



Department for  
Communities and  
Local Government

Ms Heather Allen  
Barton Wilmore  
The Observatory  
Southfleet Road  
Swanscombe  
Kent  
DA10 0DF

Our Ref: APP/H1705/A/13/2205929

22 September 2014

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY CRUDANCE STRATEGIC LTD: LAND AT RAZOR’S FARM, CHINEHAM,  
BASINGSTOKE  
APPLICATION REF: BDB/77341**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul Griffiths BSc(Hons) BArch IHBC, who held a public local inquiry on dates between 8 and 16 April 2014 into your client’s appeal against the failure of Basingstoke and Deane Borough Council (‘the Council’) to make a decision within the prescribed period on an application for planning permission for: residential development comprising up to 425 dwellings (including up to 40% affordable homes), public open space (including children’s play areas), associated landscaping, infrastructure, and the formation of 2 no. new vehicular accesses from Crockford Lane, in accordance with application ref BDB/77341, dated 30 November 2012.
2. In October 2013 the appeal was recovered for the Secretary of State’s determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involved proposals for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government’s objective to secure a better balance between housing demand and supply and create high-quality, sustainable, mixed, and inclusive communities.

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

3. The Inspector recommended that the appeal be allowed and planning permission granted, subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector’s conclusions, except where indicated otherwise, and agrees with his recommendation. A copy of the Inspector’s report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Procedural matters**

4. At the inquiry a costs application was made by the appellant against the Council. That application is the subject of a separate decision also being issued today.

## **Policy considerations**

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Basingstoke & Deane Borough Council Local Plan 1996-2011 adopted in 2006. The Secretary of State considers that the policies identified at IR4.2-4.9 are the most relevant development plan policies in this appeal.
6. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework); the associated planning guidance published in March 2014; and the Community Infrastructure Levy (CIL) Regulations 2012 as amended.
7. The Secretary of State notes that the Council is currently preparing a new Local Plan for submission for examination. It is anticipated that this version of the Local Plan will be submitted to the Planning Inspectorate in October. In the emerging plan the appeal site is included as a residential allocation through policy SS3.3 and he considers that this is a material consideration, albeit one that carries limited weight.
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving those listed structures and their settings which are potentially affected by the scheme.

## **Main issues**

### The policy position and housing land supply

9. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing sites and that there is a significant and serious shortfall of housing when tested against the Council's proposed housing target (IR10.3). For the reasons at IR10.4-10.5, the Secretary of State agrees with the Inspector that the relevant Local Plan policies for the supply of housing cannot be considered up to date and that the presumption at paragraph 14 of the Framework applies in this appeal.

### Landscape

10. For the reasons at IR10.7-10.8 the Secretary of State agrees with the inspector that the proposal will cause landscape harm.

### Heritage Assets

11. The Secretary of State has regard to the inspector's analysis of harm to the listed Razor's Farm complex at IR10.9-10.21. For the reasons given at IR10.10-10.11 he agrees that harm would be caused to the setting of these listed buildings, and that this would bring the proposal into conflict with LP Policy E2 (IR10.12).
12. The Inspector notes that footnote 9 to paragraph 14 of the Framework refers to Framework policies on designated heritage assets, but does not refer to their settings (IR10.15). However the planning guidance states that the significance of a heritage asset derives not only from the asset's physical presence, but also from its setting. The guidance also states that the harm to a heritage asset's significance may arise from development within its setting. Consequently the Secretary of State does not

agree with the Inspector's suggestion at IR10.16 that it is difficult to envisage how an impact on setting, rather than a physical impact on special architectural or historic interest, could ever cause substantial harm. Nevertheless, having carefully considered the evidence in the particular circumstances of this case the Secretary of State does agree with the Inspector that the harmful impact on the significance of the Razor's Farm complex through the harm that would be caused to its setting would be less than substantial (IR10.17).

13. For the reasons at IR10.22-10.23 the Secretary of State agrees with the Inspector that the proposal would cause no harm to the non-designated Roman Road that passes through the site.

#### Living conditions and the potential impact on Air Products Ltd

14. For the reasons at IR10.24-10.28 the Secretary of State agrees with the Inspector that, subject to suitable conditions and the future arrangement of housing on the site which can be dealt with at reserved matters stage, the proposal accords with the Framework regarding high quality design and a good standard of amenity. He also agrees that the same applies in regard to relevant Local Plan policy, insofar as it bears on the living conditions of prospective occupiers (IR10.29).

#### Accessibility and traffic Impacts

15. For the reasons at IR10.30-10.35 the Secretary of State agrees with the Inspector that the impacts of the proposal in trip generation terms will be mitigated to an acceptable degree. He also agrees it is important to view objections on this count in the context of the allocation of the site for housing in the emerging Local Plan (IR10.35).

#### Conditions

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR10.52-10.63. He considers that conditions 1 - 28 as set out in Annex D of the IR and Annex A of this letter meet the tests of paragraph 206 of the Framework.

#### Infrastructure and other contributions – the Section 106 Agreement

17. The Secretary of State has considered the Inspector's assessment at IR10.36-45 of the infrastructure and other contributions in the Section 106 Agreement dated 16 April 2014. For the reasons given at IR10.30-10.35 he agrees with the Inspector that the Transport Contribution, Highway Works, Travel Plan and Bus Service provisions of the Agreement clearly accord with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations (IR10.36). For the reasons at IR10.37, the Secretary of State agrees that the financial contribution to the provision of primary education also meets the requirements of paragraph 204 and Regulation 122. He also agrees that the parts of the Section 106 Agreement concerning the Landscape Management Plan, affordable housing, Habitat Enhancement & the Woodland Management Plan and listed buildings satisfy all meet the requirements of paragraph 204 and Regulation 122 (IR10.44).

18. Turning to open space, the Secretary of State notes that the development will include an open space contribution of 5.91 hectares (IR10.38), the necessity of which was agreed by the parties. For the reasons at IR10.38-39 the Secretary of State agrees with the Inspector that the provisions of the Section 106 Agreement that deal with the 'open space balance' and the 'open space contribution' are not necessary to make the development acceptable in planning terms. Consequently, and with reference to paragraph 11.1.2 in the Section 106 Agreement, the Secretary of State does not

consider that these particular provisions of the Agreement satisfy the requirements set out in paragraph 204 of the Framework and Regulation 122 of the CIL regulations.

19. As regards provision of playing fields, the Secretary of State has carefully considered the Inspector's assessment at IR10.40-42 and also the positions of the Council and the appellant (IR5.18-25 and 6.43-49 respectively), the evidence they submitted to the Inquiry on this matter and the thrust of Local Plan Policies C1 and C9. He considers that in the absence of on-site provision a contribution towards improvements to the facilities at Down Grange is required to make the development acceptable in planning terms and would be directly related to the development. The Secretary of State differs from the Inspector in that he sees no reason why the calculation of this contribution should be informed by an estimate of the proportion of residents in the development who would actually use the Down Grange facilities (any more than contributions for children's play space or allotments, for example, should necessarily be based on the proportion of residents who actually use these facilities). The Secretary of State is satisfied with the contribution for off-site provision being a sum per resident and this being expressed as a contribution per dwelling based on the Council's published assumptions on average household size per dwelling depending on bedroom number, as set out in Appendix A to the Council's 'Planning Obligations and Community Infrastructure' document. Moreover, the Secretary of State is satisfied with the Council's explanation of why the likely overall playing field contribution as calculated on the above basis in Schedule 1 of the Section 106 Agreement is not disproportionate (IR5.24). Consequently, and with reference to paragraph 11.1.2 in the Section 106 Agreement, the Secretary of State considers that the manner in which that Agreement calculates the contribution towards improving and expanding the facilities at Down Grange is fairly and reasonably related in scale and kind to the development, meets the requirements of paragraph 204 of the Framework and satisfies the requirements set out in Regulation 122 of the CIL Regulations.
20. Regarding what is termed the 'Percent for Art', for the reasons at IR10.43 the Secretary of State agrees with the Inspector that Section 19 of the Section 106 Agreement dealing with this matter does not meet the requirements of paragraph 204 of the Framework or Regulation 122. He also agrees that the provision of broadband and telecommunications to individual dwellings does not seem to be necessary to make the development acceptable in planning terms (IR10.44).

### **Overall balance and conclusion**

21. The proposal would cause harm to the setting and thereby the significance of the listed buildings at Razors Farm (IR10.50). That harm would be less than substantial in terms of Framework policy, but having regard to his duty under s66 of the LBCA the Secretary of State agrees with the Inspector that it attracts considerable importance and weight in the balancing exercise. However, like the Inspector he considers that considerable importance and weight is not synonymous with overriding importance and weight (IR10.50). The Secretary of State also attaches some weight to the adverse impact on the landscape (IR10.50).
22. Weighing in favour, the Secretary of State agrees with the Inspector that the provision of up to 425 houses with up to 40% affordable is a matter that attracts significant weight (IR10.46) and he also agrees that the associated economic benefits also carry significant weight (IR10.47). The fact that the appeal site is included as a residential allocation in the emerging Local Plan Review for approximately 420 dwellings adds further, albeit limited weight in favour of the appeal.

23. Other considerations such as traffic are essentially neutral in the balance.
24. Overall, the Secretary of State agrees with the Inspector that the planning balance falls strongly in favour of the proposal and the adverse impacts do not come close to significantly and demonstrably outweighing the benefits when assessed against the policies of the Framework considered as a whole. On that basis, the proposal benefits from the presumption in favour of sustainable development (IR10.51).

#### **Formal decision**

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your client's appeal and grants outline planning permission for residential development comprising: up to 425 dwellings (including up to 40% affordable homes), public open space (including children's play areas), associated landscaping, infrastructure, and the formation of 2 no. new vehicular accesses from Crockford Lane, in accordance with application ref BDB/77341 dated 30 November 2012, subject to the conditions listed at Annex A of this letter.

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

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
27. A copy of this letter has been sent to Basingstoke and Deane Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Julian Pitt**

Authorised by Secretary of State to sign in that behalf

Richborough Estates

## Annex A

### Conditions: Application ref BDB/77341

- 1) Details of appearance, landscaping, layout, and scale, (the reserved matters) for any phase shall be submitted to and approved in writing by the local planning authority before any development begins on that phase. Development shall be carried out as approved in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: ITB6028-GA-018 Rev. B - Proposed Main Site Access; ITB6028-GA-009 Rev. C - Proposed Secondary Access; CSa/1900/122 Rev. C - Site Location Plan; CSa/1900/109 Rev. F - Land Use Plan; and CSa/1900/120 Rev. B - Parameters Plan.
- 5) No development shall take place until a Scheme of Phasing has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Scheme of Phasing.
- 6) Applications for the approval of reserved matters shall be in accordance with the principles and parameters described and illustrated in the Design and Access Statement dated November 2012 and the Supplementary Design and Access Statement dated May 2013 and received on 30/05/2013. For the avoidance of doubt all reference to indicative masterplan shall be drawing no. CSa/1900/108 Rev. M received on 30/05/2013 and any conditions on this approval will supersede any reference made in this document where relevant.
- 7) Applications for the approval of reserved matters shall be in accordance with Saved Policy C3 and the Housing Mix and Lifetime Mobility Standards SPD; with particular regard to the provision of an appropriate housing mix and implementation of 15% of market dwellings being built to lifetime mobility standards.
- 8) Prior to the commencement of each phase of development as approved under Condition 5 an Interim Certificate of Compliance with the Code for Sustainable Homes for that phase shall be submitted to and approved in writing by the local planning authority. The certificate shall demonstrate that the development within that phase will attain a minimum standard of Code Level 3. The development shall be carried out only in accordance with the details the subject of the certificate and prior to occupation of each dwelling a Code for Sustainable Homes Post Construction Stage Review is to be completed by an independent licensed Code of Sustainable Homes assessor demonstrating that the dwelling is expected to achieve Code Level 3. The results of the review must be submitted to the local planning authority in writing.
- 9) Prior to the commencement of development of each phase of development as agreed under condition 5 of this permission, no development shall commence (in relation to that specific phase being pursued) until a materials schedule detailing the types and colours of external materials to be used, including colour of mortar and windows, has been submitted to and approved in writing by the local planning

authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

- 10) Prior to the commencement of development of each phase of development as agreed under condition 5 of this permission, no development shall take place (in relation to that specific phase being pursued) until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the local planning authority. These details shall include, as appropriate, proposed finished levels or contours, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, location and design of play areas, hard surfacing materials and minor artefacts and structure (e.g. furniture, refuse or other storage units, signs, lighting, external services, etc). Soft landscape details shall include planting plan, specification (including cultivation and other operations associated with plant and grass establishment), schedules of plants (including replacement trees where appropriate), noting species, planting sizes and proposed numbers/densities where appropriate, as well as any works to enhance wildlife habitats where appropriate. In addition, an implementation timetable for each phase shall be submitted to and approved in writing by the local planning authority before development commences within that Phase. If applicable, these details will also extend to cover areas of open space to be adopted by the Council and such areas shall be agreed in writing prior to development commencing. All hard and soft landscape works shall be carried out in accordance with the approved details in accordance with the approved timetable. Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved.
- 11) Prior to the commencement of each phase of development as agreed under condition 5 of this permission, no works (in relation to that specific phase being pursued) shall take place until a measured survey of that phase has been undertaken and a plan prepared to a scale of not less than 1:500 showing details of existing and intended final ground levels and finished floor levels in relation to a nearby datum point which shall be submitted to and approved in writing by the local planning authority. The development shall be completed and thereafter retained in accordance with the approved details.
- 12) As part of the reserved matters submissions for each phase of development (as approved under condition 5), a noise mitigation scheme shall be submitted for the approval in writing by the local planning authority dealing with noise from road and rail traffic. The scheme shall be designed to achieve maximum internal noise levels in all habitable rooms of 35 dB LAeq, 16 hour between 07:00 and 23:00 hours, and 30 dB LAeq, 8 hour between 23:00 and 07:00 hours. The approved noise mitigation scheme shall be implemented in full prior to the occupation of dwellings on the relevant phase. The measures forming part of any scheme approved and implemented shall be thereafter retained.
- 13) As part of the reserved matters submission for each phase of development (as approved under condition 5), a noise mitigation scheme shall be submitted for the approval in writing by the Local Planning Authority dealing with noise from adjacent industrial operations on the Air Products premises. The scheme shall be designed to achieve (a) a maximum free-field noise level from adjacent operations on the Air Products premises (as recorded in the noise survey data included in Cole Jarman reports 11/1441/R2 and 11/1441/R3) of 42 dB LAeq, 1 hour between 07:00 and



23:00 hours in all external amenity spaces serving the needs of the residents of dwellings within the development site (including private gardens, terraces, balconies and communal amenity spaces shared by occupiers of flats or apartments but excluding public open space shared by all occupants of the site); and (b) maximum internal noise levels in habitable rooms of 30 dB LAeq, 5 minute and 45 dB LAmax,F between 23:00 and 07:00 hours and 35 dB LAeq, 5 minute between 07:00 and 23:00 hours.

If the internal noise limits can only be achieved with closed windows then alternative means of both whole dwelling and purge ventilation should be provided to allow residents to occupy the properties at all times with windows closed. The approved noise mitigation scheme should be implemented in full prior to the occupation of dwellings on the relevant phase. The measures forming part of any scheme approved and implemented shall be thereafter retained.

It is anticipated that compliance with the noise mitigation schemes required in Conditions 12 and 13 may be achieved via the combination of some or all of the following (i) appropriate site layout and masterplanning; (ii) provision of acoustic glazing and alternative means of ventilation; and (iii) provision of acoustic screening.

- 14) No work relating to the construction of each phase of the development agreed under condition 5, including works of preparation prior to operations, or fitting out, shall take place before 0730 hours or after 1800 hours on Mondays to Fridays, before 0800 hours or after 1300 hours on Saturdays, and not at all on Sundays or recognised public holidays.
- 15) No deliveries of construction materials or plant and machinery and no removal of any spoil from the site shall take place in relation to each phase of development agreed under condition 5 before 0730 hours or after 1800 hours on Mondays to Fridays, before 0800 hours or after 1300 hours on Saturdays, and not at all on Sundays or recognised public holidays.
- 16) The works pursuant to this permission (in relation to each phase agreed under condition 5) shall be carried out in accordance with (a) the desk top study carried out by Southern Testing (Desk Study and Preliminary Site Assessment Report dated 25/05/2012 – Ref. A2324 received 03/12/2013) and no works (in relation to each phase agreed under condition 5) shall commence until there has been submitted to and approved in writing by the local planning authority; (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as being appropriate by the desk study in accordance with BS10175:2001 - Investigation of Potentially Contaminated Sites - Code of Practice; and, if remediation works are required, (c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works. If during any works, contamination is encountered which has not been previously identified then the additional contamination shall be fully assessed and an appropriate remediation scheme, agreed in writing with the local planning authority.
- 17) If a remediation scheme is required in accordance with Condition 16, the relevant phase of development as approved under condition 5 of this permission shall not be occupied/brought into use until there has been submitted to the local planning

authority verification by the competent person approved under the provisions of condition 16 that any remediation scheme required and approved under the provisions of condition 16 has been implemented fully in accordance with the approved details. Such verification shall comprise as built drawings of the implemented scheme; photographs of the remediation works in progress; and certificates demonstrating that imported and/or material left in situ is free of contamination. Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 16(c).

- 18) No development shall commence in relation to each phase of development approved under condition 5, until a programme for the suppression of dust during the construction of the development has been submitted to and approved in writing by the local planning authority. The measures approved shall be employed throughout the period of construction.
- 19) There shall be no burning of any waste materials on site.
- 20) Prior to the commencement of development of each phase as agreed under condition 5 of this permission, an archaeological investigation of the phase shall be carried out in accordance with a specification submitted to and approved by in writing the local planning authority, including a Written Scheme of Investigation and Mitigation Statement. The investigation and mitigation works shall be carried out in accordance with the approved details.
- 21) No development shall commence in relation to each phase of development approved under condition 5 until a surface water drainage scheme for that phase, based on sustainable drainage principles, and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 1 in 100 plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- 22) Prior to the commencement of development of each phase as agreed under condition 5 of this permission, a scheme for the provision and management of a 5m buffer zone alongside the drain across the application land (if within the specific phase being pursued) shall be submitted to and agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The buffer zone scheme shall be kept free from built development.
- 23) Prior to the commencement of each phase of development as agreed under condition 5 of this permission, including soil moving, temporary access construction/widening, or storage of materials, a Biodiversity Mitigation Strategy shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place other than in complete accordance with the approved Biodiversity Mitigation Strategy. No habitat or other landscape features that are to be retained as part of the approved Biodiversity Mitigation Strategy shall be damaged, destroyed or removed without the prior written approval of the local planning authority, before practical completion of the development. If a habitat or other landscape feature is removed or damaged in

contravention of this agreement, a scheme of remedial action, with a timetable for implementation, shall be submitted to and approved in writing by the local planning authority within 28 days of the incident. The scheme of remedial action must be approved by the local planning authority before practical completion of the development and implemented in accordance with the approved timetable.

- 24) Prior to the commencement of each phase of development as agreed under condition 5 of this permission, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall include a detailed strategy for traffic management throughout the construction of phase of the relevant phase of development, which shall include construction routeing, including signage, site parking for contractors' vehicles, provisions to be made for delivery and construction vehicles turning on site, hours of deliveries, a Construction Phase Travel Plan (CPTP), and measures to ensure that mud and debris is not deposited on the public highway, or other local roads. Once approved the CTMP and CPTP shall be implemented in accordance with the approved details.
- 25) Prior to commencement of development of each phase as agreed under condition 5 of this permission, a scheme for external lighting and street lighting within that phase shall be submitted to and approved in writing by the local planning authority. External lighting and street lighting shall be provided on each phase, in accordance with the approved details.
- 26) The vehicular accesses shall be provided in accordance with the details shown on drawings ITB6028-GA-009 Rev C and ITB6028-GA-018 Rev B in accordance with an implementation programme first submitted to and approved in writing by the local planning authority.
- 27) No development shall take place until details of the shared footway/cycleway access on to Cufuade Lane from the northern extent of the site, including layout, construction, sight lines, as shown in principle on drawing ITB6028-SK-30-Rev A, and an implementation programme, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 28) Prior to the commencement of development of each phase as agreed under condition 5 of this permission, an Arboricultural Impact Assessment and Arboricultural Method Statement (drawn up to reflect the current British Standard BS 5837) in relation to any retained trees contained within the land subject to that phase, shall be submitted to and approved by in writing the local planning authority. Development shall be carried out in accordance with the approved details.

**End**



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

by Paul Griffiths BSc(Hons) BArch IHBC

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

Date: 8 July 2014

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**The Town and Country Planning Act 1990**

**Appeal by**

**Croudace Strategic Ltd**

**Against the failure of**

**Basingstoke & Deane Borough Council**

**To make a decision within the prescribed period on an application for  
outline planning permission**

Inquiry held between 08 April and 16 April 2014

Razor's Farm, Chineham, Basingstoke RG24 8LS

File Ref: APP/H1705/A/13/2205929

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**Appeal Ref: APP/H1705/A/13/2205929**  
**Razor's Farm, Chineham, Basingstoke RG24 8LS**

- The appeal is made by Croudace Strategic Ltd against the failure of Basingstoke & Deane Borough Council to make a decision within the prescribed period on an application for planning permission.
- The application Ref.BDB/77341 is dated 30 November 2012.
- The development proposed is a residential development comprising up to 425 dwellings (including up to 40% affordable homes), public open space (including children's play areas), associated landscaping, infrastructure, and the formation of 2 no. new vehicular accesses from Crockford Lane.

**Summary of Recommendation: The appeal be allowed and planning permission granted, subject to conditions.**

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**1. Procedural Matters**

- 1.1 The application was made in November 2012. The appeal was lodged on 24 September 2013 on the basis that the Council had failed to make a decision on the originating application within the prescribed period. After the appeal had been lodged, the Council proffered three putative reasons for refusal. These are set out in full in the Statement of Common Ground<sup>1</sup> but in very simple terms relate to the location of the site and its accessibility; the relationship of the site to adjoining noise-generating uses and the implications of that for the living conditions of prospective occupiers; and the lack of provision for community and infrastructure contributions.
- 1.2 The appeal was recovered for decision by the Secretary of State<sup>2</sup> in October 2013 because it involved proposals for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high-quality, sustainable, mixed, and inclusive communities.
- 1.3 The Inquiry opened on 8 April 2014 and also sat on 9 and, briefly, on 10 April 2014. The Inquiry was closed on 16 April 2014. By the time of the Inquiry, following negotiation, the Council had modified its position and sought only to contest the appeal on the basis of concerns about some aspects of the infrastructure contributions. Interested persons, some of whom are Members of the Council, raised more fundamental objections.
- 1.4 On 15 April 2014, I carried out an accompanied visit that took in the premises of Air Products Ltd, on the Hampshire International Business Park, the appeal site itself, and the existing Razor's Farm complex. I then carried out a series of unaccompanied visits and perambulations on foot, in accordance with an itinerary prepared and agreed by the main parties<sup>3</sup>.
- 1.5 At the Inquiry, the appellant made an application for costs against the Council<sup>4</sup>. This is the subject of an associated report and recommendation.

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<sup>1</sup> CD1/5 Section 5 (Referred to hereafter as the SoCG)

<sup>2</sup> Referred to hereafter as SoS

<sup>3</sup> ID/17

<sup>4</sup> ID/7, ID/24 and ID/25 refer to the exchanges

1.6 Throughout this report, I have referred to various documents by the use of footnotes. The use of [--] cross-refers to other paragraphs in the report.

## **2. The Proposal**

2.1 The originating application was made in outline, with all matters save for access, namely appearance, landscaping, layout and scale, reserved for future determination. As set out above, and in the SoCG<sup>5</sup>, the proposal is a residential development of up to 425 dwellings, with up to 40% of them affordable, public open space, including children's play areas, associated landscaping, and infrastructure. Two new accesses to the site are proposed, both from Crockford Lane. These are shown on detailed plans<sup>6</sup>.

2.2 There are also plans that give details of the location of the site, proposed land uses, and various parameters<sup>7</sup>. The SoCG<sup>8</sup> helpfully sets out the areas to be given over to the various elements of the proposal. Other plans<sup>9</sup> are to be treated as illustrative.

## **3. Site and Surroundings**

3.1 As set out in the SoCG<sup>10</sup>, the appeal site extends to around 20.46 Ha and lies to the north-east of Basingstoke, adjacent to Chineham. It lies to the north of the Hampshire International Business Park and Chineham Business Park, which are fed by Crockford Lane. To the east of the appeal site is the Basingstoke to Reading railway line. Further east, beyond the railway line, and Cufaude Lane, is the new development at Sherfield Park, also known as Taylor's Farm.

3.2 Much of the appeal site is given over to pasture and the fields are subdivided by substantial hedgerows. The complex of farm buildings known as Razor's Farm includes a series of listed buildings. Razor's Farmhouse dates from the 17<sup>th</sup> Century and is a Grade II listed building. The adjacent granary and two barns, thought to date from the 18<sup>th</sup> Century, are also Grade II listed buildings. Access to the complex is currently gained from Cufaude Lane via a track which crosses the railway line across a bridge. There is a public footpath that runs along the northern boundary of the appeal site and the course of a Roman Road crosses the appeal site.

## **4. Planning Policy**

4.1 The SoCG<sup>11</sup> sets out the prevailing planning policy position very fully. The development plan is made up of the saved policies of the Basingstoke & Deane Borough Council Local Plan 1996-2011, that was adopted in 2006<sup>12</sup>.

4.2 The appeal site does not lie within the settlement boundaries set out in LP Policy D5.

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<sup>5</sup> CD1/5

<sup>6</sup> CD2/7 and CD2/8 (Plans A and B)

<sup>7</sup> CD 2/3, CD2/5 and CD2/6

<sup>8</sup> CD1/5 Section 4.3

<sup>9</sup> For example the Masterplan (CD2/9) and the Landscape Strategy (CD2/10)

<sup>10</sup> CD1/5 Section 2.0

<sup>11</sup> CD1/5 Section 6.0

<sup>12</sup> CD6/1 (Referred to hereafter as LP)

- 4.3 LP Policy D6 limits residential development in the countryside to one-for-one replacements of existing dwellings, conversions of existing buildings in certain circumstances, or on sites that comply with the requirements of LP Policies D7, D8 or D9. These refer to dwellings essential for agriculture or forestry, rural exceptions, and rural brownfield sites.
- 4.4 LP Policy E1 deals with proposals for new development with reference to the need for high standards of design, the efficient use of land, respect for the amenities of neighbouring occupiers, and to avoid inappropriate traffic generation or problems in terms of highway safety. LP Policy E2 sets out that any proposal harmful to the setting of a listed building will not be permitted. LP Policy E4 deals with archaeology.
- 4.5 LP Policy C1 deals with what it terms Section 106 contributions. It says that development will only be permitted where there are, or will be, adequate infrastructure and community facilities. Where provision is inadequate, developers will be required to provide the infrastructure and community facilities necessary to allow the development to proceed. The Council will negotiate to secure planning obligations to ensure that such infrastructure and facilities are provided in time to meet the needs arising from development.
- 4.6 LP Policy C2 covers affordable housing and sets out that the Council will negotiate provision on all housing sites above certain thresholds. The level of affordable housing will vary but the intended starting point is 40%. Affordable housing will be secured through planning conditions or obligations.
- 4.7 LP Policy C7 refers to the protection, enhancement and replacement of existing leisure and community facilities of open spaces. It is permissive of proposals for the redevelopment or improvement of existing leisure and community facilities or public open space and private open space where the replacement or improved facilities will be at least equivalent and there will be no reduction in the overall capacity to accommodate demand; the Council accepts that there is no need for the existing facilities either now or in the future and a clear environmental justification can be made for an alternative use; the proposal will bring sufficient benefit to the community to outweigh the loss of the facility or open space; and development proposals will improve facilities ancillary to its use.
- 4.8 LP Policy C9 is concerned with new leisure facilities or open space. These will be permitted provided that they are in accordance with the current standards adopted by the Council, their proposed location and design is acceptable, and foreseeable adverse impacts on neighbouring land uses can be ameliorated or managed acceptably. Provision of on-site, or a contribution to provision off-site, of any new or enhanced leisure facilities or open spaces required to meet the reasonable needs of the incoming residents of housing developments, will be sought, unless there is a local surplus, on the basis of a rate of 2.8 Ha per 1,000 people.
- 4.9 According to LP Policy, A2, planning permission will only be granted for development with vehicular and pedestrian generation implications where cycling and walking facilities are integrated with the surrounding network and account is taken of the needs of public transport. Policy A3 says that proposals for schemes on the road network which are necessary to relieve congestion, improve road safety, or lead to environmental benefits, will be supported.

- 4.10 The Emerging Basingstoke and Deane Pre-Submission Local Plan 2011 to 2029 is a material consideration. In the emerging plan, the appeal site is included as a residential allocation through Policy SS3.3<sup>13</sup>.
- 4.11 This refers to several important aspects to be taken into account notably the need for high-quality design and layout that responds positively to the site, preserves the significance of the heritage assets affected, and addresses the potential isolation of the site from existing communities.
- 4.12 Requirements for measures to mitigate impact on the road network, boost travel by non-car modes, and ensure acceptable noise standards can be met without harming the business function of adjacent uses, are also highlighted. The importance of not restricting the possible future delivery of Chineham Railway Station is mentioned.
- 4.13 Obviously, the National Planning Policy Framework<sup>14</sup> is an important material consideration. The areas the parties believe to be particularly relevant are set out in the SoCG<sup>15</sup>. Of primary importance is paragraph 49. This says that housing applications should be considered in the context of the presumption in favour of sustainable development. 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.
- 4.14 This leads the decision-maker back to paragraph 14 which makes clear that at the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision-taking. It continues that for decision-taking this means<sup>16</sup> approving proposals that accord with the development plan without delay; and where the development plan is absent, silent, or relevant policies are out-of-date<sup>17</sup>, granting permission unless (i) and adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole; or (ii) specific policies in the Framework indicate that development should be restricted. Footnote 9 explains when those situations might come about.
- 4.15 Reference has also been made to various sections of the National Planning Practice Guidance<sup>18</sup>. I return to these below.
- 4.16 All agree that the proposals would have something of an impact on the setting of the complex of listed buildings at Razor's Farm. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>19</sup> requires the decision-maker, in considering whether to grant planning permission for development which affects a listed building, or its setting, to have special regard to desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

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<sup>13</sup> CD6/7 Page 37 (Referred to hereafter as DLP) and ID/14 and ID/15

<sup>14</sup> CD4/1 (Referred to hereafter as the Framework)

<sup>15</sup> CD1/5 Paragraphs 6.5 and 6.6

<sup>16</sup> Unless material considerations indicate otherwise

<sup>17</sup> I see no distinction between the phrases 'not up-to-date' and 'out-of-date'

<sup>18</sup> CD4/5 (Referred to hereafter as PPG)

<sup>19</sup> CD5/12 (Referred to hereafter as the Act)



- 4.17 In simple terms, the recent decision of the Court of Appeal in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137 posits that 'special regard' is synonymous with treating any harm caused to a listed building, or its setting, as a matter of 'considerable importance and weight'<sup>20</sup>.

## **5. The Case for the Council**

- 5.1 The Council's case is fully set out in their Opening and Closing Statements to the Inquiry<sup>21</sup>. Given the agreed situation in terms of housing land supply, reflected in recent appeal decisions<sup>22</sup>, provided the agreed conditions are imposed, and the Agreement under S.106<sup>23</sup> is accepted in the form submitted, outline planning permission can be granted for the proposed development.
- 5.2 In the light of the application for costs made by the appellant, the Council seeks to emphasise that its final position on the planning merits of the case adopted at the Inquiry, must be seen in the light of, amongst other things, the mitigation measures in the Agreement under S.106 and the agreed conditions, those dealing with noise especially. The Council remains of the view that the proposal, as it stood when the decision was made by the appellant to lodge the appeal against non-determination, was unacceptable in relation to the development plan, and the Framework.
- 5.3 In terms of the Agreement under S.106, three of the clauses<sup>24</sup> will not be operative if the decision-maker determines that they do not satisfy the requirements of Regulation 122 of the CIL Regulations<sup>25</sup>. The Council is of the view that these clauses comply with these requirements and this forms the body of their case as presented to the Inquiry. If the SoS disagrees with that, then the reasons behind such a conclusion might mean that reversion to the parties to secure a revised obligation is necessary, in the interests of fairness.
- 5.4 If the view is taken that the contribution(s) at issue within one or more of the relevant clauses is not necessary to make the development acceptable in planning terms, the Council accepts that this should not stand in the way of a grant of planning permission. If the view is taken that the specific contribution at issue is something which is necessary to make the development acceptable in planning terms, but, contrary to the Council's case, is not found to be directly related to the development, the Council again accepts that planning permission could properly be granted.
- 5.5 However, if a conclusion is reached that one or more of the contributions at issue meets those tests but, contrary to the Council's position, is not found to be fairly and reasonably related in scale and kind to the development, the Council suggests that it would not be appropriate to determine the appeal until the main parties had been given the opportunity to address what might be found to be reasonably related in scale and kind to the development.

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<sup>20</sup> CD10/6

<sup>21</sup> ID/2 and ID/21

<sup>22</sup> CD10/1 and 10/2

<sup>23</sup> ID/26

<sup>24</sup> ID/26 Clauses 14, 15 and 16

<sup>25</sup> The Community Infrastructure Levy Regulations 2010

- 5.6 This could take place through further negotiation and a revised Agreement under S.106. If such an Agreement was not forthcoming, planning permission should not be granted because a contribution necessary to make the development acceptable in planning terms would not be brought forward.

### *Open Space*

- 5.7 The first of the disputed areas concerns the provision of open space and, specifically the amount to be provided on-site or off-site through a financial contribution. Clauses 14 and 15 of the Agreement under S.106 deal with the issue. There is no disagreement about Clause 14 itself and whether it complies with the relevant tests. Clause 14 is only contentious in terms of the definition of 'open space' to be provided<sup>26</sup> in the reference to a maximum provision of 6.63 hectares and because it acts as the mechanism for the delivery of the 'open space balance'<sup>27</sup> which the appellant may choose to provide on-site.
- 5.8 The appellant disputes that open space (in the multi-functional green space category) should be provided at a rate of 65 square metres per person. It can be calculated, using the number of dwellings proposed, their average occupancy, and the minimum provision set out of 5.91 ha, that the appellant is content to accept 57.94 square metres per person. The difference is, therefore, very narrow.
- 5.9 There can be no dispute that adequate provision of open space for a residential development is necessary to make it acceptable in planning terms. The only issue is the amount that is required to be fairly and reasonably related in scale to the development proposed.
- 5.10 Paragraph 73 of the Framework sets out that 'access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreation facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required'.
- 5.11 LP Policy C9 requires the provision of open space to meet the reasonable needs of residents. In March 2013, the Council adopted as interim standards for multi-functional green space an absolute minimum requirement of 20 square metres per person and an expected quantity standard of 65 square metres per person. This standard was derived from a survey of existing levels of provision relative to population in the wards that make up the built-up area of Basingstoke (as reported in the 2009 Leisure & Recreational Needs Assessment<sup>28</sup>). The data revealed a range across the wards and 65 square metres per person was the average. Within Chineham Ward, the ward closest to the appeal site, the existing level of provision was 72 square metres per person which, in part, reflects its more suburban location.

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<sup>26</sup> ID/26 Clause 14.4 refers

<sup>27</sup> ID/26 Clause 15.1.1.1

<sup>28</sup> CD6/12 Page 138 Column 3 of Table

- 5.12 The reasonable open space needs of the residents of the proposal should take account of the amount of open space enjoyed by existing residents of the area. While there might be an argument for suggesting that provision should reflect the quantum available already in Chineham, the Council's standard uses the less onerous average for the built up area as a whole. That existing residents of Chineham have an above average amount of open space available does not create some form of surplus that the appeal proposal can draw on to reduce its own level of provision because the existing level of provision in Chineham contributes to the average across the built-up area. Only if new development provides open space at that average rate will existing levels be maintained. If the development is allowed to provide open space at a level below what Chineham currently provides, this will have a knock-on effect for existing residents too.
- 5.13 The appellant makes the point that 65 square metres per person is expressed as an 'interim standard' and that it has yet to be incorporated into any development plan document. Moreover, there is an unresolved objection to the standards as expressed in Appendix 4 of the Pre-Submission Local Plan<sup>29</sup>. However, the Council relies on the evidence base<sup>30</sup> which supports the 65 square metres per person standard, as does the adoption of that by the Council's Interim Green Space Standards<sup>31</sup> after a process of extensive consultation. Whilst the Council agrees that the Interim Green Space Standards cannot carry the weight of a development plan document, they are nonetheless evidence based and up-to date. There is no alternative assessment of an appropriate level of multi-functional green space that can claim the same credibility.
- 5.14 The appellant has also alluded to the fact that the standard is higher than the old NPFA<sup>32</sup> standards and that it is at the very upper end of what might be required by other authorities. However, the emphasis in paragraph 73 of the Framework is in the production of up-to-date, locally-derived standards that are evidence based. That is what the Council relies upon.
- 5.15 Whilst the standard does have as an absolute minimum a lower level of 20 square metres per person, there is no justification for using that measure here. The appeal site is predominantly an undeveloped site on the edge of the built-up area. The appellant has already shown that provision at around 58 square metres per person is achievable. There has been no attempt to demonstrate that any constraints on the site, like the nature conservation areas, would prevent the provision of open space at the Council's standard rate of 65 square metres per person.
- 5.16 In any event, the Agreement under S.106 allows the appellant to elect for a financial contribution to improve off-site open space if it so wishes. If the appellant prefers to provide no more than the agreed minimum on site, it has that choice. Thus, there is no question of the appellant being unable to make adequate provision for the open space needs of the development because of on-site constraints.

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<sup>29</sup> CD6/7

<sup>30</sup> CD6/12

<sup>31</sup> CD6/14

<sup>32</sup> National Playing Fields Association

- 5.17 On that overall basis, the Council says that the open space requirements of the Agreement under S.106 comply with the tests of Regulation 122.

#### *Playing Fields/Sports Provision*

- 5.18 The differences between the parties on this issue have narrowed. The concerns now seems to encompass the method by which the financial contribution towards off-site provision has been calculated; whether the scale of that financial contribution fairly and reasonably relates in scale and kind to the development; and the delivery of off-site provision.
- 5.19 The policy position rests on LP Policy C9 and paragraph 73 of the Framework. There can be no doubt that residents of the proposal will require access to sports facilities. Traditionally these would take the form of playing fields but more recently, much sports provision has been in the form of ATPs<sup>33</sup>. The financial contribution sought is intended to fund the provision of ATPs and related improvements at the Down Grange recreational facility<sup>34</sup>.
- 5.20 It appears not to be in dispute that adequate sports provision is necessary to make the proposal acceptable in planning terms. Nor is it disputed that given their proximity to the appeal site, improved facilities at Down Grange would be directly related to the development. The issue raised by the appellant relates in the main to the third element of the tests imposed by the CIL Regulations namely whether the level of the contribution sought is reasonable.
- 5.21 The obligation sets out rates per dwelling type<sup>35</sup> which can be applied when the mix becomes apparent at reserved matters stage. Using a population of 1020 persons<sup>36</sup> and a multiplier of 1 ha per 1,000 persons, or 10 square metres per person<sup>37</sup>, the required contribution is likely to be in the region of £250,000<sup>38</sup>. The criticism that the rates per dwelling type in Schedule 1 assume a higher multiplier than that referred to in the Council's relevant Proof of Evidence<sup>39</sup> is misplaced. The proof had unfortunately referred to the multiplier for 2012/13 but there is no sound planning reason why a proposal being assessed in 2014 should not use the up-to-date multiplier.
- 5.22 The suggestion that the improvement schemes at Down Grange are not fully defined and costed is wrong. The contribution will be payable to the Council which will be responsible for using it as intended and will be under an obligation in the S.106 Agreement<sup>40</sup> to return any unused money at the end of the specified period. The tests imposed by the CIL regulations do not require the matters to be set out in any more detail provided that the scope of the potential works can be seen to meet those tests<sup>41</sup>.

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<sup>33</sup> Artificial Turf Pitches

<sup>34</sup> CD1/21 Appendix 6 (Council e-mail of 28 03 14)

<sup>35</sup> ID/26 Schedule 1

<sup>36</sup> Calculated by applying an average of 2.4 persons per dwelling to the 425 dwellings proposed

<sup>37</sup> CD1/21 Appendix 8 Paragraph 1.36

<sup>38</sup> Using the 2013/14 multiplier of £252.10 per person

<sup>39</sup> CD1/10 Appendix 2 Paragraph 6.1

<sup>40</sup> ID/26 Clause 23

<sup>41</sup> ID/20 R on the application of Trashorfield Ltd v Bristol City Council & others [2014] EWHC 757 (Admin) at paragraphs 62-66

- 5.23 So here, the issue is whether the development would be unacceptable without adequate sports provision and if so, whether mitigation of that impact would be achieved by improvements to the facilities at Down Grange. The evidence shows clearly that these tests would be met. Further detail is not required at this stage.
- 5.24 The final criticism raised by the appellant is that the contribution sought was disproportionate because other developments in the area would also benefit from the provision at Down Grange and the overall scale of development in the plan area makes it unreasonable for this development to contribute about 25% of the overall costs. The 25% figure relates to the costs of ATP provision (about £1 million) but as Clause 15 of the Agreement under S.106 indicates, wider improvements are also proposed and the total costs are closer to £2 million<sup>42</sup> so the proportion could be no more than about 12.5%.
- 5.25 In any event, the other developments will give rise to their own recreational needs and Down Grange will not meet the needs of all of the new housing developments across the Council area in the plan period. Some sites will also be large enough to make on-site provision possible. The exercise attempted by the appellant to show that the contribution sought is disproportionate is invalid. The rationale for the scale of the contribution sought is derived from the size of the potential population of the development proposed and the same approach will be adopted for other developments. There is, therefore, nothing disproportionate about it and as such the contribution sought in respect of playing fields/sports provision is CIL compliant.

#### *Public Art*

- 5.26 The appellant has taken an adventitious approach having not previously raised any issue about the contribution sought. The appellant relies on the passage in the PPG<sup>43</sup> which states that 'Planning obligations should not be sought – on for instance, public art – which are clearly not necessary to make a development acceptable in planning terms'.
- 5.27 This is not a statement that public art can never be necessary to make a development acceptable in planning terms. It is no more than an example. There may well be cases where public art is clearly not necessary to make a particular development acceptable. However, there will be occasions where public art is required to ensure that a development achieves the design objectives of both national and local policy. The need for good design is emphasised in the Framework<sup>44</sup> and the role of public art in achieving those objectives is clearly recognised in the PPG with its references to well designed places and successful public spaces<sup>45</sup> and the elaboration that public art and sculpture can play an important role in making interesting and exciting places that people enjoy using<sup>46</sup>. It would be surprising if this advice related to the provision of something that could never be required to make a development acceptable in planning terms.

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<sup>42</sup> CD1/21 Appendix 6

<sup>43</sup> ID23b-004

<sup>44</sup> Paragraphs 56-66

<sup>45</sup> ID26-015

<sup>46</sup> ID26-018

- 5.28 The real issue is not whether public art is ever necessary but whether it is necessary to make the particular development proposed acceptable in planning terms. The context is the creation of a wholly new-built environment on a large scale in place of open fields and the establishment of new areas of public realm, particularly in the vicinity of the listed buildings.
- 5.29 Public art can take many forms and it would not be acceptable for the proposal to contain nothing of this sort. Ensuring express provision through the Agreement under S.106 is directly related to the development and the relatively modest scale of the contribution sought<sup>47</sup> is clearly not disproportionate in terms of a development of the scale proposed. It is the Council's view that the public art contribution sought is CIL compliant.

#### *Heritage Matters*

- 5.30 Given the need for decision makers to correctly address heritage matters in the light of the Barnwell Manor decision<sup>48</sup> and Section 66(1) of the Act<sup>49</sup>, and at the specific behest of the Inspector, the Council makes several brief points. Firstly, it assesses that the detrimental impact of the development on the setting of Razor's Farm will cause substantial harm to the significance of the listed buildings affected.
- 5.31 However, that harm has been minimised as far as possible by the open space that would be retained around the buildings and the measures set out in the Agreement under S.106<sup>50</sup>. To the extent that there would be substantial harm, it is necessary to inflict that in order to achieve the considerable public benefit of delivering housing, both open-market and affordable, on the site, in an area where there is an identified shortfall in supply.
- 5.32 The Council considers that even if considerable importance and weight is attached to the desirability of preserving the settings of the listed buildings, that objective is decisively outweighed by the public benefits that will be provided through the development.

#### *Conclusion*

- 5.33 The Council accepts that the proposal has evolved to a stage where planning permission could and should be granted, subject to the agreed conditions<sup>51</sup> and, assuming the SoS agrees with the Council that there is compliance with the CIL Regulations, the provisions of the Agreement under S.106<sup>52</sup>.
- 5.34 If the SoS takes a different view on whether the contributions in the obligation comply with the CIL Regulations, the appropriate course would be to invite the Council and the appellant to address the matter further, through a revised Agreement under S.106. Only then should outline planning permission be granted for the development proposed.

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<sup>47</sup> £10,000

<sup>48</sup> CD10/6

<sup>49</sup> CD5/12

<sup>50</sup> ID/26 Clause 21

<sup>51</sup> ID/18

<sup>52</sup> ID/26

## 6. The Case for the Appellant

- 6.1 The case for the appellant is set out in the opening and closing statements to the Inquiry<sup>53</sup> but can be broken down under a series of headings.

*Whether the proposal benefits from the presumption in favour of sustainable development?*

- 6.2 At the time when the originating application was lodged, the Council could not demonstrate a 5 year supply of deliverable housing sites. As the then Annual Monitoring Report<sup>54</sup> made clear, this is irrespective of whether the figure used for the overall requirement was the derived from the South East Regional Plan (945 dwellings per annum), the current locally derived figure (594 dpa), or the proposed locally derived figure (770 dpa).
- 6.3 When the originating application was recommended for approval by Officers, that was still the position<sup>55</sup> with the Officer reporting that using the local housing requirement figure endorsed by the Council's Cabinet in June 2013 (748 dpa), the so-called Liverpool approach, and a 5% buffer over the period 2013/14 to 2017/18, there was only 3.8 years of supply based upon 1 April 2013 figures<sup>56</sup>.
- 6.4 As the Officer correctly reported, the Framework states that if a Council cannot demonstrate a 5 year supply of deliverable housing sites, then planning applications should be considered favourably having regard to the policies of the Framework, considered as a whole<sup>57</sup>. This is because, in the absence of a 5 year supply of deliverable housing sites, the relevant policies for the supply of housing cannot be considered up-to-date and accordingly the presumption in favour of sustainable development applies<sup>58</sup>. This is consistent with recent appeal decisions in the area<sup>59</sup>.
- 6.5 As recorded in the SoCG, the situation in terms of housing land supply persists and it is agreed that there is a significant and serious shortfall of housing when tested against the Council's proposed housing target<sup>60</sup>.
- 6.6 The evidence proffered by the appellant sets out that using the figure of 748 dpa endorsed by the Council, but adopting the Sedgefield approach, and a 5% buffer, there is a 3.65 year supply<sup>61</sup>. This approach better reflects the objectives of the Framework and has been endorsed by many Inspectors, and the SoS<sup>62</sup>. Moreover, it is clear that this approach is consistent with advice in the PPG where local planning authorities are advised to aim to deal with any under-supply within the first five years<sup>63</sup>.

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<sup>53</sup> ID/6 and ID/23

<sup>54</sup> CD2/11 Paragraph 4.80

<sup>55</sup> CD3/1 Pages 36-37

<sup>56</sup> CD3/1 Page 36 4<sup>th</sup> Un-numbered paragraph

<sup>57</sup> CD4/1 Paragraphs 49 and 14

<sup>58</sup> CD4/1 Paragraph 49

<sup>59</sup> CD10/1 and 10/2

<sup>60</sup> CD1/5 Paragraph 7.7

<sup>61</sup> CD1/11 Page 7 Table 2

<sup>62</sup> CD1/11 Paragraph 2.9 and the appendices referenced therein

<sup>63</sup> ID3-035

- 6.7 Using the 807 dpa figure recently recommended by Officers as a better reflection of the objectively assessed housing need, as called for by the Framework, the supply drops to 3.22 years. In fact, taking the 2011 interim household projections<sup>64</sup>, as the PPG would prefer as a starting point<sup>65</sup>, the annual requirement would be 990 dpa<sup>66</sup> which would make the supply position even more parlous.
- 6.8 Against this background, it is plain that the presumption in favour of sustainable development applies. As specified in paragraph 14 of the Framework, planning permission should be granted unless the adverse impacts of so doing significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework considered as a whole.
- 6.9 It should be noted that not one of the Council Members who addressed the Inquiry made any reference to the Borough's serious housing shortfall or the implications of that in the light of the presumption in favour of sustainable development set out in the Framework.
- 6.10 None framed their submissions in a way that acknowledged the policy approach demanded by the Framework nor did any highlight the fact that the Council continues to promote the site as an allocation in their emerging LP. This is despite having all that plainly spelled out in the Officers' report<sup>67</sup>. Almost all of them adopted an in-principle objection to housing on the appeal site with, at times, confused and contrary views.
- 6.11 The benefits of the proposal are obvious and include the provision of up to 425 new homes of which 170 would be affordable and 255 open market. This is against the backdrop of the agreed rising and substantial need for affordable housing in the Borough<sup>68</sup>. It is estimated that the proposal will generate a substantial number of construction jobs, but also a gross added value of £23 million generated by future residents and £3.25 million in New Homes Bonus.

*Will the proposals provide reasonable living conditions for occupiers having regard to nearby noise generating uses?*

- 6.12 Despite the 'in principle' assertion in the relevant putative reason for refusal, both the Environmental Health Officer<sup>69</sup> and Acoustics 24<sup>70</sup> have advised the Council that, in principle, this is a matter that could be dealt with through a condition aimed at securing appropriate design measures at the reserved matters stage.
- 6.13 This 'in principle' objection is entirely inconsistent with the repeated identification of the appeal site as a strategic housing allocation in DLP Policy SS3.3. Whilst both main parties agree that limited weight can be attached to the emerging LP since it has yet to be examined, it is notable that in every version the appeal site has been allocated for housing.

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<sup>64</sup> ID/13

<sup>65</sup> ID3-030

<sup>66</sup> ID/13 refers

<sup>67</sup> CD3/1

<sup>68</sup> CD1/5 Paragraph 7.17

<sup>69</sup> CD3/1 Pages 18 and 22 and suggested condition 12 on page 74

<sup>70</sup> CD1/8 Page 5 Paragraph 9



- 6.14 There is no good reason to suppose that this situation might change. In all versions of DLP Policy SS3.3, criterion (m) has recognised noise as a factor to be taken into account. Moreover, the recent employment land review does not suggest a need for additional land to be identified at the adjoining business parks<sup>71</sup>.
- 6.15 Against that background, the only concern in the minds of the Council when they resolved that had they the power to do so, they would have refused planning permission for the proposal, was the impact of noise from Air Products Ltd. Attempts to suggest that it also took into account noise from helicopters, and Chinooks from the nearby training base at RAF Odiham in particular, seemed to be an ill-conceived attempt at post-rationalisation.
- 6.16 In any event, the noise surveys undertaken by Cole Jarman in the Addendum Report R2, prior to determination<sup>72</sup>, noted helicopter noise so it is not something that has been overlooked or ignored. Again to suggest that the Council should not be promoting sites for much-needed housing development on account of RAF Odiham is clearly at odds with the approach of the DLP which promotes not only the appeal site but also Upper Cufaude, the site to the immediate north of it<sup>73</sup>.
- 6.17 Proposed condition 12<sup>74</sup> is designed to deal with noise from rail and road and envisages maximum internal noise levels that accord with the 'desirable' ambient noise levels for dwellings set out in Table 4 of BS8233:2014<sup>75</sup>. Condition 13 proposes that at every phase a scheme designed to mitigate noise for the Air Products Ltd premises as recorded in the noise survey data included in both the R2 and R3 Cole Jarman reports.
- 6.18 While Air Products Ltd maintains an in principle objection to the housing proposed, they have produced no expert noise evidence even though they have ready access to expert advice. It is no part of their case to suggest that Acoustics 24 have wrongly advised the Council.
- 6.19 They suggest that, in time, complaints might come and although they refer to unspecified occasions when such complaints have led to them moving away from established premises, have consistently failed to produce evidence of that. Complaints are very unlikely to arise due to the noise conditions that would be applied to any grant of planning permission.

*Whether the proposals make adequate provision for infrastructure?*

- 6.20 In terms of affordable housing, Clause 18 of the Agreement under S.106 secures this in full compliance with LP Policy C2<sup>76</sup>. The education contribution toward primary school places<sup>77</sup> is secured by Clause 13.5 in compliance with LP Policy C1<sup>78</sup>.

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<sup>71</sup> CD1/11 Paragraph 3.72

<sup>72</sup> Paragraph 3.2.1 of both CD2/37 and the later corrected CD9/5

<sup>73</sup> CD7/11 Page 54 Policy SS3.8

<sup>74</sup> ID/18

<sup>75</sup> CD5/3 Page 24

<sup>76</sup> ID/26 CD6/1 Page 65

<sup>77</sup> At Great Binfields, not as Cllr Biermann suggested Four Lanes

<sup>78</sup> ID/26 CD1/10 Appendix 8 Paragraph 9.5

- 6.21 The effect of Clause 13.4 of the Obligation is that the developer will deliver two Real Time Information ready bus shelter and bus stop poles with information panels within the site, two bus stop poles/flags within Hampshire International Business Park, changes to flag poles or new bus stops at Chineham Business Park, and two bus stop/flag poles on Crockford Lane, at the Trading Estate.
- 6.22 All this is to be provided prior to the operation of Phase 1<sup>79</sup> of the bus service which itself is to start for a period of 12 months commencing no later than 12 months after first occupation at the development. The Phase 1 bus service is intended to be half-hourly from 0600-1030 and 1600-2100 hours to serve the site and Basingstoke Railway Station along the specified route<sup>80</sup> embracing the adjoining employment areas together with Basing View. The service increase throughout the day at the same frequency for the subsequent Phase 2 over the following four year period.
- 6.23 Thus, for five years after first occupation of dwellings at the appeal site, the developer funds a bus service on a 30 minute frequency which has the potential to be of benefit not just to residents of the proposal, but also to others living and/or working along, or close to, the route.
- 6.24 The bus map<sup>81</sup> illustrates the dearth of public transport provision in this part of the town which can be overcome if the development is permitted to come forward. Sustainable transport solutions would be maximised in accordance with paragraphs 20 and 34 of the Framework and a pattern of development which facilitates the use of sustainable transport measures and the provision of viable infrastructure necessary to support sustainable development in accordance with paragraphs 30 and 31.
- 6.25 There can be no doubt that the opportunities for sustainable transport have been taken up and secured through the Obligation.
- 6.26 This level of provision has been identified by the appellant in discussion with Stagecoach who considers that 'meeting the commuter market is important' and who 'can see great potential for the future bus service' which 'has the makings of being sustainable'<sup>82</sup>.
- 6.27 Based on the viability calculations, both the appellant's and the Council's experts consider there to be a reasonable prospect that this service will continue beyond the initial 5 year period<sup>83</sup>. Plainly, therefore, the proposals make more than adequate provision for buses.
- 6.28 Councillor Biermann was, initially at least, under the mistaken impression that the bus service requires a £300,000 subsidy from Hampshire County Council which he doubted would be forthcoming or, if it was, sustained. His evidence merely served to add strength to the benefits that the bus service, procured by the developer at no direct cost to HCC would bring. It is agreed that a sum of £300,000 can be offset against the total transport contribution sought by HCC.

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<sup>79</sup> ID/26 Definition on Page 11

<sup>80</sup> CD1/20 Appendix D Page 16

<sup>81</sup> CD1/14 Appendix 17

<sup>82</sup> CD1/20 Appendix C Page 13 (31 March 2014 e-mail)

<sup>83</sup> CD1/20 Appendix F

- 6.29 In terms of pedestrian facilities, priority has been given to this through a number of pedestrian improvement works secured through Clause 13.2 of the Agreement under S.106 on routes along Crockford Lane, Lime Tree Way, and Hanmore Road. It is the latter improvements<sup>84</sup>, to the east of the railway line, which the appellant doubts the necessity of given the existing, planned, lit and adequate off-carriageway routes through Chineham. The total cost of £180,000 which is agreed, should again be deducted from the overall transport contribution.
- 6.30 In terms of offsite highway improvements, Clause 13.2 of the Obligation secures the delivery of an improvement scheme to the Crockford Lane/A33 roundabout to provide increased capacity. This scheme has been subjected to a Stage 1 Safety Audit and despite the doubts expressed by some, HCC as the Highway Authority, has undertaken and approved a Preliminary Design Check. The appellant's evidence<sup>85</sup> demonstrates that the additional capacity that will be secured which is very likely to act as a disincentive to those car drivers working in the adjoining business parks who are currently travelling over the railway line onto Cufaude Lane on the approach to this roundabout. The costs of this, in total, are estimated at £1.05 million of which it is agreed that 75% (or £750,000) can be offset from the total transport contribution.
- 6.31 As the Transport SoCG<sup>86</sup> confirms, the western primary and eastern secondary proposed priority junction accesses, which have both been subject to Stage 1 Safety Audits, are agreed to operate safely and within capacity, without queues or delay. At both accesses adequate provision is made for buses to enter and exit the site<sup>87</sup> and adequate provision is made for pedestrians and cyclists. It is agreed that these accesses would have sufficient capacity to accommodate traffic generated by any new housing that might come forward at Upper Cufaude Farm, proposed for allocation in the emerging Local Plan<sup>88</sup> thus ensuring that the scheme at issue here, will not prejudice delivery of that site. The new accesses would cause no difficulties for any future scheme for Chineham Railway Station. A further pedestrian and cycle link, and emergency access is to be provided in the north-east of Razor's Farm which will link into the northern part of Sherfield Park.
- 6.32 Clause 13.3 of the Agreement under S.106 secures a Framework Travel Plan which is aimed at supporting a range of sustainable travel modes. The Transport SoCG records that the measures therein are acceptable. These would include sustainable travel vouchers, marketing the bus service beyond the site, monitoring traffic along Cufaude Lane, promoting car sharing, and setting targets for reducing single occupancy journeys. The Obligation includes a fee for approving the Travel Plan, monitoring costs of £15,000, and a bond in the sum of £152,000<sup>89</sup> which is based on the cost of measures outlined in the plan. This sum is to be offset against the total transport contribution<sup>90</sup>.

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<sup>84</sup> SK32 and SK28 show two desirable but unnecessary improvements

<sup>85</sup> CD1/13 Table 5.2 and Table 5.4 on Pages 62-63 and the plan at MCG5

<sup>86</sup> CD1/14 Section 3.1 of MCG2

<sup>87</sup> CD1/14 Section 3.3 of MCG2

<sup>88</sup> CD6/7 Policy SS3.8 at Page 41

<sup>89</sup> Framework Travel Plan Appendix E

<sup>90</sup> CD1/14 Transport SoCG Paragraph 6.2 MCG2

- 6.33 The Obligation secures a payment to Hampshire County Council of a £500,665 transport contribution based on a total of £1,882,665<sup>91</sup> less a total offset of £1,382,000<sup>92</sup>. This is payable in stages as per Clause 13.1 of the Obligation and the definition<sup>93</sup> makes clear that the money can be used to fund some or all identified improvements which relate to Chineham. These include improved pedestrian/cycle infrastructure and junction improvements to the A33/Great Binfields roundabout and the A33/Thiornhill crossroads junction improvement. The evidence indicates that the development will have an impact on those junctions albeit not one that requires the developer to secure specific improvements.
- 6.34 Open space is dealt with in Clause 14 of the Obligation<sup>94</sup>. The relevant reason for refusal refers to Saved Policy C7<sup>95</sup> which is directed towards proposals for redevelopment, replacement and improvement of existing leisure facilities. It is not engaged by this proposal. Saved Policy C9<sup>96</sup> calls for new open space to be sought on the basis of 2.8 Ha per 1,000 people and the proposals significantly exceed that standard.
- 6.35 Policy C1 seeks infrastructure 'where provision is inadequate'. However, since the specific provision in Saved Policy C9 is exceeded, and the development plan must be read as a whole, Saved Policy C1 cannot legitimately be used to extract yet more financial contributions from the developer. The on-site open space promulgated complies with the requirements of the development plan.
- 6.36 The proposals will secure a minimum of 5.91 Ha of open space including provision for allotments, and kick-about areas, plus a LEAP of 510 square metres<sup>97</sup> but excluding the land that forms the SINC. The 5.91 Ha is, through the reserved matters process, capable of providing accessible, high-quality open space which will be completed and managed<sup>98</sup>.
- 6.37 In that context, a financial contribution for off-site provision is not necessary in order to make the development acceptable. 5.91 Ha is 89% of the new open space quantity standards that the Council has decided to adopt, after the application was lodged. However, these standards have not been subject to examination, and paragraph 174 of the Framework advises that policy on local standards should be set out in the Local Plan.
- 6.38 This is reinforced in the PPG which says that policies for seeking obligations should be set out in a development plan document to enable fair and open testing of the policy at examination. Supplementary planning documents should not be used to add unnecessarily to the financial burdens on development and should not be used to set rates or charges which have not been established through development plan policy<sup>99</sup>.

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<sup>91</sup> CD1/10 Appendix 1 Paragraph 7.7

<sup>92</sup> CD1/26 Paragraph 4.8

<sup>93</sup> ID/26 Page 26

<sup>94</sup> ID/26 and see definition on Page 22

<sup>95</sup> CD6/1 Page 72

<sup>96</sup> CD6/1 Page 75

<sup>97</sup> ID/26 Definition of Open Space Page 22

<sup>98</sup> ID/26 Definition of Open Space Management Plan on Page 22

<sup>99</sup> ID23b-003

- 6.39 Moreover, if as the parties accept<sup>100</sup> limited weight can be given to the DLP, the same must be said of the Council's Green Infrastructure Strategy<sup>101</sup>, and associated emerging policy.
- 6.40 In this case, the Council has sought to introduce new standards and tariffs not through the Local Plan process but well in advance of it through the decision of their Cabinet in March 2013. However, as that decision acknowledged, the standards will only become fully adopted once they have been subject to viability testing, sustainability appraisal, and examination<sup>102</sup>. These new standards provide both an absolute minimum standard (which the proposal easily exceeds) and a quantity standard<sup>103</sup>. However, the report to Cabinet<sup>104</sup> described the expected quantity standard as the starting point as distinct from minimum standards. Moreover, these new standards represent a step change<sup>105</sup> and are higher than any other new town<sup>106</sup>.
- 6.41 Another weakness of this yet to be examined standard is just how little thought has been given to how it will operate on applications made in outline. Whilst the parameter plan for this proposal fixes a minimum open space figure, exclusive of the SINC, and the buffer around it, at the outset, it makes no allowance for additional accessible open space that is likely to come forward within each phase. While Clauses 15.1 to 15.3 of the Obligation<sup>107</sup> now seeks to ensure an open space balancing exercise takes place before occupation of the 378<sup>th</sup> dwelling, this is an unnecessary constraint.
- 6.42 If the SoS considers, contrary to the view of the appellant, that a specific sum must be collected on account of any deficit in the provision of the new quantitative standard, the next question are how much and where would it be spent<sup>108</sup>? A tariff approach is applied<sup>109</sup>. There are no schemes designed and costed to which the money could be applied. This contribution cannot be described as providing essential site-specific items to mitigate the impact of the development and as a result, it fails to comply with the CIL Regulations.
- 6.43 In terms of playing fields<sup>110</sup>, the developer has laid out new sports pitches close to the appeal site, as part of the Taylor's Farm development, and against that background have been keen to understand exactly why a playing field contribution is required. The Council's demands have varied but the Obligation now fixes any contribution to be spent towards improvements at Down Grange, including a second Astro turf pitch, an artificial rugby pitch improvements to the pavilion, and athletics facilities.

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<sup>100</sup> CD1/5 Paragraph 6.13

<sup>101</sup> CD6/14

<sup>102</sup> CD1/21 Appendix 11 Paragraph 3.15 of Cabinet Report

<sup>103</sup> CD1/21 Appendix 10 Page 37

<sup>104</sup> CD1/21 Appendix 9 Page 2 of 25 (iii)

<sup>105</sup> From 2.8 Ha per 1,000 to 8 Ha per 1,000 population

<sup>106</sup> CD1/21 Appendix 9 Page 25 of 25

<sup>107</sup> ID/26

<sup>108</sup> ID/26 Clause 15.3.1 identifies three areas

<sup>109</sup> ID/26 Schedule 2 of the Obligation defines the Open Space Contribution

<sup>110</sup> ID/26 Clause 15.4 of the Obligation calculated in accordance with Schedule 1

- 6.44 There are no costed schemes for any of these improvements which the Council can point to. There is no explanation of what proportion of these un-costed improvements should be borne by the appeal scheme. This contribution has not been demonstrated to be necessary or directly relevant to the proposed development. The playing fields contribution does not accord with the terms of the CIL Regulations.
- 6.45 In response, the Council has referred to a recent High Court decision<sup>111</sup>. Ground 1 of the claim related to an alleged misunderstanding of the retail impact of the proposal. Ground 2 related to the Obligation under S.106 which had included measures to mitigate the retail impact.
- 6.46 The allegation was that members had resolved to grant planning permission only in the face of specified measures to mitigate impact but that the Obligation under S.106 had not contained specific measures because all the development in that case had done was to commit to payment of an overall sum of money.
- 6.47 It is noteworthy that the judge made the point that planning cases are always fact specific when distinguishing another High Court case<sup>112</sup> involving the mitigation of retail impact. Moreover, it is clear that the applicant had identified some indicative measures<sup>113</sup> which were before the members but they had not been subject to public consultation. Rather than commit to them, the Obligation committed only to pay money to the Council in the sum identified, by reference to them.
- 6.48 The Council's claim for a playing fields contribution is different because they have not identified any deficit in provision in Chineham, or any undue pressure on playing fields elsewhere nor is it tied to any development plan policy. Saved Policy C9 has no application.
- 6.49 Even if a need is identified, the quantum is not directly related in scale and kind. The tariff applied takes account of every prospective resident but there is no allowance for those who will place no call on the facilities – it is acknowledged that only 50% of the population is engaged in active sport.
- 6.50 In terms of the contribution sought for Public Art, the PPG makes specific reference to this matter<sup>114</sup>. It is clearly not necessary to make the development acceptable in planning terms.
- 6.51 The design of the development and landscaping will be dealt with through reserved matters and it is going too far to say that without £10k spent on public art it will be unacceptable. This is especially so when one considers the quality of what the developer has achieved at Taylor's Farm.
- 6.52 To sum up, the SoS is invited to conclude that adequate infrastructure necessary to allow the development to proceed is secured by the proposal.

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<sup>111</sup> ID/20 R on the application of Trashorfield Ltd v Bristol CC & Others [2014] EWHC 757 (Admin) Paragraphs 62, 64, and 65

<sup>112</sup> ID/20 Paragraph 67

<sup>113</sup> ID/20 Paragraph 62

<sup>114</sup> ID23b-004

### *Heritage Matters*

- 6.53 The last occupiers of the buildings at Razor's Farm were not connected with farming<sup>115</sup>. In that sense, irrespective of the outcome of the appeal, new uses have already begun in the former barns and outbuildings. This scheme offers an opportunity to move away from car repairs and similar uses, arrest the decline of the listed buildings, and secure more sympathetic re-use.
- 6.54 Given the investment the developer would make in the site, if outline planning permission for the scheme was forthcoming, there is every incentive for them to ensure the listed buildings are given new life and the potential of the assets maximised so as to add value to the scheme overall. The fact that the developer recognises this as a specialist area outside their realm of expertise does not mean that this will not be achieved.
- 6.55 There are no guarantees but nor could there sensibly be at this stage. The SoS is not faced with an application for change of use but again, in advance of securing permission for housing, such a proposal could not sensibly be advanced nor could any effective marketing take place.
- 6.56 Thus the Agreement under S.106<sup>116</sup> ensures that no development can take place until a schedule of works to make the listed buildings weather-tight and structurally sound together with a programme for implementation of those works has been prepared submitted and approved. This is an advantage which needs to be weighed in the balance. It takes account of the positive contribution that conservation of these listed buildings can make to the sustainable community that would be formed at Razor's Farm.
- 6.57 The land use plan<sup>117</sup> identifies 0.53 Ha of the existing farmstead retained, 0.77 Ha of the POS to be laid out around the listed buildings and additional structural open space all around them. This, together with the less dense farmyard edge character area has been part of a deliberate strategy to minimise so far as possible and conflict with the setting of the listed buildings and to conserve them in a manner appropriate to their significance.
- 6.58 The SoS is invited to conclude that there would be no more than limited harm caused to the setting, and thereby the significance of the listed buildings as a result of the proposal and the development would offer a valuable opportunity to secure conservation and re-use of the listed buildings.
- 6.59 Of course, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>118</sup> imposes a duty on the decision-maker to pay special regard to the desirability of preserving the setting of the listed buildings.
- 6.60 If harm to the setting is found, the recent decision of the Court of Appeal in the Barnwell Manor case<sup>119</sup> means that it must be considered a matter of considerable importance and weight.

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<sup>115</sup> As confirmed by Mr Edwards in chief

<sup>116</sup> Clause 21 Page 57

<sup>117</sup> CSa/1900/109 Revision F

<sup>118</sup> CD5/12

<sup>119</sup> CD10/6

- 6.61 The Council's report to Committee records the Conservation Officer's view that there would be some harm caused, that more open space should be provided around the complex and the distribution road moved north, into the SINC tree belt<sup>120</sup>.
- 6.62 Although the Conservation Officer originally recommended refusal because of what he saw as significant harm being caused<sup>121</sup>, and in May 2013 is still recorded as holding that view, the Case Officer recommended, on balance, that planning permission should be granted for the proposal because of the severe housing supply situation.
- 6.63 The SoCG<sup>122</sup> records that the Council has no objection on heritage grounds.

### *Conclusion*

- 6.64 The presumption in favour of sustainable development is engaged and considerable weight should be afforded to the provision of up to 425 houses in a sustainable location, adjacent to employment, all the services Chineham has to offer, and within an easy bus ride of the town centre with access to more jobs and services and leisure opportunities and a main line railway station. The proposal will provide further choice and quality homes in an area where they are badly needed.
- 6.65 The noise issue is capable of being dealt with by condition and will cause no material adverse impacts, notwithstanding the appellant's misgivings about aspects of their requirements, provision for all the infrastructure believed necessary by the Council is secure, and the new bus service will provide benefits to those already living and working in the area. The development will bring forward general economic growth and further advantages to the Council in the shape of the New Homes Bonus.
- 6.66 The only one impact that the developer cannot offset entirely is the effect on the setting of the listed buildings. Even if considerable weight and importance is given to that, in the appellant's view, limited impact, it is clear that it is significantly and demonstrably outweighed by the benefits the proposal would bring forward.
- 6.67 On that basis, applying paragraph 14 of the Framework, the proposal benefits from the presumption in favour of sustainable development and outline planning permission should be granted for it.

## **7. Interested Persons**

- 7.1 **Dr Declan Weldon**, Global Director of Research and Development, Air Products Ltd<sup>123</sup> set out that the company occupies premises close to the appeal site. Activities at the facility on the Hampshire International Business Park include the storage and distribution, in cylinders, of gases for medical and industrial use. These operations are noisy but, at present, are unrestricted, allowing operation 24 hours a day, 7 days a week.

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<sup>120</sup> CD3/1 Page 59 of 81

<sup>121</sup> CD3/1 Page 18 of 81

<sup>122</sup> CD1/5 Paragraph 12.3

<sup>123</sup> Transcript at ID/8



- 7.2 There is a concern that development of the site for housing will adversely affect the established use of the Air Products Ltd facility and restrict future expansion. In simple terms, housing is not compatible with the Air Products Ltd operation and the provision of housing so close to other, similar facilities, elsewhere, has resulted in complaints and subsequent restrictions which would undermine viability and could lead to closure and relocation. This would be harmful in economic terms. The Framework is very clear about the importance the Government attaches to economic growth and allowing the appeal would put the provision of new housing ahead of jobs.
- 7.3 **Chris Tomblin**, Ward Councillor for Bramley and Sherfield and Chair of Chineham Parish Council<sup>124</sup> set out a range of concerns about the proposal notably the impact on the landscape, given that the site provides an important boundary to the urban area and is bounded by a public footpath, the effect on the setting of the listed buildings, the accessibility of the site given its location in relation to local services, and the provisions for infrastructure contributions, especially in terms of school places. It was suggested that the accesses proposed are unsuitable owing to existing levels of traffic at peak times on the adjacent business park and on the road network local to the appeal site and that there would be difficulties for Air Products Ltd, an established local employer because of noise. Residents of the proposal would also suffer from helicopter noise, notably from the RAF Chinooks flying out of RAF Odiham. For all those reasons, the proposal is contrary to the approach of the Framework and the site is unacceptable, in principle, for housing.
- 7.4 **David Thornton** of Chineham Parish Council argued that there is nothing in the proposal to mitigate the concerns of residents of Chineham. Much has been said of the allocation of the site in the DLP but this is fluid and contentious and may not happen. The proposal is premature and has become tangled up with the DLP process. It would be far more sensible to wait for the DLP to be adopted. In the meantime, the appeal site is outside any settlement boundary and so falls contrary to the LP.
- 7.5 The impact on Chineham is a major concern. The site is not in a sustainable location, the access is inadequate and it is remote from facilities. These facilities are already over-stretched. The proposal will generate a lot of traffic – whatever improvements are proposed to public transport, residents will use their cars. The routes they will use to access services and the main road network will be through Chineham and add to the already difficult traffic conditions<sup>125</sup>. There is no mitigation proposed that would alleviate this impact.
- 7.6 **Martin Biermann**, Ward Councillor for Chineham and a member of the Parish Council made a submission on the first day of the Inquiry but also made a closing submission on the final day. It is the relevant elements of the latter that I summarise here.
- 7.7 There was no in-principle objection to the development at Taylor’s Farm. That site is well-related to the existing settlement of Chineham. However, the appeal site is much more isolated because of Cufaude Lane and the railway line. The remedies put forward to mitigate that are unsatisfactory.

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<sup>124</sup> Transcript at ID 9

<sup>125</sup> ID/10 gives details of the Parish Council’s counts

- 7.8 In particular, it is very doubtful that the bus service will persist after the funding secured by the Agreement under S.106 finishes. It will not be viable in the longer term because 425 houses on the appeal site will not be enough to sustain it and the County Council will not be able to afford to subsidise it<sup>126</sup>.
- 7.9 Residents of the development will be using the car and travel through Taylor's Farm and Chineham. This will have an intolerable impact on the residents. The improvements proposed to the road network through the planning obligation are miniscule. Cufaude Lane will remain a problem for users. The proposed access points to the site can be facilitated but will be a problem for users, especially if Chineham Railway Station is ever built.
- 7.10 The proposal will cause problems for Air Products Ltd because pressure will be placed on the Council to curb their noisier activities by incoming residents.
- 7.11 The mitigation put forward to deal with education provision through the Agreement under S.106 will not prove workable. Extending and/or adapting the existing schools, which are of high architectural quality, will be difficult.
- 7.12 In summary, the adverse impacts of the proposal massively outweigh the benefits when considered against the policies of the Framework. Outline planning permission should be refused, therefore.
- 7.13 **Ranil Jayawardena**, Ward Councillor for Bramley and Sherfield expressed no objection to the proposal in-principle. However, there are several areas of concern. Residents of the Taylor's Farm development are wedded to the car with many commuting to Reading along the A33. Residents of the proposal will act similarly – they will head north primarily to get to the A33 along Cufaude lane or through the Taylor's Farm development. It would be illogical to travel south, then north, as the appellant forecasts.
- 7.14 There will be more traffic on Cufaude Lane as a result of the proposal – it is dangerous already and it is a National Cycle Route – and through Taylor's Farm. In that context, a link road to the A33, as originally proposed within the Taylor's Farm development, is critical. Residents of the development will not use buses and subsidising a bus service, in the manner proposed, is not a good idea. The financial contribution would be better spent on bringing forward a Railway Station at Chineham as has been mooted. This would make a significant, long-term, permanent difference.
- 7.15 As set out, much of the traffic from Taylor's Farm heads to Reading through the A33 and M4 link. There are no buses to Reading. Driving south to Basingstoke Railway Station to facilitate the journey by rail is not a practical option. A Railway Station at Chineham would make that much easier. It would take just 15 minutes to reach Reading from Chineham.
- 7.16 In summary there are three suggestions. First, Cufaude Lane should facilitate southbound vehicular traffic only while remaining two-way for bicycles. This would help relieve congestion, exacerbated by the level crossing, in Bramley. Second, a link road to the A33 should be provided as soon as possible and third, the financial contribution to bus services should be directed towards the provision of a railway station in Chineham.

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<sup>126</sup> ID/21 refers

- 7.17 **William Durrant** of Bramley Parish Council referred to their response to the originating application<sup>127</sup>. Lots of objections were received from the Parish and the overall view reached by the Parish Council was to object to the proposal. Bramley has expanded significantly in recent years and the site is isolated from the rest of the parish and the facilities it offers.
- 7.18 **Rhydian Vaughan** a resident of Bramley raised concerns about access and in particular the traffic conditions on Cufaude Lane which is already used as a rat-run and is difficult to negotiate in a car, let alone a bicycle. It should not be a question of attempting to improve Cufaude Lane – access to northbound traffic should be denied. Without that, residents of the proposal will drive north to reach the by-pass exacerbating existing problems.

## **8. Conditions**

- 8.1 A list of conditions was discussed by the main parties in the period leading up to and during the Inquiry and submitted for discussion<sup>128</sup>.
- 8.2 These deal with standard time limits and the submitted plans (nos.1 to 4), phasing and design parameters (nos.5 and 6), housing mix, the Code for Sustainable Homes, and Lifetime Standards (nos.7 and 8), materials, landscaping and measured surveys (nos.9 to 11), noise (nos.12 and 13), the construction process (nos.15, 18, 19, and 24), contamination (nos.16 and 17), archaeology (no.20), surface water drainage and buffer zones (nos.21 and 22), biodiversity (no.23), external lighting (no.25), the site accesses (nos.26 and 27) and trees (no.28). I have analysed these conditions as part of my conclusions below and a list that includes my corrections and adjustments can be found in Annex D.

## **9. The Obligation under S.106**

- 9.1 A draft Agreement under S.106 was submitted on the first day of the Inquiry<sup>129</sup> and a completed version, dated 16 April 2014 was submitted before the Inquiry was closed<sup>130</sup>. The parties to the Agreement are Basingstoke and Deane Borough Council, Hampshire County Council, Croudace Strategic Ltd and Jacob Farms Ltd.
- 9.2 Section 1 of the Agreement sets out the definitions of the various terms employed in it. Section 13 sets out the owner's covenants with the County Council which is the Highway and Education Authority. These include the Transport Contribution, Highway Works, Travel Plan, Bus Service, and Education Contribution.
- 9.3 Section 14 sets out the commitments in relation to Open Space and Section 15 the Open Space and Playing Fields Contributions. Section 16 deals with Percent for Art while Section 17 addresses the Landscape Management Plan. Section 18 is aimed at affordable housing. Section 19 deals with broadband and telecommunications; Section 20 with Habitat Enhancement and the Woodland Management Plan; and Section 21 the listed buildings.

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<sup>127</sup> Part of the Questionnaire documentation

<sup>128</sup> CD1/22 and ID/18

<sup>129</sup> ID/2

<sup>130</sup> ID/26

- 9.4 Importantly, Section 11 deals with delivery. Clause 11.1.2 explains that if the Inspector so recommends, and the SoS so determines that any one or more of the obligations contained in Sections 14 to 16 inclusive does not satisfy the requirements of Regulation 122<sup>131</sup> then the obligation(s) concerned shall not have effect. While this clause only covers those obligations referred to, it is still necessary for the decision-maker to analyse the others in order to decide whether they should carry weight in any balancing exercise.
- 9.5 I have analysed the Agreement under S.106, and the issues raised about aspects of it, in my conclusions below.

## **10. Inspector's Conclusions**

- 10.1 As set out above, the proposal was recovered for determination by the Secretary of State on 12 March 2013 because it involves proposals for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high-quality, sustainable, mixed, and inclusive communities. **[1.2]**
- 10.2 As is common in dealing with proposals such as this, there are a variety of issues at play which feed into an eventual balancing exercise between adverse and potentially adverse impacts, and benefits. I have ordered my conclusions in a manner that seeks to approach that process in an ordered manner.

### *The Policy Position*

- 10.3 The appeal site lies outside any settlement boundary defined in the LP. That, coupled with the nature of the proposal, means that it fails to comply with LP Policies D5 and D6. However, the Council accepts that it cannot demonstrate a five-year supply of deliverable housing sites. The SoCG records that there is a significant and serious shortfall of housing when tested against the Council's proposed housing target. **[4.2, 4.3, 5.1, 6.5]**
- 10.4 Paragraph 49 of the Framework comes into play therefore. Relevant policies for the supply of housing cannot be considered up-to-date if the Council cannot demonstrate a five-year supply of deliverable housing sites. LP Policies D5 and D6 restrict the areas where housing can be built to those within settlement boundaries. As such, they are clearly relevant to the supply of housing. On the basis of paragraph 49 of the Framework, they cannot be considered up-to-date. **[4.13]**
- 10.5 Put simply, paragraph 14 of the Framework tells us, in the context of the approach to decision-taking that where the development plan is absent, silent, or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework considered as a whole; or specific policies in the Framework indicate that development should be restricted. **[4.14]**
- 10.6 I deal with the latter point below but it is necessary, first of all, to deal with adverse, and potentially adverse, impacts.

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<sup>131</sup> Of the Community Infrastructure Levy Regulations 2010

### *Landscape and the Heritage Assets*

- 10.7 The appeal site is made up of two elements – the pasture and the fields, subdivided by substantial hedgerows, and the complex of farm buildings known as Razor’s Farm which includes a series of listed buildings. **[3.2]**
- 10.8 The former provide a setting for the latter, a matter I come on to below, but, in themselves, the fields and hedgerows also have an obvious and pleasing natural quality that can be readily appreciated from the public footpath to the north of the site. One of the core principles of the Framework is that the intrinsic character and beauty of the countryside should be recognised. It is axiomatic that building 425 new houses with associated infrastructure on the appeal site will lead to a significant erosion of that natural quality and, as a result, the proposal will cause landscape harm. **[7.3]**
- 10.9 Given the provisions of Section 66(1) of the Act and the decision of the Court of Appeal in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137, the approach to the impact on the setting, and thereby the significance of the listed buildings at Razor’s Farm is a more complex matter. **[4.16-4.17]**
- 10.10 The setting of a heritage asset is defined in the glossary to the Framework as the surroundings in which a heritage asset is experienced. In simple terms, setting embraces all of the surroundings from which the heritage asset can be experienced, or that can be experienced from, or with, the asset. The development proposed would be clearly visible from the listed buildings and there would be areas within, and outside, the appeal site where the listed buildings and the proposed development would be seen in juxtaposition. On that basis, it is clear that the proposal would have an impact on the settings of the listed buildings concerned.
- 10.11 Largely screened from the business park to the south by extensive planting, the Razor’s Farm complex is currently perceived as sitting within a pastoral hinterland. This allows the observer to properly appreciate the functional origins of the complex and its relationship with the surrounding agricultural land. Notwithstanding the area of open space that would be arranged around the complex, changing the hinterland of the listed buildings from agricultural fields and hedgerows, to a housing estate, would reduce the ability of the observer to appreciate the origins of the complex, and its relationship with the land. This would have a harmful impact on the setting of the listed buildings.
- 10.12 This brings the proposal into conflict with LP Policy E2 and, applying Section 66(1) of the Act in the manner required by the judgement of the Court of Appeal in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137, this is a material consideration of considerable importance and weight in the planning balance. **[4.4, 4.16-4.17, 5.30-5.32, 6.53-6.63, 7.3]**
- 10.13 However, the approach of the Framework is more opaque. Paragraph 132 says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. However, it is not the assets (the listed buildings) that are affected in this case, but their settings.

- 10.14 Paragraphs 133 and 134 of the Framework draw a distinction between substantial, and less than substantial, harm to the significance of a designated heritage asset and set out different approaches for the decision-maker in each case. The Council argues that through the impact it would have on their settings, the proposal would cause substantial harm to the significance of the listed buildings at Razor's Farm. **[5.30]**
- 10.15 It could be argued that if that were so, paragraph 14 of the Framework would not be engaged because specific policies in the Framework would indicate that development should be restricted. Footnote 9 refers to 'designated heritage assets' and paragraph 133 says that where a development would cause substantial harm to or total loss of significance of a designated heritage asset, local planning authorities *should refuse consent* (my emphasis) unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. That would suggest that development should be restricted but it is important to note that Footnote 9 refers only to designated heritage assets, not their settings. **[4.14]**
- 10.16 However, I do not accept the Council's conclusion about the degree of harm to significance. The PPG sets out that substantial harm is a high test and goes on to note that in terms of assessing proposals affecting listed buildings, the key question is whether the adverse impact seriously affects a key element of its special architectural and historic interest. If that is so, it is difficult to envisage how an impact on setting, rather than a physical impact on special architectural and historic interest could ever cause substantial harm.
- 10.17 This conclusion is consistent with that of the High Court in *Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd* [2012] EWHC 4344 (Admin) where it was accepted that substantial harm is an impact which would have such a serious effect on the significance of an asset that its significance was either vitiated altogether, or very much reduced. The fabric of the listed buildings would remain untouched by the proposal and that is where the majority of their significance as designated heritage assets lies. There would be a harmful impact on the significance of the complex through the harm that would be caused to its setting. However, that harm would obviously be less than substantial.
- 10.18 Paragraph 134 of the Framework says that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 10.19 However, the influence of Section 66(1) of the Act means that the balancing exercise is not as simple as that because, harm to a listed building, or its setting, is a matter that must be given considerable weight and importance after the Court of Appeal judgement in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137. The scales are pre-weighted, therefore, and I return to this specific matter below.
- 10.20 It is relevant to note that the Agreement under S.106 makes provision for a schedule of works to be prepared to make the listed buildings externally weather tight and structurally sound together with a programme of implementation for that, before development commences. **[5.31, 6.56]**

- 10.21 That would be a benefit to the buildings in the short-term. It is also clear that the appellant has longer term ambitions for the use of the buildings but there is no indication, currently, of what those might entail. Neither, however, would serve to offset the permanent harm that would be caused to the setting, and thereby the significance, of the listed buildings, by the proposal overall.
- 10.22 As set out, the path of what was a Roman Road passes the site. This is a non-designated heritage asset. Paragraph 135 of the Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account and in weighing, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the asset. **[3.2]**
- 10.23 The significance of the former Roman Road is largely archaeological and it derives very little significance from its setting. In any event, according to the submitted plans, the path of the road is to be protected and highlighted by the form of the proposals. Whether it passes through fields, as now, or a development site, makes little difference, in my view, to how it is interpreted or understood, so long as the route is delineated. On that basis, subject to an appropriate archaeology condition, the proposal would cause no harm to the significance of this non-designated heritage asset and in this way, there would be compliance with LP Policy E4. **[4.4]**

*Living Conditions and the Potential Impact on Air Products Ltd*

- 10.24 In simple terms, this issue works in two ways. In the first instance, there is the question of whether the living conditions would be, or could be made, acceptable in the light of the prevailing noise climate.
- 10.25 Having visited the premises of Air Products Ltd, it is evident that activities take place there that are relatively noisy. There is also the presence of road and railway noise to consider and helicopters, from RAF Odiham, in particular. Notwithstanding that, the noise experts engaged by the Council and the appellant agree that subject to appropriately worded conditions, the proposal would provide reasonable living conditions for occupiers in noise terms.
- 10.26 It is also clear that decisions can be made about the layout of the housing proposed, and how and where it is located on the site, which will govern the extent to which noise from the Air Products Ltd premises will be an influence.
- 10.27 What the representative of Air Products Ltd presented to the Inquiry needs to be taken into account, obviously, but it is noteworthy that the company brought no expert evidence to counter that provided by the Council and the appellant. Appropriately worded conditions and sensible decisions about the disposition of housing on the site should ensure that there is no future pressure on the Council to curtail the activities of Air Products Ltd. In that way, their future presence on the adjoining business park, with all the benefits in terms of jobs, and economic activity that brings, should not be significantly affected by the proposals. **[6.12-6.19, 7.1-7.2, 7.3, 7.10]**
- 10.28 Indeed, it is very difficult to understand the Council's initial resistance to the proposal on this ground when they are continuing to promote the site as a housing allocation in their emerging Local Plan. That promotion would be illogical in the extreme if they did not think a solution could not be arrived at.

10.29 One of the core principles of the Framework is to always seek to secure high-quality design and a good standard of amenity for all existing and future occupants of land and buildings. Subject to suitable conditions and the future arrangement of housing on the site, which can be dealt with at reserved matters stage, the proposal accords with that and, insofar as it bears on the living conditions of prospective occupiers, LP Policy E1. **[4.4]**

*Accessibility and Traffic Impacts*

10.30 Much was made by objectors to the proposal about the accessibility of the site in relation to existing settlement patterns, the propensity for residents locally to use the car, and prevailing traffic conditions. The position of the Hampshire International Business Park relative to the site, the railway line, and the nature of Cufaude Lane all contribute to a sense that the site is relatively isolated. **[7.3, 7.5, 7.7-7.9, 7.13-7.16, 7.17, 7.18]**

10.31 However, the design of the accesses to the site, a matter to be determined at this stage, is sensible. The Council accept that they would not cause any issues in highway safety terms and it is clear that, subject to the design of the facility, if it ever comes forward, the easternmost access would not prejudice the delivery of Chineham Railway Station, or the site to the north, also allocated in the emerging Local Plan.

10.32 It may well be that existing residents in the area are somewhat wedded to the car. It might be the case that residents of the proposal will be tempted to behave similarly. The existing roads may well be perceived as busy too. However, all this must be seen in the context of the extent of new housing the Council seeks to bring forward in order to meet housing needs. The site is allocated for housing in the emerging LP. More traffic must be envisaged as a result of that. It is important to judge the likely impacts of the proposal in terms of traffic generation, and the effect on existing roads, in that context. There is no way of forcing incoming residents into more environmentally-friendly travel modes. All a developer can do, it seems to me, is to provide the conditions where non-car modes are a reasonable alternative, and seek to mitigate the impact of traffic generated by the proposal as far as it can.

10.33 To that extent, the proposal makes a reasonable fist of providing linkages to, and improving, pedestrian and cycling routes. Contrary to what the appellant argues, from my perambulations, I consider all those proposed to be necessary to maximise the encouragement offered to those who might walk to gain access to local facilities. It may be that some of those facilities are too remote from the site to make walking or cycling attractive for all. However, the appellant has gone to great lengths, in my view, to research and design a bus route that clearly stands a very good chance of prevailing in the longer term. That would provide a reasonable alternative for those who might not want to walk or cycle. Other incentives would be provided through the Travel Plan.

10.34 There will be a residual number of residents of the development who despite that, continue to use the car. However, the highway mitigation works put forward, and the means of securing those through the Agreement under S.106<sup>132</sup>, are accepted by the Highway Authority.

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<sup>132</sup> ID/26



10.35 On that overall basis, the impacts of the proposal in trip generation terms will be mitigated to an acceptable degree. Again, it is important to view objections on this count in the context of the allocation of the site for housing in the emerging LP. **[4.10-4.12, 6.21-6.33]**

#### *Infrastructure and Other Contributions*

10.36 Paragraph 204 of the Framework says that planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. These tests are repeated in Regulation 122 of the CIL Regulations 2010. For the reasons set out above, the Transport Contribution, Highway Works, Travel Plan and Bus Service provisions of the Agreement under S.106 clearly accord with paragraph 204 of the Framework and Regulation 122.

10.37 Section 13.5 of the Agreement under S.106 makes provision for primary education. The development will clearly bring new residents and new children to the area. This will place pressure on existing facilities. The sums involved in the financial contribution have been reached in accordance with an established formula and are reasonable. It may be that extending the local primary school, which I agree is a building of some architectural sophistication, might prove challenging but there is no good reason to think it an impossible task. On that overall basis, it can be concluded that the financial contribution to the provision of primary education meets the requirements of paragraph 204 of the Framework and Regulation 122. **[6.20, 7.3, 7.11]**

10.38 In terms of open space, it is important, first of all, to address the approach of the development plan. LP Policy C1 sets out that where provision is inadequate, developers will be required to provide the infrastructure and community facilities necessary to allow development to proceed. Open space comes under the ambit of that policy but whether what is proposed is inadequate requires analysis. In undertaking that analysis, I do not see the relevance of LP Policy C7. The proposal makes provision for 5.91 Ha of open space which is well in excess of the 2.8 Ha per 1,000 people that LP Policy C9 requires (the population of the development has been calculated roughly as 1,020 people). **[4.5, 4.7-4.8]**

10.39 The Council may well have higher standards for the provision of open space in mind but bearing in mind advice in the Framework and the PPG, these cannot be deemed to carry more weight than the development plan, pre-examination. On that basis, the development as proposed is acceptable in terms of open space provision. What is proposed would represent a generous facility for residents of the proposal and it would not lead to any diminution in access to open space for existing residents of Chineham. The provisions of the Agreement under S.106 that deal with the open space balance, or the relevant open space contribution are not, therefore, necessary to make the development acceptable in planning terms. **[5.7-5.17, 6.34-6.42]**

10.40 Turning to the provision of playing fields, again, it is important to start with the development plan. It may well be the case that existing provision is inadequate so LP Policy C1 comes into play. It is clear that some residents of the proposal will want to use such facilities and thereby pressure will be placed upon those facilities. **[4.4]**

- 10.41 A contribution towards improved provision in the Borough, at Down Grange, could well be required, therefore, to make the development acceptable in planning terms. Such a contribution would be directly related to the development. However, it is dealt with in the Agreement under S.106 in a way that makes it very difficult to properly conclude that the approach the Council seeks is fairly and reasonably related in scale and kind to the development. In particular, the nature of the calculation the Council proposes fails to account for the fact that not all of the population of the development will be users of the facilities. At most, only 50% would. As such, in the manner presented this part of the Agreement under S.106 fails to accord with paragraph 204 of the Framework and Regulation 122. **[5.18-5.25, 6.43-6.49]**
- 10.42 If no contribution is made towards playing fields as a result of that conclusion, an adverse impact of the proposal would not be mitigated. However, that does not mean that outline planning permission should be refused. Rather, it is a matter to be taken into account in the necessary balancing exercise. **[5.34]**
- 10.43 Section 16 of the Agreement under S.106 deals with what is termed the Percent for Art and puts forward a financial contribution of £10,000 towards the provision of public art as part of the proposal. Obviously the Framework supports high-quality design and what the PPG says about public art is not meant to be prescriptive. However, the design of the housing and the public realm that form part of the proposal will come forward as part of the reserved matters. If the Council is not satisfied that the scheme promulgated meets their requirements in these terms, which may include considerations around public art, it need not grant approval for the reserved matters. In that context, it is difficult to see how the financial contribution of £10,000 sought is necessary to make the development acceptable in planning terms. It does not meet the requirements of paragraph 204 of the Framework or Regulation 122, therefore. **[5.26-5.29, 6.50-6.51]**
- 10.44 Other aspects of the Agreement under S.106 are less contentious and the Landscape Management Plan (Section 17) and the affordable housing (Section 18), Habitat Enhancement and the Woodland Management Plan Section 20) and the listed buildings (Section 21) are all dealt with in a way that accords with the Framework and Regulation 122. However, the provision of broadband and telecommunications to individual dwellings (Section 19) does not seem to me to be necessary to make the development acceptable in planning terms. It is best left to incoming occupiers. **[9.3]**
- 10.45 Concern has also been raised about the impact of the proposal on other local facilities like Doctors' Surgeries and Dentists. However, the appellant's evidence<sup>133</sup> indicates no particular shortfall. **[7.5]**

### *Benefits*

- 10.46 Paragraph 47 of the Framework highlights the need for the supply of housing to be boosted significantly. The Council accepts that it cannot demonstrate a five-year supply of deliverable housing sites. The SoCG records that there is a significant and serious shortfall of housing when tested against the Council's proposed housing target. The SoCG also makes clear that there is a rising and

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<sup>133</sup> ID/16

substantial need for affordable housing in the Council area. Against that background, the provision of up to 425 houses, with up to 40% of those affordable homes, is a matter that attracts significant weight in favour of the proposal. **[6.2-6.11, 6.20]**

- 10.47 Moreover, paragraphs 18 and 19 of the Framework are very clear that the Government is committed to securing economic growth in order to create jobs and prosperity and to ensuring the planning system does everything it can to support sustainable economic growth. The proposal will generate construction jobs and economic activity. In the longer term, as the site is occupied, residents will add to local spending levels and the proposal will generate considerable funds in terms of the New Homes Bonus. Bearing in mind the approach of the Framework, these benefits carry significant weight. **[6.11]**

### *The Balancing Exercise*

- 10.48 Paragraph 7 of the Framework refers to the three dimensions to sustainable development: economic, social and environmental.
- 10.49 Considered in the light of those three strands, there would be traffic generated by the proposal, and pressure placed on existing facilities, in conflict with the social and environmental strands, but all this would be mitigated to a significant degree by the various measures set out. As promulgated, the Agreement under S.106 would not mitigate the impact the proposal might have on demand for playing fields, at variance with the social strand.
- 10.50 The proposal would have an adverse impact in landscape terms, and on the setting, and thereby the significance, of the listed buildings at Razor's Farm, at odds with the environmental strand. The latter factor is one that attracts considerable importance and weight in the balancing exercise. However, it is important to acknowledge that considerable importance and weight is not synonymous with overriding importance and weight.
- 10.51 The provision of new open-market and affordable houses and the associated economic activity are very weighty matters in economic and social terms. Notwithstanding that considerable importance and weight must be attached to the harmful impact on the setting of the listed buildings affected, in my judgement, the adverse impacts of the proposal, considered in their totality, do not come close to significantly and demonstrably outweighing the benefits, when assessed against the policies of the Framework considered as a whole. On that basis, the proposal benefits from the presumption in favour of sustainable development and outline planning permission should be granted.

### *Conditions*

- 10.52 The conditions submitted in an agreed form by the main parties need to be considered in the light of advice in paragraph 206 of the Framework, the PPG, and what remains of Circular 11/95<sup>134</sup>. In simple terms, planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. I have made a number of minor corrections to the conditions submitted in the interests of precision. **[8.1-8.2]**

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<sup>134</sup> Circular 11/95: The Use of Conditions in Planning Permissions CD5/1

- 10.53 The standard conditions to govern the timing of the submission of reserved matters, and commencement, are clearly necessary. The same is true of a condition setting out the approved plans. Given the manner in which the development will come forward, a condition to govern phasing is also required.
- 10.54 In the interests of clarity, a condition is required to tie the nature of the reserved matters application to the principles and parameters outlined in the Design and Access Statements and the indicative masterplan.
- 10.55 To ensure an appropriate form of development, conditions are required to address housing mix and the need to comply with Lifetime Homes Standards and to ensure compliance with the Code for Sustainable Homes. So that the development meets the required standards, it is appropriate to apply conditions to secure details of materials and to govern the nature of the landscaping proposals submitted in pursuance of the reserved matters and its ongoing maintenance. It is reasonable too to attach a condition to require details of finished ground and floor levels.
- 10.56 As set out above, conditions are necessary to deal with the noise climate in order that reasonable living conditions can be ensured for incoming residents of the development. **[10.24-10.29]**
- 10.57 Given the proximity of the site to existing residences and work spaces, and the need to maintain reasonable living and working conditions for occupiers thereof, it is necessary to attach conditions to limit working hours on-site, and to specify when deliveries, and removal, of materials can take place. Similarly, conditions are necessary to deal with dust suppression during the works and to control the burning of materials.
- 10.58 To prevent any issues around contamination, conditions are necessary to govern the works in accordance with the studies already carried and to address what must happen in the event that something unexpected is encountered.
- 10.59 To comply with LP Policy E4, a condition is required to address the archaeological potential of the site. **[4.2, 10.23]**
- 10.60 Conditions are needed to address surface water drainage and to ensure that a 5 metre buffer zone is provided and maintained alongside the drain which crosses the site. In relation to both, it is not necessary to set out exactly what the schemes that come forward should include. If either are found wanting in any way, then the local planning authority need not approve the details.
- 10.61 To prevent any adverse impact on biodiversity during the course of development, a condition is necessary to bring forward for approval a Biodiversity Mitigation Strategy and to ensure that works take place in accordance with it.
- 10.62 Given that construction traffic has the potential to have a serious impact on the living conditions of existing residents, a Construction Traffic Management Plan is required for approval by the Local Planning Authority. It is reasonable to apply a condition to secure details of external lighting, including of streets. Conditions are required to ensure the accesses are brought forward in accordance with the approved details and to secure formal details of the shared footway/cycleway access on to Cufaude Lane.

10.63 Finally, a condition is required to secure an Arboricultural Impact Assessment and Method Statement to address any existing trees that might be retained as part of the landscaping proposals.

**11. Recommendation**

11.1 I recommend that the appeal be allowed, and outline planning permission granted subject to the conditions as set out in Annex D.

11.2 If however, the SoS is concerned that a Playing Fields Contribution would not be payable as a result of the way in which the Agreement under S.106 is framed, and believes that this should be mitigated through a financial contribution, then it may be necessary to revert to the main parties to address this matter. **[5.3, 5.6, 10.42]**

*Paul Griffiths*

**INSPECTOR**

Richborough Estates

## Annex A: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Michael Bedford of Counsel	Instructed by Ann Brown, Interim Head of Governance, Basingstoke & Deane BC
Matthew Taylor BA(Hons) DipTP MRTPI	Senior Planning Consultant, Brian Barber Associates
Katherine Miles BA(Hons) MSc MRTPI	Senior Planner, Basingstoke & Deane BC
Stephen Parsons MCIHT	Technical Director, Motion Consultants Ltd
Reuben Peckham BEng MPhil CEng MIOA	Principal Consultant and Director, 24 Acoustics
Julia Tymukas	Grant Funding Officer, Basingstoke & Deane BC
Alex Piper	Facilities Provision Officer, Basingstoke & Deane BC
Tim Wall BA(Hons) MSc MCIHT <sup>135</sup>	Team Leader, Highways Development Planning Team, Hampshire County Council

### FOR THE APPELLANT:

Mary Cook of Counsel	Instructed by Huw Edwards of Barton Willmore
She called	
Mark Christopher Gimingham BA(Hons) BTP CMILT MCIHT	Partner i-Transport LLP
Ian Yates BEng(Hons) MIOA	Associate, Cole Jarman
Hugh Edwards MSc MRTPI	Planning Partner, Barton Willmore LLP
Heather Allen <sup>136</sup>	Barton Willmore LLP

### INTERESTED PERSONS:

Dr Declan Weldon	Global Director of Research and Development, Air Products Ltd
Councillor Chris Tomblin CEng MIMechE	Ward Councillor for Bramley and Sherfield and Chair of Chineham Parish Council
Councillor David Thornton	Chineham Parish Council
Councillor Martin Biermann	Ward Member for Chineham
Councillor Ranil Jayawardena	Ward Councillor for Bramley and Sherfield
Councillor Anthony William Durrant	Bramley Parish Council
Rhydian Vaughan	Local Resident

<sup>135</sup> Save for Mr Bedford, all of the above took part in the discussion on conditions and the Agreement under S.106 only

<sup>136</sup> Took part in the discussion on conditions and the Agreement under S.106 only

## **Annex B: DOCUMENTS**

### **CD1: Appeal Documents**

- CD1/1 Appeal submitted to the Planning Inspectorate (24 September 2013)- excluding application documents at CD2 below
- CD1/2 BDBC Appeal Questionnaire and attachments
- CD1/3 Appellant's Statement of Case (February 2014)
- CD1/4 BDBC Statement of Case (February 2014)
- CD1/5 Appellant/BDBC Statement of Common Ground (February 2014)
- CD1/6 BDBC Planning Proof of Evidence (Matthew Taylor, Brain Barber Associates, March 2014)
- CD1/7 BDBC Highways and Transportation Proof of Evidence (Steven Parsons, Motion, March 2014)
- CD1/8 BDBC Noise Proof of Evidence- Volume 1 (Reuben Peckham, 24 Acoustics, March 2014)
- CD1/9 BDBC Noise Proof of Evidence- Volume 2 (Reuben Peckham, 24 Acoustics, March 2014)
- CD1/10 BDBC Proof of Evidence- Planning Obligations (BDBC Officers/Tim Wall HCC, March 2014)
- CD1/11 Appellant's Planning Proof of Evidence (Huw Edwards, Barton Willmore, March 2014)
- CD1/12 Appellant's Planning Proof of Evidence- Appendices (Huw Edwards, Barton Willmore, March 2014)
- CD1/13 Appellant's Highways and Transportation Proof of Evidence- Volume 1 Text (Mark Gimingham, i-Transport, March 2014)
- CD1/14 Appellant's Highways and Transportation Proof of Evidence- Volume 2 Appendices (Mark Gimingham, i-Transport, March 2014)
- CD1/15 Appellant's Noise Proof of Evidence (Ian Yates, Cole Jarman, March 2014)
- CD1/16 Appellant's Noise Proof of Evidence- Appendix A (Ian Yates, Cole Jarman, March 2014)
- CD1/17 Appellant's Noise Proof of Evidence- Appendix B (Ian Yates, Cole Jarman, March 2014)
- CD1/18 Covering Letter to Supplementary Technical Notes (Barton Willmore, 01 April 2014)
- CD1/19 Supplementary Statement on Noise (Ian Yates, Cole Jarman, 01 April 2014)
- CD1/20 Proposed Package of Transport Improvements (i-Transport, 31 March 2014)
- CD1/21 CIL Compliance Statement: S106 Matters (Huw Edwards, Barton Willmore, April 2014)
- CD1/22 List of Conditions agreed by BDBC and Appellant
- CD1/23 BDBC Justification regarding s106 obligations (email dated 02/04/2014 with attachments).
- CD1/24 Acoustics Expert Joint Statement - Ian Yates, Cole Jarman & Reuben Peckham, 24 Acoustics (03 April 2014)
- CD1/25 Supplementary Proof of Evidence on Noise- R Peckham, 24 Acoustics (04 April 2014)
- CD1/26 Supplementary Proof of Evidence- Steve Parsons, Motion (02 April 2014).

## **CD2: Planning Application Documents**

### **Original Submission November 2012**

- CD2/1 Original Planning Application form (30 November 2012)
- CD2/2 Covering Letter and Notices (Barton Willmore, 30 November 2012)
- CD2/3 Site Location Plan (CSa/1900/122 Rev C, November 2012)
- CD2/4 Topographical Survey (GS8110871/101-4 Rev P1, November 2011)
- CD2/5 Land Use Plan (CSa/1900/123, November 2012) (superseded)
- CD2/6 Parameters Plan (CSa/1900/120 Rev A, November 2012) (superseded)
- CD2/7 Proposed Main Site Access (ITB6028/GA/018B, July 2012)
- CD2/8 Proposed Secondary Access (ITB6028/GA/009C, January 2012)
- CD2/9 Illustrative Masterplan (CSa/1900/108 Rev L, November 2012) (superseded)
- CD2/10 Indicative Landscape Strategy (CSa/1900/115 Rev C, November 2012) (superseded)
- CD2/11 Planning Statement (Barton Willmore, 30 November 2012)
- CD2/12 Design and Access Statement (CSa Environmental Planning, November 2012)
- CD2/13 Landscape and Visual Assessment (CSa Environmental Planning, November 2012)
- CD2/14 Statement of Community Involvement (Barton Willmore, 29 November 2012)
- CD2/15 Transport Assessment (i-Transport, 30 November 2012)
- CD2/16 Travel Plan (i-Transport, 30 November 2012)
- CD2/17 Flood Risk Assessment (Glanville, 27 November 2012)
- CD2/18 Foul Sewerage and Utilities Assessment (Glanville, 27 November 2012)
- CD2/19 Ecology Survey and Report (Aluco Ecology, November 2012)
- CD2/20 Tree Survey (Ian Keen Limited, 28 March 2012)
- CD2/21 Arboricultural Implications Assessment (CSa Environmental Planning, November 2012)
- CD2/22 Consolidated Heritage Statement (Wessex Archaeology, November 2012) (superseded)
- CD2/23 Archaeological Evaluation Report (Wessex Archaeology, November 2012)
- CD2/24 Gradiometer Survey Report (Wessex Archaeology, November 2012)
- CD2/25 Options Appraisal (Wessex Archaeology, November 2012) (superseded)
- CD2/26 Preliminary Site Assessment Report (Southern Testing, 25 May 2012)
- CD2/27 Air Quality Assessment (Air Quality Consultants, November 2012)
- CD2/28 Noise Assessment (Cole Jarman, 27 November 2012)
- CD2/29 Draft Heads of Terms
- CD2/30 Planning Application Validation Letter (06 December 2012)

### **Revised Submission May 2013**

- CD2/31 Covering Letter and Annex 1 (Barton Willmore, 30 May 2013)
- CD2/32 Land Use Plan (CSa/1900/109 Rev F, July 2012)
- CD2/33 Parameters Plan (CSa/1900/120 Rev B, November 2012)
- CD2/34 Illustrative Masterplan (CSa/1900/108 Rev M, November 2012)
- CD2/35 Indicative Landscape Strategy (CSa/1900/115 Rev D, November 2012)
- CD2/36 Supplementary Design and Access Statement (CSa Environmental, Planning May 2013)



- CD2/37 Noise Assessment Addendum (Cole Jarman 4 April 2013)
- CD2/38 Consolidated Heritage Statement (Wessex Archaeology, May 2013)
- CD2/39 Options Appraisal (Wessex Archaeology, May 2013)

### **Revised Submission September 2013**

- CD2/40 Covering Letter (Barton Willmore, 19 September 2013)
- CD2/41 Framework Travel Plan (i-Transport LLP, 18 September 2013)
- CD2/42 Technical Note 1 – Personal Injury Accident Analysis (i-Transport LLP, 18 September 2013)
- CD2/43 Technical Note 2 – Pedestrian/Cycle Access from Cufaude Lane (18 September 2013)
- CD2/44 Technical Note 3 – Walking and Cycling Audit (i-Transport LLP, 18 September 2013)
- CD2/45 Technical Note 4 – Bus Services (i-Transport LLP, 18 September 2013)
- CD2/46 Technical Note 5 – Traffic Impact (i-Transport LLP, 18 September 2013)
- CD2/47 Preliminary Stage Design Check (i-Transport LLP, 14 June 2013)

### **CD3: BDBC Committee Documents and Deemed Reasons for Refusal**

- CD3/1 Planning Officers Report to BDBC Development Control Committee held 11 December 2013
- CD3/2 BDBC Development Control Committee Deemed Reasons for Refusals (16 December 2013)
- CD3/3 BDBC email clarifying Reason for Refusal 1 (17 January 2014)
- CD3/4 BDBC email clarifying comments on draft Statement of Common Ground and Land Supply Assessment table (30 January 2014)

### **CD4: National Planning Policies and Guidance (extracts where appropriate)**

- CD4/1 National Planning Policy Framework (27 March 2012)
- CD4/2 The Planning System: General Principles (2005)
- CD4/3 DEFRA Noise Policy Statement for England (March 2010)
- CD4/4 Government Response to the Communities and Local Government Select Committee Report: National Planning Policy Framework - Paragraph 32 (March 2012)
- CD4/5 National Planning Practice Guidance (NPPG)- 06 March 2014
- CD4/6 Ten Key Principles for Owning Your Housing Number (PAS, July 2013)
- CD4/7 Manual for Streets (Department for Transport, 2007)
- CD4/8 Manual for Streets 2 (Department for Transport, 2010)

### **CD5: Circulars and Regulations**

- CD5/1 Circular 11/95: The Use of Conditions in Planning Permissions- Appendix A only (remainder cancelled)
- CD5/2 British Standards Institution - British Standard 8233: Sound Insulation and Noise Reduction for Buildings (1999)
- CD5/3 British Standards Institution - British Standard 8233: Sound Insulation and Noise Reduction for Buildings (2014)
- CD5/4 British Standards Institution - British Standard 4142: Methodology for Assessing Industrial Noise affecting Mixed Residential and Industrial Areas (1997)

- CD5/5 British Standards Institution - Consultation to BS 4142:2014. Methods for rating and assessing industrial and commercial sound
- CD5/6 World Health Organisation - Guidelines for Community Noise (1999)
- CD5/7 International Standards Organisation - ISO 9613. Part 2. Acoustics - Attenuation of Sound During Propagation Outdoors (1993)
- CD5/8 Approved Document F of the Building Regulations
- CD5/9 World Health Organisation- Night Noise Guidelines for Europe (2009)
- CD5/10 Inclusive Mobility (Department for Transport, December 2005)
- CD5/11 Design Manual for Roads and Bridges – TA91/05, TD16/07 and TD42/95
- CD5/12 Planning (Listed Buildings and Conservation Areas) Act 1990- Chapter 9

### **CD6: BDBC Local Planning Policies and Guidance**

- CD6/1 Basingstoke and Deane Borough Local Plan 1996-2011 (2006)
- CD6/2 Basingstoke and Deane Borough Local Plan Saving Direction: List of Saved Policies within the Basingstoke and Deane Borough Local Plan (2006)
- CD6/3 First and Revised Deposit Draft Local Plan (2002 & 2003)
- CD6/4 No document
- CD6/5 Extract from Local Plan Inspectors Report (2005)
- CD6/6 Withdrawn Pre-Submission Draft Core Strategy (January 2012)
- CD6/7 Pre-Submission Draft Local Plan (August 2013)
- CD6/8 S106 Planning Obligation and Community Infrastructure Interim Planning Guidance (Adopted July 2005, Revised April 2013)
- CD6/9 Draft Infrastructure Delivery Plan (August 2013)
- CD6/10 Basingstoke and Deane Borough Council, Environmental Protection Team - Noise assessments and reports for planning applications - guidance note for developers and consultants (January 2010)
- CD6/11 Basingstoke and Deane Borough Transport Statement (Hampshire County Council, September 2012, addendum December 2013)
- CD6/12 Leisure and Recreation Needs Assessment (2007)
- CD6/13 Strategic Plan for Sport and Recreation (Updated April 2011)
- CD6/14 Green Infrastructure Strategy (July 2013)

### **CD7: BDBC Committee Papers (extracts where appropriate)**

- CD7/1 BDBC Cabinet Meeting Report and Minutes (30 October 2012)
- CD7/2 BDBC Planning and Infrastructure Overview and Scrutiny Committee Report and Minutes (17, 21 & 31 January 2013)
- CD7/3 BDBC Cabinet Report and Minutes (28 February 2013)
- CD7/4 BDBC Cabinet Report and Minutes (15 April 2013)
- CD7/5 BDBC Planning and Infrastructure Overview and Scrutiny Committee Report and Minutes (15 & 16 July 2013)
- CD7/6 BDBC Cabinet Report and Minutes (22 July 2013)
- CD7/7 BDBC Council Report and Minutes (25 July 2013)
- CD7/8 BDBC Planning and Infrastructure Overview and Scrutiny Committee Report and Minutes (14 November 2013)
- CD7/9 BDBC Planning and Infrastructure Overview and Scrutiny Committee Report and Minutes (30 January 2014)
- CD7/10 BDBC Cabinet Meeting Report and Minutes (18 February 2014)
- CD7/11 BDBC Planning and Infrastructure Overview and Scrutiny Committee Report and Minutes (05 & 6 March 2014)

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**CD8: BDBC Background/Evidence Base Documents (extracts where appropriate)**

- CD8/1 Strategic Housing Market Assessment for Central Hampshire and the New Forest (November 2007) Extract
- CD8/2 Central Hampshire and New Forest Housing Market Monitoring Report – Update (2008)
- CD8/3 Central Hampshire and New Forest Housing Market Monitoring Report – Update (2009)
- CD8/4 Central Hampshire and New Forest Housing Market Monitoring Report – Update (2010)
- CD8/5 BDBC Strategic Housing Land Availability Assessment (October 2010) Extract
- CD8/6 BDBC Strategic Housing Land Availability Assessment (January 2013) Extract
- CD8/7 BDBC Housing Site Assessment (January 2013) Extract
- CD8/8 BDBC Sustainability Appraisal (January 2013) Extract
- CD8/9 BDBC Strategic Housing Market Assessment Update May 2013 (P&I OSCOM 04 June 2013)
- CD8/10 BDBC Housing and Homelessness Strategy 2013–2018
- CD8/11 BDBC Employment Land Review (February 2014)
- CD8/12 BDBC Annual Monitoring Report 2012/13

**CD9: Other (extracts where appropriate)**

- CD9/1 Screening Opinion Decision Letter (27 January 2012)
- CD9/2 CLG Household Interim Projection 2011 to 2021 (09 April 2013)
- CD9/3 Email from BDBC’s Acoustic Advisors and Consultants (16 January 2014)
- CD9/4 Existing and Proposed Changes: Cufaude Lane Plan
- CD9/5 Cole Jarman Amended Noise Report (issued 12 February 2014)
- CD9/6 Hampshire County Council Transport Contributions Policy

**CD10: Relevant Appeal Decisions/Judgments**

- CD10/1 Land North of Marnel Park Appeal Inspectors Report and SoS letter (APP/H1705/A/12/2188125 & APP/H1705/A/12/2188137) (8 July 2013)
- CD10/2 Kennel Farm Appeal Inspectors Report (APP/H1705/A/13/2200861) (amended 17 March 2014)
- CD10/3 Kennel Farm Appeal Inspectors Report on Costs (APP/H1705/A/13/2200861) (amended 7 February 2014)
- CD10/4 Area North of Catshead Woods Appeal Decision (APP/G2815/A/11/2156757) (12 March 2012) - Barnwell Manor Wind Energy
- CD10/5 Judgment between East Northamptonshire DC, English Heritage, National Trust & SoS for Communities and Local Government, Barnwell Manor Wind Energy Limited (CO/4231/2012) (08 March 2013)
- CD10/6 Judgment between Barnwell Manor Wind Energy Limited & East Northamptonshire DC, English Heritage, National Trust & SoS for Communities and Local Government (C1/2013/0843) (18 February 2014)

## **Inquiry Documents**

- ID/1 Summary of S.106 Obligations
- ID/2 Draft Agreement under S.106
- ID/3 BDBC Development Control Committee Report dated 7 April 2014
- ID/4 Revised Core Document List (April 2014)
- ID/5 Opening Submission on behalf of the Council
- ID/6 Opening Submission on behalf of the Appellant
- ID/7 Application for Costs on behalf of Appellant
- ID/8 Submission from Dr Weldon, Global Director Air Products
- ID/9 Submission from Councillor Tomblin
- ID/10 Additional Traffic Surveys put in by Chineham Parish Council
- ID/11 Extract from Croudace Strategic Public Exhibition Display Boards submitted by Councillor Biermann)
- ID/12 Note from i-Transport – Table of comparison: Chineham Parish Council Traffic Survey (ID/10)
- ID/13 DCLG Interim Housing Projections April 2013
- ID/14 Policy Maps for Pre Submission Local Plan (August 2013) and Policy Maps for Adopted Local Plan (2006)
- ID/15 Draft Revised Local Plan Maps from P&I OSCOM Report (05 March 2014)
- ID/16 Review of Doctors and Dentists April 2014 put in by appellant
- ID/17 Inspector's unaccompanied site visit- suggested itinerary from i-Transport (Mr Gimingham)
- ID/18 Lists of agreed Conditions
- ID/19 Email exchanges between BDBC and Barton Willmore regarding extension of time (13 September 2013 – 24 September 2013)
- ID/20 Transcript of R on the application of Trasherfield v Bristol City Council & Others [2014] EWHC 757 (Admin)
- ID/21 Letter from Hampshire CC dated 6 March 2014 submitted by Councillor Biermann
- ID/22 Closing Statement on behalf of BDBC
- ID/23 Closing Statement on behalf of Appellant
- ID/24 Response to Appellant's application for costs on behalf of BDBC
- ID/25 Appellant's response to BDBC's response to the costs application
- ID/26 Completed Agreement under S.106 dated 16 April 2014

**Annex C: PLANS**

- A ITB6028-GA-018 Rev. B - Proposed Main Site Access
- B ITB6028-GA-009 Rev. C - Proposed Secondary Access
- C CSa/1900/122 Rev. C - Site Location Plan
- D CSa/1900/109 Rev. F - Land Use Plan
- E CSa/1900/120 Rev. B - Parameters Plan

Richborough Estates

## **Annex D: SUGGESTED CONDITIONS**

- 1) Details of appearance, landscaping, layout, and scale, (the reserved matters) for any phase shall be submitted to and approved in writing by the local planning authority before any development begins on that phase. Development shall be carried out as approved in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: ITB6028-GA-018 Rev. B - Proposed Main Site Access; ITB6028-GA-009 Rev. C - Proposed Secondary Access; CSa/1900/122 Rev. C - Site Location Plan; CSa/1900/109 Rev. F - Land Use Plan; and CSa/1900/120 Rev. B - Parameters Plan.
- 5) No development shall take place until a Scheme of Phasing has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved Scheme of Phasing.
- 6) Applications for the approval of reserved matters shall be in accordance with the principles and parameters described and illustrated in the Design and Access Statement dated November 2012 and the Supplementary Design and Access Statement dated May 2013 and received on 30/05/2013. For the avoidance of doubt all reference to indicative masterplan shall be drawing no. CSa/1900/108 Rev. M received on 30/05/2013 and any conditions on this approval will supersede any reference made in this document where relevant.
- 7) Applications for the approval of reserved matters shall be in accordance with Saved Policy C3 and the Housing Mix and Lifetime Mobility Standards SPD; with particular regard to the provision of an appropriate housing mix and implementation of 15% of market dwellings being built to lifetime mobility standards.
- 8) Prior to the commencement of each phase of development as approved under Condition 5 an Interim Certificate of Compliance with the Code for Sustainable Homes for that phase shall be submitted to and approved in writing by the local planning authority. The certificate shall demonstrate that the development within that phase will attain a minimum standard of Code Level 3. The development shall be carried out only in accordance with the details the subject of the certificate and prior to occupation of each dwelling a Code for Sustainable Homes Post Construction Stage Review is to be completed by an independent licensed Code of Sustainable Homes assessor demonstrating that the dwelling is expected to achieve Code Level 3. The results of the review must be submitted to the local planning authority in writing.
- 9) Prior to the commencement of development of each phase of development as agreed under condition 5 of this permission, no development shall commence (in relation to that specific phase being pursued) until a materials schedule detailing the types and colours of external materials to be used, including colour of mortar and windows, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

- 10) Prior to the commencement of development of each phase of development as agreed under condition 5 of this permission, no development shall take place (in relation to that specific phase being pursued) until full details of both hard and soft landscape proposals have been submitted to and approved in writing by the local planning authority. These details shall include, as appropriate, proposed finished levels or contours, means of enclosure, car parking layouts, other vehicle and pedestrian access and circulation areas, location and design of play areas, hard surfacing materials and minor artefacts and structure (eg furniture, refuse or other storage units, signs, lighting, external services, etc). Soft landscape details shall include planting plan, specification (including cultivation and other operations associated with plant and grass establishment), schedules of plants (including replacement trees where appropriate), noting species, planting sizes and proposed numbers/densities where appropriate, as well as any works to enhance wildlife habitats where appropriate. In addition, an implementation timetable for each phase shall be submitted to and approved in writing by the local planning authority before development commences within that Phase. If applicable, these details will also extend to cover areas of open space to be adopted by the Council and such areas shall be agreed in writing prior to development commencing. All hard and soft landscape works shall be carried out in accordance with the approved details in accordance with the approved timetable. Any trees or plants which, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced in the next planting season with others of species, size and number as originally approved.
- 11) Prior to the commencement of each phase of development as agreed under condition 5 of this permission, no works (in relation to that specific phase being pursued) shall take place until a measured survey of that phase has been undertaken and a plan prepared to a scale of not less than 1:500 showing details of existing and intended final ground levels and finished floor levels in relation to a nearby datum point which shall be submitted to and approved in writing by the local planning authority. The development shall be completed and thereafter retained in accordance with the approved details.
- 12) As part of the reserved matters submissions for each phase of development (as approved under condition 5), a noise mitigation scheme shall be submitted for the approval in writing by the local planning authority dealing with noise from road and rail traffic. The scheme shall be designed to achieve maximum internal noise levels in all habitable rooms of 35 dB LAeq, 16 hour between 07:00 and 23:00 hours, and 30 dB LAeq, 8 hour between 23:00 and 07:00 hours. The approved noise mitigation scheme shall be implemented in full prior to the occupation of dwellings on the relevant phase. The measures forming part of any scheme approved and implemented shall be thereafter retained.
- 13) As part of the reserved matters submission for each phase of development (as approved under condition 5), a noise mitigation scheme shall be submitted for the approval in writing by the Local Planning Authority dealing with noise from adjacent industrial operations on the Air Products premises. The scheme shall be designed to achieve (a) a maximum free-field noise level from adjacent operations on the Air Products premises (as recorded in the noise survey data included in Cole Jarman reports 11/1441/R2 and 11/1441/R3) of 42 dB LAeq, 1 hour between 07:00 and 23:00 hours in all external amenity spaces serving the needs of the residents of dwellings within the development site (including

private gardens, terraces, balconies and communal amenity spaces shared by occupiers of flats or apartments but excluding public open space shared by all occupants of the site); and (b) maximum internal noise levels in habitable rooms of 30 dB LAeq, 5 minute and 45 dB L<sub>Amax,F</sub> between 23:00 and 07:00 hours and 35 dB LAeq, 5 minute between 07:00 and 23:00 hours.

If the internal noise limits can only be achieved with closed windows then alternative means of both whole dwelling and purge ventilation should be provided to allow residents to occupy the properties at all times with windows closed. The approved noise mitigation scheme should be implemented in full prior to the occupation of dwellings on the relevant phase. The measures forming part of any scheme approved and implemented shall be thereafter retained.

It is anticipated that compliance with the noise mitigation schemes required in Conditions 12 and 13 may be achieved via the combination of some or all of the following (i) appropriate site layout and masterplanning; (ii) provision of acoustic glazing and alternative means of ventilation; and (iii) provision of acoustic screening.

- 14) No work relating to the construction of each phase of the development agreed under condition 5, including works of preparation prior to operations, or fitting out, shall take place before 0730 hours or after 1800 hours on Mondays to Fridays, before 0800 hours or after 1300 hours on Saturdays, and not at all on Sundays or recognised public holidays.
- 15) No deliveries of construction materials or plant and machinery and no removal of any spoil from the site shall take place in relation to each phase of development agreed under condition 5 before 0730 hours or after 1800 hours on Mondays to Fridays, before 0800 hours or after 1300 hours on Saturdays, and not at all on Sundays or recognised public holidays.
- 16) The works pursuant to this permission (in relation to each phase agreed under condition 5) shall be carried out in accordance with (a) the desk top study carried out by Southern Testing (Desk Study and Preliminary Site Assessment Report dated 25/05/2012 – Ref. A2324 received 03/12/2013) and no works (in relation to each phase agreed under condition 5) shall commence until there has been submitted to and approved in writing by the local planning authority; (b) a site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as being appropriate by the desk study in accordance with BS10175:2001 - Investigation of Potentially Contaminated Sites - Code of Practice; and, if remediation works are required, (c) a detailed scheme for remedial works and measures to be undertaken to avoid risk from contaminants/or gases when the site is developed and proposals for future maintenance and monitoring. Such scheme shall include nomination of a competent person to oversee the implementation of the works. If during any works, contamination is encountered which has not been previously identified then the additional contamination shall be fully assessed and an appropriate remediation scheme, agreed in writing with the local planning authority.
- 17) If a remediation scheme is required in accordance with Condition 16, the relevant phase of development as approved under condition 5 of this permission shall not be occupied/brought into use until there has been submitted to the local planning authority verification by the competent person



- approved under the provisions of condition 16 that any remediation scheme required and approved under the provisions of condition 16 has been implemented fully in accordance with the approved details. Such verification shall comprise as built drawings of the implemented scheme; photographs of the remediation works in progress; and certificates demonstrating that imported and/or material left in situ is free of contamination. Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under condition 16(c).
- 18) No development shall commence in relation to each phase of development approved under condition 5, until a programme for the suppression of dust during the construction of the development has been submitted to and approved in writing by the local planning authority. The measures approved shall be employed throughout the period of construction.
- 19) There shall be no burning of any waste materials on site.
- 20) Prior to the commencement of development of each phase as agreed under condition 5 of this permission, an archaeological investigation of the phase shall be carried out in accordance with a specification submitted to and approved by in writing the local planning authority, including a Written Scheme of Investigation and Mitigation Statement. The investigation and mitigation works shall be carried out in accordance with the approved details.
- 21) No development shall commence in relation to each phase of development approved under condition 5 until a surface water drainage scheme for that phase, based on sustainable drainage principles, and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 1 in 100 plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- 22) Prior to the commencement of development of each phase as agreed under condition 5 of this permission, a scheme for the provision and management of a 5m buffer zone alongside the drain across the application land (if within the specific phase being pursued) shall be submitted to and agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The buffer zone scheme shall be kept free from built development.
- 23) Prior to the commencement of each phase of development as agreed under condition 5 of this permission, including soil moving, temporary access construction/widening, or storage of materials, a Biodiversity Mitigation Strategy shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place other than in complete accordance with the approved Biodiversity Mitigation Strategy. No habitat or other landscape features that are to be retained as part of the approved Biodiversity Mitigation Strategy shall be damaged, destroyed or removed without the prior written approval of the local planning authority, before practical completion of the development. If a habitat or other landscape feature is removed or damaged in contravention of this agreement, a scheme

of remedial action, with a timetable for implementation, shall be submitted to and approved in writing by the local planning authority within 28 days of the incident. The scheme of remedial action must be approved by the local planning authority before practical completion of the development and implemented in accordance with the approved timetable.

- 24) Prior to the commencement of each phase of development as agreed under condition 5 of this permission, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall include a detailed strategy for traffic management throughout the construction of phase of the relevant phase of development, which shall include construction routing, including signage, site parking for contractors' vehicles, provisions to be made for delivery and construction vehicles turning on site, hours of deliveries, a Construction Phase Travel Plan (CPTP), and measures to ensure that mud and debris is not deposited on the public highway, or other local roads. Once approved the CTMP and CPTP shall be implemented in accordance with the approved details.
- 25) Prior to commencement of development of each phase as agreed under condition 5 of this permission, a scheme for external lighting and street lighting within that phase shall be submitted to and approved in writing by the local planning authority. External lighting and street lighting shall be provided on each phase, in accordance with the approved details.
- 26) The vehicular accesses shall be provided in accordance with the details shown on drawings ITB6028-GA-009 Rev C and ITB6028-GA-018 Rev B in accordance with an implementation programme first submitted to and approved in writing by the local planning authority.
- 27) No development shall take place until details of the shared footway/cycleway access on to Cufuade Lane from the northern extent of the site, including layout, construction, sight lines, as shown in principle on drawing ITB6028-SK-30-Rev A, and an implementation programme, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 28) Prior to the commencement of development of each phase as agreed under condition 5 of this permission, an Arboricultural Impact Assessment and Arboricultural Method Statement (drawn up to reflect the current British Standard BS 5837) in relation to any retained trees contained within the land subject to that phase, shall be submitted to and approved by in writing the local planning authority. Development shall be carried out in accordance with the approved details.



## Department for Communities and Local Government

### RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

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

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

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

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

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

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