



Appeal Decision

Inquiry held on 28 to 30 March 2023

Site visit made on 18 April 2023

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Appeal Ref: APP/R3650/W/22/3310793

Lower Weybourne Lane, Badshot Lea, Farnham GU9 9LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andrew Morris (Bewley Homes Plc) against the decision of Waverley Borough Council.
 - The application Ref WA/2022/01433, dated 16 May 2022, was refused by notice dated 23 August 2022.
 - The development proposed is outline application for residential development of up to 140 dwellings with all matters reserved except for access (excluding internal roads).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The inquiry was originally scheduled to sit for 5 days, which was subsequently reduced to 3 days following a narrowing in the areas of disagreement between the Council and the Appellant.
3. A case management conference was held online on 1 February 2023. The purpose of the conference was to provide a structure for the ongoing management of the inquiry. No discussion of the merits of the respective cases took place. A note of the conference was made publicly available shortly after it took place.
4. The proposal is an outline application with all matters reserved for subsequent approval except for access. Plans indicating matters that would be reserved, including the submitted layout plan, have been treated on an illustrative basis.
5. Ahead of the event, and following receipt of further details from the Appellant and consultees, the Council confirmed that they no longer wished to defend their reasons for refusal (RFR) relating to highways (RFR2), minerals (RFR3), protected species (RFR5) and flooding (RFR7).
6. Statements of common ground (SOCG) were agreed in respect of landscape, planning issues, housing land supply, and highways. The highways SOCG directly led to the Council withdrawing RFR2.

7. Consequently, the acceptability of the proposed access (the only matter for which approval is being sought at this stage) is not in dispute. Reviewing the details, I agree that the access details are acceptable subject to conditions governing details such as the construction and visibility splays.
8. A signed and duly executed legal agreement under section 106 of the Town and Country Planning Act 1990 (S106) has been submitted. The S106 contains obligations relating to provision of affordable housing, first homes, transport and highways, managed land and landscaping, and financial contributions towards waste and recycling, Strategic Access Management and Monitoring (SAMM) and Suitable Alternative Natural Green Space (SANG). Examining the policy basis and rationale for each of these obligations, as set out in the evidence and discussed as necessary at the inquiry, I am satisfied that they meet the relevant tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, as repeated in Paragraph 57 of the National Planning Policy Framework (the Framework).
9. As a consequence of the above, I have taken all the obligations within the S106 into account in reaching my decision. The obligations relating to affordable housing and the SAMM/SANG contributions also led to the Council no longer wishing to defend RFR4 (affordable housing) and RFR6 (effects on integrity of the Thames Basin Heaths Special Protection Area (SPA)).
10. The extent of common ground reached over the course of the appeal has led to a number of the Council's RFRs not being identified as main issues in this appeal. Notwithstanding this, highways, flooding, and effects on the SPA are matters raised by a number of interested parties. As such, these issues were discussed in substance at the inquiry and I have addressed them in this decision under other matters.
11. Following the inquiry an appeal decision was issued in relation to a nearby site at Green Lane¹. I have included this decision as an inquiry document and gave the Council and the Appellant the opportunity to comment on it. Although it relates to a nearby site and considers similar issues, the decision turns on its own facts and evidence. As such, the decision has not been instructive in my decision making.

Site History

12. Two proposals for 140 dwellings on the site have been dismissed previously at appeal. The first was in March 2018 and was an application for full planning permission (2018 Appeal²). This decision was an appeal recovered by the Secretary of State for their own determination. Within the context of the present appeal, it is noteworthy that the Secretary of State was of the view that the Council could show 5 years of housing land supply at that time. As such, the presumption at what is now Paragraph 11 of the Framework did not apply.
13. The second proposal was an outline application, identical in substantive detail to the current scheme and was dismissed in June 2021 (2021 Appeal³). In this decision, 5 years of supply could not be shown and the presumption therefore applied.

¹ APP/R3650/W/22/3312128

² APP/R3650/W/15/3132971

³ APP/R3650/W/20/3262641

14. Paragraph 14 of the Framework was also relevant, which applies to the presumption and directs that the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits.

15. It is common ground that the age of the Farnham Neighbourhood Plan now means that Paragraph 14 no longer applies. There are also differences in the Council's assessment of harm (including in relation to density) and the benefits of the scheme. My conclusions in the present case are reached on this basis.

Main Issues

16. The main issues are:

- The effect of the proposal on the character and appearance of the area, when particular regard is paid to effects on landscape and settlement character.
- Any implications of housing supply or delivery in respect of the approach to decision taking.

Reasons

Planning policy background

17. The development plan policies that are central to the main issues are within the Waverley Borough Local Plan Part 1 Strategic Policies and Sites (Local Plan Part 1) and the Farnham Neighbourhood Plan (Neighbourhood Plan), both of which plan for the period to 2032. The Waverley Borough Local Plan Part 2 (Local Plan Part 2) was adopted on 21 March 2021, just ahead of the inquiry, and contains policies that have a more indirect influence on the main issues.

18. Policy ALH1 of the Local Plan Part 1 sets out that the Council will make provision for at least 11,210 (590 dwellings per annum) additional homes in the plan period, including a minimum of 2,780 homes within Farnham.

19. Policy SP2 of the Local Plan Part 1 seeks to maintain Waverley's character whilst ensuring that development needs are met in a sustainable manner. This is to be achieved by, amongst other things, avoiding major development on land of the highest amenity and landscape value, focusing development at the four main settlements (including Farnham), and allocating strategic and additional sites (including through an adopted part 2 plan and neighbourhood plans).

20. The Local Plan Part 1 was adopted in 2018, with the last update to the Neighbourhood Plan following in 2020 to identify additional land for housing to assist with meeting the requirement for Farnham. The Local Plan Part 2 makes housing site allocations only in relation to Haslemere and Witley (including Milford), to meet the minimum needs for those settlements as established in Policy ALH1.

21. Paragraph 5.16 of the Local Plan Part 1 recognises that there are limits to which the main settlements can accommodate the Borough's housing needs and that some expansion of settlements through the development of suitable sites on the edges will be necessary. Whilst not an allocated site, it is common ground that the location adjacent to a main settlement boundary is such that the proposal would not conflict with Policy SP2.

22. It is also common ground that the site and the immediately surrounding landscape and townscape do not constitute a valued landscape as defined in paragraph 174a of the Framework.
23. Nevertheless, the site is regarded as Countryside Beyond the Green Belt for the purposes of Policy RE1 of the Local Plan Part 1. As such, RE1 requires that the intrinsic character and beauty of the countryside will be recognised and safeguarded in accordance with the Framework. Paragraph 174b of the Framework is relevant in this regard.
24. Ensuring an adequate supply and mix of housing to meet identified needs within the environmental constraints of Farnham is an objective of housing policy in the Neighbourhood Plan. Equally, the plan has amongst its environmental objectives protecting the identity and distinctive character of the different areas of Farnham and preventing coalescence of specific areas (including, importantly in the context of this appeal, Badshot Lea and Weybourne).
25. The Neighbourhood Plan defines a Built up Area Boundary, which the site falls outside of. In accordance with Policy FNP10, priority will be given to protecting the countryside from inappropriate development and proposals will only be permitted that enhance the landscape value of the countryside.
26. In terms of preventing coalescence between Badshot Lea and Weybourne, Policy FNP11 requires development proposals in locations such as the site to be assessed, amongst other things, in terms of their potential impact upon the visual setting and landscape features of the site and its surroundings. The policy adds that proposals which either fail to demonstrate that planning impacts can be satisfactorily addressed or which clearly lead to the increased coalescence of settlements will not be supported.
27. Paragraph 5.96 of the Neighbourhood Plan makes specific reference to the area between Badshot Lea and Weybourne, highlighting the wish to retain the separate identity of the 2 areas, the separation provided by the railway line, and the single field gap on Lower Weybourne Lane which breaks the built up frontage of the two settlements. The Neighbourhood Plan acknowledges that the remaining gap is not of high landscape value, but that it has an important role in separating areas of Farnham that are considered to be distinct.
28. It is common ground that the proposal would result in an area of residential development outside of the Built up Area Boundary and within an area that is regarded as Countryside Beyond the Green Belt. As such, the proposal would not comply with Policy RE1 of the Local Plan Part 1 and FNP11 of the Neighbourhood Plan.
29. The extent of conflict, the resulting impacts, and consequently the weight that should be attributed to the policies, along with others, in any planning balance exercise is a matter of dispute. Whether the proposal would conflict with Policy FNP10 of the Neighbourhood Plan is also a matter of dispute.

Character and appearance

30. The extent of public visibility, and to a lesser extent the visual impacts, of the proposal are a matter of a degree of common ground, influenced also by conclusions set out in the 2018 Appeal and 2021 Appeal decisions. This focuses my reasoning on the matters that are in dispute, which relate to whether the site exhibits a rural character, the extent to which the proposal would give rise to unacceptable urbanisation, and whether coalescence between Badshot Lea and Weybourne would result.
31. I will address character and urbanisation in my comments below relating to effects on landscape character and coalescence in the section on settlement character. However, there is a degree of interrelationship across these issues and their relevance to the policies under discussion.
32. During the inquiry, some discussion took place about the respective methodologies utilised by the Council and the Appellant's landscape witnesses. Whilst noting where there are differences in approach and conclusions on points of detail, I can identify no underlying inadequacy in either assessment. Both provide a clear and logical basis on which to consider the landscape effects of the proposal.
33. Given the timeline and lack of evidence of material physical change in the landscape, the Appellant's reliance on the Landscape and Visual Impact Assessment that supported the 2021 Appeal planning application, supplemented by the evidence of their landscape witness, does not damage the credibility of the assessment that has been undertaken.

Effect on landscape character

34. The existing character of the land was subject to extensive discussion at the inquiry. Whilst I acknowledge the views on both sides, whether the site is specifically referred to as semi rural or peri urban matters less than appreciating simply that the character of the site and surroundings are mixed and take their influence from both the rural and the urban.
35. The surroundings are not deeply rural. The lack of formal landscape designation, notable features and public accessibility were all noted by the Inspectors in the 2021 Appeal and 2018 Appeal decisions and are relevant. However, the current use and appearance of the site clearly evokes some sense of rurality. As does its connection with open land to the north and south that shares similar characteristics. As existing, there is a sense of tranquillity that increases more deeply into the site away from Lower Weybourne Lane.
36. At the same time, the modern housing estate close to the boundary and, to a lesser extent, the railway line, are urban qualities that also influence the context. The urban influence intensifies to the east and west, deeper into Badshot Lea and Weybourne respectively. However, the influence is more readily profound on the Badshot Lea side due to the immediate presence of the adjacent housing estates.
37. I have paid regard to the various landscape character assessments that have been drawn to my attention, particularly the Surrey Landscape Character Assessment, Borough Landscape Study, and Farnham Landscape Character Assessment.

38. As noted by the Inspector in the 2021 Appeal decision, particularly in relation to the Borough Study and the Farnham Assessment, differences in conclusions can largely be attributed to the scale of the area being considered and their purpose. The assessments each have value and, perhaps inevitably, draw attention to some aspects of character that are more common to the site than others. However, I do not find them to be contradictory.
39. Taken as a whole, it would be wrong to deny either the rural or the urban influences in their entirety. In addition, as mentioned by the Appellant's landscape witness, the character of the site is best appreciated by visiting it. Having done so, I am of the view that the Appellant's description of the site as a plot with significant urban influences underplays the rural aspects of the land. As noted above, the main urban influence comes from the adjacent modern housing estates, which form only part of the site context. Although the Appellant's landscape witness disagrees with the Inspectors in both the 2018 and 2021 Appeal decisions describing the appeal site as being rural in character, I do not. Particularly as, at the same time, they also acknowledge the urban influence.
40. Some discussion took place at the inquiry about whether the character of the site has materially changed since the previous appeals. I have noted the words that the respective Inspectors use to describe the surroundings. To my mind these amount to linguistic preferences from the respective authors, rather than something that can be used to reach a firm finding on whether the quality of the land has degraded, or not, between decisions.
41. The schedules of photographs that have been submitted and the nature of agricultural land uses, generally not the most dynamic in terms of change, do not suggest to me that the character of the land has changed very much between appeal decisions. The felling of a sizeable tree along the frontage is likely to have impacted on the visual qualities of the site. However, in the wider context, the impact is unlikely to be sufficient to change the character of the land.
42. Acknowledging the urban influence in the surroundings, and that layout and appearance are reserved, I agree with the Inspector's conclusions in the 2021 Appeal that the proposal would result in a fundamental change in the character of the site. The nature of that change would shift the balance between rural and urban unquestionably in favour of the urban. This would come as an inevitable consequence of introducing 140 homes to what is presently an open, greenfield site and creating what would be seen as a new urban edge to Badshot Lea. A consequent increase in urbanisation would follow.
43. In addition to the relatively enclosed nature of the site and localised views, which are matters of common ground, there are a number of factors that would help to mitigate the effects of urbanisation. These are all acknowledged by the Inspector in the 2021 Appeal decision and remain relevant.
44. The illustrative plans demonstrate that a green corridor along the western side of the site adjacent to the railway land, along with a set back and provision of open space adjacent to Lower Weybourne Lane could be provided. This would help to give some visual relief from built development. Setting dwellings back from the front edge of the site would also help limit more distant views approaching from the east and west along Lower Weybourne Lane, coupled with the limits on intervisibility between Badshot Lea and Weybourne due to the railway line and bridge.

45. The fence along the eastern boundary with the modern housing estates is a visible feature from Lower Weybourne Lane. It's appearance, along with the side walls of some of the dwellings within the estates, detracts to some degree from the setting of Badshot Lea. However, when viewed within the wider context of the site's openness and greenery, I would not go as far as agreeing with the Inspector in the 2021 Appeal and say that the fence dominates the setting.
46. Nevertheless, I do acknowledge that the proposal has the potential to create an attractive urban edge that, along with the other factors discussed, would assist in mitigating the impacts that would result from increased urbanisation of the site and a decline in its rural character. I would not, however, go as far as describing these elements of the scheme as material enhancements to the landscape, even if that term is understood to also include townscape.
47. Whilst I acknowledge the potential for mitigation, the increased urbanisation associated with the proposal would fail to protect the countryside from inappropriate development. Further, the proposal would not enhance the landscape value of the countryside. As such, there is conflict with Policy RE1 of the Local Plan Part 1 and Policy FNP10 of the Neighbourhood Plan.
48. The Farnham Design Statement has been drawn to my attention as a source of detailed design advice for development in the area. As the layout and appearance would be reserved matters, concluding at this outline stage that the proposal would be incapable of following the guidance would be premature. As such, I do not find conflict with it or Policy FNP1 of the Neighbourhood Plan that references it.

Effect on settlement character

49. The Neighbourhood Plan has preventing coalescence of specific areas amongst its objectives (including Badshot Lea and Weybourne). Policy FNP11, along with the establishment of the Built up Area Boundary are key policy tools for achieving that objective, with Policy FNP10 and its focus on protecting the countryside from inappropriate development also playing an important role. The policy approach has been informed by the relevant landscape character assessments, that consider the relationship between landscape and settlement.
50. Given the prominence in the development plan, it is not for this appeal to question significantly whether maintaining the separate identities of Badshot Lea and Weybourne is a legitimate objective, or not. Further, whether Badshot Lea and Weybourne are seen as distinct settlements in their own right or different parts of Farnham is not material. However, for the purposes of this decision I will refer to them as 2 settlements.
51. Looking at the Built up Area Boundary in the Neighbourhood Plan as a whole, the size of the gaps in the boundary between different settlements varies in extent. In the case of Badshot Lea and Weybourne the gap is amongst the narrowest, with only a single field (the site) separating them at the point along Lower Weybourne Lane. The gap at this point is specifically referred to in paragraph 5.96 of the plan where it is said to break the built up frontage between the 2 settlements and have an important role in separating distinct areas, despite the acknowledgement of not being of high landscape value and the separation provided by the railway line.

52. On the Badshot Lea side, the Built up Area Boundary extends up to the housing estates that are adjacent to the site. On the Weybourne side, the boundary is shown as extending to the railway line. Other than the dwellings that line Lower Weybourne Lane itself, housing is not currently built up to the edge of the boundary on the Weybourne side, reflecting the inclusion within it of the housing allocation at SSE Farnham Depot (allocated under Policy FNP14a of the Neighbourhood Plan), which has beyond it land west of Green Lane (allocated under FNP14b).
53. Given the closeness of these allocations on the other side of the railway, I find no fault in the Council considering the cumulative impact of the proposal along with plans for future development in the area, and the potential effects of that in terms of coalescence. However, given the separation provided by the railway this is not in my view a significant issue.
54. At the inquiry, the parties agreed that the 3 aspects identified by the Appellant's landscape witness represented a reasonable way to consider the issue of coalescence, namely the physical, perceptual, and visual aspects. I have adopted a similar approach.
55. The illustrative plans show how a gap between Badshot Lea and Weybourne could be maintained, particularly by retaining a green corridor on the west side of the site and setting dwellings back from Lower Weybourne Lane. Part of the green corridor would be utilised as the site access and road, which would be evident when seen from Lower Weybourne Road. The result would be more urban in appearance as compared to existing. However, this would not materially diminish the potential contribution that the retained gap could make in providing some degree of separation between the 2 settlements, assisted also by the railway line and the associated embankment.
56. Nevertheless, as a matter of fact and degree, taking account of the relatively limited extent of the gap and the scale of the proposed development the reduction in the gap between the two settlements and therefore increase in coalescence would be extensive. The parties disagree on some measurements, including that the Appellant's figures that a physical reduction in the gap of 70 metres would result, leaving 50 metres remaining between the railway line and the development. Even adopting the Appellant's figures, I would regard the physical reduction in the gap as significant in this context.
57. The railway line makes a contribution to the perceived separation between the 2 settlements, particularly by providing a physical barrier. The openness of the site, coupled with the mostly undeveloped sea cadets site, also makes an important contribution to the sense of moving between places. The signs displaying the place names are of more superficial importance.
58. The extent of development proposed would disrupt how the gap is perceived by replacing openness with built development designed, to a degree, to be consistent with the housing estates that are already present. It would create a new suburban edge to Badshot Lea that would be perceived as such. Setting back development from Lower Weybourne Lane could be used to indicate some perception of place change that, along with the retained gap and the railway would provide a sense of passing between settlements, albeit in a less meaningful way than existing due to the reduction in the gap and change in the character of the land.

59. The green corridor and setback from Lower Weybourne Lane would assist with managing the visual effects of the reduction in the gap. It would provide some openness along the frontage that would be important, particularly given the relatively low level of intervisibility between the 2 settlements due to the railway infrastructure. This, along with the green corridor, would result in a visual break and relief from built development, as discussed more extensively in my conclusions on effects on landscape character.
60. The proposal would result in an unplanned reduction in the gap between the 2 settlements. Although actual coalescence would not occur, Policy FNP11 only requires proposals to clearly lead to the increased coalescence of settlements to be in conflict with the policy.
61. Although 'clearly' is not defined in Policy FNP11, giving the word its ordinary meaning, the scale of development proposed in this case relative to the reduction in the gap is such that the increase in coalescence would be clear. As such, there is conflict with Policy FNP11 of the Neighbourhood Plan.

Conclusion on character and appearance

62. In overall conclusion on the main issue of character and appearance. When particular regard is paid to effects on landscape and settlement character, the proposal would fail to protect the countryside from inappropriate development and would not enhance the landscape value of the countryside. It would also clearly lead to increased coalescence between Badshot Lea and Weybourne. Consequently, there is conflict with the development plan for the area, in particular Policy RE1 of the Local Plan Part 1 and Policies FNP 10 and FNP11 of the Neighbourhood Plan.

Housing land supply and delivery

General supply and delivery

63. In relation to supply, the Council's current housing land supply position is set out in the Position Statement published on 28 February 2023, the detail of which is a matter of disagreement between the parties. However, it is common ground that the correct period for assessing 5 year supply is 20 February 2023 to 19 February 2028 and that the housing requirement for the Council's area (including buffer) equates to 779 dwellings per annum. The requirement reflects an uplift on Policy ALH1 of the Local Plan Part 1 as a consequence of it being more than 5 years old and, therefore, needing to adopt a figure using the standard method.
64. Although the parties disagree on the Council's supply position, for the purposes of this appeal they agree that the 5 year housing land supply figure falls somewhere within the range of 3.53 and 4.28 years. It is also common ground that reaching a judgment on the exact extent of the shortfall in supply is not necessary in order to make a decision on this appeal.
65. Although the range is broad, the figures are generally consistent with judgements reached in previous appeal decisions in the area that have been drawn to my attention. As such, I am satisfied that adopting the range is a reasonable approach and it has not, therefore, been necessary for the inquiry to assess the deliverability of individual sites.

66. The shortfall has persisted over a considerable period. The adoption of the Local Plan Part 2 is a step in the right direction. However, its housing site allocations are geographically contained and relatively small in a wider Borough context. There is little concrete evidence to demonstrate that the Council has a credible strategy, including progressing through an agreed timetable for updating the Local Plan Part 1, that will address the housing land supply issues of the Borough on a wider basis anytime soon. In these circumstances, the Appellant is correct to characterise the shortfall in housing land supply as significant. The removal of the shortfall from earlier in the plan period, which accords with National Planning Practice Guidance⁴, makes little difference to my judgement on this matter.

67. Notwithstanding the position on housing land supply, the picture is better when housing delivery is considered using the Housing Delivery Test. Here there has been an improvement over the last 4 years, with the last set of results generating a figure of 109%. Notwithstanding this, the more positive position on the Housing Delivery Test cannot be used to justify or offset what is a poor housing land supply situation.

Affordable housing

68. It is common ground that there is an acute need for affordable housing in the Borough. The extent of the need is set out in the Proof of Evidence from the Appellant's witness on Planning Matters and there is limited factual evidence to dispute it.

69. The proposal would contribute towards the current and pressing need by delivering 40% affordable housing, which is secured by obligation in the S106. This is above the 30% requirement under Policy AHN1 of the Local Plan Part 1. Within this context, I would characterise the affordable housing contribution associated with the proposal as significant.

Conclusion on housing land supply and delivery

70. The proposal would positively impact the Borough's housing supply and delivery position (including affordable housing). This attracts weight in the final decision of whether to grant planning permission, which is not in dispute between the parties. As such, housing supply and delivery have implications in respect of the approach to decision taking, which I shall explore further in my conclusions.

Other Matters

71. I have paid regard to comments from other interested parties, including those who made representations at the inquiry. Comments relating to the issues of character and appearance and housing supply and delivery have been considered as part of my assessment of the main issues. Comments on other matters have not affected my final conclusions. However, as highways, flooding, and effects on the SPA were discussed at length at the inquiry I will address those issues in more detail.

⁴ Reference ID – 68-031-20190722

Highways

72. The Highways SOCG sets out the extent of common ground on highways issues between the Appellant and Surrey County Council, in their capacity as highway authority. Amongst the issues that are agreed are that the detailed plans demonstrate that the proposed site access to Lower Weybourne Lane would be safe and suitable and that the package of highway improvement works immediately beyond the site and contributions (along with travel plan provisions) would promote sustainable transport measures. Taken as a whole, they would ensure that the residual cumulative traffic impacts fall short of the threshold of severe identified in Paragraph 111 of the Framework, which I agree with. The relevant highway improvement works and contributions are secured in the S106.
73. Widening the existing footway beneath the railway arch would improve shared facilities for pedestrians and cyclists, and therefore the safety and attractiveness of the connection between the site and Weybourne. There is no evidence that the priority give way arrangement for motor vehicles passing under the bridge that would be a consequence of the change to the road layout would introduce safety concerns that outweigh the positives in terms of improving connectivity. As the plans indicate that priority would be in favour of vehicles coming from the Weybourne side, there is a low risk of any adverse impacts of queuing traffic being felt by occupants of existing properties close to the railway bridge.
74. I appreciate the concerns about the impact of further housing development on an area where key roads are seen as congested and operating at towards capacity, particularly at peak times. The Appellant's transport evidence is described as extensive and detailed in the Highways SOCG. The evidence does not assess every junction/roundabout that is of concern to other interested parties. However, having visited the key points in the area suggested by other interested parties, I am satisfied that it is reasonably comprehensive paying regard to the scale of the proposal. As such, I would not question the extensiveness of the evidence. Further, I have no evidential basis on which to disagree with the conclusions on effects that are a matter of common ground.

Flood risk

75. Surface water flooding on Lower Weybourne Lane is a relatively frequent occurrence, with pooled water as the road approaches and passes beneath the railway bridge being a particular consequence. The appeal site itself has a relatively lower risk of surface water flooding and is supported by a surface water drainage strategy. Although the Lead Local Flood Authority initially objected to the proposal based on lack of information, the Council withdrew their RFR7 relating to this issue following further consideration and acceptance that the details provided were the same as those accompanying the 2021 Appeal. This is subject to conditions to manage the design of the surface water drainage solution that would come forward as part of reserved matters applications. I have no evidence that leads me to conclude that this approach would not be effective.
76. There was discussion at the inquiry about whether the proposal would improve the surface water flooding situation beyond the site. No requirements of local and national policy for such improvements have been drawn to my attention.

77. Nevertheless, there is evidence within the Appellant's detailed drainage work to indicate that management of surface water via storage and attenuation of flows across the site may result in consequential positive benefits beyond it. Although, such a benefit is not fully quantified and is subject to agreement of a detailed solution at the reserved matters stage.

SPA

78. The issue of effects on SPAs was subject to discussion at the inquiry, specifically by Cllr Hyman. Given the detailed nature of the comments raised an agreed note⁵ between the Council and the Appellant was produced by way of response. The note is the same as that produced during the 2021 Appeal inquiry and has been subject to confirmation with Natural England that it remains factually correct.

79. It is common ground between the Appellant and the Council that the site is within 5km of the SPA and that an absence of appropriate mitigation could have a potential significant effect on it. Policies NE3 of the Local Plan Part 1 and FNP12 of the Neighbourhood Plan, along with saved Policy NRM6 of the South East Regional Plan provide a policy basis for requiring a financial contribution towards SANG and SAMM as a form of avoidance and mitigation for significant effects. The Council's Avoidance Strategy has been updated relatively recently and provides guidance on the implementation on and how the SANG and SAMM requirement should be incorporated within planning applications. The contribution is contained within the S106 and, on the basis of it, Natural England have raised no objection to the proposal.

80. The effectiveness of this approach was discussed at the inquiry. However, as I am minded to dismiss the appeal, the requirement for me to undertake an Appropriate Assessment is not triggered. As such, addressing this issue further serves no useful purpose as it does not change the overall outcome

Planning balance and application of Section 38(6)

81. The proposal would result in harmful effects to the character and appearance of the area, when particular regard is paid to effects on landscape and settlement character. There is consequent conflict with the development plan for the area that flows from the harm, in particular with Policy RE1 of the Local Plan Part 1 and Policies FNP10 and FNP11 of the Neighbourhood Plan.

82. Although much of the detail would be left to reserved matters, there is potential for some mitigation. In the case of landscape character, it is common ground that the effects would be no greater than moderate adverse, which I agree with.

83. The harmful effects on settlement character arise principally as a consequence of the physical reduction in the extent of the gap between Weybourne and Badshot Lea. Again, some mitigation could be applied which would manage the visual effects. However, the outcome of the proposal would be a clear increase in coalescence between Weybourne and Badshot Lea.

⁵ Inquiry Document 11

84. In the 2021 Appeal decision the Inspector afforded moderate weight to the increased coalescence. On the basis of the evidence I have considered, I am of the view that this factor should attract more significant weight. Whilst I accept that the visual aspects could be managed, the physical and perceptual reduction in the gap are significant issues. This is particularly the case when the scale of the reduction is viewed in the context of the relatively modest width of the gap at this point along Lower Weybourne Lane.
85. Allied to the conflict with FNP10 and FNP11 is the incompatibility of the proposal with the environmental objectives part of the strategy in the Neighbourhood Plan, as well as the specific policy detail in relation to how development outside of the Built up Area Boundary should be considered as a matter of principle. A grant of planning permission for the proposal in these circumstances would seriously undermine the credibility of the Neighbourhood Plan as the conflict with it could not be clearer.
86. I am also mindful of the role that neighbourhood planning has as part of ensuring that the planning system is genuinely plan led and all that Paragraph 15 of the Framework says about providing a positive vision and a platform for local people to shape their surroundings.
87. As a consequence, the clear conflict with the strategy in the Neighbourhood Plan, delivered through the explicit detail of FNP10 and FNP11 is a matter that attracts considerable weight.
88. I recognise the high degree of common ground and accordance with the development plan across a range of other areas. I also appreciate that the proposal's accordance with SP2 of the Local Plan Part 1 indicates that it would, at least at a strategic level, assist with meeting the Borough's development needs in a sustainable manner. However, the harm discussed above and conflict with the associated strategy in the Neighbourhood Plan leads me to conclude that the proposal would not accord with the development plan when viewed as a whole.
89. The position in relation to 5 year housing land supply triggers consideration of the presumption at paragraph 11 of the Framework, specifically 11d(ii). The most important policies for determining the appeal in this case are RE1, FNP10, and FNP11. These policies are deemed out of date. The main purpose of Policy SP1 and ALH1 of the Local Plan Part 1 is to repeat the presumption at Paragraph 11 and to set out the overall housing requirement for the area. Given their strategic nature, considering whether a proposal complies with or breaches these policies in individual development management decisions serves a limited purpose.
90. The positive impact the proposal would have in terms of housing supply is discussed elsewhere in this decision. The evidence on five year housing land supply provides ample demonstration that sufficient amount and variety of land is not coming forward where it is needed. Within this context, 140 homes of a mix of market housing to be determined at reserved matters stage in accordance with the Council's requirements, is a significant benefit. Provision of 40% affordable housing, in excess of what would otherwise be required under the Local Plan Part 1, on a relatively large site is also a significant benefit. As such, the proposal would support the Government's objective of significantly boosting the supply of new homes [Paragraph 60, Framework].

91. The Council concede that the 31% reduction against the target emissions rate in the Building Regulations is a matter that attracts significant weight, given the level of support for this in Policy DM2 of the Local Plan Part 2. I have no evidence that leads me to take a contrary view.
92. Provision of on site open space, vehicular and pedestrian access within and beyond the site, and accessibility for local services would be expectations of many developments of this scale and, at least in part, help to mitigate various associated effects and ensure compliance with the development plan on individual issues. As such, I see little in the evidence to persuade me that they attract anything more than moderate weight as benefits. There is some evidence that the proposal could assist with improving the existing surface water drainage issues that have contributed towards flooding in the area beyond the site towards the railway bridge. Although the extent of such an improvement isn't fully proven, this puts this benefit towards the upper end of a moderate weighting.
93. Short term benefits from construction and longer term benefits from spend in the local economy are hard to attribute to individual developments of this scale, and I see nothing of detail in the evidence that tries to do so. I attribute moderate weight to these matters as benefits of the proposal.
94. Paragraph 81 of the Framework regarding placing significant weight on the need to support economic growth does not increase the weight further, given the principal focus it has on business investment, expansion, and adaption.
95. Notwithstanding the moderate weight attached to the benefits described above, collectively they add weight in favour of the scheme. My attention has been drawn to appeal decisions that consider similar benefits. I have paid regard to these decisions⁶ acknowledging also that such judgements turn on their own circumstances and that, whilst it is desirable to decide like cases in a similar way, a small number of decisions following one approach is not always determinative of an issue.
96. In relation to biodiversity, a 10.26% net gain is proposed. Policy DM1 of the Local Plan Part 2 requires development to deliver the minimum net gain of 10% as required by the Environment Act 2021. The policy intention behind DM1 is sufficiently clear (i.e. delivering a minimum 10% gain in order to avoid negative impacts on biodiversity). Interpreting it to imply that the requirement won't apply until mandatory net gain is a legal requirement robs the policy of meaning and utility in the meantime and is an overly legalistic approach to interpreting planning policy.
97. My attention has been drawn to appeal decisions in Malmesbury⁷. They turned on their own facts and evidence, which limits the usefulness of attempting direct comparison. Paragraph 41 of the decision letter refers to a policy that seeks a net gain without identifying a specific percentage. On the face of it, that would appear to be a different situation to the present appeal where a minimum 10% is specified in Policy DM1. As such, I am not persuaded that the Malmesbury decisions help in the present appeal.

⁶ Including APP/N1730/W/20/3261194, which was discussed during the inquiry

⁷ App/Y3940/Q/21/3278256, 3278923, 3282365 (addressed in a single decision letter)

98. In light of the above, the proposal offers a very minimal biodiversity net gain over and above what Policy DM1 requires. Indeed, as DM1 is expressed as a minimum, the proposal simply complies with the policy. As such, the increase in biodiversity net gain attracts limited weight in the planning balance as a benefit of the scheme.
99. Taken overall, the benefits of the scheme are weighty. This is mostly as a consequence of the proposed housing delivery, particularly affordable, and the alignment with Paragraph 60 of the Framework and the resulting support for the Government's objective of significantly boosting the supply of homes.
100. Notwithstanding the tie that both have to a development boundary, Policies RE1 and FNP10 have a high degree of consistency with paragraph 174b of the Framework in terms of seeking to recognise the intrinsic character and beauty of the countryside. As such, while the policies are out of date, the weight to be attributed to my conclusions on the issues that they address is not diminished.
101. Paragraph 15 of the Framework and the implications of it discussed above, along with the identified harm to the character and appearance of the area, are significant considerations in the balance. This issue persists in the absence of Paragraph 14 being relevant as the Neighbourhood Plan is more than 2 years old.
102. The overall housing supply position Borough wide is poor. However, the Neighbourhood Plan does not appear to be significantly restricting the pipeline of housing development locally. Indeed, it is instead playing its part in allocating land for housing in what are otherwise challenging circumstances. In this respect the Neighbourhood Plan provides a positive vision for the future of the area. Whilst I appreciate that it plans for a lower housing requirement as a consequence of the Local Plan Part 1 being more than 5 years old, I am not persuaded that this materially dents its credibility.
103. In these circumstances, a grant of planning permission for development that so clearly goes against the wishes of the Neighbourhood Plan would be a serious undermining of it and its underlying strategy for balancing housing growth with environmental objectives.
104. Weighing these matters up, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, the presumption at Paragraph 11 of the Framework is not a material consideration in this instance.
105. In reaching a view on this issue, I have paid regard to the appeal decision at Hale Road⁸. This recent decision is relevant as it considered development outside of the Built up Area Boundary in the Neighbourhood Plan, with the presumption providing a material consideration in favour of granting planning permission. Whilst differently situated, landscape effects were considered in that case. However, settlement effects arising from coalescence were not. Nor is there anything within that decision to suggest that the conflict with the specific policies of the Neighbourhood Plan was as clear and obvious.

⁸ APP/R3650/W/22/3302987

106. Applying Section 38(6) of the Planning and Compulsory Purchase Act 2004, in the absence of other material considerations to indicate otherwise, the appeal should be determined in accordance with the development plan. In this case that would be a refusal of planning permission.
107. For the above reasons, and paying regard to all the other points made, the appeal is dismissed.

D.R. McCreery

INSPECTOR

Richborough Estates

Appearances

FOR THE APPELLANT:

Charles Banner KC of Keating Chambers

Witnesses:

Clare Brockhurst FLI, BSc (Hons), Dip LA (landscape)
David Neame BSc (Hons), MSc, MRTPI (planning)

FOR THE LOCAL PLANNING AUTHORITY:

Emma Dring of Cornerstone Barristers

Witnesses:

Michelle Bolger FLI, Dip.LA, BA, PGCE, BA (landscape)
Brian Woods BA, MRTPI (planning)

INTERESTED PARTIES:

Caroline Cockburn (Farnham Town Council)
David Howell (Farnham Town Council)
Jerry Hyman
Andy MacLeod
Catherine Powell
Cliff Watts (Badshot Lea Community Association)

Inquiry documents

A library of core documents thought by the Council and the Appellant to be of relevance to the appeal (although not necessarily extensively referred to) was maintained by the Council throughout the inquiry.

During and following the inquiry, the following additional documents were submitted:

1. Council's opening statement
2. Appellant's opening statement
3. Fleet appeal decision APP/N1730/W/20/3261194
4. Malmesbury appeal decision APP/Y3940/W/21/3278256/
APP/Y3940/Q/21/3278923/ APP/Y3940/W/21/3282365
5. City of Edinburgh Council v. Secretary of State for Scotland and Others
[1997] UKHL 38; [1998] 1 All ER 174; [1997] 1 WLR 1447
6. Extract from Waverley Borough Local Plan Part 2 (Policy DM1)
7. Statement of Councillor Powell entitled 'Plan led development, cumulative
and interactive impacts and the tilted balance'
8. Final version of agreed draft conditions
9. Council's closing submissions
10. Appellant's closing submissions
11. Note in response to Cllr Hyman (appropriate assessment and Natural
England response)
12. Note to Inspector on s106 Agreement (undated)
13. Executed S106 agreement dated 6 April 2023
14. Appeal decision at Green Lane APP/R3650/W/22/3312128