryside on the opposite side of Winchester Road. It will not lead to coalescence but would add community facilities to Boorley Green. That is completely different. Similarly, the *Woodhouse Lane* allocation will function as an integrated extension to Hedge End and would not undermine its urban character, unlike that of Boorley Green, and is located on the appropriate side of the railway line.

[132] CD1.4 para 5.273. See also paras 5.277 and 5.282

6.33 The appeal proposals are based on an absurd interpretation of saved Policy 3.CO. It would permanently destroy the gap between Hedge End and Boorley Green and lead to coalescence of the two which would be bad master-planning. As with *Bubb Lane*[133], it would thwart the aims of local planning policy to retain the separate identity of settlements and be unsustainable development. The profound harms would massively outweigh the benefits and so the appeal should be dismissed.

Post Inquiry submissions

6.34 These raise two further matters. First, following recent legal submissions by *Sheet Anchor*[134], the Council withdraws its concession in the SoCG and contends that Policy 3.CO is not a relevant policy for the supply of housing and, accordingly, not out-of-date by virtue of NPPF49[135]. The skeleton arguments[136] explain that, to be relevant policies for the supply of housing they must both (1) restrict the locations where new housing may be developed; and (2) prevent an authority from demonstrating a 5-year supply of deliverable housing sites. While Policy 3.CO may restrict the possible locations, it does not prevent a 5YHLS as was the conclusion at *Sovereign Drive*[137].

6.35 Second, following more detailed consideration, the Council acknowledges that 630 dpa could be an appropriate figure for OAN and has agreed as much in common ground for an imminent Inquiry concerning *Land at Botley Road*[138]. Revised tables set out the consequence of this which is a supply of 4.43 years. This is clearly sufficiently close to a 5YHLS to satisfy the examples in *Suffolk Coastal*. Even if Policy 3.CO is found to be a relevant policy for the supply of housing, substantial weight should be given to the conflict with that policy.

## 7. The Case for Gleeson Developments, Miller Homes and Welbeck Land

The gist of its case was as follows:

7.1 The Council has no up to date development plan for the area, its key housing policies were not saved by the SoS in 2009, and there have been no housing policies or allocations for the last 7 years. It accepted that its development plan position is a *disaster*[139]. It has no 5YHLS. The Inspector for *Bubb Lane*[140] concluded that the Council only has around 4 years. There is an immediate shortfall of around 1,000 dwellings which the Council accepted was serious and significant[141].



[133] ID15, paras 56 and 57
[134] *Sheet Anchor Properties Limited v Secretary of State for Communities and Local Government and Eastleigh Borough Council* [CO/323/2016] involved a challenge under section 288 of the TCPA 1990 to the decision of the *Grange Road* Inspector [CD4.35.1]
[135] See Further submissions section 2
[136] Ibid appendices 1-3
[137] CD4.34 para 24
[138] Appeal Ref: APP/W1715/W/15/3139371 – not before this Inquiry
[139] Budden in XX
[140] ID15: ref. APP/W/1715/W/15/306 3753
[141] Budden in XX

7.2 The more detailed evidence at this Inquiry reveals a supply of either 3.39 or 3.01 years[142] or an immediate shortfall of around 2,000 dwellings. This is not close to the Council's claim of being *within a whisker* of a 5 years HLS. Its delivery rate is relevant to assessing supply[143]. The fact that local councillors were unaware[144] of its dismal performance of delivery is deeply worrying and it is troubling that they take decisions on housing applications without knowing both sides of the argument. The blame is not the development industry, the lack of brick or bricklayers, but the Council itself. Furthermore, even this limited supply is based on large sites with an excessive number of pre-commencement conditions, described as *toxic*[145]. The Council accepted[146] that the only way to increase the supply of housing was to grant planning permissions. The appellants request that this is what the SoS should do, and do quickly, in line with the announcement that decisions will be made no more than 3 months from the date of an Inspector's report[147].

7.3 The proposals for a location right next to a main line railway station [148] would enable direct access on foot from within the site and from the adjacent Boorley Fields. There would be an additional car park capacity for local residents at a station whose use is growing rapidly. The station was opened in 1990 at the request of the Council to service new houses in the area. But it is currently missing half its catchment[149] as the appeal site is just fields despite there having long since been proposals for its development[150]. It would therefore be the very definition of sustainable development and accords with the Government's thinking on housing near railway stations[151]. Although not yet providing a 15 minute service, with the potential for 5,000 people within 800m walking distance on part of the network where there are not capacity issues, the railway operating company would clearly be interested and the evidence for this should be carefully examined[152].

Development plan

7.4 There is no up-to-date plan and the finding of *unsound* was entirely predictable. Saved policies of the old adopted LP only addressed housing needs until 2011. The report[153] must be seen in the light of the presumption in favour of previously-developed land at that time, which was effectively superseded by the SE Panel report and has no currency today. While the Council has not yet withdrawn the eLP it accepts that it will have to. It should carry no weight or, at best, very limited weight as the Council accepted. While some policies form the starting point for determining the appeal, given their age and the failure of the LP to address present needs, the focus should be on the NPPF. Although, as



[142] The latter based on the LPEG approach
[143] PPG 3-033-20150327
[144] Cllr. Kyrle, Chairman of the planning committee which took the decision, in XX
[145] By the Planning Minster
[146] Budden in XX
[147] The Budget Report 2016: for both call ins and recovered reports
[148] Portsmouth to London Waterloo
[149] Harris in XX
[150] CD1.9: SE Panel's report para 16.67 and CD1.10: PUSH study para 4.8.10
[151] DCLG Consultation on Proposed Changes to National Planning Policy (Dec 2015)
[152] Dr Harris: para 3.1, IC and XX
[153] By Mary Travers

above, the emerging LP should only carry extremely limited weight, draft policies S1 and S9 are fully aligned with the NPPF and gaps remain a priority.

NPPF

7.5 The drafting of the NPPF leaves a lot to be desired[154] and case law is ever increasing. The proper approach is currently:

7.5.1 identify the development plan to which applications must accord unless material considerations, including the NPPF, indicate otherwise[155];

7.5.2 identify the relevant policies, assess the weight to be given to them in terms of consistency with NPPF215, and ascribe weight[156] independently of 5YHLS and NPPF49;

7.5.3 assess whether there is a 5YHLS and, if not, identify which policies are relevant to the supply of housing[157] and so out-of-date[158];

7.5.4 note that out-of-date policies should not be dis-applied but decide on the weight they should be given[159];

7.5.5 identify the extent of conflict with the development plan policies;

7.5.6 identify other material considerations weighing against the scheme;

7.5.7 subject to footnote 9, apply the relevant part of NPPF14;

7.5.8 identify other material considerations weighing in favour of the proposals, and;

7.5.9 weigh the material considerations using the balance in NPPF14 to determine whether the proposal would amount to sustainable development[160].

7.6 In this case, the development plan is the LP and the relevant policies[161] are 1.CO, 3.CO, 18.CO and 59.BE. Of these, 18.CO and 59.BE should have limited weight as they prohibit any adverse effects, at odds with NPPF51[162]. It was common ground that the Council does not have a 5YHLS but the parties disagree on whether it is 3 years or nearly 5 years.

7.7 In assessing the weight to be given to Policy 3.CO, the decision taker should consider:

7.7.1 the extent of the shortfall;

7.7.2 the action taken by the Council to address the shortfall;

7.7.3 the purpose, such as gap policies between settlements;

7.7.4 the fact that the Council has already released land in a Local Gap (*south of Horton Heath*), a strategic gap (*South of Chestnut Avenue, Stoneham Park*)



[154] The Court of Appeal in both *Hunston* and *Solihull*
[155] S38(6) of the TCPA 1990; *Suffolk/Richborough* para 42; NPPF12
[156] *Daventry* (subject to the CoA)
[157] *Suffolk/Richborough* para 45: a necessary step for the decision maker not the Courts
[158] Ibid para 30
[159] Ibid paras 45/47. See AAs' closing para 28(D)(ix) for the history of case law
[160] *Cheshire East 2016* paras 19,21 and 23
[161] The Council having accepted that 60.BE can be dealt with by reserved matters, KB in XX
[162] As concluded at *Bubb Lane*

7.7.5 that it was looking to release major housing sites in the Local Gap in the eLP until it was found unsound;

7.7.6 that this includes 800-900 dwellings in the same gap at *Woodhouse Lane* to the south of the appeal site; and,

7.7.7 that the Council relies upon those same sites in local gaps for the purpose of its 5YHLS at this inquiry;

7.7.8 the extent of harm to the Hedge End - Horton Heath gap referred to[163] rather than that between Hedge End and Boorley Green which is not named.

7.8 On the Council's case, there are no other material considerations and, if any weight is given to conflict with the eLP, this should be very limited. Regardless of the weight to Policy 3.CO, as it is out-of-date and footnote 9 is not relevant[164], the special emphasis in NPPF14 applies. There would be substantial benefits from housing, AH, public open space, a new station car park, a new connection with the railway, economic benefits and others listed in the SoCG.

7.9 While sustainable development may be permitted even where there is a 5YHLS[165], as there is not, the special emphasis applies. This leaves the Council's position as doubly awful, with this scheme only promising to deliver one third of the shortfall within 5 years, and more sites needed.

7.10 In trying to establish that development in a green wedge, or gap, cannot be sustainable development, the Council has erred in law[166]. Such policies are relevant to the supply of housing but it is for the decision maker to determine weight[167].

*5 year housing land supply (5YHLS)*

7.11 The *Bubb Lane* Decision accepted the appellant's OAN figure and a shortfall of 1,000 homes. While that appeal was refused on a gap site, it was a strategic gap and the Inspector did not rule out development but only on certain parts of the site. He found that there would be significant erosion of the gap *between settlements named in the policy.* This was not a site identified for growth by the PUSH study and in a gap which faces towards Southampton rather than away from it. The Council argued that there is land beyond the gap areas which could be developed but 50% of the open land in the Borough is designated as gaps and no alternative locations for new development beyond the gaps have been promoted. That is before addressing some of the unmet needs from Southampton[168].

Full Objectively Assessed Needs (OAN)

7.12 Case law sets out how the full OAN should be established[169]. At *Bubb Lane*, the Inspector favoured the appellant's figure of 630 dpa[170] but this was not based

[163] CD1.2 Appendix 1, gap J
[164] Budden in XX
[165] E.g. Decisions at *Hook Norton, Launceston, Davenham, Northwich and Whetstone*
[166] The authority is not *Bloor* (CD5.14 para 179) or *William Davis* (para 41) but *Suffolk/Richborough* para 47
[167] See AAs' closing paras 33-35 for the history of case law on this
[168] As accepted by Cllr. House
[169] See closing ID35 paras 42-47

on full modelling, was carried out at short notice, and was no more than a critique of the Council's position. There is considerable agreement between the parties with regard to the full OAN[171] including that:

7.12.1 there is no adopted up-to-date housing requirement and so it is appropriate to consider OAN at this Inquiry;

7.12.2 the SoS must consider the full OAN, for 2011 to 2036, at the local level, and unconstrained by policy, in order to determine the extent of HLS;

7.12.3 the starting point is the 2012-base Sub National Household Projections (SNHPs) which draw on the Sub National Population Projections (SNPP)[172];

7.12.4 an adjustment should be made to household formation rates, in particular the most affected 25-34 age cohort, which has suffered throughout the economic downturn and is still suffering[173];

7.12.5 no adjustment is needed for unattributable population change or employment forecasts.

7.13 Other differences are marginal including: the number of dwellings associated with the 2012-based SNHPs, long term migration, and the demographic baseline. Only two factors are of consequence, the approaches to household formation rates and the treatment of both AH and market signals, leading to a difference of between 590 and 675 dpa. Of these, 26 dpa relates to household formation rates and 59 dpa to the treatment of AH and market signals[174].

7.14 The only outstanding differences relate to AH and suppressed household formation. It should be noted that the law allows either party's figure to be favoured but that the Council's has only been accepted as an interim figure, has been subject to neither consultation nor independent examination, and is expected to rise[175].

Two main differences

7.15 Both the Inspector at *Bubb Lane*, and that for the eLP, recognised the need for an uplift for AH[176]. 10% is reasonable not excessive[177]. With regard to suppressed household formation, this is again a matter of judgement amounting to a difference of some 26 dpa and the appellants' partial return to the long term trend, following nearly 10 years of economic downturn, is entirely reasonable[178] and consistent with the PPG[179].



[170] ID15 para 42
[171] See closing ID35 and SoCG on OAN ID3 p3
[172] While these have been replaced by the 2104-based SNPP, these make no overall difference
[173] Coop in XX
[174] ID35: closing para 55c
[175] See *West Berkshire*
[176] ID15 para 41 and conclusions in CD1.6.3
[177] The appellants' arguments over the AH uplift are set out in full in their closing ID35 paras 56-80 but add little to the fact that the law allows either figure to be favoured

[178] The detailed arguments on this point are set out in the appellants' closing ID35 paras 81-101. See also Coop paras 7.30-38 and the changes between 1991 and 2012. Para 102 explains why the appellants consider this to be important
[179] Refs ID: 2a-015-20140306, 2a-016-20150227and 2a-017-20140306

7.16 Finally on this point, it is agreed that the latest population projections do not change the number of households to any significant extent. The appellants' figure of 675 dpa is robust, convincing and, although slightly higher than that found at *Bubb Lane,* is so for sound reasons[180].

Supply

7.17 Aside from the issue of whether the full OAN should be 675 or 590 dpa, the shortfall is greater than the Council claims for two reasons. First, it did not apply a buffer to the shortfall and, second, it is reliant on sites which do not have a realistic prospect of delivery either because they have not yet been proven to be viable or suitable or because their delivery is uncertain.

7.18 The reason why the buffer should be added to the shortfall is provided at *Great Ayton* and at *Stokesley*[181]*.* Only the *Gresty Lane* Decision goes the other way while that at *Malpas* makes no sense. No other SoS case adopts this approach[182]. The Council accepted that if the buffer is added then a further 260 units would be needed.

7.19 Delivery rates have consistently been applied at 50 dpa[183] and this has rarely been exceeded. The Council has a poor track record of predicting delivery, especially on large sites[184], and accepted[185] that it had underestimated lead-in times, that it had been 'green', and that developers 'talk up' delivery rates.

7.20 Recent delivery of housing, and AH, has been *dismal* and the appeal scheme would make a positive contribution to this. Acknowledgements by the Council demonstrate an over-optimistic approach on several sites[186]. The appellants' evidence[187] adds yet further doubts to delivery at other sites.

7.21 In response to a question[188] about the harm that would be caused by granting more permissions than would be delivered, the Council[189] confirmed that *delivery would slow at other sites as a result of competition*. The appellants fairly conceded[190] that they had not taken any account of sales rate or the recession but nor had they adjusted figures for any slowing in delivery resulting from lots of supply at the same time (flags on poles).

Conclusions on 5YHLS

7.22 The Council argues for 4.8 years while the appellants consider that it is just 3.42 years (or 3.03 based on the LPEG calculations). While absolute precision is not necessary, it is pertinent to weight to establish the extent of the shortfall[191].



[180] Listed in their closing ID35 para 106
[181] Inspectors' Decisions at CD7.12 para 32 and CD7.13 para 42
[182] CD1.34
[183] Miller PoE p26 paras 4.14-4.16 and Fig 5, rebuttal para 3.3. He explained in oral evidence that one unit per week was a common target.
[184] E.g. Boorley Green, Abbey Fruit Farm and West of Horton Heath
[185] Cllr House in XX. See also *Yate* and *Ottery St Mary* Decisions at Miller Ax4 para 24 and Ax5 para 20
[186] By Ireland in XX, see AAs' closing para 117
[187] Miller IC, XX and ReX
[188] by the Inspector
[189] Ireland in XX
[190] Miller in XX – see AAs' closing para 119(d)
[191] *Crane* and *Phides* - see the CoA skeleton CD7.3

Affordable housing (AH)

7.23 The proposals would deliver 238 affordable homes[192] against the Council's *dismal* performance[193] of an average of 26 dpa over the last 3 years. The argument that this is not a unique benefit is misguided as each scheme should be considered on its own merits[194]. Very substantial weight should be given to AH in the planning balance as nearly 2,000 households are registered with the Council, but their voices are rarely heard at Inquiries. Contrary to the Council's approach, the current backlog, from a persistent undersupply identified as 724 households[195], should be dealt with in the first 5 years. To spread the need over the entire period would downplay the need, has been rejected by Inspectors[196], and would severely reduce the needs.

7.24 The needs are acute in Eastleigh where the average house price to income ratio is 9.3 and private rents are well above the national average[197]. That there is a housing crisis, causing misery to millions, has been made clear by the Planning Minister and many others[198]. Local and regional reports[199] should also be considered in assessing what should be the very substantial weight to be given to the provision of 35% AH where there is an acute need and past delivery has been dismal.

Planning policy

7.25 The Council's case is built on a designated local gap identified in the LP[200] and protected by Policy 3.CO. However, unlike other Decisions[201] referring to named gaps, Boorley Green is not mentioned. While the gaps join up, as the wording makes clear[202], they are not the same gap. The appendix forms part of, or performs the same role as, the reasoned justification which the Courts have found plainly relevant[203]. The correct comparison is with *Willaston*[204] where the relevant settlement was named. Connection is irrelevant; the focus must be on the identified gaps. Any other interpretation would make the Council's intention to allow 8-900 houses on the other side of the railway line, but also in the gap between Hedge End and Boorley Green, wholly unjustified.

7.26 The gap to be considered in the policy is between Hedge End - Horton Heath. The extent of likely visibility is agreed[205] and will not harm the perception of the



[192] Equivalent to 35% through the s106 Agreement
[193] Accepted by Cllr House in XX
[194] *Burghfield Common* CD4.22 paras 58 and 71
[195] CD1.17: the latest Review of Housing Needs in Eastleigh Borough Study, March 2016
[196] *Droitwich Spa* CD4.9 para 8.124 and *Davenham* CD4.31 par 55
[197] Stacey Ax15: Home Truths 2015/16, by the National Housing Federation for the South East, opening sentences
[198] Set out in Stacey, Ax3 and Ax8 and including: Sir John Cunliffe (Deputy Governor of Financial Stability); George Osborne (Chancellor of the Exchequer); Mark Carney (Governor of the Bank of England); European Commission and International Monetary Fund
199 See appellants' closing para 148
[200] paragraph 1.6 and Appendix 1
[201] *Bubb Lane* and *Grange* Road
[202] in Appendix 1 to the LP.
[203] 1D12: *R (oao Cherkley Campaign Limited) v Mole Valley DC and Longshot* [2013] EWHC 2582 (Admin) Court of Appeal: Richards U para 16
[204] Williams Rebuttal, Appendix A, Para 46
[205] SoCG and illustrated in Fig 2 to Williams Ax Volt

identities of either of these settlements. The scheme would not be visible from any location between the closest points of these two settlements and their physical separation would be over 1,000m[206]. The impact on this gap would be negligible[207].

7.27 While the proposals would conflict with Policy 1.CO this relates to needs up to 2011, is out-of-date, is of little relevance to needs in 2016, and seeks to constrain housing development. The scheme would conflict with Policy 18.CO but as this seeks to prevent any adverse effect on the countryside, without any balance, it is at odds with the NPPF approach. Policy 59.BE is really a design policy but if there is any conflict, as a result of building within the gap, then it is one which restricts housing supply.

Visual and landscape

7.28 It is common ground that the landscape effects on the local character would not be significant[208] and that the visibility is essentially only within and immediately adjacent to the site. There would be very restricted visibility of the scheme beyond the site boundary. The Council is a member of PUSH. The 2010 PUSH Study identifies the local landscape unit for the area, its sensitivity and that it could accommodate some large scale development on the appeal site as did the SEP[209]. The PUSH study also recognised that: *'Creation of a positive landscaped edge or green wedges to the edge of development in such areas could still enable the retention of a sense of separation between future development north of Hedge End and outlying settlements such as Horton Heath and Boorley Green*[210]*.*

7.29 In line with the PUSH findings, and unlike previous proposals for the site, the scheme has been designed not to focus on Hedge End, but on Boorley Green and Boorley Fields with an access linking the latter to the railway[211]. Even if the Council's interpretation of 3.CO is correct, and there is a need for a separation between Hedge End and Boorley Green, the very clear and positive landscape edge, the railway and the vegetation would provide this separation.

7.30 The Design Review Group[212] has supported the direction of the scheme. It has been well conceived, is thorough in its analysis of context, and would be landscape led particularly with regard to the retention and promotion of existing landscape corridors and movement routes within the site as key future site features. The Council acknowledged[213] that the scheme amounted to good urban design.

Sustainable location

7.31 The site was previously identified within an MDA search area, an SDA search area and 3 of the PUSH scenarios although the latter stopped short of a



[206] Williams Fig 6
[207] Accepted by Nowak and Cllr House in XX
[208] General SoCG para 2.5
[209] CD1.9 paras 16.64-16.67
[210] Williams Appendix C: PUSH Landscape Sensitivity Study Conclusions 2010 para 4.5 - and as accepted by Nowak in XX
[211] Mulliner in XX
[212] Williams Appendix B - Winchester with Eastleigh Design Review Note October 2014
[213] Nowak in XX

preferred option. With no up-to-date plan, the Council cannot argue prematurity and there are no longer any technical objections. There is no NP and while an NP area has been designated[214] a *made* plan is several years away.

7.32 As the policies are out-of-date, the special emphasis (or tilted balance) in NPPF14 applies and permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. These are many[215] including but not exclusively: housing, AH, social well being, community facilities, employment, retail expenditure, sustainable transport, public open space and other improvements. It would enhance the sustainability of developments already permitted though improved access to the railway.

7.33 The benefits should carry substantial weight. They are not transferrable to another site[216]. The harm would be limited to loss of countryside and conflict with out-of-date policies. There is no evidence that the site is needed to retain the identity of Boorley Green which is about to change anyway.

*Residents' concerns*

7.34 Issues such as traffic, flood risk, ecology, impact on the local area and local community facilities have been covered in the application documentation, including the ES and TA, as well as in evidence submitted to, and given at, the Inquiry. There are no outstanding objections from any of the technical statutory consultees. Specific issues raised are covered below.

Air quality

7.35 The effects of traffic have been reassessed[217] and been subject to public consultation. There is no requirement for mitigation and the Air Quality Action Plan for Botley will continue to operate.

Sewer

7.36 A deliverable and viable scheme for the phased provision of foul services is available[218] and Southern Water is legally obliged to accept all foul flows, in this case at the Peel Common Waste Water Treatment Works.

Rail use

7.37 There are services from Hedge End station to London, Eastleigh, Fareham and Portsmouth. Evidence[219] shows that there is no advantage in travelling to Southampton Airport Parkway to travel to London. The service is well used[220] but while there may be a perception that trains are busy there is spare capacity on most journeys for new users from the development while the car park would enable more journeys and reduce travel to other stations.



[214] ID27 – Botley NP Designation Letter and Map comprising the whole of Botley Parish
[215] Listed at para 5.7 to the SoCG
[216] Mulliner in XX
[217] in the ES addendum pp7-10
[218] A note on mitigation dated 24 May 2016 was delivered to the Parish Council
[219] From Dr Harris
[220] Ibid Fig 2 p7: over 250,000 passengers pa. in 2014/2015

Transport matters

7.38 The site is well located with regard to the railway station, existing bus services and local facilities which can be reached by walking or cycling. HCC has agreed[221] that residents would have genuine and attractive opportunities to travel sustainably. Nevertheless, there would be an agreed package of mitigation including physical junction improvements and measures to promote non-car travel. Using the appeal site as part of the assessment, HCC has confirmed that the case for the Botley bypass is now much stronger and that it will carry out work and consultation this year[222]. In any event, the impact from this development on Botley would be small with an addition of around 1% to its traffic levels[223].

7.39 With regard to the roads around the station, improvements to Shamblehurst Lane North to allow two-way traffic, access to the station car park and traffic signal control over the bridge have also been agreed. There are a variety of safe walking routes to the proposed secondary school at Horton Heath[224] which, at around 2km, would be shorter than using Winchester Road. The junction modelling has been based on up-to-date traffic survey data agreed with HCC and, as well as access to Winchester Road, there would be station car park access, a bus route onto Shamblehurst Lane North and emergency access from this direction.

7.40 While the development would inevitably generate significant levels of traffic, HCC has agreed that, with the package of mitigation, the impact would be effectively accommodated. A detailed assessment of Junction 7 on the M27 has similarly been carried out and agreed with Highways England including, if necessary, a contribution towards an improvement which would fully mitigate any impact. Moreover, not only have the improvements for the Botley Park development been tested, and shown to deliver significant capacity to accommodate the appeal scheme as well, but a contribution would also deliver a second entry lane to the Woodhouse Lane/Winchester Road junction. A further contribution would alleviate congestion at the Bubb Lane/Snakemoor Lane/Winchester Road junction and reduce any incentive to use rat-runs.

7.41 Accident records do not identify any existing issues and independent safety audits have raised no concerns. The s106 Agreement would deliver these mitigation measures and nowhere would the residual transport impact amount to severe. While mitigation would deal with any adverse impacts, the development would be highly sustainable for public transport, as above, and deliver many facilities on site including a school, community and leisure facilities, and a local centre.



[221] CD3.2: Transportation SoCG
[222] Wall Ax14: 2015 HCC Eastleigh Strategic Transport Assessment
[223] TA Update para 5.3.18 and the Agreed Statement on Transport Matter CD3.2 [98] Three of which are set out in the appellants' closing para 214
[224] Three of which are set out in the appellants' closing para 214

Local Health Care

7.42 It is understandable that the representative group for the local GP practice[225] is concerned that their present premises are inadequate, prevent further GP services and training, and may cause difficulties with recruiting. However, there is a commitment within the s106 Agreement to make positive contributions in response to the GPs' request.

Other matters

7.43 There are no designated or undesignated heritage assets within the site nor is it within the setting of any.

7.44 Wildlife impacts are fully assessed in the ES. Most of the land that would be lost to housing is improved grassland of limited ecological value and supports few species. The scheme would introduce a variety of habitats and a network of green spaces, with new planting, to create a greater diversity than at present and a net biodiversity gain[226].

7.45 The loss of around 46has of grade 3 agricultural land is relatively small in relation to the 224,448has of agricultural land in Hampshire and some loss is necessary to meet the pressing need for housing in the Borough.

7.46 Community facilities and local shops within the site would provide an extension to the Boorley Fields District Centre, would be supported by the increase in population, and would be within easy walking distance of Boorley Green as well.

7.47 The DAS shows a clear rationale and potential for a high quality development which received a positive response from the local review panel.

7.48 The scheme would bring immediate construction jobs and a commitment to an employment and skills plan, as well as longer term employment at the school and district centre.

7.49 Most of the site is within flood zone 1 and there would be no development within the higher risk zones. The scheme would not increase flooding elsewhere. Concerns over the railway embankment have not been raised by Network Rail[227].

7.50 Privacy for residents along Winchester Road can be secured for a scheme of this size and would be resolved at reserved matters stage.

Conclusions

7.51 This is a very sustainable proposal on a very logical site, next to a main line railway station, at a time when the Council has no plan of any kind, a huge shortfall in the 5YHLS, and a dismal delivery record for housing and AH. The appeal should therefore be allowed.



[225] The St. Luke's and Botley Patient Participation Group
[226] ES chapter 9 p33 para 9.191
[227] Consultation response dated 19 March 2015

Post Inquiry submissions

7.52 With regard to *Sheet Anchor*, not only is it unfortunate to attempt to retract a concession after the Inquiry, but the submissions there concern Policy 2.CO not Policy 3.CO. Moreover, the Council has accepted that it must grant permissions within local gaps in order to meet its 5YHLS obligations but has still failed to do so. The status of the policy as one which constrains the supply of housing is a matter of judgement. The OAN concession does not alter the appellants' case which is that the HLS is no more than 3.39 years.

## 8. The Cases for interested parties

The following summarises statements and answers to questions given during the evening session. Where points have been covered by the Council (above) or in a preceding statement by another interested party, they are not repeated. The full statements are listed as IDs.

8.1 **Cllr. Rupert Kyrle** represents the Botley Ward on the Council and was the chairman of the Hedge End, West End and Botley Local Area Committee (HEWEB) which refused the application to which this appeal relates. The HEWEB is made up of 13 local ward councillors who consider controversial applications or those referred to it by local members. He is also the HCC representative for Botley and Hedge End, and a member of Botley Parish Council. The HEWEB unanimously rejected the application. He noted that the site has never been actively promoted by the Council, as it is seen as a vital gap between Botley and Hedge End, and explained that the reasons for not allowing the application were that it would harm the countryside, effectively filling in and urbanising this local gap and merging the communities of Boorley Green, Botley and Hedge End creating an urban sprawl, contrary to policies 1.CO and 3.CO which were taken fully into account by local members before coming to a decision.

8.2 In his view, the scheme would be contrary to the NPPF due to the impact on the countryside and existing communities and the effects of traffic. It would be predominantly dependent on the car where there is no integrated transport network, where Hedge End railway station does not offer a realistic alternative and near an AQMA on Botley High Street. He argued that: there is no capacity on the sewer network; there would be impact on wildlife that would not be mitigated by the landscaping; the local doctors' surgeries are under significant pressure; the views and rural nature would be lost; development should be delivered as part of a plan led process; and little regard had been had to existing communities. He advised that the HEWEB members had weighed up all the arguments before its unanimous refusal and urged that the appeal should not be allowed.

8.3 In cross-examination, Cllr. Kyrle claimed that the Council's failure to meet its housing targets in 8 years out of 10 was as a result of 'land-banking' by developers. He was unaware of the extent of either the Council's shortfall in delivery of housing, only acknowledging that it was getting bigger, or of its performance with regard to AH, which he accepted was dismal. However, he pointed out that the Council didn't build houses and denied that it was using its gap policy to prevent housing development. When told that the average age of

first time buyers was approaching 40, he referred to many factors including the global recession, people living longer, financial institutions not lending and that there has been an issue with housing supply for 30 years.

8.4 **Cllr. Dr. Colin Mercer** is chairman of Botley Parish Council. He highlighted the long history of landslips by the railway line due to the original poor construction with the most recent incident in January 2014 being described as one of the worst ever. Climate change will increase such probabilities and, if the appeal is allowed, preventative measures should be taken with regard to surface water and storage ponds. The same would apply to any new car park. He set out sewage concerns in the absence of fully detailed plans close to Boorley Green, which has a history of surcharging, and drew a comparison with the development of 1,400 houses across Winchester Road requiring a new purpose built sewer line. He queried the extent of investigation into other utilities, and requested fibre optic broadband and a waste recycling centre.

8.5 He drew attention to the Parish Council's emerging NP and reported that this is proposing to limit the height of development to 2 storeys. He requested that, if permission is granted, that any AH should be on site and that there should be more than one practical entrance and exit to avoid a 'ghetto' mentality and lack of social inclusiveness. He questioned whether there would be an adequate 'centre' and realistic social or community facilities. Finally, he drew attention to the combined effect of developments turning rural areas into suburban ones and allowing Boorley Green and Hedge End to coalesce.

8.6 **Sue Grinham** of the **Botley Parish Action Group** (BPAG) is a Botley Parish Councillor, Botley School Governor and the Chair of BPAG. The group has over 1,400 members who are resident in Botley and its surrounding villages. She advised that BPAG does not oppose development but argued that it should be more sustainable than other alternatives, be supported with efficient infrastructure, enhance and support existing communities, and most importantly not coalesce and change the separate identities and character of individual communities. For these reasons it objected to the appeal. She outlined the history of Botley and Boorley Green and BPAG's unsuccessful Judicial Review of the 1,400 home development at Boorley Fields.

8.7 She informed the Inquiry that the Botley NP is currently under development by the Parish Council and local residents, a group that know and understand the village environment well. She argued that granting permission for this application at this important stage of the NP would undermine and confuse the ongoing work. The appeal site has never been part of any local plan and BPAG considers that there are other far more viable and sustainable sites within the Borough which should be brought forward ahead of this site.

8.8 She highlighted BPAG's concerns with regard to the loss of farmland, the natural environment, Botley's rural heritage and historic farming environment, cumulative traffic movements, noise, pollution, traffic light pollution and the destruction of quiet lanes. The proposed roundabout would further exacerbate this while the proposed car park to Hedge End station would do little to increase its usage. Instead, further development around Botley would exacerbate existing air quality management areas.

8.9 **David Jackson**, who is 30 years old and a local resident for some 22 years on a relatively new development, outlined the distinct community feel in Hedge End

as opposed to surrounding settlements and the importance of green gaps. He highlighted existing traffic congestion at the junction of White's Way and Tollbar Way during commuter hours and its unsuitability for increased traffic.

8.10 **Cllr. Daniel Clarke** is the recently appointed Chair of HEWEB, having previously served as Vice-Chair, and Chair of West End Parish Council. He advised that councillors in the HEWEB area have been committed to supporting sites for development which are sustainable and which respect gaps and gave illustrations[228]. He outlined concerns with regard to community identity, quality of life and the wishes of local residents.

8.11 **Cllr. Bruce Tennant** serves on HCC, EBC (HEWEB), West End Parish Council, Hedge End Town Council and is Vice Chair of the Horton Heath Development Management Committee. By serving on four councils, he considers himself a true community politician and able to speak on behalf of residents on planning policy, quantity of development and road safety. He advised that the appeal site had not been considered by the public during the eLP consultation period and expressed concern that building in the gap would reduce the quality of the landscape enjoyed by local residents and the identities of Botley and Hedge End. He referred to the potential cumulative impact with other developments and the likely dependence on car ownership.

8.12 **Mrs. Rosemary Nimmo** referred to heritage concerns in the ancient parish of Botley and outlined its interesting history. She refuted the claim that most of the objectors were older people who owned homes that had already been built on previously green fields. **Eugene McCann** expressed concern over the very narrow bridge crossing the railway line at Shamblehurst Lane North and the length of delays that would arise as a result of traffic lights. She argued that the Council's performance in planning for housing was an entirely separate matter to whether the site would be suitable for development. **Mark Proudfoot** queried whether the 'Merton Rule'[229] would be followed and if the development would be sustainable in terms of cycling. **Eric Bodger** was concerned with regard to air quality, arguing that development should not be permitted before completion of the Botley by-pass. **Jamie Mills**, who is 29, advised that he had many friends struggling to get onto the housing ladder but that none of them supported this development.

8.13 **Teresa Griffin** is Chair of the St. Luke's & Botley Surgery PPG and attended on its behalf. She advised that the current demand there already exceeds the capacity to provide a timely service. Despite repeated attempts, the surgery has been unable to recruit GPs on a long term basis so that the full time GPs currently have a patient list of 3,300 each, compared with a national average of 1,650, so that access to routine appointments is almost impossible. A development as large as this, in addition to that on the old golf course, would only make matters worse.

8.14 **Peter Tippetts** attended, even though it was his birthday, to show the extent of his concern. These centred on traffic congestion and the impact on Botley and Boorley Green. **Ian Bennett** lives close to the end of the appeal site and described how wet the fields are and the massive landslip affecting the railway



[228] The sites at Moorgreen Hospital, Dog Kennel Farm and Hatch Farm
[229] Requiring a % of energy needs to be supplied by on site renewable energy

line in February 2014. **Nicola Byrne** raised concerns over the effect that power lines have on limiting the ability to grow large trees or hedges to screen potential overlooking.

8.15 Finally, **Tessa Richardson** spoke on behalf of **Mimms Davies MP** to urge rejection on account of its omission from any local plan, traffic congestion, air quality, the loss of farmland and the importance of gaps between settlements.

## 9. Written Representations

Representations from statutory consultees[230] have been taken up by the Council and addressed through suggested conditions.

9.1 **Cllr. Derek Pretty** is one of the ward councillors for Hedge End Grange Park. He sought to represent the views of residents. While most acknowledge the need for more homes, this application was viewed as opportunistic and unwanted, in an important green countryside gap with access from an already overcrowded road. He refuted the claim that an increase in pupil numbers could be accommodated at local primary schools and pointed to the distances to shops, the limited bus timetable and the dangerous bridge to the railway station. He cited concerns over the local GP practices, loss of agricultural land and the effect on wildlife.

9.2 **Cllr. Stephen Radmore** was unable to attend the Inquiry but wrote to support the arguments of Colin Mercer and to emphasise concerns over the local health service, traffic pollution and education capacity. A representative of **Mrs Loth** and the residents of **Appletree Cottage** and **Oak Cottage** did not oppose the development but expressed concerns over employment, detail of sustainable dwellings and boundary treatments.

9.3 **Graham and Anne Hunter** wrote to highlight the risks of flooding, with recent photographs showing Maddoxford and Wangfield Lanes in Boorley Green underwater, and to add their concerns that the waste water infrastructure is already overloaded.

9.4 **Janet Morgan**, the Parish Clerk to **Botley Parish Council** wrote a holding letter on 24 March 2016 advising that it would need to look at the amendments in more detail but making preliminary observations including concerns over: loss of community identity; emerging NP; entrances too close together; housing layout would not improve traffic flow; multi storey buildings would be unsuitable; no sustainable urban drainage (SuDS); subsidence to the railway embankment; no off road walk or cycle route to Horton Heath School; lack of pavements along most of Winchester Road; modelling for M27 junctions; no health care provisions; sewage disposal which is already at maximum capacity.

9.5 The **Eastleigh Group of the Ramblers** expressed concern over the lack of recreation opportunities and that public open space would also be part of the sustainable drainage proposals.

9.6 **Lesley Bowler** added an objection on the ground of air quality from extra traffic onto Winchester Road, congestion, and urban sprawl.

[230] Including the Environment Agency, Natural England, and the County Archaeologist

9.7 **Nadia Kian** has just moved to her second home in a nice quiet house in Crows Nest Lane and was sad that this and other developments would change the area when that was the reason she moved there.

9.8 **David Gussman** and **Joan White** reiterated others' concerns.

9.9 The **Hedge End Town Council** submitted the minutes of its Highways and Planning Committee on 6 April 2016 which raised a series of highway concerns.

## 10. Conditions

10.1 A list of conditions[231] was discussed on two occasions at the Inquiry together with reasons for their inclusion. Unless stated below, I am persuaded that the suggested conditions, and reasons, would satisfy the tests in the CIL Regulations and the NPPF. Except as explained below, or as modified by me for clarity, I recommend that if the appeal is allowed, and planning permission is granted for the proposals, for the reasons accompanying the attached conditions, the Conditions listed at Appendix C should be attached.

10.2 Conditions 1, 2 and 3 set out the reserved matters, the maximum number of dwellings and the relevant drawings[232]. Conditions 4 and 5 set shorter than usual timescales for commencement in line with the appellants' claim that housing would be delivered quickly. Conditions 6 to 9 control the landscaping proposals, condition 10 the construction period, and conditions 11 and 12 require further details for, and compliance with, the submitted drainage and flood risk proposals. As the application was submitted before the upper limit of peak rainfall was increased to 40% by the Environment Agency, the previous 30% allowance would be appropriate[233]. Highway and footpath details not covered by the s106 Agreement would be controlled by conditions 13 to 15; noise and contamination by 16 to 19. Compliance with the LP requirements for employment and skills management would be governed by conditions 20 and 21, biodiversity by 22 to 25, and archaeology by conditions 26 and 27.

10.3 A written ministerial statement (WMS)[234] sets out which housing standards can now be applied. The Code for Sustainable Homes has now been withdrawn but Councils are still able to require water and energy performance standards above those in the Building Regulations. These should still be applied as should be the BREEAM standards, where relevant, all of which are covered by conditions 28 to 32. To justify the design claims, including adequate parking provision, conditions 33 to 35 are necessary.

## 11. Obligations

11.1 I have assessed the s106 Agreement[235] in the light of the Community Infrastructure Levy Regulations 2010 (CIL Regulations), and NPPF204, which set 3 tests[236] for such obligations. From April 2015, CIL Regulation 123(3) also restricts the use of pooled contributions that may be funded via a s106



[231] ID23 – Agreed planning conditions
[232] See A3 brochure, other drawings being illustrative
[233] Confirmed in ID29
[234] From the SoS on 25 March 2015
[235] ID38, signed and dated 16 June 2016
[236] *necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development*.

obligation if five or more obligations for that project or type of infrastructure have already been entered into since April 2010 which could have been funded by the levy.

11.2 The s106 Agreement would bind the appellant to provide: 35% of the total number of dwellings as AH to an agreed phasing and mix; on-site open space land and play area land; off-site highway works and a bus access restrictor; a funded travel plan secured by a bond; a primary school site; a completed community building or land transfer and community infrastructure contribution; contributions towards: mitigation against recreational pressure impact from the development on the Solent and Southampton Water Special Protection Area, an artificial pitch, education contributions, public art, sustainable integrated transport, Junction 8 improvements, public open space (on-site and at a district park), on-site trees, play areas, a young persons' facility, a trim trail, and healthcare facilities; and other obligations covering future provision of retail and healthcare uses, phasing, a station user car park and cycle use of Botley Footpath No.1. The Shamblehurst Lane North Works are defined as those shown in principle on drawing no. ITB11055-GA-008 Rev B which itself notes that it requires further consideration by the detailed design team.

11.3 Clause 28 to the s106 Agreement allows that if a Court or the SoS determines that any obligation or part would not meet the 3 tests then that obligation shall cease. For the reasons set out in detail in the Final CIL Compliance Schedule and justification, discussed and agreed at the Inquiry but submitted by agreement in its final form after the Inquiry closed[237], I am persuaded that all these obligations would satisfy the NPPF tests and recommend that the SoS reach the same conclusion. The Schedule shows that to date there have been at most 4 pooled contributions towards an item and that those put forward would therefore comply. However, if much time passes between the close of the Inquiry and issuing the Decision, the SoS may have to satisfy himself that this remains the case.



[237] ID37: Final CIL Compliance Schedule dated 27 May 2016

## 12. Inspector's Conclusions

From the evidence before me, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

*Main considerations*

12.1 Following the submission of a signed and dated s106 Agreement, the main considerations remaining in this appeal are as follows:

a) whether the proposed development would accord with the development plan and, if not, whether material considerations indicate determining the appeal otherwise;

b) the effect of the proposed development on the character and appearance of the area with particular regard to:
i) the limits of the built up area;
ii) the designated countryside, including both its landscape and visual characteristics;
ii) the local gap between Hedge End and Boorley Green;

c) the balance to be struck between harm and benefit with particular regard to the extent of housing land supply (HLS) and consequently whether or not paragraph 14 of the National Planning Policy Framework (NPPF14) should apply in assessing whether the scheme would amount to sustainable development.

*Development plan*

12.2 The starting point for determining the appeal is the development plan of which LP policies 1.CO, 3.CO, 18.CO and 59.BE are particularly relevant. The weight to be given to policies is a matter of planning judgement for the decision taker. By limiting development outside the urban edge, as it was identified when adopted in 2006, Policy 1.CO has no other purpose than to restrict proposals, including those for housing. It is therefore a relevant policy for the supply of housing under NPPF49 and not up-to-date. As it is common ground that the Council lacks a 5YHLS, if there is ever to be an adequate HLS in the Borough, this policy will be breached. While Policy 1.CO should not be ignored, it should be given very little or no weight. This was the approach taken at *Grange Road* and at *Bubb Lane.* [3.1][3.2][6.5][7.6][7.27]

12.3 The same, however, does not necessarily apply to policies 2.CO and 3.CO as they serve another purpose. The findings in *Suffolk/Richborough* are helpful here. Unless and until a further Judgment is reached, for example following the *Grange Road* challenge, they explain that it is the effect of policies that may bring them within the scope of NPPF49. What is required is a judgement as to whether the policies do affect the supply of housing in this particular Borough given its present level of HLS, the action of the Council to address this, and the purposes of the policies. The Council originally accepted that Policy 3.CO is out-of-date under NPPF49 but argued that it should still be accorded substantial weight. In its post-Inquiry representations, following the renewal application to the *Grange Road* Decision, the Council reviewed this and reached a different conclusion. [3.2][3.3][6.2][7.6][7.25][7.29]

12.4 Unlike 2.CO, which prohibits any development which would physically or visually diminish a strategic gap, 3.CO does allow a further exception for development in local gaps which could not be acceptably located elsewhere. Although not specifically stated, these differences in policy wording support the common sense interpretation of a *strategic* gap as being more significant than a *local* gap. This is also consistent with the Botley to Hedge End gap being downgraded from strategic to local. The Council's evidence that strategic gaps are simply larger than local gaps, and that there is no other distinction, does not sit squarely with the differences in policy wording. There is a hierarchy and it follows that in principle conflict with 3.CO should usually carry less weight than conflict with 2.CO. The fact that this stance on gaps has not changed in 30 years might well say more about the Council's approach to housing delivery than to the importance of the gap. [3.2]

12.5 The appellants argued that the appeal site was not within the gap as set out in the LP. This claim turned on which gaps between which settlements the policy intended to protect. This argument may be relevant to the weight to be given to any impact that the scheme might have on the purposes for which the gap was designated and the function it performs (see below). Nevertheless, however attractively the arguments were presented, as a matter of fact the appeal site is identified on the Proposals Map as part of a designated local gap. This interpretation is consistent with the *Willaston* Decision (which led in part to the *Suffolk/Richborough* Judgment) where the Inspector found that the site was within a gap, and contrary to policy, but found that there would be no significant harm to the functions of the gap in maintaining the definition and separation of the settlements identified in the policy. [3.3][6.15][6.16][6.30][7.25][7.26]

12.6 As policy 18.CO prohibits any adverse impact on the intrinsic character of the landscape it is only partly consistent with the NPPF which recognises the virtues of the countryside but requires a balance to be struck. Policy 59.BE relates to design and accordance or with this otherwise is again a matter of judgement. [3.3][6.5][7.6][7.27]

12.7 At the time of the Inquiry, the parties were essentially agreed on the approach now required by the NPPF as interpreted by the Courts. That is that if policies are out-of-date the special emphasis in NPPF14 applies but that the final weight to be given to policies is for the decision-taker. This means that conflict with a gap policy may render a proposal unsustainable. Equally, it may not. The 3 tests in *Suffolk/Richborough* simply throw the planning judgement squarely back to the decision-maker. Whether or not Policy 3.CO prevents any possibility of achieving a 5YHLS, when 50% of the Borough is not covered by gaps, is not the test. The policy severely limits the possible locations, and so restricts housing, and therefore significantly affects its supply. The final weight to be given to it depends on the 3 tests. [3.1][6.3][6.17][6.34][7.6-7.8]

12.8 The Council considers that as the eLP has not been withdrawn its policies should still carry weight, albeit extremely limited. The difference between this and no weight at all, as the appellants prefer, is probably a matter of semantics rather than of any practical effect. While the eLP may help the Council to communicate its current thinking to developers, it is of no assistance in deciding this appeal. Other than the steer provided by the Inspector's Report, there is no need for the eLP to be considered further.

While a NP area has been designated for Botley Parish, until a plan has been published this should not be given any weight in this Decision. [3.7][6.15][7.4]

*Material considerations*

12.9 The NPPF is a material consideration in planning decisions. It says so. Of its policies, the presumption in favour of sustainable development and the objective of boosting significantly the supply of housing through a five-year supply of deliverable housing sites are the most relevant to this appeal.

*Five year housing land supply (5YHLS)*

12.10 It is common ground that the Council cannot demonstrate the 5YHLS expected by NPPF47. Nevertheless, as a result of the *Phides* Judgment, it is not only important to establish whether or not there is a 5YHLS but also to take account of the level of any shortfall. [3.18][3.21][6.2][7.7]

12.11 The 5YHLS has two components: the requirement and the supply. In the absence of an up-to-date plan, there is no adopted requirement and the full, objectively assessed needs (OAN) should be used. However, although the eLP will not progress in its present form, the Inspector's Report provides an objective approach to assessing the OAN. Much of the initial evidence was eventually common ground. Unless and until the LPEG recommendations are accepted, it was agreed at the time of the Inquiry that the OAN lay between 590 dpa (the Council's position) and that of 675 dpa (for the appellants). Only two substantive matters were not agreed: the approach to the adjustment of household formation rates; and the treatment of affordable housing (AH) need and market signals. Following further consideration of the *Bubb Lane* Decision for another Inquiry, the Council has accepted that an OAN of 630 dpa would be appropriate. [1.11][3.17][4.3][6.13][7.22]

12.12 On the first matter, the LP Inspector accepted that there is evidence that household formation rates have been suppressed by the economic downturn and that an adjustment (based on a partial catch-up for the younger age cohorts) is not unreasonable. The Council allowed an addition of 11 dpa but this would do very little to correct the situation. By looking at a partial catch up only, the appellants' figure of 37 is more likely to reflect the real needs and is consistent with advice in the PPG. On the second matter, in practice it is highly unlikely that the full AH requirement could ever be met under current policy and the appellants' addition of 10% seems reasonable. However, the Council is not wrong to argue that any uplift above the OAN is likely to increase the provision of AH and so there would be a significant element of overlap if this is added on top of the uplift for market signals. For this reason, and notwithstanding the conclusions at *Bubb Lane*, the appellants' figure of 675 is too high and a smaller adjustment should be made on top of that for household formation rates. [3.7][3.8][6.10][7.12][7.13]

12.13 In conceding the figure of 630 dpa after the Inquiry, the Council did not identify precisely whether it conceded with regard to household formation rates, an uplift for AH, or a combination of the two. However, for the above reasons, it is in line with a reasonable judgement from the evidence at this Inquiry. Moreover, to accept the figure of 630 dpa, as the Council now does, would follow the *Bubb Lane* conclusions and the common ground in the forthcoming Inquiry. While this would not accord entirely with the LPEG

approach, that is still at the consultation stage and may not form policy. Given that establishing future need is not an exact science, and in the interests of consistency, adopting the figure of 630 dpa would be both reasonable and desirable. [1.11][3.17][6.10][6.35][7.13][7.14]

12.14 While acknowledging the different approaches that have been adopted in the past, the *Bubb Lane* Inspector also accepted that, to better accord with the aims of the NPPF to boost significantly the supply of housing, the buffer should be applied to both the OAN and the shortfall. The Council did not agree but invited the SoS to state clearly, and for future reference, which he prefers. Again, for consistency with the most recent conclusions, the approach reiterated at *Bubb Lane* is appropriate. Applying the 20% buffer to the shortfall as well as to the OAN results in a total 5 year requirement of a little over 5,500 new dwellings. [3.17][6.9][6.10][6.12][7.15][7.17]

Supply

12.15 NPPF footnotes 11 and 12 set out policy on supply with further commentary in the PPG. The Council expects the supply over this period to amount to 4,675 dwellings. The appellants were largely in agreement other than with regard to the lapse rate, delivery on large sites, and sites under discussion but without planning permission. The historic lapse rate for 2006-2015 was 0.57%. While Council rounded this down to 0% and the appellants rounded it up to 1% there is no good reason not to use the actual figure. Looking in detail, some of the sites only under discussion may come forward and delivery on some of the large sites is likely to slip. Nevertheless, on balance and as a reasonable proxy for a site by site analysis, following the direction in NPPF footnote 11 on counting all those with planning permission (and this should include Council resolutions to grant), but discounting all those at discussion stage without permission, produces a similar outcome to a site by site approach. That outcome is that the identified sites are likely to supply a little fewer than 4,500 dwellings over the 5 year period. [1.10][3.1][6.13][7.17-7.20]

12.16 On this basis, following the agreed tables and the reasoning above, a reasonable indication of HLS, is very close to 4 years. This is also consistent with the findings at *Bubb Lane* of *something in the order of a four year supply* and the conclusion which should be reached here, as there, is that the scale of the shortfall is a significant material consideration. [3.17][6.14][7.22]

Tests for weight from *Suffolk/Richborough*

12.17 The Council claimed that it encourages both pre-application discussions and proposals for appropriate sites, has granted permission for schemes for thousands of houses, has established a builders' guarantee scheme and its own development company which is bringing forward its own sites. Councillors in the area gave evidence to the effect that they have supported sites for development which represent sustainable development and which respect the gaps between existing settlements. The *Bubb Lane* Inspector accepted that the Council had made considerable efforts to improve housing provision. Nevertheless, his more important conclusion, which also applies here, is that there is no convincing evidence that any of the measures which have been taken have been effective in increasing the rate of housing delivery. [3.18][6.10][6.14][7.19][7.20][8.3]

Deliverability

12.18 In rejecting the appellants' assessment of what the 5YHLS should be, the Council also questioned whether granting more permissions would actually deliver more houses given that: the Council is effectively unable to build any itself, that the delivery of public sector housing and subsidised AH effectively ceased long ago, and that the country is now effectively reliant on just 10 housebuilders in the private sector, all of whom protect their margins. As increasing supply would be likely to reduce margins, for some, granting more permissions would be a disincentive to build. These, the Council argued, are the real blockages to delivery, not the lack of planning permissions. [6.11][6.14][7.19-7.21]

12.19 The Council also argued that to raise numbers to unrealistic, unreasonable and undeliverable levels would lead to: a loss of control; permissions for unsuitable sites; an increased choice of sites but no overall increase in supply above that which the market can deliver; and no benefit but harm arising from permissions on inappropriate sites. This would only slow development in more suitable locations. All this may or may not be true but the fact is that the Council has not identified more suitable locations and so this hypothesis has not been tested as there has not been enough land for housing development for many years. As the Council had to acknowledge, unless there is a change in Government policy, the only way to increase the supply of housing is to grant more planning permissions. [6.11][7.20][7.21]

12.20 The Council may be right about the flaws in the private rented sector's ability to deliver housing. However, even if it is correct that this is not the real block to housing delivery and that there may be a limit to the rate at which the private sector would be prepared to deliver houses in order to protect its profit margins, it has still failed to produce evidence to show that more permissions would do anything but boost supply or that the current supply is anywhere close to that limit. Even if it would not boost supply as much as required, or as fast as claimed, so long as it delivered more houses it would be a benefit and would show efforts to comply with Government policy. [6.11][7.2][7.20]

Conclusions on 5YHLS

12.21 For the purposes of this report, the HLS is around 4 years. As highlighted by the appellants, the recommendation below should be based on the assumption that the Government meets its commitment to issue the decision on this within 3 months. In the event that it takes longer, and an update is provided on the extent of shortfall, the evidence of both parties on 5YHLS may require further scrutiny. Should the LPEG recommendations become policy before the appeal is decided, the OAN should be higher still and the number of years of supply would be even fewer. [6.13][7.22]

*Affordable housing (AH)*

12.22 The evidence on the Council's success rate in delivering AH is damning. The importance of AH was not questioned and so it is not necessary to go into further detail beyond attributing considerable weight to the benefits which the scheme would bring through delivering AH. [6.13][7.22]

*Character and appearance*

12.23 The site and its surroundings are as described (in s2 above) which are in turn taken from the SoCG, the ES, the DAS and the site visits. The DAS also sets out its interpretation of the character and identity of the surrounding settlements as does the independent PUSH study. The appeal site is the beyond the limits of the built up area and therefore within the designated countryside. As the appeal site lies outside the urban edge, the proposals would be contrary to LP Policy 1.CO which only grants planning permission outside the urban edge in specific circumstances. [2.1][2.4][3.2][6.5][7.6]

Landscape

12.24 In short, the land is generally flat with some hedgerows and tree belts. There can be no doubt that the development would harm the landscape qualities of the site itself by permanently altering countryside into built development. However, aside from the local gap designation (see below), if there is a requirement for new housing on agricultural land the moderate sensitivity of the site means that the quality of the landscape, which would be altered, is no more special than others in the Borough. The trees and hedgerows, which are a key characteristic, would be protected and enhanced. To this extent, the scheme would accord with landscape policy 18.CO. Beyond this, the policy does not include criteria for judging the landscape and so is not fully consistent with NPPF113 and should be given reduced weight. There was little evidence that the cumulative effects of these proposals and others would cause greater harm to the landscape, as opposed to the gap, than the sum of any harm caused by each scheme. [2.2][2.3][6.22][7.28]

12.25 The Council argued that the importance of local gaps is in maintaining the individual identity and character of settlements, that mitigation is not referred to in policy, as no amount of landscaping can mitigate against the loss of openness, and that by preserving open countryside local gaps also function as landscape policies. [2.4-2.6][6.3][6.19]

Visual effects

12.26 It was common ground that the overall public visibility of the scheme, and the geographical area where the landscape changes would be experienced, would be essentially limited to the appeal site itself, including the footpath, and that there would be no significant adverse landscape effect beyond the site. As was apparent on the site visits, the very limited views onto the land from beyond its perimeter mean that the harm, as a result of the loss of countryside and as experienced from different viewpoints, would be limited.
[4.5][5.1][5.2][6.19][7.28]

12.27 The development of Boorley Fields will lead to some short term impact from construction as would the appeal scheme. On the other hand, both proposals have extensive landscaping elements and, subject to close scrutiny by the Council (and probably by concerned neighbours) at reserved matters stage, there is no reason why both schemes would not eventually produce attractive environments, both along the transformed footpath and from the limited number of viewpoints beyond the site. In time these could be as pleasant as those enjoyed along the residential streets of Boorley Green.
[2.4][5.1][6.31][6.32][7.28][7.29]

12.28 At *Bubb Lane* the Inspector identified the visual dimension to the perception of a gap and where the topography local to that site was an important factor in creating a sense of separation in a strategic gap. Here however, there are very few views which provide a sense of separation and so much less harm would be done to a less important local gap. The weight to the conflict with Policy 18.CO should therefore be reduced further. [3.4][4.5][6.3][6.21][7.28][7.29]

Existing identity

12.29 Of the three nearest settlements, Botley is a small market town. Hedge End comprises three distinct areas: the older town, a commercial area alongside the M27, and the more recent residential area by the railway line. Boorley Green is currently a small residential settlement with a verdant appearance but few facilities. There is no specific reason to consider the character of Botley other than as it is at the moment. Hedge End has far more recent developments and is shortly expected to extend up to the railway line on the *Woodhouse Lane* site. However, this planned extension would complement adjoining residential areas and do little to alter the overall character of this settlement. [2.4-2.8][6.15][7.7]

12.30 Boorley Green is on the cusp of a major transformation as a result of the Boorley Fields development. On the other hand, it is currently lacking any meaningful facilities and so at the moment it can probably only operate as a dormitory to adjacent settlements. Short of some highly unlikely eventuality, the upshot of the Boorley Fields scheme will be that Boorley Green will essentially become a small residential quarter of the much larger Boorley Fields, rather than the other way around, and the effect of the latest proposals before me on the identity of Boorley Green should be considered in this context. This is not to justify the proposals as being similar to the Boorley Fields site – which is not in a gap and was in use as a golf course not for agriculture. While the Council acknowledged that the scheme would be good urban design, it did not credit the logic of extending Boorley Green and Boorley Fields into a more rounded community as opposed to extending Hedge End. [2.1][2.4][6.4][6.22][6.31][6.32][7.29][7.30][7.33]

12.31 On this point, the scheme would enhance the social qualities of Boorley Green and improve its rather one-dimensional character. Its identity would be changed, but not for the worse, while the important characteristics of Botley and Hedge End, identified above, would be essentially unaltered.

Effect on the local gap

12.32 The LP gives some guidance as to the purpose of the local gap. The PUSH Study, while intended to support the eLP rather than being a statutory plan (and so warranting reduced weight), is more helpful although its status is not more than that of part of the evidence base. It sets four criteria for designating gaps other than those named between different authorities. The local gaps close to the appeal site are shown as continuous. Although the appeal site is within a local gap, with regard to criterion one and *the open nature and/or sense of separation* the list of gaps between settlements, where a risk of coalescence is identified in the LP, does not include Hedge End to Boorley Green. [3.3][3.14][6.20][6.29][7.7]

12.33 Turning to criterion 2, regarding *settlement character* and the *risk of coalescence*, it is evident that the appeal site is not within the Botley – Boorley Green gap, which is identified as east of Winchester Road, and is not within the Botley – Hedge End gap as both these settlements are on the other side of the railway line. The Hedge End – Horton Heath gap is more problematic. Although Horton Heath is due north of Hedge End, whereas the appeal site is to the east, the references to the railway line to the south-west and to glimpses of Hedge End, suggest that the LP considered that at least a part of the area which is the appeal site is relevant to this gap. [3.3][3.14][6.1][6.21][6.30][7.7][7.25]

12.34 While the effect of the appeal scheme would be to make the separation from Hedge End would look slim on a map or from the air, on account of the railway line and associated green infrastructure on both sides, there would be an effective separation on the ground. The accompanied site visit demonstrated that, at the two crossing points over the railway line adjacent to the site, the bridges and adjoining trees provide a clear demarcation and serve to separate Hedge End from the land on the other side regardless of the appeal site. The lack of likely integration with Hedge End, as a result of the railway line, would not be a flaw in the proposals but a benefit as it would help both to retain the separate identities of the settlements. By achieving close ties with the enlarged Boorley Green it would also benefit from the new facilities proposed there. [2.1][5.1][6.22][6.30][6.31][7.28][7.29]

12.35 Criteria 3 and 4 to the PUSH Study, not to preclude provision for development and to include no more land than is necessary, both support appropriate development. Finally, the open space provisions would strengthen the recommended multifunctional capacity of the proposed buffer whereas, other than a footpath which would be retained, the site currently makes no contribution to recreation. [3.14][5.1][7.28][7.30]

12.36 With regard to the need to retain the open nature and sense of separation, as above, the site is visible in few places beyond its boundary and, with the possible exception of Shamblehurst Lane North (see below), there would continue to be limited visibility onto the site while a landscaped buffer would reinforce the separation provided by the railway line. On this point, by reference to the PUSH Study, the weight to be given to the conflict with Policy 3.CO should be reduced further. [3.2][3.14][5.2][6.22][6.25][7.28]

Settlement character

12.37 The LP Inspector identified the rail line as a severe constraint on integration of the suggested MDA and Hedge End and the difficulty in creating a mixed development area around the station. However, the design of the appeal scheme thoughtfully avoids this problem. Rather than fail to link with Hedge End, it would extend a transformed Boorley Green with substantial integration and overlap with significant provision of local services. Whether or not the design arose from the inability to connect with Hedge End or otherwise is irrelevant to the quality of the urban design. [3.8][5.2][6.31][7.29]

12.38 Unlike previous schemes for the appeal site at MDA or SDA stage, the proposals before me are specifically designed to complement the extant permission at Boorley Fields by extending and expanding its local centre and facilities on adjoining land on the other side of Winchester Road. The scheme

would change 45ha of pasture into a housing development, a local centre, and several open areas with existing hedgerows and tree belts retained and enhanced, and recreational space. Subject to reserved matters and obligations, there was no compelling evidence to suggest that the development as a whole could not proceed satisfactorily (see below for specific concerns). If so, Boorley Green would become a residential portion of a new settlement with a far better balance of community facilities and services than at present. [3.11][5.3][6.20][6.32][7.29][7.31]

12.39 The identity of settlements is a matter of perception. The visual effects are not the only ones of relevance, they play a large part. Two matters as to the identity of Boorley Green are relevant. First, its character is about to change dramatically from around 200 houses to part of a 1,600 settlement with a district centre. While the scheme would certainly change the identity of Boorley Green as a whole, the existing residential areas would be unaltered while the new facilities, on the appeal site and at Boorley Fields, would transform the existing settlement into a far more rounded community. In any event, its character will shortly change irrevocably. On this point, the scheme would complement a planned improvement to the existing settlement character and this would be a benefit to its new identity. [2.1][6.32][7.29]

12.40 Second, there are very few public, or even private, views from outside the appeal site from which both the settlements of Boorley Green and Hedge End can be seen simultaneously or indeed either settlement and the appeal site. Although the taller buildings would no doubt be more apparent than the site is at present, the limited views would otherwise remain largely unchanged. While development of the fields of the appeal site would be crystal clear on a map or in the air, to most observers on the ground it would not. The points of transition would be, as they are now, marked by the railway line and the bridges over it. The Council points to openness, but the policy is not for a Green Belt and there is no national presumption against development in gaps. Openness is not the only way to preserve identity. [4.5][6.22][7.28]

12.41 The Council has identified the *Woodhouse Lane* allocation as an integrated extension to Hedge End on the appropriate side of the railway line. This emphasises that the correct analysis is not whether a development would reduce part of the gap, which this would do just as much as the appeal proposals, but how either scheme would relate to adjoining settlements. In particular, whether they would, in the language of the NPPF, support: *strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.* In short, the test is whether the scheme would help to create a sustainable community. For Boorley Green, this test would be satisfied. [2.8][3.19][6.19][7.7][7.30]

12.42 Finally, by making a draft allocation of the *Woodhouse Lane* site, and arguing that its development would contribute to the 5YHLS, the Council has acknowledged that it is possible to extend local settlements into the local gaps without harming their identities or causing coalescence. Indeed, given the numbers of houses proposed there, it is likely that development of the *Woodhouse Lane* site would involve no greater landscaped buffer to Boorley Green than that proposed on the appeal site. [3.19][6.28][7.7]

*Conclusion on gap policy*

12.43 Although the wording of policy 3.CO, and its justification, could be clearer, the Proposals Map shows that the gaps join up around the appeal site so that they are continuous. The site is therefore within a designated local gap protected by policy 3.CO and on the cusp of the specified Hedge End – Horton Heath gap as described in Appendix 1 to the LP. However, both the weight to be given to this policy, and any conflict with it, should be adjusted for a number of reasons. [3.2][3.3][6.2][6.15][6.17][7.7][7.25][7.26]

12.44 The status of a policy as one which is relevant to the supply of housing is a matter of judgement. A policy does not have to make it impossible for housing to be developed for it to affect the supply of housing. Rather, as was identified in *Suffolk/Richborough*, the concept extends to policies which influence supply by restricting the locations where new housing may be developed. Subject to the evidence, which at this Inquiry may have been different to that at *Sovereign Drive*, given the extent of gaps in the Borough and the significant shortfall in HLS, policy 3.CO may be both relevant to the supply of housing and may constrain it. [3.2][3.21][6.2][6.3][6.17][7.5-7.7][7.25]

12.45 First, it is necessary to assess whether policy 3.CO is consistent with the NPPF if it has the effect of restricting the supply of housing land. Taken together, the gaps make up 50% of the Borough and at *Grange Road* the Inspector accepted that some areas of gaps would need to be developed. Referring to the 3 *Suffolk/Richborough* tests: the Council's HLS, at 4 years, falls well short of that required and has done for many years; notwithstanding its efforts, the action it has taken has not remedied this; and, as described in policy and set out in the PUSH Study, the site is in the least important part of the relevant named gap and the purpose of the gap would largely remain. For all these reasons, and in the circumstances of this appeal, policy 3.CO is a relevant policy which affects the supply of housing, is not up-to-date, and the weight to be given it in this appeal should be greatly reduced. [3.3][3.14][6.14][6.17][7.25]

12.46 Moreover, even set against this, the actual conflict with policy 3.CO should be given even less weight on account of it being drafted prior to the planning permission for Boorley Fields, which will fundamentally alter the identity of Boorley Green; the gap itself has been downgraded from strategic to local, i.e. related to a lower order of importance than the strategic gap in *Bubb Lane*; and, more discernable on a map than on the ground where views are few, again in stark contrast with the finding in *Bubb Lane*. [2.1][3.20][6.17][7.29]

12.47 The Council is correct to say that a scheme may be unsustainable simply because of harm to a gap. That is one possible outcome. However, such a finding can only be the proper outcome if it is the result of a balancing exercise. In this case neither the policy, the gap behind it, nor the actual conflict with it, should carry full weight. On the other side of the scales, the benefits of housing and AH, particularly where the supply is significantly below 5 years and the history of delivery is poor, warrant considerable weight. [3.18][5.1][6.3][7.7]

*Consistency of policy and decision making*

12.48 With regard to consistency with *Bubb Lane* concerning gaps, 4 points should be noted. First, the *Bubb Lane* site lies within a strategic gap. From the ordinary

meaning of the words, strategic should be more important than local. This is reinforced by the wording of the policies which does not allow any development which would physically or visually diminish a strategic gap while that for local gaps also allows development if it would be appropriate or cannot be acceptably located elsewhere. Less weight should usually be given to harm arising as a result of conflict with policy 3.CO than 2.CO. [3.2][3.16][6.3][7.11]

12.49 Second, while the proposals map makes clear that the site is within a local gap, as these join up it is not entirely clear which gap it lies within. The degree of conflict with Policy 3.CO should take account of its purposes which focus on three gaps: Hedge End – Horton Heath to the north, Botley – Boorley Green to the east, and Hedge End – Botley to the south. Less weight should be given to harm to that between Hedge End and Boorley Green. Third, as above, the separate identities of Hedge End and Boorley Green would be retained and so there would be little harm to the purposes of the policy. [3.3][3.15][6.4][6.15][6.22][7.7][7.25][7.29]

*Residents' concerns*

Railway

12.50 Hedge End station may not have a 15 minute frequency of train services but it is still well used. It is a public transport hub with regular buses serving the station at times which link well with train services. There is also cycle parking and there are walking routes, including one leading directly from the platform to the appeal site. This path is already hard surfaced for much of the route and the appeal scheme would provide the finance for this to be significantly improved. The short distance and close links between the appeal scheme and the station would be substantial benefits. [2.1][5.4][7.37][7.39][8.4][8.8][8.12]

12.51 The need for a new car park on the site was questioned when it would not be essential for many residents of the appeal site, for whom the station would be within easy walking distance. The single lane bridge works, with a lengthy time delay to the traffic lights rather than a separate pedestrian and cycle lane, were also criticised. The access works to it from Shamblehurst Lane North would result in the loss of significant trees across from Hedge End railway station which both screen the site and assist in the visual sense of separation between the settlements. This would be to allow road widening, a footway and a maintenance bay to preferred highway standards but with seemingly little consideration of how these benefits should be balanced against the loss of trees. However, while the s106 Agreement requires a highway works agreement, the definition only refers to the drawing in principle and this stipulates that it requires further consideration. There is also a degree of conflict between this drawing and suggested conditions protecting all the existing trees. Consequently, as reserved matters have still to be submitted and the purpose of the drawing is only to secure the works in principle, there is still time to review the extent of loss of trees, the impractical, if theoretically safe, crossing arrangements and any potential harm at this point should not alter the overall balance of the recommendation. [4.2][4.6][5.4][7.37][7.39][8.4][8.8][8.12][11.2]

12.52 Aside from Network Rail's concern to ensure that the proposed balancing pond must be designed and constructed so that no water could leak toward the railway line, a matter which would be controlled by conditions, it raised no

objection with regard to proposed development in the vicinity of the embankment and so limited weight should be given to this risk. [7.49][8.4][9.4]

Other matters

12.53 While there were widespread concerns with regard to traffic, none of these identified flaws in the safety of the highways proposals and no evidence was produced to show that the impact at any point would reach the threshold of *severe* in NPPF32. Similarly, there was no quantitative evidence to challenge the appellants' detailed information, in the ES, addressed through the s106 Agreement and conditions, or otherwise, on air quality, sewage disposal, drainage, flooding, noise, pollution, education, ecology, privacy or heritage. Given Network Rail's lack of concern over landslips, the healthcare contribution in the s106 Agreement and the inevitability of the loss of farmland to meet a 5YHLS, these concerns should not prevent development either. [7.34-7.50][s8][s9]

Sustainable location

12.54 While the NPPF makes one reference to sustainable locations in relative terms, it gives no definition and so the concept is of limited use in considering planning policy. What the NPPF does do is make many references to sustainable development explaining that a proposal may be, or may be capable of being made into, sustainable development. It explains at NPPF8 that the planning system should play an active role in guiding development to sustainable solutions. That is to say that design is critical to sustainable development, something reiterated in NPPF56. [3.1]

*Benefits*

12.55 The proposals would make a very substantial contribution to housing and AH for which there are substantial shortfalls. It would provide green infrastructure of the sort recommended in the PUSH Study. Access to the station, the footpath and the pedestrian/cycle link at the south end would provide connections through the scheme and a new local centre to complement that at Boorley Fields would achieve a sense of place. The Council and Review Panel accepted that the proposals have the potential for creating an attractive settlement. The s106 Agreement would substantially offset potential harms but should more correctly be considered as mitigation rather than benefit. Indeed, if the measures were simply benefits it is doubtful that they would pass the 3 tests in the NPPF. [4.6][5.1-5.3][6.24][6.26][7.8][7.9][7.23][7.33][7.47]

*Sustainability balance*

12.56 The proposals would harm the landscape, and result in the loss of countryside, but the weight to this harm should be tempered by the very limited impact on views from outside the site and its immediate surroundings. As above, there would be substantial benefits. Although theoretically the economic and social benefits could be delivered in a more appropriate location without the landscape harm, as there are not enough sites to achieve a 5YHLS, or even get close, this argument is unsound. The proposals would amount to sustainable development, as defined by the NPPF, and this is a material consideration of considerable weight. [31.][6.25][6.33][7.5][7.32][7.33]

*Policy balance*

12.57 In line with the findings in *Suffolk/Richborough*, the weight to be attached to relevant policies is for the decision-maker. The scheme would be contrary to LP Policy 1.CO. The weight to this conflict should be reduced considerably as it is a relevant policy for the supply of housing and so out-of-date in the absence of a 5YHLS. The scheme would also be contrary to Policy 3.CO. As above, given the circumstances in the Borough, for the purposes of this appeal it also affects housing supply and should also be regarded as out-of-date. The weight should be greatly reduced compared with that given to conflict in the *Bubb Lane* Decision on account of the gap being local rather than strategic, there being a lack of harm to named settlements, the limited viewpoints from which this harm could be experienced, the proposal for a significant landscape buffer to complement the railway line separation, and the precedent of other development being allocated within local gaps, notably on *Land west of Woodhouse Lane.*

12.58 The proposals would not accord with Policy 18.CO, due to the loss of agricultural landscape, but only little weight should be given to this conflict as it is not entirely consistent with the NPPF and the harm as experienced on the ground would be limited. Policy 59.BE is essentially a design policy and, as the scheme would amount to good urban design, it would accord with this policy. As above, the benefits would be substantial. The proposals would represent sustainable development which is a material consideration of considerable weight.

12.59 As the Council cannot demonstrate a 5YHLS, NPPF49 applies. As set out above, Policies 1.CO and 3.CO should be assessed as out-of-date. Nevertheless, this does not exclude them from being given at least some weight as a part of the development plan against which the NPPF must be balanced as a material consideration. While neither policy should necessarily be disallowed, the weight to Policy 1.CO should be very limited and Policy 3.CO should be given no more than little weight. No specific policies indicate that development should be restricted under NPPF footnote 9. Given policy in NPPF14, even if the harm were to outweigh the benefits on a straightforward balance, which it would not, in this case the tilted balance means that the adverse impacts would need to significantly and demonstrably outweigh the benefits, to which they do not come close. This is a material consideration which should outweigh the limited conflict with the development plan and the appeal should be allowed.



## 13. Inspector's Recommendation

13.1 The appeal should be allowed, and outline planning permission granted subject to the conditions in the attached Schedule.

*David Nicholson*

INSPECTOR

Appendix A

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

| | |
|---|---|
| Paul Stinchcombe QC and Ned Helme of Counsel | instructed by Eastleigh Borough Council (EBC) |
| They called | |
| Cllr Keith House | Leader, EBC |
| Nick Ireland | GL Hearn |
| Michal Nowak | Influence Environmental Limited |
| Kitty Budden | Senior Planning Officer, EBC |

FOR THE APPELLANT:

| | |
|---|---|
| Christopher Young of Counsel | instructed by Mrs Mulliner |
| He called | |
| Simon Coop | Nathaniel Lichfield & Partners |
| Martin Miller | Terence O'Rourke (TO'R) |
| James Stacey | Tetlow King |
| Nigel Harris | The Railway Consultancy |
| Tim Wall | iTransport |
| Andrew Williams | Define |
| Jacqueline Mulliner | Terence O'Rourke |

INTERESTED PERSONS:

| | |
|---|---|
| Cllr Rupert Kyrle | Botley ward councillor for EBC |
| Cllr Mercer | Chairman, Botley Parish Council |
| Sue Grinham | Botley Parish Action Group |
| David Jackson | Local resident |
| Daniel Clarke | Local resident |
| Cllr Bruce Tennent | Local resident |
| Rosemary Nimmo | Local resident |
| Eugene McCann | Local resident |
| Eric Bodger | Local resident |
| Jamie Mills | Local resident |
| Teresa Griffin | Local resident |
| Peter Tippets | Local resident |
| Ian Bennett | Local resident |
| Nicola Byrne | Local resident |
| Tessa Richardson | on behalf of Mimms Davies MP (Conservative) |

Appendix B

## INQUIRY DOCUMENTS

ID1 – Appellant Opening Statement
ID2 – Council Opening Statement
ID3 – OAN SoCG
ID4 – HLS SoCG and Table of Disputed Sites
ID5a – Mr Pretty third party
ID5b – Botley PC third party
ID6a – Mr James email HCC Housing Land Supply
ID6b – Chris Reiss email Horton Heath Housing Land Supply
ID7 – NLP briefing note – comparison of components of FOAN
ID8 – Queen's Speech extract
ID9 – Cllr Radmore third party
ID10 – Apple Tree Cottage Third Party
ID11 – Botley Parish Action Group third party
ID12a – Cherkley Ltd v Mole Valley DC
ID12b – Fox Land & Properties v SoS & CLG
ID13 – Final CIL Compliance Schedule
ID13b – EBC Supplementary Statement on Developer Contributions
ID13c – CIL Compliance Plan
ID14 – Extract St Johns Rd S106
ID15 – Appeal Decision for *Land off Bubb Lane* Ref: APP/W1715/W/15/3063753
ID16a – Cllr Rupert Kyrle third party
ID16b – Botley Parish Action Group third party
ID16c – David Jackson third party
ID16d – Daniel Clarke third party
ID16e – Cllr Bruce Tennent third party
ID16f – Rosemary Nimo third party
ID16g – Eugene McCann third party
ID16h – Eric Bodger third party
ID16i – Jamie Mills third party
ID16j – Teresa Griffin third party
ID16k – Peter Tippets third party
ID16l – Ian Bennett third party
ID16m – Nicola Byrne third party
ID16n – Tessa Richardson on behalf of Mimms Davies MP (Conservative) third party
ID17a – Fig 3.11 Land use at and in vicinity of proposed MDA
ID17b – Fig 4.2 Concept Masterplan Phases 1 and 2 (1500 houses)
ID18 – Bodkin Farm Whitstable Hern Bay Plan
ID19 – Site visit itinerary plan
ID20 – Wychavon decision
ID21 – Budget 2016 Extract
ID22 – Select Committee NPPF change
ID23 – Agreed planning conditions
ID24 – Inspectors Note Affordable Housing 23.05.16
ID25 – FAON comparison Bubb Lane and Boorley Green
ID26 – Final Bubb Lane 5YLS Note
ID27 – Botley NP Designation Letter and Map comprising the whole of Botley Parish dated 1 December 2015
ID28 – Mr Mercer third party
ID29 – EA conditions email
ID30a – Mr Coop ONS 2014 SNPP Note
ID30b – Mr Ireland ONS 2014 SNPP Note
ID31 – Past performance position statement tables
ID32 – *Daventry DC v SoS & Gladman*

ID33 – Changes to PPG
ID34 – Council Closing Statement
ID35 – Appellants' Closing Statement
ID36a – Appellants' Costs application
ID36b – Council's Costs reply
ID37 – Final CIL Compliance Schedule dated 27 May 2016
ID38 – Completed s106 Agreement

POST-INQUIRY DOCUMENTS

Post-ID1 - Further submissions and 4 appendices relating to a High Court Challenge with regard to Land to the east of Grange Road (see section 3 below) and housing figures
Post-ID2 – Further submissions from the appellants dated 11 July 2016
Post-ID3 – Response to appellants' further submissions, dated 13 July 2016

## CORE DOCUMENTS[238]

### 1. Policy & Evidence Base Documents

1.1.1 NPPF
1.1.2 NPPG Extract (Housing and Economic Development Needs Assessments)
1.1.3 NPPG Extract (Housing and Economic Development Land Availability Assessments)
1.2 Eastleigh Borough Local Plan: Review (2001 – 2011), adopted 2006, and Policies Map (extract)
1.3 Eastleigh Borough Local Plan Review Saving Direction, 14 May 2009
1.4 Eastleigh Borough Local Plan Review Inspector's Report (extracts)
1.5 Eastleigh Borough Local Plan 2011 – 2029, Submission Document, July 2014:
1.5.1 Revised Pre-submission Eastleigh Borough Local Plan (2011-2029) (February 2014) and Policies Map (extracts);
1.5.2 Schedule of Proposed Changes July 2014
1.6 Eastleigh Borough Local Plan 2011 – 2029, Inspector's Reports:
1.5.1 Preliminary Conclusions Housing Needs (Post Hearing Note 2) 28 November 2014;
1.5.2 Other Matters (Post Hearing Note 3) 3 December 2014
1.5.3 Inspector's Report on the Examination into Eastleigh Borough Council's Eastleigh Borough Local Plan 2011-2029, 11 February 2015
1.7 Planning Policy Guidance 3: Housing (PPG3), 29 November 2006 (extract)
1.8 South East Plan (extract - South Hampshire Strategy), adopted 2009
1.9 South East Plan Panel Report, August 2007 (Extracts)
1.10 SDA Feasibility Study and Appendices, July 2010
1.11 South Hampshire Strategy, October 2012
1.12 Hampshire Structure Plan: Review 1996 – 2011, November 2000 (Extracts)
1.13 Eastleigh Borough Council: Local Development Scheme (Draft), April 2015
1.14 Eastleigh Borough Local Plan 2011 – 2036, Issues and Options, December 2015
1.15 Eastleigh Housing Needs Study, JG Consulting, June 2015
1.16 Eastleigh Borough Council Local Plan 2011-2036 Housing Background Paper (December 2015)
1.17 Review of Housing Needs in Eastleigh Borough, GL Hearn (March 2016)
1.18 Eastleigh Borough Council: SHLAA, June 2014 (Extracts for appeal site)
1.19 Five Year Housing Land Supply Position: Housing Implementation Strategy for the Borough of Eastleigh, 30 September 2015
1.20 Eastleigh Borough Council 5 year housing land supply position at 31 March 2013
1.21 Housing implementation strategy for the Borough of Eastleigh December 2013



[238] These exclude all application documentation (submitted with appeal) consultation responses (submitted with questionnaire) committee report and minutes (submitted with questionnaire) Decision notice (submitted with appeal) post-determination appeal plans (submitted to PINS) appellants' statement of case (submitted with appeal) and the Council's statement of case (submitted to PINS).

1.22 Housing implementation strategy for the Borough of Eastleigh June 2014
1.23 Housing implementation strategy for the Borough of Eastleigh September 2014
1.24 Housing implementation strategy for the Borough of Eastleigh December 2014
1.25 Housing implementation strategy for the Borough of Eastleigh March 2015
1.26 Housing implementation strategy for the Borough of Eastleigh June 2015
1.27 Eastleigh Borough Council SLAA Interim Update (December 2015)
1.28 Five year housing land supply proof of evidence of Chris Hemmings, GL Hearn, April 2016, in conjunction with planning inquiry APP/W1715/W/15/3063753
1.29 Corrigendum to the five year housing land supply proof of evidence of Chris Hemmings, GL Hearn, April 2016, in conjunction with planning inquiry APP/W1715/W/15/3063753
1.30 Eastleigh Borough Interim Housing Requirement: Cabinet Report of the Head of Regeneration and Planning Policy, 16 March 2016
1.31 Analysis of Objectively Assessed Housing Need in light of 2012-based Subnational Projections, JG Consulting, June 2014
1.32 PUSH South Hampshire Strategic Housing Market Assessment, Final Report, GL Hearn, January 2014
1.33 Housing Strategy for Eastleigh 2012-2017
1.34 Amber Valley Local Plan Part 1 Core Strategy Examination - Letter from Inspector R. Foster (10 August 2015)
1.35 Eastleigh Borough Council Eastleigh Corporate Plan 2015-2025
1.36 Partnership for Urban South Hampshire (October 2012) PUSH Green Infrastructure Implementation Framework
1.37 Partnership for Urban South Hampshire (October 2012) South Hampshire Strategy – A Framework to Guide Sustainable Development and Change to 2026
1.38 Partnership for Urban South Hampshire (December 2008) - Policy Framework for Gaps
1.39 Eastleigh Borough Council (December 2011) Landscape Character Assessment of Eastleigh Borough [Extract] Area 9
1.40 Winchester City Council (March 2004) Winchester District Landscape Character Assessment [Extract] Durley-Claylands LCA
1.41 Hampshire County Council (May 2012) The Hampshire Integrated Character Assessment [Extracts] Character Area 2E - Forest of Bere West
1.42 Natural England (March 2014) National Character Area Profile 128 'South Hampshire Lowlands'
1.43 Eastleigh Borough Council (October 2014) Green Infrastructure Background Paper
1.44 Hampshire County Council (2000) The Hampshire Landscape: A Strategy for the Future
1.45 Landscape Institute and the Institute of Environmental Management and Assessment (2013) Guidelines for Landscape and Visual Impact Assessment (3rd Edition)
1.46 Solent Local Enterprise Partnership (LEP) (March 2014) Transforming Solent Strategic Economic Plan
1.47 Hampshire County Council (Adopted September 2012) Eastleigh Borough Transport Statement
1.48 Transport for South Hampshire (February 2013) Transport Delivery Plan 2012-2026
1.49 SPD ‘Character Area Appraisals: Hedge End, West End and Botley’ (January 2008)
1.50 SPD ‘Environmentally Sustainable Development’ (March 2009)
1.51 SPD ‘Quality Places’ (November 2011)
1.52 SPD ‘Residential Parking Standards’ (January 2009)
1.53 SPD ‘Affordable Housing’ (July 2009)
1.54 SPD ‘Planning Obligations’ (July 2008, updated November 2010)
1.55 Infrastructure Delivery Plan, Background Paper G8 (July 2014)
1.56 Public Art Strategy 2015-2019 (February 2016)
1.57 Hampshire County Council’s ‘Developer’s Contributions towards Children’s Services Facilities’ (October 2015)
1.58 Solent Recreation Mitigation Partnership’s ‘Interim Solent Recreation Mitigation Strategy’ (December 2014)

1.59 Land Use Consultants, June 2010, PUSH Landscape Sensitivity Study for Hedge End (Extracts)

## 2. Ministerial / Government Publications

2.1 Government's Productivity Plan July 2015
2.2 Government's Consultation on proposed changes to national planning policy, December 2015
2.3 Ministerial Statement, March 2015 (re SHMA)
2.4 Letter: Housing and Planning Minister to PINS, 19 December 2014 (re SHMA)
2.5 Local Plans Expert Group Recommendations
2.6 Government Press Release 10 April 2016

## 3. Appeal Documents

3.1 General Statement of Common Ground – EBC & TO'R
3.2 Transport Statement of Common Ground – Highways England & i-Transport
3.3 Transport Statement of Common Ground – Hampshire County Council as Highways Authority & i-Transport

## 4. Appeal Decisions

4.1 Land between Leasowes Road and Laurels Road, Offenham, Worcestershire February 2014 (APP/H1840/A/13/2203924)
4.2 Land at Fountain Lane, Davenham, Cheshire, September 2015 (APP/A0665/A/14/2226994)
4.3 Land north of Durham Road, Spennymoor, County Durham, August 2015 (APP/X1355/W/15/3005376)
4.4 Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire, September 2015 (APP/A0665/W/14/3000528)
4.5 Land at Worcestershire Hunt Kennels, Kennels Lane, Fernhill Heath, Worcestershire December 2015 (APP/H1840/W/15/3003157)
4.6 Land rear of 62 Iveshead Road, Shepshed, Leicestershire, February 2016 (APP/X/2410/W/15/3007980)
4.7 East Leake, Nottinghamshire, March 2008
4.8 Long Marston, Pebworth, July 2014
4.9 Land at Pulley Lane, Droitwich Spa (APP/H1840/A/13/2199085 and APP/H1840/A/13/2199426)
4.10 Land at Sketchley House, Burbage, November 2014
4.11 Land off Rilshaw Lane, Winsford, Cheshire, October 2015
4.12 Hook Norton, Banbury, Oxfordshire, December 2015
4.13 Money Hill, Ashby-De-La-Zouch, February 2016
4.14 Lowbrook Farm, Tilbury Green, Solihull, March 2016
4.15 Land at Hamble Lane, Bursledon (APP/W1715/A/13/2207851)
4.16 Land at Hamble Station, Netley Abbey (APP/W1715/A/14/2228566)
4.17 Land at Upper Chapel, Launceston, April 2014 (APP/D0840/A/13/2209757)
4.18 Greetham Garden Centre, Oakham Road, Greetham, Oakham, May 2015
4.19 Salisbury Landscapes Ltd, Boughton Road, Moulton, Northampton, June 2015
4.20 Land off Field End, Witchford, Cambridgeshire, June 2015
4.21 Land adjacent to Cornerways, High Street, Twyning, Tewkesbury, July 2015
4.22 Land at Firlands Farm, Burghfield Common, Reading, Berkshire, July 2015
4.23 Walcot Meadow, Walcot Lane, Pershore, Worcestershire, August 2015
4.24 Land Bounded by Gresty Lane, Rope Lane, Crewe Road and A500, Crewe (APP/R0660/A/13/2209335)
4.25 Land South of Cirencester Road, Fairford, 22 September 2014 (APP/F1610/A/14/2213318)

4.26 Land off Sadberge Road, Middleton St George, Darlington, County Durham, 12 January 2015 (APP/N1350/A/14/2217552)
4.27 Land west of Beech Hill Road, Spencers Wood, Berkshire, 9 June 2015 (APP/X0360/A/13/2209286)
4.28 -
4.29 Land at Southwell Road, Farnsfield, Nottinghamshire, 7 January 2016 (APP/B3030/W/15/3006252)
4.30 Longbank Farm, Ormesby, Middlesborough, 9 March 2016 (APP/V0728/W/15W3018546)
4.31 Land adjacent to 28 Church Street, Davenham Cheshire, January 2016
4.32 Land at Well Meadow, Well Street, Malpas (APP/A0665/A/14/2214400)
4.33 Land at Cottage Farm Glen Road, Oadby, Leicestershire (APP/L2440/A/14/2216085)
4.34 Land to the east of Sovereign Drive and Precosa Road, Botley (October 2015) (APP/W1715/W/14/3001499)
4.35 Land to the east of Grange Road, Netley Abbey, Southampton (December 2015) (APP/W1715/W/15/3005761)
4.35.1 Sheet Anchor Properties s288 challenge to Grange Road, Netley decision (CD11.1)
4.35.2 Facts and Grounds
4.35.3 First Defendant's Grounds
4.35.4 Summary Grounds on behalf of interested party
4.36 Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley (September 2012) (APP/D2320/A/12/2172693)
4.37 Land off Elmwood Avenue, Essington (April 2013) (APP/C3430/A/12/2189442)
4.38 Land east of Springwell Lane, Whetstone, Leicestershire (August 2013) (APP/T2405/A/13/2193758 and APP/T2405/A/13/2193761)
4.39 Land at burgess farm, Hilton Lane, Worsley, Manchester, 16 July 2012 (APP/U4230/A/11/2157433)
4.40 Land adj. Gretton Road, Winchcombe, Gloucestershire, 14 May 2013 (APP/G1630/A/12/2183317)
4.41 Land at Goch Way, Andover (APP/C1760/A/14/2222867)

## 5 Court Judgements

5.1 Solihull Metropolitan Borough Council and 1) Gallagher Estates Ltd 2) Lioncourt Homes [2014] EXCA Civ 1610
5.2 Gallagher Homes Ltd and Lioncourt Homes Ltd V Solihull Metropolitan Borough Council (2014) EWHC 1283
5.3 Wenman [2015] EWHC 925 (Admin)
5.4 Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East BC [2016] EWCA Civ 168
5.5 West Berkshire District Council v Secretary of State for Communities and Local Government and HDD Burfield Common Limited [2016] EWHC 267 (Admin)
5.6 Stratford on Avon District Council v Secretary of State for Communities and Local Government and J S Bloor (Tewkesbury) Limited, Hallam Land Management Limited and RASE (Residents Against Shottery Expansion) (2013). EWHC 2074
5.7 Hunston Properties v Secretary of State for CLG and St Albans City and District Council (2013) EWHC 2678
5.8 R v City and District of St Albans [2013] EWCA Civ 1610
5.9 South Northamptonshire Council v Secretary of State for CLG and Barwood Land and Estates Ltd [2014] EWHC 573
5.10 SatNam Millennium v Warrington Borough Council [2015] EWHC370
5.11 Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government and Bloor Homes Ltd [2015] EWHC 1879
5.11b Borough Council of Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government and Elm Park Holdings Ltd. [2015] EWHC 2464

5.12 Stroud District Council v SoS DCLG and Gladman Developments Ltd [2015] EWHC 488 (Admin)
5.13 Wainhomes (South West Holdings Ltd) v The Secretary of State for the Communities and Local Government (March 2013)
5.14 Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin)
5.15 Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827
5.16 Wynn-Williams v SSCLG [2014] EWHC 3374 (Admin)
5.17 Cheshire East Borough Council v SSCLG [2015] EWHC 410 (Admin)
5.18 William Davis v SSCLG [2013] EWHC 3058 (Admin)
5.19 Cheshire East Borough Council v SSCLG [2016] EWHC 571 (Admin)
5.20 Colman v SoS, North Devon District Council, RWE Npower [2013] EWHC 1138 (Admin)
5.21 Zurich Assurance Limited v Winchester District Council and South Downs National Park Authority [2014] EWHC 758
5.22 Dartford BC v SSCLG [2014] EWHC 2636 (Admin)

## 6 Additional Documents

6.1 Boorley Green development Illustrative Masterplan (00523_BG_MP_01 Rev P2)
6.2 Boorley Gardens Design and Access Statement, March 2016, Figure 2.5 – Site and its context
6.3 Planning Advisory Service's Technical Advice Note (July 2015) Objectively Assessed Need and Housing Targets, 2nd Ed.
6.4 Simpson, L. and McDonald, N. (April 2015) Making sense of the new English household projections, TCPA
6.5 DCLG (February 2015) Household Projections 2012-based: Methodological Report
6.6 Holmans, A. (2013) New estimates of housing demand and need in England, TCPA
6.7 Local and Strategic Gap, Land East of Grange Road, Netley
6.8 Local Gap, Sovereign Drive Site

## 7. Core Documents Additions

7.1 Eastleigh Borough Local Plan 2011-2029 – Background Paper C1 Demography (July 2014)
7.2 Appeal decision: Land to the north and south of Mans Hill, Burghfield Common, Reading, Berkshire 2015 (APP/W0340/A/14/2226342)
7.3 Cheshire East Willaston Court of Appeal Skeleton January 2016 (Claim No. CO/4217/2014)
7.4 Proposals Map, Borough of Crewe & Nantwich Replacement Local Plan 2011
7.5 Willaston LVIA Figure 1
7.6 Willaston LVIA Figure 2
7.7 Test Valley Borough Council Revised Local Plan DPD 2011-2029 Extracts and Inspector's Report
7.8 Appeal Decision: Land at Bodkin Farm, Thanet Way, Chestfield, Whitstable 2015 (APP/J2210/A/14/222624)
7.9 High Court refusal of application for permission to proceed in the matter of a claim for planning statutory review Sheet Anchor Properties v SSCLG and EBC
7.10 Sheet Anchor application for reconsideration of decision to refuse permission to proceed
7.11 Plan showing borough-wide countryside and gap designations
7.12 Appeal Decision: Land off Station Road, Great Ayton 2015 (APP/G2713/A/14/2218137)
7.13 Appeal Decision: Land off Tanton Road, Stokesley 2015 (APP/G2713/A/14/2223624)
7.14 Nick Ireland Proof of Evidence: Land to the west of Langton Road North Yorkshire (APP/Y2736/W/15/3136237 and 3136233
7.15 Ryde District Council Strategic Housing Market Assessment (April 2016)

Appendix C

**Schedule of conditions**

1 No development shall start until details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters"), have been submitted to and approved in writing by the Local Planning Authority (LPA). The development shall be carried out in accordance with the approved details.

*Reason: To comply with Section 92 of the Town and Country Planning Act 1990.*

2 The development hereby permitted shall comprise no more than 680 dwellings.

*Reason: For the avoidance of doubt.*

3 The development hereby permitted shall be carried out in general accordance with the details shown on the Land Use Plan, drawing ref. 143405/LUB/003 Rev G, 143405/MA/008 Rev A, 143405/BH/006 Rev A, 143405/DEN/005 Rev A, 143405/LA/009 Rev A, ITB11055-GA-104 Rev D.

*Reason: For the avoidance of doubt and in the interests of proper planning.*

4 Application for approval of the reserved matters for the first phase of the development (of no less than 300 units) shall be made to the LPA not later than one year from the date of this permission, or one year from the conclusion of any subsequent Section 288 process, whichever is the later. Application for all of the remaining phases of the development shall be made to the LPA not later than three years from the date of this permission.

*Reason: To support the immediate need to improve the Council's housing land supply.*

5 The development hereby permitted shall begin before the expiration of two years from the date of approval of the first of the reserved matters to be approved.

*Reason: To support the immediate need to improve the Council's housing land supply.*

6 The reserved matters application for landscaping shall be accompanied by a Landscape Masterplan and Strategy to demonstrate that the landscaping proposals have taken account of, and been informed by, the existing landscape characteristics of the site and by any loss of existing vegetation on the site. The landscaping scheme shall include all hard and soft landscaping, including trees, boundary treatments and means of enclosure, car park layouts; proposed and existing functional services above and below ground; and shall provide details of timings for the provision of all landscaping and future management and maintenance. All hard and soft landscape works shall be carried out in accordance with the approved details and programme.

*Reason: In the interests of the visual amenities of the locality and to safeguard the amenities of neighbouring residents.*

7. For a period of no less than 5 years after planting, any trees or plants which are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of the same species, size and number as originally approved in the landscaping scheme.

*Reason: In the interests of the visual amenities of the locality.*

8. No development or site preparation prior to operations which have any effect on compacting, disturbing or altering the levels of the site shall take place on site until an Arboricultural Method Statement and Tree Protection Plan (prepared in accordance with B.S.5837:2012 Trees in Relation to Design, Demolition and Construction) is submitted to and approved in writing by the LPA for each phase of the development and a person qualified in arboriculture, and approved by the LPA, has been appointed on the behalf of the developer to supervise construction activity occurring on the site where such development will occur within, or adjacent to, a Root Protection Zone of any tree to be retained.

This statement must include methodology for:

- Removal of existing structures and hard surfacing
- Installation of protective fencing and ground protection
- Excavations and the requirement for specialised trenchless techniques where required for the installation of services. The default position is that all services should be situated outside of the RPA of all trees
- Installation of new hard surfacing (no dig) – materials, design constraints and implications for levels
- Preparatory work for new landscaping
- Auditable system of arboricultural site monitoring including a schedule of specific site events requiring input or supervision, together with a mechanism for the submission of written evidence of monthly monitoring and compliance by the appointed Arboricultural Supervisor during construction.

The appointed Arboricultural Supervisor will be responsible for the implementation of protective measures, special surfacing and all works deemed necessary to ensure compliance with the approved Arboricultural Method Statement and Tree Protection Plan. A pre-commencement site meeting between the LPA's Arboricultural Officer, the appointed Arboricultural Supervisor and Site Manager shall take place for each phase of development, prior to any equipment, materials or machinery being brought onto the site for the purposes of development, to confirm the protection of trees on and adjacent to the site in accordance with the approved Arboricultural Method Statement and Tree Protection Plan.

*Reason: To retain and protect the existing trees which form an important part of the amenity of the locality.*

9. Following inspection and approval of the tree protection measures, no access by vehicles or placement of goods, chemicals, fuels, soil or other materials shall take place within fenced areas nor shall any ground levels be altered or excavations. The tree protection shall be retained in its approved form until the development is completed.

*Reason: To retain and protect the existing trees which form an important part of the amenity of the locality.*

10. No development shall take place in any phase, including any works of demolition, until a Construction Method Statement and Construction Environmental Management Plan (CEMP) for that phase has been submitted to, and approved in writing by the LPA. The approved Statement and CEMP shall be adhered to throughout the construction period. The Statement shall provide for:

    i. Means of access for construction work

    ii. A programme and phasing of construction work, including roads, landscaping and open space

    iii. Location of temporary storage buildings, compounds, construction material and plant storage areas used during construction

    iv. The arrangements for the routing/turning of lorries and details for construction traffic access to the site

    v. The parking of vehicles of site operatives and visitors

    vi. Provision for storage, collection, and disposal of recycling/waste from the development during construction period

    vii. Details of wheel washing and measures to prevent mud and dust on the highway during demolition and construction

    viii. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate

    ix. Temporary lighting

    x. Protection of trees and ecology (to include Habitats Regulation Assessment requirements)

    xi. Noise generating plant

    xii. Measures to control the emission of dust and dirt during construction (having regard to the details contained in the “Best Practice Guidance – The Control of Dust and Emissions from Construction and Demolition”, 2006 (London Authorities) and “Guidance on the assessment of dust from demolition and construction” 2014 (Institute of Air Quality Management)

    xiii. A noise and vibration assessment which takes into account the impact of demolition and piling works on existing and proposed noise sensitive properties, including a scheme of mitigation measures for protecting from noise and vibration

    xiv. Protection of pedestrian routes during construction

    xv. Safeguards to be used within the construction process to ensure surface water contains no pollutants on leaving the site, including suspended solids

    xvi. Safeguards to waterways adjacent to the site from pollution impacts

    xvii. Hours of construction works restricted to 0800 - 1800 hours Monday to Friday, 0800 - 1300 on Saturday, and at no other time on Sundays, Bank and Public holidays

    xviii. No burning on site during construction and fitting out of the development hereby permitted.

*Reason: To limit the impact the development has on the amenity of the locality during the construction period.*

11. No development shall take place in any phase until a surface water drainage scheme for that phase, 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 LPA. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1:100 year event critical storm (plus 30% climate change allowance) will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

Those details shall include:

- Information about the design storm period and intensity, the method employed to deal and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- Control measures to limit pollutants leaving the site;
- A timetable for its implementation; and
- A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its life to maintain operational water quality.

*Reason: To prevent the increased risk of flooding, to protect water quality, and to protect habitat and amenity.*

12. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (by FMW Consultancy, FMW1467F, dated December 2014) and the following mitigation measures detailed within the FRA:

    - All buildings and development must be located within Flood Zone 1 only. The mitigation measures shall be fully implemented prior to occupation and in accordance with the timing / phasing arrangements embodied within the scheme.

*Reason: To ensure that the flood risk is minimised.*

13. Prior to the commencement of any phase, details of the construction proposed for the roads and footways within the development, for each phase, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels together with details of street lighting (designed to minimise spillage and avoid impacting on flight corridors used by bats), the method of disposing of surface water, and details of the programme of implementation for the making up of the roads and footways, including on-going management and maintenance of any roads, footpaths and accesses and any future plans for adoption, must be submitted to and approved by the LPA in writing.

*Reason: To limit the impact the development has on the locality.*

14. The roads and footways must be laid out and made up in accordance with the specification, programme and details approved and in any event shall be so constructed that, by no later than the time any building erected within that

phase on the land is occupied, there shall be a direct connection from it to an existing highway. The final carriageway and footway surfacing must be commenced within 3 months and completed within 6 months from the date upon which the erection is commenced of the penultimate dwelling herby permitted.

*Reason: To ensure the timely delivery of associated local highway infrastructure.*

15. No surface alterations to the Public Right of Way, Botley Footpath no. 1, or any works that affect its surface, shall take place without the prior permission of Hampshire County Council, as the Highway Authority.

*Reason: To protect the Public Right of Way.*

16. Development shall not begin in any phase until a noise assessment scheme has been submitted that demonstrates that the adverse impacts of noise on the development within that phase have been addressed through building layout and design, including where appropriate, mitigation measures to achieve acceptable levels of noise both externally and internally. The noise mitigation measures, as approved in writing by the LPA, shall be fully installed and verified as performing as required in accordance with the approved scheme.

*Reason: To protect the amenities of the occupiers of nearby properties.*

17. Any plant or equipment used for the purpose of air conditioning shall be provided with suitable acoustic attenuation, or sited at agreed locations, to mitigate the effects of noise as approved in writing by the LPA. The acoustic attenuation shall be installed and retained in accordance with the approved details.

*Reason: To protect the amenities of the occupiers of nearby properties.*

18. No work shall commence on site until the following has been submitted to, and approved in writing by the LPA:

    a) A Report of Preliminary Investigation comprising a Desk Study, Conceptual Site Model, and Preliminary Risk Assessment documenting previous and existing land uses of the site and adjacent land in accordance with national guidance and as set out in Contaminated Land Report Nos. 11, CLR11, and BS 10175:2011+A1:2013 Investigation of potentially contaminated sites - Code of Practice, and, unless otherwise agreed with the LPA;

    b) A Report of a site investigation documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the Preliminary Investigation and in accordance with BS 10175:2011+A1:2013, and BS 8576:2013 and unless otherwise agreed with the LPA;

    c) A detailed site specific scheme for remedial works and measures to be undertaken to avoid the risk from contaminants and/or gases when the site is developed and proposals for future maintenance a and monitoring.

    Such a scheme shall include nomination of a competent person to oversee the implementation of the works.

*Reason: To minimise the risk from land contamination for the safety of the property's occupiers.*

19. The development hereby permitted shall not be occupied / brought into use until there has been submitted to the LPA verification by the competent person approved under the provisions of condition 18(c) that any remediation scheme required and approved under the provisions of condition 18(c) has been implemented fully in accordance with the approved details (unless varied with the written permission of the LPA in advance of implementation).
Unless agreed in writing with the LPA such verification shall comply with the guidance contained in CLR11 and EA Guidance for the Safe Development of Housing on Land Affected by Contamination - R&D Publication 66: 2008.
Typically such a report would comprise:

    - A description of the site and its background, and summary of relevant site information;
    - A description of the remediation objectives and remedial works carried out;
    - Verification data, including - data (sample locations/analytical results, as built drawings of the implemented scheme, photographs of the remediation works in progress, etc;
    - Certificates demonstrating that imported and / or material left in situ is free from contamination, gas / vapour membranes have been installed correctly.

    Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 21(c).

*Reason: To minimise the risk from land contamination for the safety of the property's occupiers.*

20. No development shall take place until an Employment and Skills Management Plan has been submitted to and approved in writing by the Council. This Plan will include a mechanism for delivery of the approved Plan in a co-ordinated way by the developers and for a report to be submitted to indicate how the criteria set out in the approved Employment and Skills Management Plan are jointly being met.

*Reason: In the interests of economic sustainability and securing local employment opportunities, in accordance with Saved Policy 191.IN of the Eastleigh Borough Local Plan (2001-2011) and the EBC Planning Obligations SPD.*

21. Prior to the commencement of the Development, the developers shall implement the approved Employment and Skills Management Plan throughout the duration of the construction period and any subsequent variations shall be agreed in writing by the LPA.

*Reason: In the interests of economic sustainability and securing local employment opportunities, in accordance Saved Policy 191.IN of the Eastleigh Borough Local Plan (2001-2011) and with the EBC Planning Obligations SPD.*

22. No reptile translocation or development shall take place until a phased Ecological Protection and Mitigation Plan, including timetable of implementation,

has been submitted to and approved in writing by the LPA.
This plan shall include:

- a scheme of ecological enhancements and landscaping and safeguards to protect the identified badger sett from disturbance;
- incorporation of features suitable for use by breeding birds (including swifts and house sparrows), and bats;
- an assessment of the trees on site for bat roosts, undertaken by a licensed bat ecologist;
- a reptile translocation, mitigation management and monitoring plan;
- a detailed scheme for the provision of mains foul water sewerage disposal on and off site within each phase.

The Plan shall be carried out as approved.

*Reason: To ensure the protection of wildlife and supporting habitat; and to ensure no deterioration of watercourses and protected areas and sensitive waters, as a result of the development.*

23. No tree/shrub clearance works shall be carried out on the site between 1st March and 31st August inclusive, unless the site is surveyed beforehand for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the LPA. If such a scheme is submitted and approved the development shall thereafter only be carried out in accordance with the approved scheme.

*Reason: To prevent harm to breeding birds.*

24. No development which would disturb Japanese knotweed on the site shall take place until a detailed method statement for removing or the long-term management/control of Japanese knotweed on the site shall be submitted to and approved in writing by the LPA. The method statement shall include measures that will be used to prevent the spread of Japanese knotweed 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

*Reason: To prevent the spread of Japanese Knotweed, which is an invasive plant listed under Schedule 9 of the Wildlife and Countryside Act.*

25. No development shall take place until a scheme for the provision and management of a 15 metre wide buffer zone alongside the Moorgreen Stream/Ford Lake Brook running through the development site shall be submitted to and agreed in writing by the LPA. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:
    - Plans showing the extent and layout of the buffer zone;
    - Details of any proposed planting scheme (for example, native species);

- Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan;
- Details of any proposed footpaths, fencing, lighting etc;
- Where a green roof is proposed for use as mitigation for development in the buffer zone ensure use of appropriate substrate and planting mix.

*Reason: To protect land alongside watercourses that is particularly valuable for wildlife and warrants protection.*

26. No development shall take place until the applicant has secured the implementation of a programme of archaeological assessment and a programme of archaeological mitigation in accordance with the submitted Environmental Statement Appendix C, 'C3 Written Scheme of Investigation for a Scheme of Investigation for a Scheme of Archaeological Evaluation'.

*Reason: To assess the extent, nature and date of any archaeological deposits that might be present and the impact of the development upon these heritage assets; and to mitigate the effect of the works associated with the development upon any heritage assets and to ensure that information regarding these heritage issues is preserved by record for future generations.*

27. Following the completion of the archaeological fieldwork, a report will be produced in accordance with an approved programme, including, where appropriate, post-excavation assessment, specialist analysis and reports, publication and public engagement. This report shall be submitted to the LPA and to the local Historic Records Office.

*Reason: To ensure evidence from the historic environment, captured through the archaeological fieldwork, is properly compiled and made publically available.*

28. For reserved matters applications, residential buildings shall achieve the following:

    - In respect of energy efficiency, a standard of a 19% improvement of dwelling emission rate over the target emission rate as set in the 2013 Building Regulations being equivalent to and not exceeding the requirement as set by Code Level 4 (as defined by ENE1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).
    - In respect of water consumption, a maximum predicted internal mains water consumption of 105 litres/person/day, i.e. the equivalent requirement as set by Code Level 4 (as defined by WAT1) in the, now revoked, Code for Sustainable Homes (or equivalent requirements that are set out in national legislation or policy).

    Any non-residential development must achieve a BREEAM New Construction 'excellent' standard.

*Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential requirements of the adopted SPD 'Environmentally Sustainable Development'.*

29. Prior to the construction of any building above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing with the LPA), a BREEAM New Construction Interim Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) design stage SAP data and a design stage water calculator confirming energy efficiency and the predicted internal mains water consumption shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

*Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-residential requirements of the adopted SPD 'Environmentally Sustainable Development'.*

30. Prior to the construction of any dwelling above slab level in each individual phase of the development (or, in accordance with a timetable to be agreed in writing by the LPA) a report shall be submitted to and approved in writing by the LPA which sets out how essential requirements set out within ESD 2-8 of Eastleigh Borough Council's Environmentally Sustainable Development SPD will be met within that phase. The development shall not be carried out otherwise than in accordance with the approved details.

*Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-residential requirements of the adopted SPD 'Environmentally Sustainable Development'.*

31. Prior to the first occupation of each type of building within each phase a BREEAM New Construction Post Construction Stage Certificate at "excellent" standard (for non-residential development); or (for residential development) an as built stage SAP data, and an as built stage water calculator confirming energy efficiency and the predicted internal mains water consumption; which shall meet the requirements set out in condition 24 above; shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

*Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-residential requirements of the adopted SPD 'Environmentally Sustainable Development'.*

32. Prior to the first occupation of each type of building within each phase of development a report highlighting how the essential requirements set out within ESD2-8 of the Eastleigh Borough Council's adopted Environmentally Sustainable Development SPD, set out by condition 26 above, have been achieved in that phase of the development shall be submitted to and approved in writing by the LPA. The development shall not be carried out otherwise than in accordance with the approved details.

*Reason: To ensure the development meets the requirements of the national technical standards for energy and water consumption and the Council's residential and non-*

*residential requirements of the adopted SPD 'Environmentally Sustainable Development'.*

33. A Design Code shall be submitted with the first reserved matters application, accompanied by a Masterplan, demonstrating how the reserved matters application, and the remainder of the outline permission (if reserved matters takes place in phases) meets the objectives of the Design & Access Statement (March 2016) and takes into account the drawings listed in condition 3 submitted with the outline planning application. It shall include details of:
    - Street Hierarchy and Character;
    - Green Infrastructure and Green Corridor Framework;
    - Urban Form, and;
    - The Character Areas, including boundary treatments and materials.

*Reason: To ensure a coherent, well-designed, development.*

34. No development shall take place within each phase until the following details have been submitted to and approved in writing by the LPA for that phase:
    - Details and samples of the materials to be used in the construction of the external surfaces of the buildings (including fenestration, rainwater goods, meter boxes, fascias and soffits).
    - Plans including cross sections to show proposed ground levels and their relationship to existing levels both within the site and on immediately adjoining land.
    - Any pumping stations and associated no build zone details
    - External crime prevention measures for any flatted units.

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

*Reason: To limit the impact the development has on the locality.*

35. A parking layout plan showing the unallocated parking spaces (for shared use by any residents or visitor of the site) for each phase shall be submitted and approved as part of the reserved matters. The identified unallocated parking spaces shall remain unallocated and available for shared use by residents and visitors to the site in perpetuity.

*Reason: To ensure the adequate provision of on-site parking for the purpose of highway safety.*

Department for Communities and Local Government

www.gov.uk/dclg

## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

**Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.



### SECTION 2: ENFORCEMENT APPEALS

**Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.