



Appeal Decision

Inquiry held on 21, 22, 23 & 24 March and 13 & 14 June 2017

Site visit made on 15 June 2017

by Roger Clews BA MSc DipEd DipTP MRTPI

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

Decision date: 26 July 2017

Appeal Ref: APP/D3640/W/16/3158822

Land at Heathpark Wood, East of Heathpark Drive, Windlesham, Surrey GU20 6AR

- 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 Charles Church Southern Ltd & Sentinel Housing Association against the decision of Surrey Heath Borough Council.
 - The application Ref 15/0590, dated 25 June 2015, was refused by notice dated 18 March 2016.
 - The development proposed is the erection of up to 140 dwellings and community facilities, with associated landscaping, open space, car-parking and access from Woodlands Lane, and use of land to provide publicly accessible recreation space (SANG).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 140 dwellings and community facilities, with associated landscaping, open space, car-parking and access from Woodlands Lane, and use of land to provide publicly accessible recreation space (SANG), on land at Heathpark Wood, East of Heathpark Drive, Windlesham, Surrey GU20 6AR in accordance with the terms of the application, Ref 15/0590, dated 25 June 2015, subject to the conditions listed in the attached Schedule of Conditions.

Procedural matters

2. A completed agreement made under section 106 of the Town and Country Planning Act 1990, as amended, and a completed unilateral undertaking made under the same section, were submitted at the inquiry. I consider their contents further in the Reasons section below. These documents and a list of suggested conditions prepared by the Council and the appellants were discussed at a round-table session during the inquiry.
3. At the inquiry the appellants made an application for costs against the Council. It is the subject of a separate decision.
4. The application was made in outline, with all matters other than access reserved for future determination. I have considered the appeal on the same basis.
5. During the inquiry I received a letter dated 12 June 2017 from Mr Michael Gove, MP for Surrey Heath, setting out his concerns regarding the appeal proposals. I also accepted written representations from a local resident,

Mr Ian Phillips, who had hoped to speak at the inquiry but in the event was not able to. I have taken the contents of those documents and all the other correspondence submitted on the planning application and the appeal into consideration in my decision, together with the written and oral evidence and submissions to the inquiry.

6. During the inquiry the Rule 6 party, Windlesham Heathpark Wood Group [WHWG], claimed that evidence had been submitted by the appellants and accepted by me in contravention of the *Town and Country Planning (Development Management Procedure) (England) Order 2015* [the DMPO] and the *Planning Inspectorate's Procedural Guide: Planning Appeals – England* (August 2016) [the PG].
7. Article 37 of the DMPO requires appellants to submit their full statement of case at the same time as the completed appeal form. It defines a full statement of case as containing full particulars of the case that it is intended to put forward and copies of any documents which it is intended to refer to or put in evidence. However, the appellants submitted a substantial number of additional documents in the weeks leading up to the inquiry and during the inquiry itself. In addition, I made arrangements for rebuttal proofs to be prepared and submitted eight days before the inquiry opened.
8. Article 16(10) of the *Town and Country Planning Appeals (Determination by Inspector) (Inquiry Procedure) (England) Rules 2000* [the Inquiry Procedure Rules] permits the inspector to allow any person to alter or add to a full statement of case so far as may be necessary for the purposes of the inquiry, provided that every other person entitled to appear at the inquiry is given an adequate opportunity of considering any fresh matter or document. Paragraph F12.4 of the PG sets out criteria to be taken into account by the inspector when deciding whether or not, exceptionally, to accept late evidence.
9. I considered those criteria when deciding whether or not to accept each of the additional documents submitted. I was satisfied that in all cases the material was directly relevant to and necessary for my decision, and that it was (a) not possible for the appellants to have submitted it with their full statement of case because the material was not available at that time or (b) reasonable to allow them to submit it in order to respond to the other parties' cases. I was also satisfied that in all but one case the material had been submitted in sufficient time to enable those entitled to appear at the inquiry to consider it. The one document to which that last point did not apply (Mr Burden's rebuttal appendix TBR3) was returned to the appellants. I have not taken it into account in my decision.
10. I am satisfied therefore that the inquiry was conducted in accordance with the Inquiry Procedure Rules and that there was no breach of any party's right to a fair hearing under Article 6 of the European Convention on Human Rights.

Background

11. The appeal site falls into two distinct parts. To the north of Woodlands Lane is the area where the proposed dwellings and community facilities would be built, and to the south is the area proposed for a Suitable Alternative Natural Greenspace [SANG]. The northern part of the site corresponds to the area of land that is designated as a "reserve housing site" under saved policy H8 of the *Surrey Heath Local Plan 2000* [the 2000 Local Plan], except that it excludes

- four existing dwelling plots along Woodlands Lane that are part of the policy H8 site.
12. Currently this northern part of the site consists of a 10.75ha area of woodland extending northwards from Woodlands Lane to meet Chertsey Road. The northern part of that woodland, nearest to Chertsey Road, lies outside the policy H8 site and in the Metropolitan Green Belt. No development is proposed on that part of the appeal site. All the new dwellings and the proposed community building would be built within the designated policy H8 site on what I shall call "the proposed development area".
 13. The application was made in outline, but a Landscape Masterplan [LMP] drawing¹ was submitted with it showing an illustrative layout for the proposed buildings. That drawing also identifies areas of what is described as "retained woodland" around the edges of the proposed development area.
 14. The other part of the appeal site lies to the south of Woodlands Lane, between it and the M3 motorway. It consists of two land parcels, some 9.38ha in total, which are separated by a public bridleway and are currently used for hay-cropping and grazing horses. The larger western parcel is proposed for development as SANG and would be available for public recreation. I shall call it "the proposed SANG area". The smaller, triangular eastern parcel, "the triangle area", is proposed for development as a wildlife area, with no public access.
 15. Both parts of the appeal site lie immediately adjacent to the built-up area of Windlesham. That built-up area is inset in, and thus excluded from, the Green Belt². The designated policy H8 site is also excluded from the Green Belt but the SANG and triangle areas lie within it, as does all the adjacent land to the north, east and south. The northern part of the appeal site is part of a larger area of woodland extending to the east away from Windlesham.
 16. The planning application was refused, against the officers' recommendation, for four reasons. Only the first of these, concerning the site's safeguarded land status, was pursued by the Council at the inquiry. The Council were satisfied that the other reasons, concerning protected species, effect on the Thames Basin Heaths Special Protection Area, and provision of affordable housing, had been addressed by the provision of additional information and the completion of the section 106 agreement. However, WHWG presented evidence concerning protected species, effect on the SPA and other issues.

Main issues

17. At the start of the inquiry I identified the main issues in this appeal as they appeared to me at that stage. After hearing and considering the evidence I have refined them as follows:
 - (a) Would the proposed development conflict with saved policy H8 of the *Surrey Heath Local Plan 2000*, with policies CP1 and CP3 of the adopted *Core Strategy & Development Management Policies 2011-2028*, and with national planning policy in respect of safeguarded land?

¹ Ref PERTV19715 10, dated June 2015

² Because of Windlesham's particular geography, it is in fact one of two separate Green Belt inset areas for the village.

- (b) How much weight should be given in my decision to the policies of any emerging development plan documents?
 - (c) Can the Council demonstrate a five-year supply of deliverable housing sites as required by paragraph 47 of the National Planning Policy Framework [NPPF]? If not, what is the extent of the shortfall?
 - (d) Can I lawfully conclude that the proposed development would not have a significant effect on any European site, or is an Appropriate Assessment of its effects required?
 - (e) Is the part of the appeal site north of Woodlands Lane a Plantation on Ancient Woodland Site [PAWS]?
 - (f) What impact would the proposed development have on protected species and on biodiversity?
 - (g) What other adverse impacts and benefits of the proposed development should be taken into account in my decision on the appeal?
18. After considering each of the main issues in turn I will set out my overall conclusions.

Reasons

(a) Consistency with local and national policies

19. As noted above, the proposed development area lies within a site designated as a "reserve housing site" by policy H8 of the *Surrey Heath Local Plan 2000* ["the 2000 Local Plan"]. That policy remains part of the development plan, because it was "saved" by a direction of the Secretary of State, and it was not included in the list of policies superseded or deleted when the Council's *Core Strategy & Development Management Policies 2011-2028* ["the Core Strategy"] was adopted in 2012.
20. Policy H8 states that the site, together with two other areas of land at the village of West End, is *reserved to meet possible long-term development needs*, and that it is *excluded from the Green Belt*. It therefore has the status of "safeguarded land" between the urban area and the Green Belt, as referred to in NPPF paragraph 85. Indeed it has had that status ever since the first Local Plan for the borough was adopted in 1985.
21. Policy H8 goes on to say that *during the period covered by this Local Plan* [the site] *will remain subject to the restrictions set out in policy RE3*. However, policy RE3 is no longer extant following the adoption of the Core Strategy. The relevant table in the Core Strategy indicates that it was superseded by Core Strategy policy CP1, the most relevant parts of which read: *New development will come forward largely through redevelopment of previously developed sites in the western part of the Borough. [...] The smaller villages of Bisley, West End and Windlesham ... have limited capacity to accommodate development and this will be achieved primarily through redevelopment of existing sites. [...] Development in the Countryside Beyond the Green Belt (as shown on the Proposals Map) which results in the coalescence of settlements will not be permitted.*
22. Core Strategy policy CP3 is also relevant. It states that between 2011 and 2028 the Council will make provision for 3,240 additional dwellings, to be

- provided through a combination of redeveloping previously-developed land, a large site allocation at Deepcut Barracks, and small-scale affordable housing schemes on rural development sites. Additionally, policy CP3 contemplates *[a]fter 2025 if sufficient sites have not come forward within settlement areas release of sustainable sites in the Countryside Beyond the Green Belt.*
23. A table within policy CP3 indicates that Windlesham is expected to provide around 20 dwellings between 2011 and 2025, out of a total of 2,730 to be provided by 2025. Provision for the remaining 510 dwellings, the policy states, is to be made in the period 2026-2028 *within settlement areas or if insufficient sites come forward then through the release of sustainable sites within the Countryside Beyond the Green Belt.*
24. Taking policy H8 first, the key question is what is meant by the phrase *possible long-term development needs*. The reasoned justification to the policy explains, at paragraph 8.27, that the site has been excluded from the Green Belt *to meet possible longer term development needs beyond the current plan period, that is beyond the year 2006. [...] [Its] release for development will depend upon a further review of the Local Plan when it will be necessary to demonstrate that strategic housing requirements cannot be met by the release of other more appropriate land.*
25. While the reasoned justification is not part of the policy, it is part of the context within which the policy must be read and interpreted. Moreover, its explanation of the meaning of *possible longer term development needs* is entirely consistent with national policy towards safeguarded land set out in NPPF paragraph 85. That national policy also refers to longer-term development needs as *stretching well beyond the plan period* and indicates that *planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review that proposes the development.*
26. Taking all this into account, my view is that the proposed development would conflict with saved policy H8. In reaching this view I acknowledge that the end-date of the 2000 Local Plan was 2006 and that the policy's reasoned justification specifically refers to meeting possible longer-term development needs beyond that date, which is now 11 years ago. But that is not the end of the matter. Both the reasoned justification and, more significantly, NPPF paragraph 85 also make it clear that safeguarded land should not be released until there has been a review of the Local Plan that proposes its development.
27. In this case there has been a review of the 2000 Local Plan, in the form of the Core Strategy, but the Core Strategy did not release the site for development, and policy H8 remains part of the development plan. In my view this means that, according to local and national policy, the site should remain as safeguarded land until a further review of the Local Plan authorises its release.
28. Turning to policy CP1, there is a degree of conflict with the general statements that development will largely come forward in the west of the borough (Windlesham lies in the eastern part of the borough), and that the village has limited capacity for development which will be achieved primarily through redevelopment of previously-developed sites [my emphases]. While none of these statements places an absolute ban on greenfield development at Windlesham on the scale proposed, they indicate a clear preference for such development to be located elsewhere.

29. Similarly, while the distribution table in policy CP3 does not actually prohibit the development of more than 20 dwellings at Windlesham, it is evident that the policy does not contemplate the development of up to seven times that figure. To that extent there is conflict with this policy also.
30. The remaining relevant provisions of policies CP1 and CP3 concern land designated as Countryside Beyond the Green Belt [CBGB]. There was considerable discussion at the inquiry about whether or not the proposed development area should be seen as subject to this designation. It was suggested that the pale green wash which indicates that designation was applied to the safeguarded land at Windlesham in error when the Proposals Map for the Core Strategy was drawn up. In this regard, reference was made to a number of documents bearing on the designation of the CBGB in the Core Strategy and in previous iterations of the Local Plan, but in my view none of that material was conclusive on this specific point.
31. Article 9(1)(c) of the *Town and Country Planning (Local Planning) (England) Regulations 2012* requires that the adopted policies map must *illustrate geographically the application of the policies in the adopted development plan*. Policy CP1 refers in terms to the CBGB (as shown on the Proposals Map) [my emphasis]. There was no legal challenge to the adoption of the Core Strategy or to the *Surrey Heath Local Plan 2011-2028 Proposals Map* which accompanies it. In the absence of any conclusive evidence to support the contrary view, therefore, I consider that, because of how it is shown on the Proposals Map, the proposed development area is designated as CBGB for the purposes of the Core Strategy.
32. The proposed development would not result in the coalescence of settlements and so would not conflict with the specific provisions of policy CP1 as regards CBGB. The provisions of policy CP3, on the other hand, make it clear that sites with that designation are not intended to be released for development before 2025, and then only if insufficient sites to meet the Core Strategy's housing requirements have come forward. The proposed development is in conflict with those provisions.
33. Having said that, it will be noted that these restrictions of policy CP3 are less stringent than those of policy H8, which does not permit any development of the designated reserve housing site until after a review of the Local Plan has occurred. Even if I am wrong about the designation of the site as CBGB, therefore, it makes no difference in practical terms to the outcome of the appeal.
34. I conclude on this issue that the proposed development would conflict with those provisions of saved 2000 Local Plan policy H8 and NPPF paragraph 85 that make it clear that safeguarded land should not be released until there has been a review of the Local Plan which proposes its development. There is also conflict with Core Strategy policies CP1 and CP3, in respect both of their expectations as to the scale and location of development at Windlesham, and of the specific conditions which policy CP3 sets for the release of CBGB. I will consider the weight to be given to these conflicts, having regard to other material considerations, in my overall conclusions.

(b) *Emerging development plan documents*

35. After adopting the Core Strategy, the Council had envisaged that a Site Allocations Plan would be prepared and adopted by October 2015, according to their Local Development Scheme [LDS] of December 2012. However, their latest LDS, published in 2016, does not mention a Site Allocations Plan. Instead, it indicates that a new Surrey Heath Local Plan, setting out the Council's approach to strategic policies, land allocations and detailed policies to help deliver the vision and objectives for the borough, will be prepared.
36. According to the 2016 LDS, an Issues and Options document is to be published in October 2017, with adoption of the Plan envisaged for December 2019. That remains the intended timetable. Since no documents associated with the new Local Plan have yet been published, it can be given no weight in this appeal.
37. A draft *Windlesham Neighbourhood Plan 2017-2028* was published for consultation between February and April 2017. Its policies WNP 1.1 & 1.3 seek organic housing growth of 1-2%, primarily on brownfield sites, and envisage replacement of large houses on large plots in the Green Belt with a small number of smaller houses. Other draft policies deal with design standards, character and amenity, and vehicle parking. The appeal site lies within the Neighbourhood Plan area, but there is no reference in the draft document to saved 2000 Local Plan policy H8, which applies the reserve housing site designation to the northern part of the appeal site.
38. The appellants have made a substantial objection to the draft Neighbourhood Plan, alleging that it fails to meet the basic conditions for such documents. I have no information on any other objections that may have been made. Nonetheless, the facts that the plan is still at an early stage of preparation and that there has been at least one substantial objection to it mean that I can give only very limited weight to its policies in my decision.

(c) *Five-year housing land supply*

39. The Core Strategy requirement for 3,240 dwellings is based on the revoked South East Plan 2009 and no longer reflects the current level of need. The Council and the appellants agree that it is appropriate to base the five-year housing supply requirement on the objectively assessed housing need [OAN] figure identified in the November 2016 *Hart, Rushmoor and Surrey Heath Strategic Housing Market Assessment* [SHMA]. For Surrey Heath that figure is 382 dwellings per annum. I agree that the SHMA is the most up-to-date and comprehensive available assessment of housing need in the borough and that it is appropriate to use that figure for the purposes of assessing the five-year supply.
40. To accord with advice in the NPPF and the national Planning Policy Guidance [PPG], it is necessary to adjust the OAN figure to account for any shortfall in delivery since the start of the Core Strategy period (2011), and to apply a buffer of 5% or 20%, as appropriate, to arrive at the five-year requirement. I endorse the Council's and the appellants' agreed position that the shortfall since 2011 is 439 dwellings and that this figure should be added to the five-year OAN figure, in accordance with advice in the PPG. That gives a five-year requirement total, before application of the buffer, of 2,349 dwellings ((382 x 5) + 439 = 2,349).

41. In order to determine whether a 5% or 20% buffer is appropriate, it is necessary to consider whether there has been a record of persistent under-delivery of housing in the borough. Information on delivery between April 2006 and January 2017 is available. That period is long enough to take in peaks and troughs in delivery and therefore to be sufficiently representative.
42. In assessing the extent of any under-delivery in each year, I agree with the Council that delivery must be measured against the annual requirement, or "target", that actually applied during the year in question. In other words, I do not agree with the appellants that a requirement calculated, for example, in 2016 should then be "back-dated" in order to assess delivery in the two previous years. That may be appropriate practice when calculating OAN, but it is not appropriate to assess past delivery performance against a target that was not known at the time.
43. Assessed on the basis of targets applicable at the time, the extent of under-delivery in the borough was some 281 dwellings out of a total requirement of around 2,322. There were significant surpluses in 2006/07 and 2008/09, and significant deficits in 2009/10 and 2010/11, but the latter are largely explained by the effective moratorium on housing permissions that followed the designation of the Thames Basin Heaths Special Protection Area, until a mechanism for securing avoidance measures was put in place. Otherwise any deficits in past years are relatively modest, and figures for the current year are not yet complete. Taking all this together, I find that there has not been a record of persistent under-delivery of housing. A 5% buffer is appropriate.
44. In my view the buffer should be applied after the shortfall is added to the five-year OAN figure, not before as the Council contend. I disagree with their argument that this amounts to double-counting, because the buffer has a different purpose from the addition of past shortfall to the five-year OAN figure. Addition of the shortfall is necessary to ensure that the full need for housing is met, whereas the purpose of the buffer is to ensure choice and competition in the market for land. It is logical therefore that the buffer should be applied to the total requirement for housing land over the five-year period, including any shortfall from previous years.
45. Although the Secretary of State took the opposite approach in his decision on the appeal at Gresty Lane, Crewe³, other Secretary of State decisions⁴ follow the approach I favour, which has also been endorsed by the Local Plans Expert Group. In any case, in this appeal it makes little difference to the final figure whichever approach is followed.
46. With the addition of a 5% buffer, the five-year housing requirement figure is calculated as $2,349 \times 1.05 = 2,466$ for the five-year period from 1 April 2017 to 31 March 2022.
47. The Council accept that they cannot demonstrate a supply of deliverable housing land to meet that requirement. They say that the deliverable supply would provide land for some 1,942 dwellings. That is equivalent to about 3.9 years' supply against the requirement I have identified. However, the appellants challenge some of the Council's assumptions on sites included in the supply and propose an alternative supply figure of 1,333, or 2.7 years' worth of

³ Ref APP/R0660/A/13/2209335

⁴ Refs APP/H1840/A/13/219905 & 219946 and APP/R0660/A/13/2197532 & 2197529

- housing against the same requirement. I shall examine the more important differences between the parties in turn.
48. The Council's assumption that 390 units will come forward on the allocated Deepcut Barracks site depends on delivery of around 48 dwellings per annum (dpa) by each of two national housebuilders over a four-year period beginning in 2018. However, the evidence I heard concerning progress on infrastructure and the likely start-date for construction means that few, if any, dwellings will actually be completed before the 2019/20 monitoring year. 48 dpa per housebuilder may be a relatively high figure in national terms but I would expect this to be an area of strong market demand and I heard unchallenged evidence that 54dpa had been achieved by a housebuilder at nearby Wokingham. Accordingly it would be reasonable to expect Deepcut to be capable of delivering about 300 dwellings in the five-year period, 90 less than the Council assume.
49. I see no reason why 110 dwellings should not be delivered in the five-year period on the allocated site at Ashwood House, Pembroke Way North, given that site is owned by the Council and that a planning application for that number of dwellings is already under consideration. On the other hand, it would be unsafe to rely on the delivery of housing at the unallocated SHLAA site West of Sturt Road which is designated as CBGB and is in active employment use. That would reduce the Council's supply figure by a further 100 dwellings.
50. The smaller allocated sites at Woodside Cottage and East of Knoll Road are capable of delivering a total of 45 dwellings in the five-year period, since there is a current planning application on the former and development at the latter is already under way. It also appears feasible for a 20-dwelling rural exception scheme to come forward on the charity-owned, unallocated SHLAA site on Land rear of The Grange.
51. However, there is no current application on the unallocated SHLAA site at Pembroke House, and given that a proposal for 14 dwellings there was previously dismissed at appeal, it cannot be assumed to be capable of contributing to the five-year supply. Similar comments apply to the unallocated SHLAA site at London Road / Victoria Avenue, which has been the subject of two previous planning applications, one refused and the other withdrawn. These two sites contribute 64 dwellings to the Council's supply figure.
52. In total, therefore, 254 dwellings need to be subtracted from the Council's supply figure of 1,942 to reflect my findings on the sites at Deepcut Barracks, West of Sturt Road, Pembroke House, and London Road / Victoria Avenue. Some smaller elements of the Council's supply list, amounting to a further 67 dwellings, were also disputed by the appellants, but in total they contribute less than 3% of the five-year requirement and are not significant in assessing the overall supply position.
53. Drawing all the above points together, on the evidence before me I assess the deliverable supply of housing land in the borough, over the 2017/18-2021/22 period, as amounting to between 1,620 and 1,690 dwellings, in round figures. This equates to around 3.4 years' worth of housing land against the five-year requirement. The shortfall in supply, again in round figures, is between 775 and 845 dwellings.

(d) *Need for Appropriate Assessment?*

54. The requirements of the European Council Directive 92/43/EEC [the Habitats Directive] were transposed into UK law by the *Conservation of Habitats and Species Regulations 2010* [the Habitats Regulations]. Article 61(1) of the Habitats Regulations requires a competent authority, before deciding to give permission for a project which is likely to have a significant effect on a European site, to make an appropriate assessment [AA] of the implications for that site in view of that site's conservation objectives.
55. This effectively creates a two-stage process: it must first be determined whether or not the project, either alone or in combination with other plans and projects, is likely to have a significant effect on the European site in question, and if it is, AA must then be carried out. However, AA is not required if the competent authority is satisfied that no significant effect on the site is likely.
56. In this case, I am the competent authority for the purposes of the Regulations, and the European sites potentially affected are the Thames Basin Heaths Special Protection Area [SPA] and the Thursley, Ash, Pirbright and Chobham Special Area of Conservation [SAC]. Both the SPA and SAC cover extensive and quite widely dispersed tracts of land, but at their nearest point, they lie within 800m of the proposed development area. The boundaries of those parts of the SPA and SAC potentially affected by the proposed development are identical. Accordingly, measures that would obviate any significant effect of development on the SPA can be taken to have the same effect in respect of the SAC. The same applies to Chobham Common Site of Special Scientific Interest [SSSI], whose boundaries coincide with those of the SPA and SAC.
57. Core Strategy policy CP14B sets out requirements for new residential development that are designed to avoid any significant effect on the SPA. The requirements, which reflect those set out in saved South East Plan policy NRM6, involve the provision of SANG and contributions towards strategic access management and monitoring measures [SAMM]. Their purpose is to offset the impact of additional visitors on the SPA by providing alternative recreational space in the form of SANG, and by managing and monitoring the continuing use of the SPA through SAMM.
58. The section 106 agreement in this appeal makes arrangements for the provision of SANG and the payment of SAMM contributions in full accordance with the requirements of policy CP14B, and the terms of the agreement satisfy all the comments made by English Nature on the application and the appeal. In these circumstances, the Council and the appellants agree that it has been demonstrated that the proposed development is not likely to have a significant effect on any European site and that no AA is required.
59. However, WHWG's view is that the agreement would need to have been presented as an integral part of the proposal at the time the appeal was made, in order for me to take it into account in making a finding on the likelihood of significant effect. It is therefore not open to me, they say, to find that no AA is required.
60. It is necessary for me to reach a view on this matter, because it affects the way in which I consider the appeal as a whole. NPPF paragraph 119 advises that the presumption in favour of sustainable development does not apply where development requiring AA is being determined.

61. My attention was drawn to four relevant legal judgments. The *Waddenzee* judgment of the European Court of Justice [ECJ] established that, when determining whether or not a project would be likely to have a significant effect on a European site, that determination should proceed on a precautionary basis. AA must be carried out unless it can be excluded, on the basis of objective information, that the project will have a significant effect on the site, either individually or in combination with other plans or projects. The same principle was reiterated in the ECJ's judgment in the *Sweetman* case⁵.
62. The *Dilly Lane* judgment in the High Court concerned a decision by the Secretary of State to grant planning permission for residential development. Sullivan J considered whether or not avoidance or mitigation measures could be taken into account when determining whether or not that project was likely to have a significant effect on an SPA. He was *satisfied that there is no legal requirement that a screening assessment ... must be carried out in the absence of any mitigation measures that form part of a plan or project. On the contrary, the competent authority is required to consider whether the project as a whole, including such measures, if they are part of the project, is likely to have a significant effect on the SPA*⁶.
63. That finding of the *Dilly Lane* judgment is quoted with approval in the Court of Appeal judgment in the *Exminster* case, in which the same question was considered, this time with regard to an inspector's decision to grant planning permission for residential development. Sales LJ's lead judgment concluded that *The Inspector was lawfully entitled to take into account the proposed preventive safeguarding measures in respect of the SPA and SAC ... for the purposes of giving a screening opinion to the effect that no "appropriate assessment" would be required ... in the course of his consideration whether to grant planning permission*⁷.
64. Of significance for the present appeal is that, in the *Exminster* case, it appears that some elements of the safeguarding measures designed to avoid significant impact on the SPA and SAC were to be secured by a planning condition: see para 34 of the inspector's decision, quoted at paragraph 53 of Sales LJ's judgment. This indicates that not all those safeguarding measures were "incorporated" into the project at the point when the appeal was made. Yet this fact did not prevent the Court of Appeal reaching the conclusion that they did.
65. No legal authority supporting WHWG's position was drawn to my attention. Taking all the above into account, my view is that I am lawfully entitled to take into account both the section 106 agreement and the provisions of any conditions that may be imposed on any permission I may grant, when determining whether or not the proposed development in this case is likely to have a significant effect on any European site. It was not necessary for the section 106 agreement and any relevant conditions to have been presented as part of a complete package on the date the appeal was submitted, in order for me to take them into account in making that determination.

⁵ *Landelijke Vereniging to Behoud van de Waddenzee v Staatsecretaris van Landbouw, Natuurbeheer en Visserij* [2005] 2 CMLR 31 and *Sweetman v An Bord Pleanla* [2014] PTSR 1092

⁶ *R (Hart DC) v SSCLG* [2008] EWHC 1204 (Admin), para 72

⁷ *Dianne Smyth v SSCLG and others* [2015] EWCA Civ 174, para 77

66. If planning permission were granted for the proposed development, the section 106 agreement would provide avoidance and mitigation measures, in the form of the proposed SANG and the SANG contributions. Those measures meet the requirements of Core Strategy policy CP14B and saved South East Plan policy NRM2.
67. The agreement also meets Natural England's specific requirements, subject to which they withdrew their previous objection to the proposed development. It contains an appropriate definition of the SANG management company, including that it has responsibility for managing and maintaining the SANG in perpetuity; appropriate arrangements for collecting a service charge from purchasers of the proposed dwellings, to pay for management and maintenance of the SANG; secure arrangements for the maintenance of the SANG until it is transferred to the management company; and arrangements for monitoring by the Council, backed up by "step-in" rights should the management company fail to discharge its responsibilities satisfactorily.
68. Condition 25 below requires the draft SANG Management Plan (February 2016) prepared by Keystone Ecology to be updated and finalised, and submitted for the written approval of the Council before development commences. This will ensure that the plan which guides the management company's work is fully reflective of current circumstances.
69. With those measures in place I am satisfied that I can lawfully conclude that the proposed development, either alone or in combination with other plans and projects, would not have a significant impact on the Thames Basin Heaths SPA, on the Thursley, Ash, Pirbright and Chobham SAC or on Chobham Common SSSI. It is not necessary for AA to be carried out and the appeal proposal would comply with Core Strategy policy CP14B and South East Plan policy NRM6.

(e) *Ancient woodland*

70. Ancient woodland is defined in the Glossary to the NPPF as *an area that has been wooded continuously since at least 1600 AD*. A Plantation on Ancient Woodland Site [PAWS] is an ancient woodland site which has been converted to a plantation dominated by non-native broadleaved or conifer species (Glossary to Forestry Commission, *Managing ancient and native woodland in England*, 2010). Thus the evidence to establish that land is a PAWS must show that it has had continuous woodland cover since at least 1600.
71. In this case the map series produced in Mr Forbes-Laird's proof, Appendix 8, shows beyond any reasonable doubt that the part of the appeal site north of Woodlands Lane was not wooded when it was surveyed for the 1806 Ordnance Survey draft maps. Nor is there any mapping evidence to show that it was wooded before 1750. The map series produced by Dr Berardi is less extensive and does not add to the evidence before me in these respects.
72. Evidence from the available mapping is supported by the April 2015 Ecological Appraisal of the site by Keystone Ecology. This found only limited ground flora and an understorey, in the conifer plantation area, dominated by dense stands of bracken. Those findings were confirmed by my site visit. The appeal site lacks the rich assemblage of indicator species that would typically be found on an ancient woodland site, whether or not it has been converted to plantation.

73. I conclude that the part of the appeal site north of Woodlands Lane is not a Plantation on Ancient Woodland Site.

(f) *Impact on protected species and biodiversity*

74. A wide range of species are protected by European and national legislation. Guidance on the conservation of protected species is given in ODPM Circular 06/2005. At paragraph 99 the Circular advises that the presence or otherwise of protected species, and the extent to which they might be affected by the proposed development, must be established before planning permission is granted. However, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Where this is the case, the survey should be completed and any necessary measures to protect the species should be in place before the permission is granted.
75. A Phase 1 Extended Habitat Study of the whole appeal site (both north and south of Woodlands Lane) was carried out by Keystone Ecology [KE]. Specific surveys by KE to assess the presence or otherwise of bats, breeding birds and badgers took place between 2013 and 2015. KE's work was subject to further check surveys by Ecology Solutions [ES] in 2016. Mitigation and compensation proposals arising from the surveys are set out in the draft *Landscape and Ecological Management Plan – Ecology* [LEMP] (June 2015), and the *SANG Management Plan – Ecology* (February 2016), also prepared by KE.
76. KE categorised the appeal site, in accordance with the guidance then applicable [the 2012 survey guidelines]⁸, as a medium-sized site of low habitat quality for bats and accordingly recommended that there should be three bat activity surveys, in spring, summer and autumn respectively. Each survey should include a manual survey of two transects on the site, and use of an automatic bat detector on four consecutive nights at one location in each transect. In the event, one spring, three summer and five autumn manual surveys were undertaken by KE and ES between September 2013 and October 2016, and automatic detectors were deployed on a total of 17 nights during that period.
77. Both the Surrey Bat Group [SBG] and WHWG made substantial criticisms of these surveys which I have taken into account in my decision. Having regard to the Circular's guidance on proportionality in survey effort, I consider it legitimate for KE to take account of previous survey results (from 2007) as well as features of the appeal site itself, when determining its habitat quality. As a safeguard, KE made provision for the habitat quality category to be upgraded if the later surveys had found additional bat species, higher levels of bat activity or greater evidence of roosting on site than in 2007. But in the event they did not.
78. I am also satisfied that, in combination, KE and ES's tree survey work was sufficient to establish that it is unlikely that any bat roosts would be lost as a result of the appeal proposals. From what I saw during my site visit, I agree with Mr Goodwin that the relatively sparse nature of the tree canopy over the proposed development area means that most trees could be effectively assessed for potential roost features from ground level. On that basis, ES were justified in their decision to confine climbing surveys to those trees which had

⁸ Bat Conservation Trust, *Bat Surveys: Good Practice Guidelines*, 2nd edition (2012)

- high potential for bat roosts and would be likely to be removed if the development proceeds.
79. The absence of a dense tree canopy over the proposed development area or the SANG area also justifies the decision to place the microphones for the automatic bat detectors 1m or more above ground level, rather than in the canopy itself.
80. Weather conditions for the bat surveys generally met the recommendation in the 2012 survey guidelines to avoid wet or windy nights. The light winds and drizzle that occurred on some nights are unlikely to have affected the results significantly, especially in view of the warm temperatures that accompanied them. While the May 2015 manual survey took place in temperatures lower than those recommended in the current best practice guidelines [the 2016 survey guidelines]⁹, weather conditions that night were otherwise favourable to bat activity. Moreover, to give a complete picture the results of the May 2015 survey must be considered alongside those of all the other surveys that were carried out in appropriate weather conditions. Accordingly, I am not persuaded that the weather conditions for that survey would have resulted in substantial under-estimation of bat activity on the appeal site.
81. The surveys recorded relatively low levels of bat activity overall, with higher activity on the southern part of the appeal site (south of Woodlands Lane) than on the northern part. These findings are consistent with the view that the predominantly conifer woodland found on most of the proposed development area is of relatively low foraging value.
82. No rare bat species were recorded in the surveys. SBG and WHWG drew attention to the difficulty of distinguishing, in automatic surveys, between certain bat species. However, KE's assessment of the species present was a professional judgment informed by the appeal site's characteristics and by a combination of manual and automatic surveys. They used sound analysis to distinguish between *Myotis* species, thereby excluding the rare Bechstein's bat for which SBG acknowledge the site offers a sub-optimal habitat. I am satisfied that it is highly unlikely that any other species of bats, other than those identified by KE, are present on the site.
83. Moreover, the advance licence survey techniques that SBG advocate in order to gain a fuller picture of the range of species present, and to assess their age, sex and breeding status, are invasive and pose potential risks to sensitive bat populations. The 2016 survey guidelines recommend their use only where other options are ineffective or grossly inefficient and the level of potential impact on important bat populations is considered high, such as the loss of significant high-quality bat foraging or roosting habitat. For the reasons given above, I consider that those conditions do not apply in this case.
84. Some low-quality bat foraging habitat would be lost as a result of the appeal proposals, but the better-quality habitat in the adjacent deciduous woodland and on the proposed SANG and triangle areas would be retained and enhanced in accordance with the specific recommendations in the KE report, thereby compensating for that loss. While night-time lighting would be introduced into the proposed development area, unlit flight corridors around it would remain.

⁹ Bat Conservation Trust, *Bat Surveys for Professional Ecologists: Good Practice Guidelines*, 3rd edition (2016)

85. KE's breeding bird surveys found six bird species present on the appeal site that are on the England Biodiversity Priority list or are listed as Birds of Conservation Concern. A single Red Kite, a species listed in Schedule 1 of the Wildlife & Countryside Act 1981, was observed on both the northern and southern parts of the site, but was not considered to be breeding on-site. No evidence of the three qualifying bird species from the Thames Basin Heaths SPA was found. The surveys were conducted in the daytime, whereas the site may be within flying range of the SPA for the nocturnal nightjar. However, even if nightjars do resort to the site, the proposed development would not result in significant loss of suitable habitat for that species.
86. The observations of Mr Shuhood, who is a qualified ornithologist, were made without the benefit of access to the northern part of the appeal site. As a result he acknowledged that he could not be sure that any of the species to which he drew attention were nesting on that part of the site. The mitigation and compensation measures proposed as part of the development, including the retention of deciduous woodland habitat and additional landscape planting, would ensure that suitable bird habitats are maintained.
87. KE carried out both a badger survey of the appeal site, and a bait-marking survey to assess the foraging range of the badgers living on-site. There is an extensive main sett in the retained woodland area near the western boundary of the northern part of the appeal site, adjacent to the rear boundary fences of houses in Heathpark Drive. A nearby annexe sett and four active outlying setts are also present on the northern part of the site, together with two disused outlying setts.
88. Two outlying setts, one active and one disused, would be destroyed as a result of the proposed development if it proceeds as shown on the LMP drawing. A licence from Natural England would be required for this. The other setts, including the main and annexe setts, are within the retained woodland areas shown on that drawing. I see no reason why badgers should not continue to occupy those setts if the development were to go ahead. They have, after all, lived in the main sett for many years, cheek by jowl with the residents of Heathpark Drive. The LMP drawing shows how adequate wooded and planted 30m buffer zones around the retained setts and "commuting" corridors to link with the badgers' foraging territory could be provided. In my experience badgers are resilient animals and would not be deterred from using those corridors by the adjacent new housing and roads with their attendant lighting.
89. The SANG Management Plan includes the creation of extensive, fenced-off earth bunds within the SANG and triangle areas. These would be planted with suitable plant species to facilitate colonisation by badgers. KE also propose the construction of an artificial sett of main sett size as part of the proposed mitigation measures. This does not imply that the badgers are likely to abandon the existing main sett, which would be protected as described above.
90. The bait-marking survey indicated a foraging territory for the resident badgers of around 48ha. That territory includes the SANG and triangle areas as well as the northern part of the appeal site and woodland to the east of it. I note the West Surrey Badger Group's criticisms of the survey, but I consider that the method used was adequate for its purpose, following a precautionary approach. More sophisticated methods are unlikely, therefore, to have yielded a smaller territory size.

91. About 10% of that 48ha territory would be lost if the development were to proceed, but it would remain at or close to the average size of a rural badger group's territory. Moreover, the territory lost would be generally poor-quality foraging habitat, whereas the foraging potential of the SANG and triangle areas would be substantially increased by the new planting that is proposed. Thus I see little danger of inter-clan disputes or increased risk of disease arising because of loss of territory.
92. Because the resident badger group's territory already includes the area to the south of Woodlands Lane, it is unlikely that badger movements across the lane would increase substantially. The 20mph speed limit, no-parking zones and warning signs that are proposed as part of the mitigation measures would help to reduce the potential for badger road deaths. As badgers are nocturnal, it is also unlikely that public use of the SANG would lead to conflicts with people or dogs.
93. A survey by KE in 2007 and 2008 found no evidence of dormice on the northern part of the appeal site. It is highly unlikely that on-site conditions have changed sufficiently since that time to invalidate that assessment. As such, I am satisfied that dormice are unlikely to be affected by the proposed development. However, as a further safeguard a repeat survey should be carried out before development commences, as recommended by KE in their original survey report. This could be secured by a condition.
94. I consider that KE were justified in excluding the need for a reptile survey of the southern part of the appeal site in view of the very limited extent of suitable habitat it contains, which would be increased as a result of the SANG proposals. The SANG Management Plan contains appropriate recommendations for protecting any reptiles that are found on site during the landscaping works.
95. Drawing all these points together, therefore, and after taking into account the proposed mitigation and compensation measures, I find that the proposed development would not have any materially adverse effect on protected species or breach the legal protections afforded to them. Accordingly it is unlikely that any European Protected Species licence from Natural England would be required.
96. Section 40(1) of the *Natural Environment and Rural Communities Act 2006* imposes a duty on any English public authority to have regard, in the exercise of its functions, to the purpose of conserving biodiversity. The proposed development would lead to the loss of about 5ha of the existing woodland north of Woodlands Lane. That area consists principally of mature plantation conifers, although some younger, native deciduous trees, including birch, sweet chestnut, oak and beech, have established themselves, particularly in gaps where conifers have fallen. The understorey here is dominated by tall bracken, with clumps of holly and of invasive non-native species such as rhododendron and laurel. Ground flora is very limited in its diversity.
97. This is an environment of low biodiversity value, not a site having *the potential to contain a unique and rare insect, fern, moss and fungal species assemblage*, as Dr Berardi described it, albeit without the benefit of a prior site visit¹⁰. Any loss of biodiversity resulting from the loss of this woodland area would be more than compensated for by the proposed enhancements to the retained woodland

¹⁰ Dr Berardi used a drone-mounted camera for his surveys.

- areas surrounding the proposed development area, and by the new planting and landscaping that is proposed for the SANG and the development area itself.
98. There is no evidence to show that the proposed development would have any material impact on the area of ancient woodland lying some 140m to the east. National standing advice is that the minimum buffer zone of semi-natural habitat between development and ancient woodland should be at least 15m¹¹. As the planning application was made in outline, it would be possible to design the development in such a way as to avoid any significant encroachment onto the priority deciduous woodland habitat at the eastern edge of the proposed development area.
99. The concerns raised by WHWG regarding potential threats to trees from windthrow, desiccation and encroachment onto root protection areas were convincingly answered by the evidence of Mr Forbes-Laird and Mr Goodwin. The retained woodland area at the western edge of the proposed development area would remain connected to the surrounding woodlands by a wooded corridor, thereby reducing any fragmentation effects. Accordingly, I am satisfied that the loss of some 5ha of mainly coniferous woodland would not lead to adverse impacts on the biodiversity value of the retained woodlands around it.
100. Given that the SANG area is to be publicly accessible, some compromises in its design between recreational and wildlife considerations are inevitable. Nonetheless, the SANG proposals would enhance its biodiversity value compared with its current use mainly as pasture and agricultural grassland. The proposals do not envisage any increase in animals or birds crossing the M3, which runs along the southern edge of the SANG area. From the evidence I saw and heard, including observations made during my site visit, I am satisfied that the SANG area would not be affected by run-off from the motorway and that neither air pollution from traffic nor use of the SANG area by people and dogs would be likely to make the SANG area inhospitable to the plants and animals for which it is designed.
101. I conclude that the proposed development would not lead to any materially adverse impact on biodiversity. As a result there would be no conflict with Core Strategy policies CP14A and CP2(iv), which promote biodiversity and nature conservation and respect and enhancement of the natural environment, or with the biodiversity policies of the NPPF, in particular those at paragraph 118.

(g) Other adverse impacts and benefits

102. The proposed development would result in the loss of some 5ha of currently wooded countryside to residential development. However, the illustrative LMP shows how the impact of this development on public viewpoints from Woodlands Lane could be reduced by setting the main part of the developed area behind existing frontage development and retained woodland. Additional planting as proposed in the LEMP would help to give the development a character consistent with the sylvan setting of the neighbouring Heathpark Drive. With such a layout, only the site access, the proposed community building and a small number of dwellings would be located close to the lane,

¹¹ Forestry Commission and Natural England, *Ancient woodland and veteran trees: protecting them from development* (October 2014, updated October 2015)

and their visual impact could be softened by retaining existing trees where possible and by new planting.

103. As the appeal site lies adjacent to the built-up area of Windlesham, the new development would not constitute an isolated incursion into open countryside but rather a contained eastward extension of the existing built-up area, going no further east than the existing dwelling plots on Woodlands Lane. It would remain visually contained by the extensive woodland area to the east, in much the same way as Heathpark Drive is currently contained by the woodland to its east (including the proposed development area of the appeal site).
104. While the development would lead to some loss of rural quality and character, therefore, the resultant harm would not be severe, given the site's location and the proposed landscaping measures. There would be only limited conflict with Core Strategy policy CP2(iv), which requires development to respect and enhance the quality of the rural environment, or with the requirement in NPPF paragraph 17 to recognise the intrinsic character and beauty of the countryside.
105. In reaching that view I have taken into account the relevant findings of the Core Strategy inspector and of the inspectors who examined the 2000 Local Plan and its predecessors. Unlike me, those inspectors did not have an illustrative scheme before them to inform their assessment. Moreover, they were contemplating the potential development of the entire policy H8 site, not the area excluding the existing dwelling plots along Woodlands Lane which forms the proposed development area in this case.
106. From the middle of the proposed development area it is about 800m, or 10-15 minutes' walk, to Updown Hill, in and around which most of the village shops and its two bus stops are located. There are two small convenience stores, one also containing a Post Office and the other a coffee and sandwich bar, a pharmacy, butcher's, hairdressers' and a public house. Thus many essential day-to-day facilities are within comfortable walking and cycling distance. A condition is proposed to secure improvements to the pedestrian and cycle route along Woodlands Lane.
107. Windlesham offers only very limited employment opportunities, and other facilities including schools, larger shops and supermarkets, doctors' and dentists', and leisure and entertainment venues, are too far away for most people to walk or cycle. On Mondays to Fridays the bus service provides some opportunities for reaching wider destinations for work and other purposes, with three journeys a day to and two from Sunningdale station for commuter trains to London, and five services a day to and from Camberley and Staines. But it provides only five journeys in total on Saturdays, finishing at around 2pm, and none in the evenings or on Sundays.
108. Thus public transport would only be a realistic option for some journey purposes and residents of the proposed development would have no alternative to the car for many of their journeys, especially in the evenings and at weekends. This would of course limit the opportunities available to those without access to a car. The local education authority must provide school places for all children seeking them, and transport to school for those living beyond the qualifying distance. But the distance even to the nearest primary schools makes it likely that most parents would drive their children to school.

109. In these respects the proposed development would fail to meet the objectives of Core Strategy policy CP2(i)&(v) to create sustainable communities with easy access to a range of high quality services and to contribute to a reduction in carbon dioxide emissions. These accessibility issues are also relevant to the conflicts I have already identified with policies CP1 and CP3, which set out a spatial strategy that is in part intended to concentrate new development in areas with good access to infrastructure and services.
110. That said, at paragraph 29 the NPPF recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Relative to many other rural settlements, Windlesham has a reasonably good range of local facilities which an increase in its population is likely to help to sustain.
111. The proposed development would be subject to the national standards for energy and water efficiency which are applied through the Building Regulations. Its specific location may mean that it is somewhat less efficient in terms of energy use than developments of comparable size elsewhere, but that in itself would not create a significant conflict with Core Strategy policy CP2(ii) or (iii).
112. The Air Quality Technical Report prepared for the development by Peter Brett Associates [PBA] demonstrates that any degradation of air quality due to the proposed development would be insignificant and its impacts negligible. That report, and PBA's Noise Impact Assessment, show that the removal woodland from the appeal site would not result in any exceedance of air quality objectives or increase the noise exposure of existing properties. No substantial evidence was submitted to contradict those assessments.
113. The appellants drew attention to a number of benefits which, in their view, would arise from the proposed development. They include the provision of up to 140 dwellings, including up to 56 affordable homes, and a community building, an increase in Windlesham's working-age population, job creation associated with the development, provision of new public open space, creation of new ecological habitats, and a New Homes Bonus. I consider those benefits, and the weight that should be attached to them, in my overall conclusions.

Conditions

114. The conditions in the attached Schedule are based on those suggested by the Council and the appellants, with one exception. Where necessary I have amended the wording of the suggested conditions in the interests of consistency and precision. I have added condition 27, dealing with dormice surveys, for the reasons given in paragraph 93 above.
115. Conditions 1 to 3 are the standard reserved matters conditions, and condition 4 is necessary to ensure that the development is constructed within the saved policy H8 site, that the access, which is not a reserved matter, is constructed in the right location, and that the SANG area is provided as proposed. Conditions 5 to 8 are needed to ensure that adequate provision is made for surface and foul water drainage. Condition 9 is required to ensure that appropriate archaeological investigations are carried out, while conditions 10 to 14 are needed to secure the investigation and, if necessary, remediation of any on-site contamination in the light of the findings of the June 2015 desktop assessment.

116. Conditions 15 to 17 are necessary to ensure that roads and parking areas are properly surfaced, and that access to the site and a management plan for construction transport are in place before building works begin. Condition 18 requires the preparation and implementation of a Travel Plan to promote the use of walking, cycling and public transport by residents of the development in accordance with national and local policy. Conditions 19 and 20 deal with proposed ground levels and tree assessment and protection, and are needed to ensure a satisfactory scheme of development and appropriate protection for existing trees.
117. Conditions 21 to 25 are concerned with external lighting, badger protection measures, and the approval and implementation of the LEMP, a construction environmental management plan and the SANG Management Plan. In accordance with the recommendations of previous surveys conditions 26 and 27 require additional surveys before development commences to establish the presence or otherwise of bats and dormice on the development site, and the implementation of any necessary mitigation or compensation measures. These conditions are necessary to ensure that the proposed development makes adequate provision to mitigate and compensate for its effects on wildlife, including protected species, and has no significant effect on the Thames Basin Heaths SPA.
118. Conditions 28 and 29 are required to ensure adequate provision of refuse storage areas, vehicular parking, and parking and storage for bicycles. Conditions 30 and 31 require improvements to bus stops and footways in Windlesham, in view of their increased usage by residents of the proposed development, while condition 32 is necessary in order to ensure that all the new dwellings are adequately protected against noise.

Section 106 Agreement and Unilateral Undertaking

119. The section 106 agreement contains three planning obligations. As I have already shown, the obligations to provide an area of SANG and to make SAMM contributions are necessary in order to meet the requirements of Core Strategy policy CP14B and to ensure that the proposed development would not have a significant effect on the Thames Basin Heaths SPA.
120. The third obligation is that 40% of the dwellings within the proposed development will be provided as affordable housing. This means that up to 56 affordable homes would be provided from the proposed development of up to 140 dwellings. This obligation is necessary to accord with the requirements of Core Strategy policy CP5 and is further justified by evidence that over 500 households are currently registered for affordable housing on the Council's housing register.
121. Accordingly, I am satisfied that the planning obligations contained in the section 106 agreement meet the tests set out in article 122(2) of the *Community Infrastructure Levy Regulations 2010* [the CIL Regulations] and constitute a reason for granting planning permission in this case.
122. Turning to the unilateral undertaking, it contains obligations requiring contributions towards early years, primary and secondary education to be paid if planning permission is granted for the proposed development. However, it also contains clauses requiring me to state either that each obligation satisfies the tests in paragraph 204 of the NPPF (which mirror those of article 122(2) of

- the CIL Regulations) and is material to my decision, or that it does and is not. In the latter case the relevant obligation(s) would cease to have effect.
123. Education infrastructure projects are not included in the Council's Regulation 123 list of projects that may be funded through CIL. But that would not prevent contributions being made by means of a unilateral undertaking, provided that the article 122(2) tests are met.
124. Surrey County Council [SCC], the local education authority, provided evidence to justify seeking education contributions. It demonstrates that junior schools in the local area are at capacity and that expansions are taking place at two schools within three miles of the development site. Those schools would take pupils from the appeal site or pupils displaced from other schools as a result of the new development. The primary education contribution sought from the proposed development would be applied to a specific project to deliver additional classrooms at one of those schools (Connaught Junior). It is therefore directly related to the proposed development.
125. SCC confirm that no more than five separate planning obligations, including the present unilateral undertaking, will be applied to the project, in accordance with article 123(3) of the CIL Regulations. The primary contribution requested is based on Department for Education build costs and standard yield factors and in my view is fairly and reasonably related in scale and kind to the proposed development. It is necessary to make the development acceptable in planning terms, having regard to the great importance given by NPPF paragraph 72 to providing a sufficient choice of school places.
126. As such, planning obligations 2 and 5 in Schedule 1 of the unilateral undertaking, which provide for the payment of the primary education contribution, satisfy the tests in NPPF paragraph 204 and article 122(2) of the CIL Regulations. They are material to my decision on the appeal and constitute a reason for granting planning permission in this case.
127. On the other hand, although SCC assert that early years provision in the local area is at capacity, they are unable to identify a specific project towards which any early years contribution would be put. It cannot therefore be demonstrated that the planning obligations requiring that contribution would be directly related to the proposed development.
128. In respect of secondary education, SCC say that *pressure on secondary places is beginning to increase and additional education infrastructure may be necessary at secondary schools in the area to cope with this growing and expected demand* [my emphasis]. In my view that somewhat equivocal statement fails to demonstrate that secondary school contributions are necessary to make the development acceptable in planning terms, even though a specific project to which they would be put has been identified.
129. I find therefore that planning obligations 1, 3, 4 and 6 in Schedule 1 of the unilateral undertaking, providing for the payment of the early years and secondary education contributions, do not satisfy the tests in NPPF paragraph 204 and article 122(2) of the CIL Regulations. They do not constitute a reason for granting planning permission in this case and no weight is attached to them.

Overall conclusions

Status of safeguarded land policies

130. At paragraph 49 the NPPF advises that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. That is the case here. Having regard to the "narrow" definition of the term *relevant policies for the supply of housing* recently endorsed by the Supreme Court in the *Suffolk Coastal* judgment¹², I consider that policy CP3 is such a policy. Because it is deemed out of date by NPPF paragraph 49, the advice in the last bullet point of NPPF paragraph 14 is a material consideration in this appeal.
131. That bullet point says that where relevant policies for the supply of housing are out of date, the presumption in favour of sustainable development means granting permission unless one of two conditions apply. The first of those conditions, in logical sequence, is where specific policies in the NPPF indicate that development should be restricted. Footnote 9 gives a non-exclusive list of examples of such policies.
132. Because I have determined that Appropriate Assessment is not necessary in this case, the presumption in favour of sustainable development is not disapplied by NPPF paragraph 119. The NPPF's policies on ancient woodland do not apply, as I have determined that the northern part of the appeal site is not a Plantation on Ancient Woodland Site. However, it is necessary for me to determine whether or not the policies for safeguarded land at NPPF paragraph 85, and their counterpart saved policy H8 in the 2000 Local Plan, fall into the category of specific policies indicating the development should be restricted.
133. I was not made aware of any legal authority on this specific question. I was shown two appeal decisions¹³ one of them determined by the Secretary of State, in which the NPPF's policies for safeguarded land were held by the inspector not to fall into that category, and all three main parties agreed that they were unaware of any appeal decisions taking the contrary view. However, I note that the Secretary of State himself refrained from making any explicit finding on the NPPF's safeguarded land policies (as opposed to the counterpart local plan policy) in the decision which he determined. Moreover, in neither decision was there explicit reference to the *Forest of Dean* judgment¹⁴ which bears specifically on this question.
134. Green Belt policies are specifically included in the non-exclusive list at NPPF footnote 9, but safeguarded land policies are not. However, in the *Forest of Dean* judgment Coulson J draws attention to the NPPF's policy concerning Heritage Coast, which is in the footnote 9 list. That policy is expressed in general terms: *Local planning authorities ... should maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast ...* Its inclusion in the non-exclusive footnote 9 list suggests that a policy need be no more restrictive than

¹² *Suffolk Coastal DC v Hopkins Homes Ltd & anr and Richborough Estate Partnerships LLP & anr v Cheshire East BC* [2017] UKSC 37

¹³ Refs APP/N4720/W/15/3004034 and APP/N2739/W/16/3144900

¹⁴ Judgment of Coulson J in *Forest of Dean DC v SSCLG* [2016] EWHC 421 (Admin), para 28

that in order to qualify as a specific policy indicating that development should be restricted.

135. It is true that, according to NPPF paragraph 85, the purpose of identifying safeguarded land in local plans is in order to meet longer-term development needs stretching well beyond the plan period. To that extent it differs from the other policies specifically listed in footnote 9, none of which apply to land specifically identified for development. But the identification of safeguarded land to meet longer-term development needs is subject to two important qualifications in paragraph 85: first, that the safeguarded land is not allocated for development at the present time, and secondly, that planning permission for its permanent development should only be granted following a Local Plan review which proposes the development.
136. It seems to me that, read plainly, those qualifications indicate that development should be restricted. The restriction is temporary rather than permanent, holding back the development of safeguarded land until there has been a Local Plan review which proposes the development, but it is a restriction nonetheless. Within the timeframe in which it operates, it is no less restrictive than the NPPF's policy for Heritage Coast: on the contrary, it is expressed in more explicitly restrictive terms.
137. I shall therefore apply the decision-taking process contained in the last bullet point of NPPF paragraph 14 on the basis that the NPPF's policies for safeguarded land indicate that development should be restricted.

Assessment against safeguarded land policies

138. The *Forest of Dean* judgment indicates that, where there are specific policies in the NPPF indicating that development should be restricted, the assessment against those policies, under Limb 2 of the last bullet point of NPPF paragraph 14, is to be carried out on an unweighted basis, without reference to the weighted test (or "tilted balance" as it is commonly known) contained in Limb 1.
139. Unlike the NPPF's policies for heritage assets, which were the relevant restrictive policies in the *Forest of Dean* case, its safeguarded land policies contain no specific advice on how harms and benefits should be treated when making that assessment. However, it seems to me that an appropriate approach would be to weigh the benefits of doing what the safeguarded land policies seek to prevent – releasing the appeal site for development now, rather than after there has been a Local Plan review which proposes the development – against the harm that it would cause.
140. The provision of up to 140 new dwellings, including up to 56 affordable homes, would be a very substantial benefit of the proposed development. It would make an important contribution to meeting the shortfall of at least 775 dwellings in the Council's five-year housing land supply, and to meeting the high level of need for affordable housing. It would reflect the strong emphasis given by NPPF paragraph 47 to boosting significantly the supply of housing and meeting both market and affordable housing needs.
141. The Council and WHWG argue that holding back development of the appeal site until after a local plan review has taken place would give the opportunity for more appropriate land to be identified to meet housing needs. Accordingly

it might not be found necessary to allocate the site for development at all, in the new local plan. In support of this argument it was pointed out that the site scored poorly in assessments of potential housing land carried out for the proposed Site Allocations Document and the 2000 Local Plan.

142. However, no evidence was presented to the inquiry to indicate where more appropriately-located housing sites, other than those already identified as part of the five-year supply, are likely to be found currently. I was told that the Council are pursuing the purchase of land for SANG provision and participating in the One Public Estate programme, which seeks to release publicly-owned land for housing development. But I heard nothing to indicate that those initiatives will yield a substantial increase in housing land supply in the near future.
143. There is no indication that neighbouring local planning authorities are willing to assist Surrey Heath in meeting its housing needs, or that the proposed Longcross Garden Village development just across the borough boundary would assist in this respect. Nor is it the role of this section 78 inquiry to assess whether there are constraints that might justify adopting a housing requirement lower than the objectively-assessed need¹⁵.
144. I see no real force in the argument that, now that all the other sites safeguarded by policy H8 have planning permission for development, the appeal site is, as Mr Howell Williams put it, *the last line of defence against the breach of Green Belt boundaries*. It will be for the Council to decide which sites to allocate for development, when reviewing the local plan, and whether any Green Belt land should be released. (For example, policy CP3 identifies the CBGB as a potential alternative source of future development land.)
145. Releasing the appeal site for development now, contrary to saved policy H8, would conflict with the emphasis of NPPF paragraph 17 on a plan-led planning system. But the NPPF also requires plans to meet objectively-assessed housing needs so far as is consistent with its policies. Currently the Core Strategy is failing in that task, given the shortfall in the five-year housing land supply, and a new local plan is not due to be adopted for over two years.
146. While maintaining the central role of the local plan in the planning system is an important consideration, it is also necessary to consider whether, in this instance, the safeguarded land policies are consistent with the planning system's equally important role of providing much-needed development. With no evidence to show where more appropriately-located sites are available for development, there is little justification for holding back development of the appeal site that could meet pressing current needs, merely in the hope that more appropriately-located sites might come forward in future.
147. Taking all these points into account, I find that the benefits of releasing the appeal site for development now would substantially outweigh the harm that would be caused by the resultant conflict with the NPPF's safeguarded land policies, and with their counterpart saved policy H8.

¹⁵ Judgment of Sir David Keene in *St Albans City & DC v Hunston Properties, SSCLG & anr* [2013] EWCA Civ 1610, para 26

Assessment against NPPF policies as a whole

148. I turn next to Limb 1 of the last bullet point of NPPF paragraph 14, which advises that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF's policies taken as a whole. As I have already noted, the provision of up to 140 new dwellings, including up to 56 affordable homes, would be a very substantial benefit of the proposed development in the context of the NPPF's policies to boost housing supply and meet objectively-assessed needs.
149. NPPF paragraph 28 advises that the rural economy in general, and the retention and development of local services and community facilities in villages in particular, should be promoted. In this regard the proposed new community building on the appeal site would also be a genuine benefit in view of the expressed wish of local residents for such a building in this part of the village. But as it could not be said to meet such a pressing need as the new housing, I give this benefit moderate weight.
150. The positive impact on the local economy from the increase in Windlesham's population also carries moderate weight, especially insofar as additional residents would help support the existing businesses and services in the village. However, I give limited weight to the job-creation effects of the proposed development in view of the low level of unemployment in the area and the temporary nature of those jobs.
151. I give limited weight also to the provision of new ecological habitats and new public open space, as these are designed principally to mitigate or compensate for the ecological effects of the proposed development, and to meet the needs of its future residents. However, there would be benefits for existing residents of Windlesham and others who would be able to use the new SANG area for recreation.
152. Section 70(2)(b) of the *Town and Country Planning Act 1990* provides that any local finance considerations should be taken into account in dealing with a planning application, so far as they are material to the application. New Homes Bonus would be paid in respect of the proposed development, if it is permitted. However, I have no other evidence on what impact the revenues from the bonus would have, or how it is relevant to the application. Accordingly I give it little weight.
153. I have found that the proposed development would have no significant effect on any European site, would not have any materially adverse effect on protected species or breach the legal protections afforded to them, and would not lead to any materially adverse impact on biodiversity. Nor would it have any materially harmful effect on air quality. There would be no conflict with national or local planning policies in these respects. Accordingly they are neutral factors in my decision.
154. For the reasons set out above in my assessment of the proposals against the safeguarded land policies in NPPF paragraph 85 and in saved policy H8, I give only moderate weight to the proposed development's conflict with those policies. It follows that I also give moderate weight to its conflict with the

similar, but less stringent, provisions of Core Strategy policy CP3 regarding CBGB¹⁶.

155. The loss of a 5ha area of wooded countryside to development would, to some extent, conflict with the NPPF's core principle advising that planning should recognise the intrinsic character and beauty of the countryside, as well as with Core Strategy policy CP2(iv). But the resultant harm would be limited, for the reasons I have set out in the preceding section of my decision, and therefore carries only moderate weight.
156. I accord moderate weight also to the harm arising from the proposal's conflict with the spatial strategy envisaged by Core Strategy policies CP1 and CP3, and with the objectives of Core Strategy policy CP2(i)&(v). In this respect, NPPF paragraphs 34 to 38 set out policies aimed at minimising the need to travel and prioritising non-car modes of transport. Many journeys to and from the proposed development would require the use of a car, and access to facilities outside the village, especially in the evenings and at weekends, would be limited for those without access to private transport. Nonetheless, residents of the new development would have access on foot and cycle to local shops and services, and public transport to destinations further afield, including London, is available during the working day.
157. For the reasons given under main issue (g), any conflict with the NPPF's policies for water and energy efficiency and with Core Strategy policy CP2(ii)&(iii) would be limited and carries similarly limited weight in my decision.
158. To sum up therefore, I give moderate weight to the proposed development's conflict with policies for safeguarded land and with policies to protect the countryside, promote sustainable patterns of development, minimise the need to travel and prioritise non-car modes of transport. I give limited weight to its conflict with policies to promote energy and water efficiency.
159. All these policy conflicts and the harm resulting from them weigh in the balance against granting planning permission. But they are heavily outweighed, in my judgment, by the very substantial benefits that would arise from the provision of up to 140 dwellings, including up to 56 affordable homes, to help meet current housing needs in the context of the large-scale shortfall in housing land supply.
160. The provision of a new community building and the benefits of the development to the local economy, and the provision of new ecological habitats and new public open space, contribute additional moderate and limited weight respectively in favour of the appeal proposal.
161. I conclude therefore that the adverse impacts of the proposed development would not significantly and demonstrably outweigh its benefits when assessed against the NPPF's policies as a whole. On the contrary, its benefits in terms of housing provision alone would heavily outweigh its adverse impacts when assessed against those policies.

¹⁶ See paragraph 33 above.

Section 38(6) assessment

162. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise.
163. The proposed development would conflict with the Core Strategy's spatial strategy as expressed in policy CP1 and CP3, and with the provisions of saved policy H8 regarding safeguarded land and of policy CP3 regarding CBGB. There would also be conflict with some of the provisions of policy CP2. The proposal therefore conflicts with the development plan as a whole.
164. However, I have found that, when assessed both against the specific policies of the NPPF which restrict development and against its policies taken as a whole, the benefits of the proposed development would heavily outweigh its adverse impacts. In reaching that judgment I have also found that the harm caused by all the effects of the proposal which conflict with the development plan is heavily outweighed by the proposal's benefits. These are material considerations which justify granting planning permission notwithstanding the conflict with the development plan. There are no other material considerations indicating that permission should be withheld.
165. I conclude therefore that the appeal should be allowed and planning permission should be granted subject to the conditions in the Schedule which is attached.

Roger Clews

Inspector

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: SLP-01B *Site Location Plan* (revision B dated 22.06.15), and the access shall be provided in the location shown on plan No 30446_5501_SK04B *Indicative Site Access Point* (revision B dated 23.06.15). The SANG area shall be constructed in general accordance with plan No PERTV19715 13G *SANGS Proposal* (revision G dated 28.09.15). All dwellings shall be built wholly within the area of the site identified as a housing reserve site (Land East of Heathpark Drive, Windlesham) under saved policy H8 of the *Surrey Heath Local Plan 2000* as shown on the Proposals Map of the *Surrey Heath Local Plan 2011-2028*.
- 5) Development shall not commence until a drainage strategy detailing any on- and/or off-site drainage works has been submitted to and approved in writing by the local planning authority. The strategy shall include details of all foul water inspection chamber covers and invert levels, pipe sizes and gradients. Until the drainage works detailed in the approved strategy have been carried out, no foul or surface water shall be discharged from the site into the public drainage system and no dwelling authorised by this permission shall be occupied.
- 6) Development shall not commence until a ground investigation has been undertaken and a subsequent interpretative report undertaken by a suitably qualified person has been submitted to and approved in writing by the local planning authority. The ground investigation shall include:
 - (a) Infiltration testing to BRE 365 or other suitable method, and
 - (b) Groundwater monitoring to assess the highest typical annual groundwater levels in the soil.
- 7) Development shall not commence until the existing greenfield runoff rates for the 1 in 1, 1 in 30 and 1 in 100 rainfall events have been submitted to and approved in writing by the local planning authority. The greenfield rate shall be determined on the basis of the ground conditions determined under condition 6 above, and shall be calculated in accordance with the method given in the Flood Risk Assessment and Drainage Strategy (Project Ref 30446/2001 Rev A dated June 2015), prepared for the development by Peter Brett Associates. The peak surface water discharge from the site shall be limited to match the greenfield runoff rate for the equivalent rainfall events up to the 1 in 100 year (plus 30% allowance for climate change) event.
- 8) Development shall not commence until details of the proposed surface water management scheme have been submitted to and approved in writing by the local planning authority. The surface water management scheme shall:

- (a) follow the principles set out in the Flood Risk Assessment and Drainage Strategy (Project Ref 30446/2001 Rev A dated June 2015), prepared for the development by Peter Brett Associates;
- (b) be commensurate with the outcomes of the ground investigation and the runoff rates established under conditions 6 and 7 above;
- (c) demonstrate compliance with the *Non-statutory technical standards for sustainable drainage systems* published by DEFRA (March 2015);
- (d) provide design details (including long and cross sectional layout) of i) flow controls; ii) SuDs elements, iii) levels and iv) all other elements of the surface water management scheme;
- (e) provide an exceedance flow routing plan and mitigation details for key component failure;
- (f) provide details of how surface water drainage will be dealt with during construction; including how the sustainable drainage system will be protected and maintained during construction;
- (g) provide a schedule of maintenance required to maintain the safe operation of the drainage system throughout its lifetime, including proposed ownership and maintenance responsibilities, responsibility and regime of open watercourse clearance where required for discharge off-site, and detailed methods of capturing and removing debris through woodland areas;
- (h) include cover, invert and sump levels for all chambers, ground levels for all other drainage attributes, pipe sizes and gradients, and surface levels for boundaries of all hard surface areas including finished floor levels for buildings;
- (i) include typical section detail of any watercourses proposed to be used for discharge and full level information for channel and embankments along their route;
- (j) show that hard surface areas are contained to ensure failure discharge is conveyed back into the drainage system or overland towards the attenuation facility and that no alternative failure route is possible towards residential properties.

The development shall be carried out fully in accordance with the approved scheme and all surface water and attenuation systems shall be maintained to their full design capacity in perpetuity.

- 9) Development shall not commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the local planning authority.
- 10) No construction of the dwellings hereby approved or highway works shall commence until:
 - (A) a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site, has been submitted to and approved in writing by the local planning authority; and
 - (B) following approval of this scheme, an investigation and risk assessment has been undertaken by a suitable qualified person in accordance with the *Model Procedures for the Management of Land Contamination* (CLR1)

published by DEFRA and the Environment Agency and a written report of the findings has been submitted to and approved in writing by the local planning authority. The report shall include:

- (a) a survey of the extent, scale and nature of contamination;
 - (b) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes, adjoining land, ground water and surface waters, ecological systems, archaeological sites and ancient monument;
 - (c) an appraisal of remedial options, and proposal of the preferred option.
- 11) Development shall not commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment has been submitted to and approved in writing by the local planning authority. The scheme shall include proposed remediation objectives and remediation criteria, details of all works to be undertaken, a timetable of works and site management procedures. The scheme must ensure that the site would not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out as approved before any development, other than that required to carry out remediation, commences. At least two weeks' written notification of commencement of the remediation scheme works shall be given to the local planning authority.
- 12) Development shall not commence until a verification report that demonstrates the effectiveness of the remediation scheme approved under condition 11 above has been submitted to and approved in writing by the local planning authority.
- 13) In the event that contamination that had not previously been identified is found at any time when carrying out the development hereby permitted, it shall be reported in writing immediately to the local planning authority. No further development shall take place, unless otherwise agreed in writing by the local planning authority, until an investigation and risk assessment is undertaken in accordance with the requirements of condition 10 above, and where remediation is necessary a remediation scheme has been prepared in accordance with the requirements of condition 11 above, and these have been submitted to and approved in writing by the local planning authority and approved remediation scheme measures carried out. Following completion of measures a verification report shall be submitted to and approved in writing by the local planning authority in accordance with condition 12 above.
- 14) Development shall not commence until a monitoring and maintenance scheme, to include monitoring the long-term effectiveness of any proposed remediation and the submission of reports to the local planning authority, has been submitted to and approved in writing by the local planning authority. As soon as practicable following completion of the measures identified in the scheme and when the remediation objectives have been achieved, a report that demonstrates the effectiveness of the monitoring and maintenance scheme shall be submitted to and approved in writing by the local planning authority. The scheme and reports should be prepared in accordance with *Model Procedures for the Management of Land Contamination (CLR1)* published by DEFRA and the Environment Agency.

- 15) Development shall not commence until details of the surface materials for the roads, car parking areas and driveways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 16) Construction of the buildings hereby approved shall not commence until the proposed vehicular / pedestrian access to Woodlands Lane and 20m of the new development access road have been constructed and the access has been provided with visibility zones in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority. The access visibility zones shall thereafter be kept clear at all times of any obstruction more than 1.05m high.
- 17) Development shall not commence until a construction transport management plan has been submitted to and approved in writing by the local planning authority. The construction transport management plan shall include details of:
 - (a) parking for vehicles of site personnel, operatives and visitors;
 - (b) loading and unloading of plant and materials;
 - (c) storage of plant and materials;
 - (d) programme of works (including measures for traffic management);
 - (e) vehicle routeing;
 - (f) measures to prevent the deposit of materials on the highway; and
 - (g) on-site turning for construction vehicles.Development shall be carried out in accordance with the details in the approved construction transport management plan.
- 18) Development shall not commence until a detailed Travel Plan, in accordance with Surrey County Council's *Travel plans good practice guide* and in general accordance with the Framework Travel Plan (Project Ref 30446/5501 Rev 0 dated June 2015), prepared for the development by Peter Brett Associates, and including an implementation timetable, has been submitted to and approved in writing by the local planning authority. The detailed Travel Plan, including any monitoring and review measures, shall be implemented as approved.
- 19) Development shall not commence until details of the proposed finished ground floor slab levels of all buildings and the finished ground levels of the site including all roads and driveways, in relation to the existing ground levels of the site and adjoining land (measured from a recognised datum point) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 20) Development shall not commence until a tree report, arboricultural impact assessment, arboricultural method statement and tree protection plan, covering the entire area to the north of Woodlands Lane within the application site boundary and prepared by a suitability qualified arboriculturalist, have been submitted to and approved in writing by the local planning authority. The submitted documents must be compliant with BS5837:2012 – *Trees in relation to design, demolition and construction – Recommendations* and shall include provision for an on-site meeting with the Council's Tree Officer prior to

- the commencement of any tree works. Development shall be carried out in accordance with the approved documents.
- 21) Development shall not commence until details of external lighting have been submitted to and approved in writing by the local planning authority. They shall include full details of the lighting supports, posts, columns, a plan showing the location of the lights and a full technical specification. They shall also include details of how the impact of the proposed lighting on wildlife (particularly bats) has been taken into account. No dwelling hereby permitted shall be occupied until the external lighting has been constructed in accordance with the approved details.
 - 22) Development shall not commence until a Method Statement for the protection of badgers on site has been submitted to and agreed in writing by the local planning authority. The Method Statement shall be prepared having regard to the measures proposed in the Keystone Ecology [KE] Response to West Surrey Badger Group (August 2015)¹⁷ and the recommendations of KE's Badger Survey (December 2014) and Badger Bait Survey (March 2015) and shall include proposals for the retention of existing setts and provision of any artificial sett(s), with appropriate buffer zones of at least 30m in extent; provision and protection of badger routes to existing setts; and the enhancement of foraging areas to compensate for habitat lost. Development shall be carried out fully in accordance with the approved Method Statement.
 - 23) Development shall not commence until the submitted Draft Landscape and Ecological Management Plan (June 2015) [LEMP] by Keystone Ecology [KE] has been updated and finalised, and submitted to and approved in writing by the local planning authority. The mitigation and enhancement measures proposed in the final LEMP shall be no less than as proposed in the Draft LEMP, the KE Bat Activity Report (August 2015), the KE Breeding Bird Survey Report (July 2015) and the KE Badger Survey (December 2014), unless otherwise agreed in writing by the local planning authority. The LEMP should be based on up-to-date ecological surveys no more than two years old unless otherwise agreed in writing by the local planning authority. Development shall be carried out fully in accordance with the approved LEMP.
 - 24) Development shall not commence until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CEMP.
 - 25) Development shall not commence until the submitted draft SANG Management Plan by Keystone Ecology (February 2016) has been updated and finalised, and submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved SANG Management Plan.
 - 26) Development shall not commence until details of surveys to establish the presence or otherwise of bats on site, including in the tree canopy, taking account of the Report from Surrey Bat Group dated 4 March 2016, have been submitted to and approved in writing by the local planning authority and the surveys have been carried out as approved. Following completion of the surveys, details of any necessary compensation / mitigation measures shall be submitted for the written approval of the local planning authority along with

¹⁷ Appendix 4 to Mr Goodwin's rebuttal proof

the details of the reserved matters. Any compensation / mitigation measures thus approved shall be implemented as approved.

- 27) Development shall not commence until details of a survey to establish the presence or otherwise of dormice on site have been submitted to and approved in writing by the local planning authority and the surveys have been carried out as approved. Following completion of the surveys, details of any necessary compensation / mitigation measures shall be submitted for the written approval of the local planning authority along with the details of the reserved matters. Any compensation / mitigation measures thus approved shall be implemented as approved.
- 28) Construction of the buildings hereby permitted shall not commence until details of cycle and refuse storage areas and access thereto have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 29) No dwelling hereby permitted shall be occupied until space has been laid out within the site, in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority, for vehicles and bicycles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The parking and turning areas shall thereafter be retained for and kept clear of any obstructions to their intended purposes.
- 30) No dwelling hereby permitted shall be occupied until the two existing bus stops on the north and south side of Updown Hill, between numbers 14 and 16 Updown Hill and adjacent to number 11 Updown Hill, have been provided with:
 - (a) up-to-date timetable information;
 - (b) pole and flag signs;
 - (c) raised bus boarders to assist level access to buses; and
 - (d) any necessary bus stop road markingsin accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 31) No dwelling hereby permitted shall be occupied until the existing footway along the north side of Woodlands Lane between the access to the site and Updown Hill has been converted into a shared footway/cycleway, to include any necessary trimming of vegetation, signs, road markings, and any other necessary works, in accordance with details which shall first have been submitted to and approved in writing by the local planning authority.
- 32) Each of the dwellings hereby approved shall be constructed so as to provide sound attenuation against external noise in general accordance with the recommendations of the Noise Impact Assessment (Project Ref 30446/3002 Rev 01 dated June 2015), prepared for the development by Peter Brett Associates. The sound attenuation measures shall be designed to ensure that internal noise levels in each of the dwellings hereby permitted do not exceed the LOAELs for internal noise set out in Table 2.2 of the Noise Impact Assessment, with windows shut and other means of ventilation provided where necessary to achieve those levels. The sound attenuation measures shall be completed before the dwellings are occupied and shall be retained thereafter.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr C Howell Williams, QC	Instructed by Mid-Surrey Legal Services
Mr R Williams, of Counsel	
Mr Howell Williams	
called:	
Mr C Wilmshurst MRTPI	Associate Partner, Vail Williams
Ms J Ireland BA DipTP	Planning Policy Manager, Surrey Heath Borough
MRTPI	Council

FOR THE APPELLANT:

Mr S Choongh, of Counsel	Instructed by Turley
He called:	
Mr J Forbes-Laird BA	Principal Consultant, Forbes-Laird Arboricultural
MICFor MRICS MEWI	Consultancy Ltd
MArborA DipArb(RFS)	
Mr T Goodwin BSc MSc	Director, Ecology Solutions
MIEnvSc MCIEEM MIALE	
Mr T Burden BSc MSc	Director, Turley
MRTPI	

FOR THE WINDLESHAM HEATHPARK WOOD GROUP:

Mr C McDonald MA DMA	Solicitor
LMRTPI(Rtd)	
He gave evidence and	
called:	
Dr A Berardi BSc MSc	Senior Lecturer, Environmental Systems
PhD	Management, The Open University

OTHER PERSONS WHO TOOK PART IN THE ROUND-TABLE SESSIONS

Ms L Graham	Head of Planning, Persimmon Homes, Thames Valley
Mr G John	Solicitor, Surrey Heath Borough Council
Ms E Pearman	Senior Planning Officer, Surrey Heath Borough Council

INTERESTED PERSONS:

Mr W Hague	Local resident
Mr DA Murphy	Local resident
Mr F Shuhood	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Signed Statement of Common Ground between the Council and the appellants
- 2 Completed Section 106 Agreement dated 20 March 2017
- 3 Submission by WHWG opposing acceptance of more documents from the appellants
- 4 Response from the appellants to Document 3
- 5 Opening submissions on behalf of the appellants (Mr Choongh)
- 6 Opening statement on behalf of the Council (Mr Howell Williams)
- 7 Opening statement by WHWG (Mr McDonald)
- 8 Planning Practice Guidance Reference ID 21b-014-20140306
- 9 Judgment in *Q (Cherkley Campaign Ltd) v Mole Valley DC & Longshot Cherkley Court Ltd* [2014] EWCA Civ 567
- 10 Appendices A & B to the inspector's report of the examination of the Surrey Heath Core Strategy & DMP DPD
- 11 Minutes of an extraordinary meeting of the Council, 1 February 2012
- 12 Schedule of suggested changes to the Surrey Heath Core Strategy & DMP DPD November 2011
- 13 Comments to the inquiry by Mr Murphy
- 14 Signed Statement of Common Ground on Five Year Housing Land Supply between the Council and the appellants
- 15 Bundle of emails headed *Heathpark Woods Appeal, SLAA sites in dispute, March 2017*
- 16 Email correspondence dated 23 & 24 March 2017 between Mr Burden and Ms Ireland concerning Document 15
- 17 Bundle of Officer Site Assessments from SLAA 2016
- 18 Bundle of eight documents submitted by Mr Forbes-Laird:
 - 18.1 Article by Al-Dabbous & Kumar
 - 18.2 Article by Popek et al
 - 18.3 Article by Ehn et al
 - 18.4 Article by Donahue et al
 - 18.5 Appeal decision & report ref APP/U2235/A/14/2227839
 - 18.6 CgMs, Archaeological desk-based assessment of the appeal site
 - 18.7 Extract from Windlesham Inclosure Act Awards Map 1814
 - 18.8 Note on accuracy of Ordnance Survey Draft map of locality
- 19 Letter dated 1 March 2017 from Ross Baker, Chairman, Surrey Bat Group to Emma Pearman, Senior Planning Officer at the Council
- 20 Letter dated 7 March 2016 from Dr S Cox, Keystone Ecology, to Mr Baker
- 21 Bat Conservation Trust, Bat Surveys, Good Practice Guidelines, 2nd edition (cover & p45 only)
- 22 Bat Conservation Trust, Bat Surveys for Professional Ecologists, Good Practice Guidelines, 3rd edition
- 23 English Nature, Bat mitigation guidelines (cover & p39 only)
- 24 List of suggested planning conditions, annotated by the appellants and the Council
- 25 Email dated 15 September 2015 from Ms Diane Doney to Mr Duncan Carty at the Council concerning the Rose Meadow appeal
- 26 Judgment in *Trustees of the Barker Mills Estate v Test Valley BC & SSCLG* [2016] EWHC 3028 (Admin)

- 27 Judgment in *Gladman Developments Ltd v Daventry DC* [2016] EWCA Civ 1146
- 28 Judgment in *St Modwen Developments Ltd v SSCLG & East Riding of Yorkshire Council* [2016] EWHC 968 (Admin)
- 29 Judgment in *Muller Property Group v SSCLG & Cheshire East BC* [2016] EWHC 3323 (Admin)
- 30 PPG2: Green Belts, versions dated January 1995 & March 2001
- 31 Judgment in *Suffolk Coastal DC v Hopkins Homes Ltd & anr and Richborough Estate Partnerships LLP & anr v Cheshire East BC* [2017] UKSC 37
- 32 Windlesham Heathpark Wood Group's comments on Document 31
- 33 Letter to the inspector from the Rt Hon Michael Gove MP, dated 12 June 2017
- 34 Email from Sarah Lindsay at the Council to Mr Burden concerning a Freedom of Information request about affordable housing
- 35 Interim Procedural Guidance for Core Strategy & DMP DPD: Affordable Housing Policies CP5 and CP6
- 36 Copy of policy RE3 from the *Surrey Heath Local Plan 2000*
- 37 Note entitled *Explanation of what SAMM is used for*, provided by the Council
- 38 Email dated 9 March 2017 from Mr John to Mr Marc Turner at Natural England, and earlier related email correspondence
- 39 Framework Travel Plan for the appeal site, dated June 2015, prepared by Peter Brett Associates
- 40 Completed Unilateral Undertaking dated 20 March 2017
- 41 Closing statement on behalf of Windlesham Heathpark Wood Group (Mr McDonald)
- 42 Closing statement on behalf of the Council (Mr Howell-Williams)
- 43 Closing submissions on behalf of the appellants (Mr Choongh)
- 44 Written costs application on behalf of the appellant (Mr Choongh)
- 45 Written response to cost application by the Council (Mr Williams)

PLANS SUBMITTED AT THE INQUIRY

- A Illustrative Masterplan IMP-01 (D) overlaid with data from the MAgIC database
- B PBA drawing ref 30446_5501_SK04 Rev B, *Indicative site access point*