



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/R3650/W/16/3152620

Mr WA Charles  
Portchester Planning Consultancy  
3 Barbican Mews  
Portchester  
Fareham  
PO16 9FB

29 March 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY COVE CONSTRUCTION LIMITED  
LAND TO THE REAR OF BINDON HOUSE, MONKTON LANE, FARNHAM  
APPLICATION REF: No WA/2015/1484**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Jennifer Vyse DipTP DipPBM MRTPI, who held a public local inquiry on 7-9 February 2017 into your client's appeal against the decision of Waverley Borough Council to refuse planning permission for your client's application for planning permission for the erection of 56 dwellings (comprising a mix of 1 bedroom flats and 2, 3, 4 and 5 bedroom houses, affordable houses), affordable housing, open space, car parking and all associated landscaping and ancillary works, in accordance with application ref: No WA/2015/1484, dated 17 July 2015.
2. On 14 February 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

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

3. The Inspector recommended that the appeal be allowed and that planning permission be granted subject to conditions.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the planning appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Matters arising since the close of the inquiry**

5. Since the inquiry, the Waverley Borough Local Plan Part 1 and the Farnham Neighbourhood Plan have both become part of the development plan. The Secretary of State has considered the appeal in the light of current development plan policies.
6. On 27 March 2017 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the implications, if any, of the Inspector's Report on the following appeal decision: Former Weyburn Works, Shackleford Road, Elstead, Godalming, Surrey GU8 6LB (APP/R3650/W/16/3150558), issued 20 March 2017.
7. On 18 May 2017, the Secretary of State wrote further to the main parties to afford them an opportunity to make representations on the Supreme Court judgment on the cases of Cheshire East BC v SSCLG and Suffolk Coastal DC v SSCLG, which was handed down on Wednesday 10 May 2017.
8. On 12 September 2017, the Secretary of State wrote further to the main parties, to afford them an opportunity to make representations on the implications, if any, of:
  - a. the Waverley Borough Local Plan Part I Main Modifications document that was published on 22 August 2017
  - b. the Inspector's Report on the following appeal decision: Frensham Vale, Lower Bourne, Farnham, GU10 3HS (APP/R3650/W/16/3163124), issued 17 July 2017
  - c. the Inspector's Report on the following appeal decision: Longdene House, Hedgehog Lane, Haslemere GL27 2PH (APP/R3650/W/16/3165974), issued 4 September 2017
  - d. further information received from parties
9. On 8 November 2017, the Secretary of State wrote to parties to notify them that the decision would be delayed because a judicial review challenge concerning the Neighbourhood Planning Written Ministerial Statement (WMS) of 12 December 2016 was heard in the High Court on 7 and 8 November 2017, and the judgment may be relevant to this case.
10. On 16 January 2018, the Secretary of State wrote to parties to notify them that the decision would be further delayed because the Report on the Examination of the Waverley Borough Local Plan Part 1 was likely to be published shortly and may be relevant to this case.
11. On 13 February 2018 the Secretary of State wrote to parties to afford them the opportunity to make comments on the Local Plan Inspector's Final Report and the associated Final Schedule of Main Modifications.
12. A list of post-inquiry representations, and representations received in response to these letters, is set out at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy and statutory considerations**

13. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
14. In this case the development plan consists of saved policy NRM6 of the South East Plan 2009, saved policies of the Waverley Borough Local Plan 2002, the Waverley Borough Local Plan Part 1 (LP), adopted on 20 February 2018, and the Farnham Neighbourhood Plan (FNP), made on 28 July 2017. The Secretary of State considers that the relevant development plan policies include RE1, RE3, NE3, SPI, SP2, ALH1, AHN1, AHN3, FNP10, FNP11 and FNP12.
15. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
16. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

## **Main issues**

### *Five-year housing land supply*

17. The Inspector's assessment of housing land supply, is set out at IR12.36–12.85. However, this has been superseded by the publication of the Inspector's Final Report, and the adoption of the Waverley Borough Local Plan Part 1. The Secretary of State notes the appellant's view that the Council's housing land supply stands at 4.1 years (representation of 12 March 2018), but for the reasons given at paragraphs 18-56 of the Final Report and paragraphs 6.2-6.12 of the LP, the Secretary of State agrees with the Local Plan Inspector and the Council that there is a 5-year housing land supply. He considers that the tilted planning balance in paragraph 14 of the Framework does not apply.

### *Housing allocations*

18. The Secretary of State has taken into account that the site is not allocated for housing in Neighbourhood Plan. He has further taken into account that in the light of the increase in housing need identified in the Local Plan, the Neighbourhood Plan does not meet full local need, and that further sites will in due course have to be identified. However, the Local Plan states in paragraph 6.24 that 'The additional housing required in Farnham ... will be allocated in Local Plan Part 2, unless Farnham Town council decides to commence an early review of the Neighbourhood Plan'. The Secretary of State considers this is an appropriate approach and therefore considers that in the circumstances of this case, the fact that the Neighbourhood Plan does not currently meet the full local need is a neutral matter.
19. Having regard to the fact that paragraph 6.24 of the Local Plan expressly makes provision for an early review of the Neighbourhood Plan, and noting that Farnham Town Council (in its representation of 15 February 2018) confirms that it has commenced an

early review of the Farnham Neighbourhood Plan, the Secretary of State considers that the publication of the Local Plan does not undermine the Neighbourhood Plan in relation to housing requirement and supply. He notes the appellant's view that the appeal site forms part of the Council's housing trajectory (representation of 12 March 2018); however, he considers that the Town Council's early review is the appropriate way to establish whether it should be brought forward as an allocation.

#### *Character and appearance/Area of Strategic Visual Importance (ASVI)*

20. For the reasons given at IR12.5-12.23, the Secretary of State agrees with the Inspector's assessment at IR12.23 that there would be no material harm to the appearance of the ASVI, and that the development proposed would not result in the coalescence of Hale and Farnham (nor Hale and any other built-up area) or in any harm to the character of Farnham. However, he further agrees that there would be some harm to the general character and appearance of the area. He considers this carries moderate weight against the proposal. As a result there would be conflict with Local Plan policies RE1 and RE3, and Neighbourhood Plan policies FNP10 and FNP11 (IR12.23).

#### *Building in the countryside*

21. The appeal site is outside the Neighbourhood Plan's Built Up Area Boundary, and in Local Plan terms is in Countryside Beyond the Green Belt. Its countryside location has recently been confirmed in both these elements of the Development Plan. The Secretary of State considers that the conflict with the relevant policies, particularly the policies of the Neighbourhood Plan, carries substantial weight against the proposal. In reaching this conclusion, he has taken into account paragraph 198 of the Framework, which states that where a planning application conflicts with a Neighbourhood Plan that has been brought into force, planning permission should not normally be granted.

#### *Housing mix*

22. The Secretary of State has taken into account the Inspector's reasoning at IR12.26-12.34. Overall he agrees with the Inspector that the appeal scheme would provide a sufficiently inclusive and varied development and an appropriately mixed community as required by paragraph 50 of the Framework. He further agrees there would be conflict with Local Plan policy AHN3, but no material harm.

#### *Other matters*

23. For the reasons given at IR12.104-12.108, the Secretary of State agrees with the Inspector that there would no harm to the special interest or heritage significance of the heritage assets (IR12.104). He has taken into account s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and further agrees with the Inspector that the development proposed would not affect the ability of the public to appreciate or interpret the heritage significance of those buildings (IR12.108). For the reasons given at IR12.110-12.113 (mis-numbered as 12.110 in the IR), the Secretary of State considers that matters relating to highways, sewage and business do not weigh against the scheme.

24. The Secretary of State has taken into account the reasons given at IR13.3, the fact there is now a 5-year housing land supply, and the Government's aim to boost significantly the supply of housing. He agrees with the Inspector that the provision of market and affordable homes carries substantial weight in favour of the proposal. The Secretary of

State has taken into account the other benefits set out at IR13.4-13.6. He considers that the economic benefits of the proposal carry moderate weight, the environmental benefits carry limited weight, and the new open spaces and footways carry limited weight.

### **Planning conditions**

25. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.16, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

### **Planning obligations**

26. Having had regard to the Inspector's analysis at IR11.1-11.5 and IR12.86-12.101, the planning obligation dated 17 February 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusions and considers that the obligation, with the exception of the Environmental Improvement element (IR12.90), complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. Like the Inspector, the Secretary of State has not taken the Environmental Improvement element into account in reaching his decision. Overall, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

### **Planning balance and overall conclusion**

27. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Local Plan policies RE1, RE3 and AHN3, or Neighbourhood Plan policies FNP10 and FNP11, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the Development Plan.

28. The Secretary of State considers that the housing benefits of the proposal carry substantial weight, the economic benefits carry moderate weight, the environmental benefits carry limited weight and the new open spaces and footways carry limited weight.

29. The Secretary of State notes the appeal site's location outside the Neighbourhood Plan's Built Up Area Boundary, and in Countryside Beyond the Green Belt. He considers that the conflict with the relevant policies, particularly the policies of the Neighbourhood Plan, carries substantial weight against the proposal. In reaching this conclusion, he has taken into account paragraph 198 of the Framework, which states that where a planning application conflicts with a Neighbourhood Plan that has been brought into force, planning permission should not normally be granted. He considers that the harm to the character and appearance of the area, in conflict with policies designed to protect the countryside, carries moderate weight.

30. The Secretary of State considers that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

31. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

**Formal decision**

32. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of 56 dwellings (comprising a mix of 1 bedroom flats and 2, 3, 4 and 5 bedroom houses, affordable houses), affordable housing, open space, car parking and all associated landscaping and ancillary works, in accordance with application ref: No WA/2015/1484, dated 17 July 2015.

**Right to challenge the decision**

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

34. A copy of this letter has been sent to Waverley Borough Council and all other interested parties who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

Authorised by Secretary of State to sign in that behalf

## **Annex A Schedule of representations**

### **Representations received in response to the Secretary of State's reference back letter of 27 March 2017**

<b>Party</b>	<b>Date</b>
Waverley Borough Council	5 April 2017
Portchester Planning	14 and 27 April 2017
Farnham Town Council	6 April 2017
The Farnham Society	17 April 2017

### **Representations received in response to the Secretary of State's reference back letter of 18 May 2017**

<b>Party</b>	<b>Date</b>
Waverley Borough Council	1 June 2017
Portchester Planning	30 May 2017
Farnham Town Council	30 May 2017
The Farnham Society	29 May 2017
Portchester Planning	13 July, 23 August and 11 September 2017
Farnham Town Council	25 July 2017
The Farnham Society	29 August 2017

### **Representations received in response to the Secretary of State's letter of 12 September 2017**

<b>Party</b>	<b>Date</b>
Waverley Borough Council	26 September 2017
Portchester Planning	25 September and 3 October 2017
Farnham Town Council	22 September 2017

### **Representations received in response to the Secretary of State's letter of 16 January 2018**

<b>Party</b>	<b>Date</b>
Farnham Town Council	24 January 2018
The Farnham Society	23 January 2018

**Representations received in response to the Secretary of State's letter of 13 February 2018**

<b>Party</b>	<b>Date</b>
Waverley Borough Council	5 March 2018
Portchester Planning	26 February and 12 March 2018
Farnham Town Council	15 February 2018
The Farnham Society	27 February 2018 and 13 March 2018

**General representations**

Jeremy Hunt MP	20 March 2017
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# Report to the Secretary of State for Communities and Local Government

by Jennifer Vyse DipTP DipPBM MRTPI

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

Date: 20 March 2017

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**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY**

**COVE CONSTRUCTION LIMITED**

**AGAINST THE DECISION OF**

**WAVERLEY BOROUGH COUNCIL**

Inquiry opened on 7 February 2017

Land to the rear of Bindon House, Monkton Lane, Farnham, Surrey GU9 9AA

Appeal Ref: APP/R3650/W/16/3152620

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**Appeal Ref: APP/R3650/W/16/3152620**  
**Land to the rear of Bindon House, Monkton Lane, Farnham,**  
**Surrey GU9 9AA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Tony Webber of Cove Construction Limited against the decision of Waverley Borough Council.
- The application, No WA/2015/1484, dated 17 July 2015, was refused by a notice dated 26 February 2016.
- The development proposed comprises the erection of 56 dwellings (comprising a mix of 1 bedroom flats and 2, 3, 4 and 5 bedroom houses) affordable housing, open space, car parking and all associated landscaping and ancillary works.

**Summary of Recommendation: That the appeal be allowed and that planning permission be granted subject to conditions.**

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**1. Procedural and Background Matters**

- 1.1 Following the close of the Inquiry, the appeal was recovered for determination by the Secretary of State,<sup>1</sup> since it involves a residential development of over 25 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local authority but the relevant plan has not yet been made.
- 1.2 The Inquiry sat for three days (7- 9 February 2017). I undertook an accompanied site visit on 10 February 2017.<sup>2</sup>
- 1.3 Three of the Council's reasons for refusal related to the absence of appropriate legal agreements in relation to the provision of affordable housing, highway improvement works and financial contributions to address impact on local infrastructure. Although not a reason for refusal, an obligation was also requested to secure mitigation measures in relation to the potential impact of the development on the Thames Basin Heaths Special Protection Area. A planning obligation was submitted to the Inquiry. It addresses all the matters referred to above to the Council's satisfaction and these reasons for refusal were not pursued. The obligations secured are a material consideration and are considered in more detail later on.

**2. The Site and its Surroundings<sup>3</sup>**

- 2.1 These are described in detail in the Planning Statement, Design and Access Statement and the appellant's Landscape and Visual Impact Assessment<sup>4</sup> (all of which were submitted with the planning application) in the officer's report to the planning committee and in the evidence of the respective witnesses.<sup>5</sup>
- 2.1 In brief the site, which lies on the south-eastern fringes of Hale, comprises a relatively flat swathe of open grassland extending to approximately 2.78 hectares along the southern side of Monkton Lane, and has been subdivided

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<sup>1</sup> By letter dated 14 February 2017

<sup>2</sup> Inquiry Doc 23 shows the itinerary

<sup>3</sup> An aerial photograph with the appeal site and surrounding features labelled, can be found on page 9 of the Design and Access Statement

<sup>4</sup> Mr Withycombe's' Appendix 2

<sup>5</sup> Mr Woods for the Council and Mr Withycombe for the appellant

with post and wire/temporary fencing into a number of smaller paddocks for horse grazing. It lacks any strong landscape pattern or character, with any features of landscape significance being confined to its vegetated boundaries.

- 2.2 Beyond the site boundary to the west, a broad grass verge rises up to meet Hale Road (A325) which overlooks the site. There is a more substantial area of unmanaged scrub between the eastern end of the site and the cross-roads junction of Monkton Lane with Weybourne Road. Immediately to the south, separated by a private access track that runs along the site boundary, are allotments (to the south of which is the Six Bells roundabout) with a triangular paddock area between the allotments and Weybourne Road. Hale Road and Weybourne Road converge at the roundabout junction.<sup>6</sup>
- 2.3 The western portion of the appeal site lies behind a short run of residential properties on Monkton Lane/Radford Close, which extends part way along the southern side of the lane from its junction with Hale Road. That end of Monkton Lane is blocked off to vehicular traffic. The north-western site boundary, along the rear of those existing properties, comprises a mix of conifers, other hedging and garden fencing. There is a large, mature oak tree mid-way along that boundary, which is covered by a Tree Preservation Order.<sup>7</sup> The remainder of the boundary along Monkton Lane is formed by an overgrown hedge along the back of the carriageway – there is no footway.
- 2.4 The southern boundary of the site, along the access track to the adjacent allotments, is defined by a mixed native species hedge. An overhead electricity line cuts diagonally across the south-eastern corner of the site, and extends to the west following the southern fringes of the site. A single pylon is located within the site in the south-eastern corner, with another located just outside the site, close to the south-western corner adjacent to Hale Road and the allotments, just to the north of the roundabout.
- 2.5 Farnham Heath End School all-weather pitch, which is floodlit, and associated buildings, together with a private day nursery and car parking, are located on the northern side of Monkton Lane opposite the appeal site.
- 2.6 To the east, beyond the cross-roads junction of Monkton Lane with Weybourne Road, is Farnham Rugby Club and a David Lloyd Tennis Centre, the development there comprising buildings, car parking, tennis courts, all-weather and grass sports pitches, including large areas of floodlit courts and pitches. A sewage works is located some 500 metres to south-east of the site. Farnham industrial estate is located further to the south/south-east.
- 2.7 A number of heritage assets, including listed buildings, lie within some 500 metres of the site, mainly to the west/north-west, clustered around the traffic light controlled junction of Upper Hale Road with Hale Road.

### **3. The Proposal**

- 3.1 A full application for 61 dwellings on the appeal site was refused in January

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<sup>6</sup> The first of the aerial photos at Inquiry Doc 5 shows the surroundings.

<sup>7</sup> Monkton Lane, Hale, Farnham Tree Preservation Order 1971

2015.<sup>8</sup> Following pre-application advice, the application the subject of this appeal sought to overcome the objections raised. It comprises a detailed application for the erection of a total of 56 homes, 22 of which would be affordable, open space, car parking, associated landscaping and ancillary works. The majority of the buildings proposed would be two-storey, with a small proportion of two and a half storey dwellings.

- 3.2 Vehicular access to the site would be via a new junction onto Monkton Lane, as well as a number of new, individual property driveway accesses.<sup>9</sup> In addition, a number of new footpath access points are proposed, linking the site to the surrounding area. The scheme includes a Local Equipped Area of Play within a larger area of public open space in the north-western corner of the site, and an attenuation basin within the south-eastern corner, adjacent to the existing pylon.

#### **4. Planning Policy**

- 4.1 The planning policy context for the appeal scheme is set out in the Council's committee report, at section 4 of the Statement of Common Ground (General Matters)<sup>10</sup> and in the evidence of the respective witnesses.<sup>11</sup> In addition to the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (planning guidance) reference was made to:

*The South East Plan 2009*<sup>12</sup>

- 4.2 The South East Plan was revoked in 2013, except for policy NRM6. The appeal site is located within 400m-5km of the Thames Basin Heaths Special Protection Area (TBHSPA). The retained policy requires that new residential development within that zone should include the provision of adequate measures to avoid or mitigate any potential adverse effect on the ecological integrity of the TBHSPA.

*Waverley Borough Local Plan 2002 (saved policies)*<sup>13</sup>

- 4.3 At the time of the Inquiry, the development plan for the area included the saved policies of the 2002 Local Plan. The appeal site lies adjacent to but outwith the settlement boundary for Hale as currently defined. Thus, it lies in the countryside for the purposes of planning policy. The policies referred to below are those most relevant to the issues raised by this appeal.
- 4.4 Policy C2: Countryside Beyond the Green Belt - in countryside beyond the Green Belt and outside identified rural settlements, the policy seeks to protect the countryside for its own sake. Building in the open countryside, away from existing settlements, will be strictly controlled.
- 4.5 Policy C5: Areas of Strategic Visual Importance - the policy resists development that would not maintain and enhance the appearance of such areas, as shown on the Proposals Map.<sup>14</sup>

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<sup>8</sup> Application No WA/2014/1957

<sup>9</sup> Drawing No 14-1030-100 J

<sup>10</sup> Inquiry Doc 9

<sup>11</sup> Mr Woods for the Council and Mr Charles for the appellant

<sup>12</sup> Included at Appendix 3 to the appellant's Statement of Case

<sup>13</sup> Included at Appendix 3 to the appellant's Statement of Case and Inquiry Docs 3 and 24

<sup>14</sup> Inquiry Doc 4

- 4.6 Policy H4: Density and Size of Dwellings - on schemes of more than three dwellings, the policy requires that at least 50% of the homes are two bedroom or less, that not less than 80% are three bedroom or less, and that no more than 20% exceed 165 square metres gross floor area. It also seeks to avoid densities of below 30 dwellings per hectare.
- 4.7 Policy H5: Subsidised Affordable Housing within Settlements - on sites within settlements the policy requires, among other things, that at least 30% of the dwellings provided are in the form of subsidised affordable housing. It adds that the scale of provision on individual sites will depend on the characteristics of the site, market conditions and other considerations.
- 4.8 Policy D13 is only permissive of development where adequate infrastructure, services and facilities are available or where suitable arrangements are made for provision where the need for such arises from the development proposed. Policy D14 further seeks high quality developments which, in appropriate cases, are required to deliver environmental and/or community benefits. The types of benefits include the provision of education facilities and public recreational or sporting facilities, including sports pitches.

*The emerging Waverley Local Plan*<sup>15</sup>

- 4.9 The emerging Local Plan is to be produced in two parts: Part One – Strategic Policies and Sites, and Part Two – Development Management and Site Allocations. The Council had progressed Part One to Examination stage, but withdrew it in 2013 on the advice of the Examining Inspector who had concluded that it was fundamentally flawed and could not be found sound.
- 4.10 Work on a new Plan commenced, with public consultation on a pre-submission version taking place August-October 2016. The Plan was submitted for Examination in December and, whilst an Inspector has been appointed, the Examination has not yet taken place. The Inspector has, however, recently issued initial questions and comments.<sup>16</sup> There are also outstanding objections to some of the policies referred to below.<sup>17</sup>
- 4.11 The policies in the emerging Plan have not been tested at Examination and may be subject to change. I consider, therefore, that they can attract only limited weight at the current time. Policies relevant to this appeal include the following.
- 4.12 Policy RE1: Countryside Beyond the Green Belt – in such areas, the policy requires that the intrinsic character and beauty of the countryside be recognised and safeguarded in accordance with the Framework.
- 4.13 Policy RE3: Landscape Character – development is required to respect and, where appropriate, enhance the distinctive character of the landscape in which it is located. Among other things, the explanatory text to the policy sets out that, in addition to the defined Area of Great Landscape Value, there are several other local landscape designations in the Borough, including Areas of Strategic Visual Importance (ASVIs). The policy confirms that the boundaries to the ASVIs will be retained pending a review in Part Two of the emerging

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<sup>15</sup> Inquiry Docs 25 and 28

<sup>16</sup> Inquiry Doc 18

<sup>17</sup> Inquiry Doc 15 Appendix 4

Plan. It adds that the appearance of the ASVIs will be maintained and enhanced, with proposals for development within them required to demonstrate that they would not be inconsistent with that objective.

- 4.14 Policy NE3: Thames Basin Heaths Special Protection Area – development that either alone, or in combination with other development, is likely to have a significant effect upon the ecological integrity of the TBHSPA, is required to demonstrate that adequate measures are put in place to avoid or mitigate potential adverse effects. The Council's Thames Basin Heaths Special Protection Area Avoidance Strategy Review 2016<sup>18</sup> sets out the measures required to avoid harm to the TBHSPA, namely providing and contributing towards Suitable Alternative Natural Greenspace (SANG) and contributing towards a programme of Strategic Access Management and Monitoring (SAMM) of the TBHSPA, in consultation with Natural England.
- 4.15 Policy ALH1: The Amount and Location of Housing – among other things, the Plan makes provision for at least 9,861 net additional homes in the period 2013 – 2032, equivalent to at least 519 dwellings per year.
- 4.16 Policy AHN1: Affordable Housing on Development Sites - the provision of at least 30% affordable housing is required on development schemes such as this. Where on-site provision is to be made, the mix of dwelling types, sizes and tenure split should reflect the type of housing identified as being required in the most up-to-date evidence of housing needs and the Strategic Housing Market Assessment.<sup>19</sup>
- 4.17 Policy AHN3: Housing Types and Sizes – development schemes are required to make provision for an appropriate range of different types and sizes of housing to meet the needs of the community, reflecting the most up to date evidence in the SHMA. The policy is supportive of new housing to meet the needs of specific groups identified in the SHMA, which currently include the over 65s, families with children and people with disabilities.

*The emerging Farnham Neighbourhood Plan (Submission Version)*<sup>20</sup>

- 4.18 The emerging Neighbourhood Plan was the subject of an Examination Hearing in November 2016. Shortly before the end of this Inquiry, the Inspector's report on the emerging Plan was received by the Council for fact checking. It was not clear at that stage when the final version of the report would be made available to the public and I agreed that both parties could provide subsequent written comments thereon.
- 4.19 In the final version of the report, dated 22 February 2017,<sup>21</sup> the Inspector concludes that the emerging Plan has been duly prepared in compliance with the procedural requirements and that, subject to suggested modifications to a number of policies, it meets the Basic Conditions and other legal requirements. The parties' comments in the report are at Inquiry Docs 34 and 35. Whilst the Plan is not part of the development plan yet, given its advanced stage, the policies attract some weight. However, that is tempered to some extent in

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<sup>18</sup> Inquiry Doc 16

<sup>19</sup> Mr Woods Appendix 7

<sup>20</sup> Appendix 9 to the proof of Mr Woods for the Council

<sup>21</sup> Inquiry Doc 33

light of the fact that it has not been to referendum yet, with the appellant suggesting that it may be subject to legal challenge.

- 4.20 The appeal site lies within a rural area, outside any development or settlement boundary defined by the emerging Neighbourhood Plan.<sup>22</sup> Policy FNP10 gives priority to protecting the countryside from inappropriate development. It sets out that development proposals will only be permitted in certain specified circumstances. Policy FNP12 (as proposed to be modified) reflects the requirements of policy NE3 referred to above in relation to the TBHSPA.
- 4.21 In answer to my questions at the Inquiry, the Council confirmed that the emerging Plan contained no reference to the ASVIs. However, in its response to the recent Inspector's report on the emerging Neighbourhood Plan, the Council suggests that policy FNP11, as proposed to be modified, includes the ASVI as defined by policy C5 of the 2002 Local Plan. The policy, as modified, requires that proposals for development outside the built-up area boundary will be assessed in terms of their potential impact upon the visual setting and landscape features of the site and its surroundings, and the potential impact upon the biodiversity of the area and other relevant planning considerations, such as the impact of traffic and noise. Proposals which either fail to demonstrate that these impacts can be satisfactorily addressed, or which clearly lead to the increased coalescence of settlements within the Plan area and beyond, will not be supported.

## **5. Agreed Matters**

- 5.1 Two Statements of Common Ground between the appellant and the District Council were submitted during the Inquiry. One relates to general matters (SoCG1)<sup>23</sup>, the other focuses on housing land supply (SoCG2).<sup>24</sup>
- 5.2 SoCG1 comprises largely a list of application documents, national and local planning policy, supplementary planning documents, emerging plans and housing documents. It sets out agreement that the site is in a sustainable location, with good access to local shops, services, local facilities and public transport. It also sets out that, subject to appropriate conditions and the completion of a satisfactory planning obligation, no issue is taken in relation to numerous other matters, including heritage, wildlife and biodiversity, highways, and visual amenity and design.
- 5.3 At the time the planning application was determined, the Council accepted that it could not demonstrate a five year supply of housing land. By the time of the Inquiry, however, its position on this had changed. SoCG2 sets out the agreed position as it was just before the Inquiry opened. It refers to housing completions over the past 7.75 years<sup>25</sup> set against the appropriate annual requirement and sets out, in tabulated form, the position of both the Council and the appellant in relation to supply using the Sedgefield method. The Council is of the view that it can demonstrate a five year supply with either a 5% or 20% buffer. The appellant takes a contrary position.

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<sup>22</sup> Inquiry Doc 12

<sup>23</sup> Inquiry Doc 19

<sup>24</sup> Inquiry Doc 20

<sup>25</sup> ie up to 31 December 2016

5.4 It should be noted that the figures set out in SoCG2 changed slightly during the Inquiry, following examination of the evidence in relation to individual sites. I deal with this in my conclusions below.

## 6. The Case for the Appellant

*Edited from the opening and closing submissions of the appellant's advocate<sup>26</sup> and the post-event written submissions in relation to the emerging Neighbourhood Plan.<sup>27</sup>*

6.1 The appellant relied on three witnesses: Mr Charles, Mr Henshaw and Mr Withycombe. Initially, it was not intended to call Mr Henshaw, the appellant relying instead on a report by him provided as Appendix 8 to the proof of Mr Charles (referred to hereafter as RH1). In the event, however, as a consequence of the Council's altered position in relation to housing land supply, he was called and produced a supplementary proof to be read alongside his original report (referred to hereafter as RH2).<sup>28</sup>

6.2 In summary, the appellant's case is as follows:

- there would be no significant harm to the countryside;
- there would be no material impact on coalescence of the ASVI;
- the housing mix is entirely appropriate;
- the Council only has between 3.16 - 3.89 years' supply of deliverable sites;
- the housing supply policies of the 2002 Local Plan are out of date and paragraph 14 of the Framework is engaged;
- there are no adverse impacts from the proposal that would significantly and demonstrably outweigh the benefits of the scheme;
- the appeal should be allowed.

### ***EFFECT ON CHARACTER AND APPEARANCE, INCLUDING THE AREA OF STRATEGIC VISUAL IMPORTNANCE (ASVI)***

#### ***(a) Policy context and policy weight apart from Framework paragraph 14 matters***

6.3 Whether or not the second bullet point of paragraph 14 is engaged, policy C2 carries diminished weight. Mr Woods accepted in cross-examination that policy C2 was not entirely compliant with the Framework because it sought to protect the countryside for its own sake, irrespective of the intrinsic beauty of the particular area under consideration. This concession is also made by the Council officers in the Dunsfold Aerodrome report to committee.<sup>29</sup> Policy C2 also fails to meet the Framework requirement for a criteria-based policy<sup>30</sup>.

6.4 Policy C5 should, in the appellant's submission, also carry limited weight. There are issues with the policy itself (see below) but also the site itself has

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<sup>26</sup> Inquiry Doc 55

<sup>27</sup> Inquiry Doc 35

<sup>28</sup> Inquiry Doc 6

<sup>29</sup> Mr Woods Appendix 5, p98.

<sup>30</sup> Framework paragraph 113.

not had any recent assessment which identifies it as having any significant value in preventing coalescence. The 2002 Local Plan Inspector's report<sup>31</sup> is from a different era.

- 6.5 The ASVI is a designation that dates back to 1984 and was accepted by the Local Plan Inspector in 2002 to have no foundation in national policy even then. Mr Woods accepted that the only provision of national policy that could support it would be paragraph 109 of the Framework, on the basis that the ASVI at this location was '*a valued landscape*' because of its function in preventing coalescence. As Mr Withycombe said, this would mean that all Green Belt having that same function would also be '*valued landscape*'.
- 6.6 There is no evidence to support the ASVI by reference to valued landscape. AMEC<sup>32</sup> does not attach any landscape value to it. Mr Withycombe has specifically assessed value by reference to GLVIA and found none.<sup>33</sup> The AMEC study of the ASVI area found no special particular value in this part of the ASVI, and the extracts produced by Mr Woods, contrary to his written evidence, appeared to attach value to the screening around the sewage works rather than the appeal site.<sup>34</sup> Even if it did apply to the appeal site, the commentary majors on the tree screening along the boundary as opposed to land that it encloses.
- 6.7 The emerging plan policy RE3 is subject to objection.

**(b) The starting point**

- 6.8 The impact of the development on the countryside will be localised and minimal. Mr Woods confirmed that he was not contesting any of the findings of the AMEC studies and so it is common ground that the site has:
- few landscape qualities;
  - low visual prominence;
  - low intervisibility;
  - low landscape sensitivity; and
  - low landscape value.<sup>35</sup>
- 6.9 AMEC concluded that the area south of Monkton Lane (including the appeal site) had capacity for development, though it would conflict with the ASVI designation.<sup>36</sup> This conclusion was adopted in the Council's Land Availability Assessment (LAA)<sup>37</sup> which gave a site capacity of 56 dwellings, and noted that the site was well-contained by existing screening.

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<sup>31</sup> Mr Woods Appendix 13

<sup>32</sup> AMEC Landscape Study and Landscape Designation Review commissioned by the Council (August 2014) - see appellant's LVIA Appendix A (Mr Withycombe Appendix 2), Mr Withycombe Appendix 5, Mr Charles Appendix 5 and Mr Woods Appendix 6.

<sup>33</sup> Mr Withycombe's proof paragraphs 4.17-4.29.

<sup>34</sup> Mr Woods' proof paragraph 8.15 and Appendix 6 page 9.

<sup>35</sup> Mr Withycombe Appendix 2 page 45

<sup>36</sup> Mr Withycombe Appendix 5, section 4.15.1.

<sup>37</sup> Inquiry Docs 14 and 26 and Mr Charles Appendix 9

- 6.10 Mr Withycombe's assessment also draws attention to the urbanised surroundings of the site and its lack of tranquility.<sup>38</sup> Hence, Mr Woods accepted in cross-examination that the Council's objection in relation to reason for refusal 1 was concerned entirely with localised effects caused by views into the site, primarily from Hale Road and also from glimpsed views from Weybourne Road. No harm is alleged by reason of views of the appeal site and the wider countryside.
- 6.11 Since the Council accepts that meeting its housing requirements will mean building houses in the countryside subject to policy C2<sup>39</sup> - a point clearly shown by the locations of the emerging allocations – the issue for Waverley is to find sites where the harm to the countryside can be contained and minimised.
- 6.12 The low sensitivity and visual enclosure of this site make it an appropriate one for development. Moreover, the ASVI at this location does not fulfill the objective of a transition between Farnham and the open countryside beyond, which was the concern of the Council's second reason for refusal.<sup>40</sup>
- 6.13 In the context of the extent of the ASVI<sup>41</sup>, the appeal site is not critical to maintaining a gap between Hale and Farnham – the relevant development being the industrial estate due south. Moreover, the policy is expressly about '*visual*' importance. There is no visual link between the industrial estate and the appeal site or the edge of Hale to the north of the site, and there will be no visual sense of coalescence between the two areas if the site is developed.
- 6.14 Contrary to Mr Woods' evidence,<sup>42</sup> the AMEC review of the ASVI did not identify the site as having any particular role, although it seems to have identified the tree boundary to the sewage works as providing a green break with the industrial estate.<sup>43</sup> Other parts of the ASVI have a much clearer role in furthering the objectives of that policy.<sup>44</sup>
- 6.15 Put simply, within the terms of the ASVI designation itself, the appeal site is very much a low sensitivity location. This conclusion is supported by the fact that the Council is itself promoting an allocation within this part of the ASVI, between the sewage treatment works and the industrial estate at Water Lane.<sup>45</sup> The ASVI obviously does not create an '*in principle*' objection to development.
- 6.16 Much of the evidence at the Inquiry considered the notion of '*transition*'. However, there is no policy relating to transition, and no study identifies the appeal site as having an important role in transition. The Council's expressed concerns are to maintain a '*visual barrier*' to signify the end of the developed area.<sup>46</sup> If that really is the concern, then the assessment should focus on whether such a barrier or signal to the end of development would be

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<sup>38</sup> xxx

<sup>39</sup> Mr Woods in cross-examination.

<sup>40</sup> See reason for refusal 2 and note Mr Withycombe's evidence on this point.

<sup>41</sup> Inquiry Doc 11

<sup>42</sup> Mr Woods paragraph 8.15.

<sup>43</sup> Mr Woods Appendix 6, page 9, top right hand side.

<sup>44</sup> Inquiry Doc 11 and also, and importantly, the review by Mr Charles, reproduced at Appendix 3 to the proof of Mr Withycombe

<sup>45</sup> Mr Charles' proof paragraph 7.45-7.48 and Inquiry Doc 28.

<sup>46</sup> Mr Woods paragraph 815.

maintained. Since the development site is bounded by roads and the allotments to the south, as well as its own landscaped boundaries, it is clear that a visual barrier and signal of the end of development will be maintained.

**(c) The effects of the scheme**

- 6.17 It is accepted by the appellant, of course, that the development will bring about a significant change within the site itself. That is so with all these kinds of cases and is an inevitable consequence of developing an undeveloped site. It is also a consequence, of course, of the development of most of the emerging allocations, which the Council accepts are on green field land. So, a fair judgment on the impacts must move beyond this trite point.
- 6.18 Housing development on this site would sit well within its context and have relatively low visual and landscape impacts for the reasons given by Mr Withycombe in his LVIA.<sup>47</sup> Mr Withycombe's evidence explains how the site layout and landscape infrastructure have been used to complement the site and its surroundings.<sup>48</sup> In particular:
- a) the proposals will protect and enhance important existing site features;
  - b) the settlement edge will be enhanced, the dwellings would be set back and spaced out on the key boundaries with Hale Road and Monkton Lane, and green corridors and infrastructure will add to the spaciousness within the site;
  - c) a strong landscape infrastructure will permeate the site and reinforce its boundaries, providing new public open space, enhancing the character of the settlement edge and maintaining visual connectivity across the site.
- 6.19 Overall the appellant assesses the impacts on landscape to be slight adverse, primarily because of the changes within the site itself. Moreover, there will be no material coalescence between Hale and Farnham. The site provides no visual link between the two. Any sense of transition between Hale and Farnham will be maintained, particularly from Hale Road, the main transitory route between the two settlements. The footpath connections to be provided through the site will also aid the sense of transition. A defined and clear boundary to development will remain.

**IS THE HOUSING MIX APPROPRIATE?**

- 6.20 The housing mix relative to the Strategic Housing Market Area (SHMA) is set out in the appellant's Statement of Case.<sup>49</sup>
- 6.21 Paragraph 47 of the Framework brings two broad policy objectives into play here.<sup>50</sup> First, delivering a choice of homes to meet relevant needs. Secondly, creating sustainable, inclusive and mixed communities. They are not the same, though they may be related.
- 6.22 The fourth reason for refusal is founded on policy H4 which, all parties agree, should carry limited weight because it is too prescriptive. Even so, the policy is substantially complied with: it requires 50% or more dwellings to be two bedroom or less – the appeal scheme proposes 35.7% (a difference of 14.3%)

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<sup>47</sup> Mr Withycombe Appendix 2.

<sup>48</sup> Mr Withycombe section 6 and LS Masterplan at Appendix 7, together with the Design and Access Statement.

<sup>49</sup> Appendix 6B especially tables 1-3 (Inquiry Doc 21)

<sup>50</sup> Framework paragraph 47.

and 80% or more of dwellings to be three bedroom or less – the appeal scheme proposes 76.7% (a difference of just 3.3%).<sup>51</sup>

- 6.23 The Frensham Vale appeal decision<sup>52</sup> is of little relevance. There, the inspector concluded that the mix would not fully meet or achieve the mix in the SHMA.<sup>53</sup> The decision pre-dates policy AHN3 of the emerging Local Plan, which both parties at this Inquiry endorse. This policy does not require the development mix to 'fully' meet the SHMA mix. Quite the opposite: the policy is not prescriptive. In any event, the mix point did not feature prominently in the overall planning balance in the Frensham Vale decision.<sup>54</sup>
- 6.24 The reason for refusal alleges the harm as follows: '*The development does not adequately respond to market demand and would not meet local housing requirements as set out within the [SHMA]...*'. At that level, the objection is simple to address. First, the development is promoted by a local house builder who knows local market demand. It will plainly meet market demands, otherwise it would not be promoted. Secondly, the development will meet the requirements for housing locally. It cannot of course meet all of them, whatever mix was proposed, because the local needs are so large. But it will meet local needs.
- 6.25 Thus, emerging policy is complied with. The bold text of the policy says that the Council will require '*an appropriate range of different types and size of housing to meet the needs of the community, reflecting the...SHMA.*' Paragraph 9.41 of the emerging Plan states expressly '*... the policy for the mix of homes should not prescribe the size of homes.*' Size means number of bedrooms (see the heading for table 9.1).
- 6.26 The appellant submits that the mix will '*reflect*' the SHMA. It will meet relevant needs identified there, with a large proportion of smaller dwellings of three beds and less (over 75%).<sup>55</sup> The relatively low proportion of market one and two bed dwellings is compensated for by a relatively high proportion of those dwellings of affordable tenure. The need for affordable housing is dire, so this is a beneficial aspect of the mix. The mix of affordable tenure is very close to that sought by the SHMA.<sup>56</sup>
- 6.27 It is impossible to conclude that the scheme will not achieve a mix of homes to meet relevant needs. It is also impossible to conclude that the occupiers of the development would harm, or not further the objective of having mixed, inclusive and sustainable communities. Paragraph 50 of the Framework will be met. Further, as Mr Charles observed, the community is something more than the residents of the appeal site. Different sites will inevitably deliver different mixes in accordance with their circumstances; Mr Woods accepted the example of town centre sites being likely to have relatively high proportions of flats, for example. Mr Charles stated that the mix was appropriate for the site's location.

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<sup>51</sup> Inquiry Doc 21 paragraph A6B.8

<sup>52</sup> APP/R3650/W/15/3008821 (Appendix 3 to the appellant's Statement of Case)

<sup>53</sup> DL paragraphs 49 and 54.

<sup>54</sup> DL paragraphs 53-57.

<sup>55</sup> Inquiry Doc 21 Table 3

<sup>56</sup> Inquiry Doc 21 Table 4.

- 6.28 In conclusion, the development will provide a range of homes of one, two, three, four and five bed, a generous provision of affordable housing, a predominance of smaller dwellings of three beds and less, and a balance that favours much needed provision of small affordable dwellings. The dwelling mix will satisfy policy and will certainly not result in any planning harm.

**THE COUNCIL'S HOUSING SUPPLY POSITION AND ITS POLICY IMPLICATIONS**

- 6.29 In the light of the evidence as it evolved during the Inquiry, the appellant's case in closing is that the authority has a supply of deliverable sites of somewhere between 3.16 – 3.89 years, for the reasons given below.

***Why the tilted balance in Framework paragraph 14 is engaged***

- 6.30 As stated in opening, the Council's policies for the supply of housing are out of date, and therefore paragraph 14 is triggered for two distinct reasons. First, the adopted plan does not include an up-to-date housing requirement. Mr Woods accepted that the policy requirement in paragraph 47 of the Framework to have an up to date requirement in an adopted plan was a "cornerstone" of housing supply policy in the Framework. That cornerstone is missing from Waverley's policies.
- 6.31 It is obvious that, in such circumstances, the policies for the supply of housing are out of date. Although Mr Woods, in cross-examination, claimed that the only way in which housing policies could be out of date was if there was no five year supply, there is no sensible reason to read the Framework in this restrictive way. Paragraph 14 of the Framework applies when '*relevant policies are out of date*'. Paragraph 49, which refers to a lack of five-year supply, gives one example of how this may happen. It is not expressed as the only example.
- 6.32 Not only does the appellant's position fit with words of the Framework, it satisfies the underlying objectives. Policies aimed at supplying just 187 dwellings per annum (dpa) cannot be expected to supply 519 dpa, let alone the five year requirement with the shortfall (before applying a buffer) of 718 dpa.<sup>57</sup>
- 6.33 In the words used in *Suffolk Coastal*,<sup>58</sup> albeit in a slightly different context, '*...the relevant policies fall short of providing for the five-year supply of housing land.*' As Mr Charles clarified in re-examination, the fact of the 2002 Local Plan having expired is highly relevant, but so too is the actual number of dwellings that it planned to deliver. The appellant would obviously not be able to run this point if the 2002 Plan had a housing requirement of 519 dpa, because were that the case the '*old*' policies would have been drafted in relation to an up to date requirement.
- 6.34 In answer to points put in cross-examination, adopted plans with out of date requirements are vulnerable because they have policies that are not geared towards meeting up to date needs.

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<sup>57</sup> RH2 Appendix 3 and Council Housing Land Supply report 1<sup>st</sup> January 2017, table 1 (Inquiry Doc 10).

<sup>58</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East, SSCLG [2016] EWCA Civ 168* paragraphs 47

6.35 Secondly, the local planning authority is unable to demonstrate a five year supply of deliverable sites as required by the Framework. So paragraph 49 applies, the housing supply policies are deemed to be out of date, and paragraph 14 is triggered.

***The Council's five year supply assessment***

6.36 There are many fatal weaknesses in the Council's assessment of five year supply.

6.37 Before looking at specific assumptions and sites, a word about process and approach. The Government's planning guidance envisages that section 78 appeals will take place against the backdrop of up to date plans where the housing supply position has been fully tested at examination.<sup>59</sup> As Mr Woods accepted, that is not the context of this case. However, the emerging Local Plan has been submitted for examination, so the evidence required by the planning guidance to justify the planned provision should be available and could have been submitted to this Inquiry. Yet the key evidence provided by the Council is its 1<sup>st</sup> January 2017 Housing Land Supply report (2017HLS) alone.<sup>60</sup>

6.38 Measured against the advice in the planning guidance, the 2017HLS is wholly inadequate. The planning guidance requires the five year assessment to display the following attributes:<sup>61</sup>

- a) be based on robust, up to date and sound evidence;
- b) contain judgments that are clearly and transparently set out;
- c) consider delivery of sites against a forecast trajectory, and to take into account the anticipated trajectory;
- d) to assess the local delivery record;
- e) to consider risks to delivery, and '*potential problems*' and where identified, consider how and when they can be realistically overcome;
- f) importantly, the annual assessment '*including the evidence used, should be realistic and made publicly available in an accessible format.*'

6.39 The Council's approach falls woefully short of what is required. This is perhaps the most obvious explanation for why delivery has faltered for so long. In summary:

- a) there is no trajectory, so it is impossible to see what assumptions on development time table and delivery rates have been taken for important sites;
- b) delivery rates and development programmes are not set out. For some sites a developer estimate is given, but with no clear statement of the assumed delivery time table and programme. These estimates are clung to even when shown to be out of date;

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<sup>59</sup> Planning guidance ID 3-033-20150327

<sup>60</sup> LAA extracts have been provided which are not site specific and have barely been referred to (Inquiry Docs 14 and 26).

<sup>61</sup> Planning guidance ID 3-031-20140306, 3-033-20150327, 3-020-20140306; 3-022020140306.

- c) there is no evidence of risks being assessed – sites with objections from Natural England, ransom issues, active alternative uses and multiple owners, for example, are all included without comment on those matters;
- d) the Council appears to accept on face value what developers say to it, even though Mr Woods emphasised that, in his view, developers were to blame for not delivering when they said they would. It is clear that the Council's methodology is failing to provide a robust assessment, because there has been persistent under-delivery, several previous decisions rejecting the authority's five year supply case, and years of data showing that the delivery falls far short of the Council's predictions.<sup>62</sup>

6.40 In short, the assessment is not policy compliant and is unreliable.

6.41 Mr Henshaw's approach has been criticised as being '*overly forensic*'. If that means he has been thorough, he should be praised for it, not criticised. But if it means that he has gone to lengths not expected of the planning authority, the point is wholly without merit. He is an experienced planner, whose experience covers local authority work. He has produced his evidence in a very short period of time, having been first instructed in December 2016. Moreover, his sources are accessible, his primary source of information being the Council's own website. The Council evidently finds his evidence makes uncomfortable reading.

6.42 Finally on approach, Mr Henshaw was criticised for using the expression '*no certainty*', but as he said, the level of certainty he had in mind was the '*realistic prospect*' expressed in footnote 11 of the Framework. It is of course for the Secretary of State to make his own judgment on the Council's supply based on the evidence before him.

*(i) 20% buffer should be applied*

6.43 The Council's inability to grasp the realities of its housing supply position and its failure to embrace the Government's call to '*boost significantly the supply of housing*' is nowhere more evident than in its attitude towards the buffer.

6.44 For the last eight years (technically 7.75) it has severely under-delivered against its requirement, whether the SHMA figure of 519 dpa is used or the low figure of 250 dpa from the South East Plan.<sup>63</sup> It delivered more dwellings in the seven years to 2008-2009 than it has in the eight years to 2017. Moreover, five of those seven early years had delivery levels higher than all but one of the last eight years.<sup>64</sup> Delivery has chronically faltered at exactly the time when it should have been boosted. Its highest delivery year was a decade ago, in 2006-2007, when 458 dwellings were completed, well below the current requirement.

6.45 On any sensible view this is a record of persistent under-delivery within the terms of paragraph 47 of the Framework, requiring a 20% buffer. There has been under-delivery in all the last five years, eight of the last ten years, and a

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<sup>62</sup> RH2 Appendix 2.

<sup>63</sup> 2017HLS Appendix 1.

<sup>64</sup> Five of the seven years delivered at 255 dpa or above. That has only been bettered in one of the last eight years – 2015-2016, when 342 dwellings were delivered.

majority of the 15 year period the Council relies upon, including every year since 2009-2010.

6.46 The Council provides no real reasons why a 20% buffer should not be applied. The appellant submits that the reasons for under-delivery must be seen as secondary to the actual record, since the Framework looks to the record, not the reasons for the record. But, in any event, the reasons given by the Authority are of no substance:

- a) the recession:<sup>65</sup> this is agreed to have lasted from 2008-2010. Yet some of the lowest delivery rates ever were in 2011-2012 and 2013-2014. The recession is now history from half a decade ago, yet under-delivery continues.
- b) the moratorium: this only applied to part of the Borough, and only lasted until 2011. As Mr Henshaw said, steps could be taken to address such constraints.
- c) the change in the housing requirement in 2013:<sup>66</sup> it is not self-evident why adopting the SHMA figure of 519 dpa for development control should negatively affect delivery. This is not a case where delivery fell short of the requirement because the requirement went up. Delivery actually went down in the year when the requirement went up. By contrast, when the requirement went up in 2006-2007, delivery went up.<sup>67</sup> So there is no logic or evidence behind the Council's argument here.
- d) completions take time to react to/catch up with a new housing requirement:<sup>68</sup> do they? This is not self-evident. They did not need time in 2006-2007. Anyway, there has now been four years of the new requirement and completions are not catching up. The 2017HLS asserts that *'it is clear that there is an upward momentum in the number of completions since 2012-2013, with the figure in each year up to 2015-2016 increasing by about 100 homes compared to the year before'*.<sup>69</sup> This is nonsense. The figure was 230 dpa in 2012-2013, it then dropped to 143 dpa in 2013-2014, and has again dropped to 226 dpa (in nine months) for this year. There is no *'upward momentum'* at all.

6.47 Other decisions assist here as well.<sup>70</sup> Mr Charles sets out Inspectors' decisions and Secretary of State decisions which applied a 20% buffer relying on performance in the last five, six or seven years. The approach of looking back at the delivery in the last five years was upheld by the High Court in the *Cotswold* case.<sup>71</sup>

6.48 Finally, the position in Waverley was reviewed by an Inspector in the Hewitt's Industrial Estate decision, following a three day inquiry.<sup>72</sup> He determined that a 20% buffer was appropriate looking at the delivery record, and then went on

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<sup>65</sup> 2017HLS paragraph 34.(a).

<sup>66</sup> 2017HLS paragraph 34(b).

<sup>67</sup> 2017HLS Appendix 1.

<sup>68</sup> 2017HLS paragraph 3.4(c) and (d).

<sup>69</sup> 2017HLS paragraph 3.4(d).

<sup>70</sup> Mr Charles' proof at paragraphs 5.9-5.29

<sup>71</sup> *Cotswold DC v Secretary of State*, [2013] EWHC 3719 at [48]. MR Charles' proof paragraphs 5.22-5.24.

<sup>72</sup> Inquiry Doc 9

to observe that his conclusion was consistent with earlier decisions in the Borough.<sup>73</sup> There are no reasons to depart from that recent decision.

6.49 Applying a 20% buffer brings the Council's supply to just below five years on its own figures, now that it has removed 65 units from the site south of High Street, between Alfold Road and Knowle Lane, Cranleigh.<sup>74</sup> The Council also accepted an element of double counting at 14-18 Lower Street, Haslemere, agreeing that a further seven dwellings should properly be removed from the supply.<sup>75</sup> (A total reduction of 72 dwellings)

*(ii) 10 % lapse rate should be applied*

6.50 Mr Woods accepted that lapses occur in Waverley, but claimed that they were taken into account by reviewing the housing land supply three times a year, and taking out lapsed sites each time.

6.51 This provides no answer for two reasons. First, it is, in substance, a concession that each housing land supply has within it deliverable supply sites that will lapse during the period before the next review. Reviewing the supply does not deal with the issue, because the Council's approach only addresses the sites that have already lapsed, whereas the lapse rate is intended to address the proportion of sites that will lapse over the future period which the supply covers. The sites that will lapse over the period until the next review should never be included in the first place, because they are not deliverable.

6.52 Secondly, as Mr Henshaw pointed out, the housing land supply does not actually discuss lapse rates. There is no evidence of the Authority assessing lapse rates, and the reasons why sites have been removed from the supply are not given anywhere, so there is no reliable way of knowing quite what the Council actually does or why it does it.

6.53 The Council's suggestion, through re-examination of Mr Woods, that a lapse rate should not be applied because guidance does not require such, demonstrates a care-free attitude to the assessment. First, guidance expressly requires the Authority to have regard to the local delivery record, which will include the level of lapse rates. Secondly, since the Council accepts that lapsing is a reality, it should adjust for it if it is interested in making its assessment robust and reliable. Its own concession undermines its assumption of 100% delivery from sites with planning permission.

6.54 Mr Henshaw advises that a 10% lapse rate should be applied to all sites with planning permission. This is reasonable in this case, where it is accepted that there will be a lapse rate but the Authority has not considered what the rate is. Mr Charles refers to decisions where 10% has been applied as a reasonable adjustment, including the Secretary of State's decision in Tetbury.<sup>76</sup>

6.55 Applying a 10% lapse rate to the Council's own figures reduces the supply by 294 dwellings.<sup>77</sup> Adding this to the 72 units the Council also accepts should be

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<sup>73</sup> DL paragraphs 8-11

<sup>74</sup> As explained by Mr Woods in evidence in chief and in cross-examination. This site is also commented on at RH2, paragraph 5.8.

<sup>75</sup> Inquiry Doc 15 Appendix 2

<sup>76</sup> Mr Charles' proof paragraphs 5.30-5.32

<sup>77</sup>  $(2439+496) \times 10\% = 293.5$ . The figures in brackets are the sites with planning permission figures from Table 2 of 2017HLS.

removed, gives a total supply of 3,991.<sup>78</sup> Applying this to the requirement, with a 20% buffer, gives 4.63 years' supply.<sup>79</sup>

*(iii) Emerging allocations*

- 6.56 Case-law makes it clear that a planning authority is not entitled to assume that a site is deliverable simply because it is an allocation in an emerging plan, where the site is the subject of unresolved objections. Instead, it must look at site specific evidence.<sup>80</sup>
- 6.57 When asked in cross-examination, Mr Woods refused to say whether the authority had taken this approach. The Council has produced no site specific evidence on the merits of the objections to the emerging allocations, and the Secretary of State is not in a position to pre-judge what the outcome of the plan examination might be. So, the starting point is that all the emerging allocations should be excluded from the supply unless there is sufficient site-specific evidence to make their delivery over the five year period a realistic prospect.<sup>81</sup> The appellant takes issue with three of the sites currently in this category.
- 6.58 Coxbridge Farm: (RH2, site 94):<sup>82</sup> This is the only site that the appellant takes issue with that is in the emerging Neighbourhood Plan. The timetable for this development was provided by the developer in June 2016 and is still relied upon by the Authority even though it is already out of date. Mr Henshaw has re-worked the delivery rate assuming a planning application submitted in the second quarter of 2017. In the absence of any revised time table from the Council or developer Mr Henshaw's evidence is to be preferred. This reduces the supply by 80, from 180 to 100.
- 6.59 Horsham Rd, Cranleigh (RH2, site 95)<sup>83</sup>: there is no planning permission for the 101 dwellings counted by the Authority. Late evidence from the Council says that public consultation on a layout is to take place in February/ March. This is not site specific evidence on whether the site is deliverable, given that its allocation is the subject of unresolved objections. The site must come out. This reduces supply by 101.
- 6.60 Milford Golf Course (RH2, site 96):<sup>84</sup> this site is self-evidently not deliverable. It is a green belt site in active use as a golf course. There is no planning application for it for any dwellings, or for the relocation of part of the course on which development is envisaged. It is subject to objections. Mr Woods did not know what the very special circumstances to justify the development would be: when pressed on his evidence that there were viability issues relating to the golf club, he accepted he did not know whether there were any such issues at all. This site must come out. It reduces supply by 180.

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<sup>78</sup>  $4,359 - (294 + 74) = 3,991$ . The 4359 is the figure for the total 5 year supply identified by the Council in row g of table 2 in the January 2017 HLS document.

<sup>79</sup>  $3,991/4,306$  is 0.926.  $0.926 \times 5 = 4.63$ . The 4306 is the agreed figure for the requirement with a 20% buffer.

<sup>80</sup> see *Wainhomes v Secretary of State*, [2013] EWHC 597 (Admin) and Mr Charles' proof paragraphs 5.45-5.50

<sup>81</sup> Framework footnote 11.

<sup>82</sup> RH2, paragraph 5.19; RH1, paragraph 6.34ff.

<sup>83</sup> RH2, paragraph 5.20; RH1, paragraph 6.39ff.

<sup>84</sup> RH2, paragraph 5.21. This is a new site so not referred to in RH1.

6.61 The combined effect of the above is to reduce supply by a further 361 dwellings. The cumulative effect of the adjustments thus far is to reduce supply to 3,630.<sup>85</sup> This gives a supply of 4.22 years.<sup>86</sup>

*(iv) Potential sites in the LAA (addressed in RH1)*

6.62 Land at Oakdale, Portsmouth Rd, Haselmere (RH1, site 78):<sup>87</sup> This site is largely within the 400m SPA exclusion zone and is subject to an unresolved objection from Natural England on habitats grounds. It took six months for the Council to validate the application. Mr Woods speculated that a solution might be found along the lines of what he said had been discussed for another site,<sup>88</sup> but this was speculation, and no evidence of any softening of the Natural England objection has been provided by the Council in respect of either site.

6.63 There is no evidence before the Inquiry of how, when and how likely the objection is to be overcome. It is simply not known what, if anything might be proposed to deal with the SPA issue, and whether any proposal would be acceptable to all the parties concerned. As matters stand this is a site whose development would be in breach of policy and EU law. This site must come out. This removes 50 dwellings from the supply.

6.64 Weyburn Works (RH1 site 79):<sup>89</sup> Mr Henshaw had originally counted this in, but it was apparent from Mr Woods' evidence that the matter is complicated. There has been a planning appeal against the Council's refusal of planning permission for 69 dwellings that the Council hopes to win, and there is an application before the Council for 61 dwellings that it intends to refuse unless it is amended. Even assuming some resolution, the impact of these issues on the development timetable, or the number of dwellings that might be consented, is not touched upon by the Council at all. Mr Henshaw said it should come out. At the very least, the assessment should now refer to 61 dwellings and not 70, since 61 is what has now been applied for.

6.65 Clement Windows (RH1, site 86):<sup>90</sup> Mr Henshaw had not realised that the planning application for 55 dwellings had in fact been refused by the Council. An earlier planning permission for 39 dwellings was never implemented and was allowed to lapse. Apart from a lapsed permission and a refused permission, there is no site specific evidence. The Council's late evidence shows that it is seeking a level of dwellings consistent with the lapsed permission.<sup>91</sup> Since the landowner and Council appear to have different aspirations for the site. There is no basis to conclude that permission for 39 dwellings will be applied for, let alone delivered in the five year period. The site should come out.

*(v) Sites with planning permission*

6.66 Land at Sturt Rd (RH2, site 46):<sup>92</sup> the Council accepts that it is reasonable to assume that a ransom exists over the existing approved access.<sup>93</sup> Two

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<sup>85</sup>  $4,359 - (294 + 74) - 361 = 3,630$ .

<sup>86</sup>  $3,630 / 4306 = 0.84$ .  $0.84 \times 5 = 4.22$ .

<sup>87</sup> RH1, paragraph 6.19-6.22.

<sup>88</sup> Inquiry Doc 15

<sup>89</sup> RH1, paragraph 6.29

<sup>90</sup> RH1, paragraph 6.31.

<sup>91</sup> Inquiry Doc 15 Appendix 1

<sup>92</sup> RH2, paragraph 5.9; RH1, paragraph 6.12.

applications for alternative access arrangements were submitted and then withdrawn, with both facing objections from Natural England on habitats grounds. It is clear that these objections were never overcome.<sup>94</sup>

- 6.67 No reserved matters have been submitted under the outline planning permission, which is now nearly two years old. There is no suggestion that a reserved matters application is expected.
- 6.68 Currently, the agreed position is that there is a development constraint over the access, with no evidence as to the means, timing or likelihood of resolving it has been put before the Inquiry. The willingness of the ransom holder to sell is unknown, as is the willingness of the developer to pay. The effect on viability and deliverability is also unknown. In these circumstances the clear evidence is that the permission is not deliverable. The site must come out, reducing supply by 135.
- 6.69 Land at East Street, Farnham (RH2, site 17):<sup>95</sup> this is subject to a judicial review on procurement issues. The Council accepts that this has impacted on the delivery time table, since construction was intended to start in autumn 2016,<sup>96</sup> but it has made no adjustment to its supply and still assumes the full 235 dwellings being delivered in the five year period. Even if the site is not removed, some adjustment should be made.
- 6.70 Land south of High Street, between Alford Rd and Knowle Lane, Cranleigh (RH2, site 25):<sup>97</sup> infrastructure needs to be delivered up front on this site, before construction of the dwellings. The Council now accepts that, on its information, 360 homes will be delivered by the end of March 2022, three months beyond the 5 year period.<sup>98</sup> Only Mr Henshaw has produced evidence on annual delivery rates from this site. He projects 26 dwellings being delivered in the first quarter of 2022. If they are removed from the 360, the projected delivery is 334. This reduces the supply by 91, from 425 as set out in 2017HLS.
- 6.71 Adjustments: the above sites face a disparate range of issues. Making adjustments to the supply is hindered by the absence of any trajectory and an absence of any transparent evidence on the assumptions that the authority has used for each site. There are very strong reasons to remove Oakdale (50), Sturt Rd (135) and reduce the Alford Rd/ Knowle Lane site by 91. This gives a maximum supply of 3,354<sup>99</sup>, equating to 3.89 years.<sup>100</sup>
- 6.72 This still leaves the Weyburn Works, Clement Windows and East Street sites, a total of 357 dwellings, over which there are doubts and delays. Because the Council's assumptions in respect of these sites are not set out, it is difficult to judge what adjustment to make to them in the light of the evidence, but some adjustment is called for and it is likely to be lower even than set out above.
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<sup>93</sup> Woods cross-examination

<sup>94</sup> see the late evidence from the Council (Natural England letter 5/12/16 (Inquiry Doc 15 attachment 3).

<sup>95</sup> RH2, paragraph 5.7; RH1, paragraph 6.5.

<sup>96</sup> See quote at RH1, paragraph 6.5.

<sup>97</sup> RH2, paragraph 5.8; RH1, paragraph 6.8.

<sup>98</sup> Inquiry Doc 15 Appendix 1

<sup>99</sup>  $4,359 - (294 + 74) - 361 - (50 + 135 + 91) = 3,354$ .

<sup>100</sup>  $3,354 / 4306 = 0.77$ ,  $0.77 \times 5 = 3.89$ .

*(vi) Sites with a resolution to grant planning permission*

- 6.73 Late evidence from the Council says that the Nugent Close consent is about to be issued, and the Little Acres s106 is with the County Council for final comments.<sup>101</sup> In the light of that the appellant takes no issue with those sites being included in the supply.
- 6.74 Dunsfold Aerodrome (RH2, site 79):<sup>102</sup> there are two real difficulties with the Council's position on this site. First, the mid-December committee report assessed delivery at 130 units in the five year period,<sup>103</sup> but the Council now relies on a draft report (the Troy Report)<sup>104</sup> which pre-dates the committee meeting, to say that delivery will be at 273 dwellings.
- 6.75 Mr Henshaw's evidence is that he cannot find a clear methodology to derive the 273 in the Troy report.<sup>105</sup> The Authority has not put the report in evidence and it is still in draft. In these circumstances, the basis for departing from the most recent assessment of 130 dwellings in the December 2016 committee report is unclear. Mr Woods confirmed that there was no evidence of any change to the 130 delivery figure being reported orally to the committee. He speculated that the officers writing the report may not have known about the Troy report, but that is implausible.
- 6.76 Secondly, the report on which the Council relies says that '*at least*' 6-12 months should be set aside for concluding the s106 obligation, yet the Council's resolution on the application means that the permission will automatically be refused if the obligation is not completed within six months of the resolution.<sup>106</sup> Mr Woods stood by that position in cross-examination and made no suggestion that the Council would resile from it. Instead, he explained that the 6-12 months had been given because of resource limitations within the Council, which had now been overcome by appointing external consultants. However, he had not read the Troy report, which makes it clear that the minimum 6-12 months is needed because of the complications of the scheme. It does not mention the Council's resources at all.<sup>107</sup> That 6-12 months takes account of the heads of terms put forward as part of the planning process. The Secretary of State's position on call-in is also unclear (12 Parish Councils have asked for a call-in).
- 6.77 In the appellant's submission, some adjustment is needed. Mr Henshaw's evidence is that the site should be removed until the s106 obligation is signed off. At the very least, the more conservative estimate of 130 dwellings should be used. This would reduce supply by between 143 and 273.
- 6.78 Making adjustments for Dunsfold (143-273) and Weyburn Works, Clement Windows and East Street sites (a total of 357) could result in a total of 630 dwellings coming off the supply. This would bring the supply down to the bottom figure of 3.16 years.<sup>108</sup>

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<sup>101</sup> Inquiry Doc 15 Appendix 1

<sup>102</sup> RH2, paragraph 5.15; RH1, paragraph 6.42.

<sup>103</sup> Mr Woods App 5, page 178.

<sup>104</sup> Inquiry Doc 27 (extract)

<sup>105</sup> RH2, paragraph 5.16.

<sup>106</sup> see resolutions A and B at Mr Woods Appendix 5, pages 236 and 256.

<sup>107</sup> Inquiry Doc 27.

<sup>108</sup>  $3,354 - 630 = 2,724$ .  $2,724 / 4,306 = 0.63$ .  $0.63 \times 5 = 3.16$ .

6.79 Accordingly, the appellant's submission is that the Council has between 3.16 and 3.89 years' supply of deliverable sites.

***Implications for policies***

6.80 The consequence of paragraph 14 being engaged by reason of there being no five year housing land supply, is that the policies for the supply of housing are out of date. While weight is a matter for the Secretary of State, in the appellant's submission the relevant supply policies must carry little weight in these circumstances for the following reasons.

6.81 First the authority accepts that, to meet its five year supply, housing development will be needed on sites subject to policy C2.<sup>109</sup> This is illustrated by the emerging allocations, nearly all of which are outside the settlement boundary,<sup>110</sup> and the Dunsfold Aerodrome decision.<sup>111</sup> The latter advised the committee that, in the event of there not being a five-year supply, '*the Council would need to revert to attributing limited weight to housing supply policies*'.<sup>112</sup>

6.82 Secondly, the 2002 Local Plan is aged and tagged to a 187 dpa requirement. There is no sensible reason for giving material weight to those policies in the circumstances of this case. That would seriously hinder delivery.

6.83 Thirdly, the track record of chronic under-delivery needs to be broken, urgently. Standing by the aged development plan policies will have the opposite effect.

6.84 Fourthly, the Council does not appear to be taking any concrete steps directed at boosting supply. It is promoting its emerging Local Plan, of course, but it is under an obligation to do so and the history of plan preparation is one of delay and faltering steps. The spectre of reliance on omission sites to meet supply suggests there may be considerable delays ahead.<sup>113</sup> The appellant submits that the Council's attitude towards housing delivery is complacent, falsely optimistic and lacking realism.

6.85 Fifthly, policies C2 and H4 already start from a position of diminished weight. H4 is agreed to be a policy for the supply of housing, because it has the effect of restricting housing supply which does not meet its prescriptive mix.

6.86 Sixthly, in relation to C5, it was suggested in re-examination of Mr Woods that a '*gap*' policy was somehow endorsed by the *Suffolk Coastal* decision, but it was not. As Mr Charles said, the merits of a gap policy were not an issue in that case. The court simply gave a gap policy as an example of a purpose that a policy might follow, which would need to be considered when judging weight. Here, the role of policy C5 should be judged not simply as a matter of principle, but in the light of the evidence on the effect that the development would have on coalescence. For the reasons already given, the impact would not be material, and so delivery issues should result in low weight being attached to the policy.

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<sup>109</sup> Mr Woods in cross-examination.

<sup>110</sup> Mr Charles in evidence in chief.

<sup>111</sup> Officer's report (Mr Woods Appendix 5 page '*In terms of the Adopted Local Plan Policy C2, the principle of development would be unacceptable*').

<sup>112</sup> Mr Woods Appendix 5 page 178,

<sup>113</sup> Questions put to Mr Charles.

- 6.87 Seventhly, the rate of undersupply year on year is accumulating, the shortfall in the five year supply is significant and there is no upward trend shown by the last few years' figures.
- 6.88 Finally, as far as relevant emerging policies are concerned, the housing requirement is the subject of unresolved objections, as are the emerging allocations, so too is RE3, the continuation of the ASVI policy.
- 6.89 So, the housing supply policies should carry only limited weight. If it is found that the Council can demonstrate a five year supply, Framework paragraph 14 is still engaged because there is no up-to-date housing requirement in the 2002 Plan and the appellant's comments in paragraphs 6.81, 6.82, 6.86 and 6.88 above still apply.

#### **EMERGING NEIGHBOURHOOD PLAN**

- 6.90 Notwithstanding the Inspector's report, about which there are a number of concerns<sup>114</sup>, there remains an urgent need to boost the supply of housing in the Borough, given the growing shortfall in supply and the likelihood that the supply of deliverable sites stands between 3-4 years.
- 6.91 The emerging Neighbourhood Plan still has a number of stages to go through before it is 'made', including a referendum and it is set to be challenged in the courts because of its failure to meet the basic requirements. That will further delay any housing delivery. Housing delivery must continue in the meantime.
- 6.92 In any event, the appellant's assessment of the housing supply position at the Inquiry was not dependent upon the sites being promoted in the emerging Neighbourhood Plan to any material extent. As such, even if some weight is now to be given to the Plan, it does not materially change the five year supply position as set out by the appellant. In any event, until the Plan is 'made', the Government's policy statement made on 12 December 2016 (which itself is the subject of judicial review) is not applicable in this case.
- 6.93 Further, and in any event, the development proposed would comply overall with, or not materially breach policy FNP10. It complies with 'other relevant planning policies applying to the area' (noting that limb (a) of the policy is not prescriptive as to the policies to be complied with) such as those on design, heritage and ecology; there would be no harm to the green belt; it would at least preserve the AONB; it would not have any detrimental impact on any area shown on Map E in the Plan; and it would enhance the countryside through additional planting with appropriate native species.

#### **THE PLANNING BALANCE**

- 6.94 The Authority's evidence considered this in the wrong way, by asking whether there are very special circumstances to clearly outweigh harm.<sup>115</sup> Mr Woods effectively withdrew this part of his evidence.
- 6.95 The planning benefits are set out in section 10 to Mr Charles' evidence. In closing, the appellant emphasises the following in particular:

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<sup>114</sup> The concerns in this regard are set out in Inquiry Doc 35

<sup>115</sup> Mr Woods' proof, final section.

- a) the provision of market housing, which should carry weight commensurate with the shortfall in supply, which is severe;
  - b) the provision of affordable housing, for which the Authority accepts there is a '*substantial need*' across the Borough and meeting this need is a '*key corporate priority*' for the Council.
  - c) public access and public open space where none currently exists. The access, including the footpaths, will provide useful links to the local community as explained by Mr Charles.
  - d) ecology benefits: these may seem minor, but they should be provided where they can, and they have been. The site currently has no particular ecological value. Existing hedgerows will be reinforced by the scheme.
- 6.96 All three strands of sustainability will be furthered by the proposals. The impact on countryside is modest and localised, and ASVI impacts are minimal. While policies C2, C5 and H4 are technically breached, the weight to be accorded to those policies is limited and outweighed by other considerations.
- 6.97 None of the allegations in the reasons for refusal amount to harm that significantly and demonstrably outweighs the benefits. The development is sustainable within the terms of the Framework and the appeal should be allowed.

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

*Edited from the opening and closing submissions of the Council's advocate<sup>116</sup> and post-event written submissions in relation to the emerging Neighbourhood Plan.<sup>117</sup>*

The Council called one witness, Mr Woods. The material points of the Council's case are summarised below.

- 7.1 Full planning permission is sought for the erection of 56 dwellings, including 22 affordable dwellings, together with associated access, parking, open space and landscaping, on a site measuring some 2.78 hectares located on the southern side of the western section of Monkton Lane.
- 7.2 The planning application was refused pursuant to officer advice and on the basis of a detailed officer report. The reasons for refusal cite policies from both the adopted development plan and the Framework.

***Effect on the character and appearance of the area, including the effect on the ASVI<sup>118</sup>, and on the setting and heritage significance of nearby listed buildings***

- 7.3 The appeal site is presently agreed to be an open field<sup>119</sup> with views into it predominantly from Hale Road and from areas identified by Mr Woods for the Council in his evidence and shown by his photographs.

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<sup>116</sup> Inquiry Docs 8 and 29

<sup>117</sup> Inquiry Doc 34

<sup>118</sup> Area of Strategic Visual Importance as defined in the 2002 Local Plan

<sup>119</sup> Proof of Mr Withycombe paragraph 4.16

- 7.4 The appellant accepts that the qualities of this open field are typical of those in the immediate vicinity of the site, necessarily including those in the ASVI in the vicinity.<sup>120</sup> Accordingly, judged against that neighbouring land, the appeal site has comparable qualities. Nor is the idea that the site, if developed, would have defensible boundaries any significant advantage. That would be looked at as being a minimum prerequisite for new housing on greenfield land outside the settlement boundary.
- 7.5 The site is located outside the settlement boundary. Accordingly, the proposed development is in breach of policy C2. Policy C2 can be given substantial weight.<sup>121</sup>
- 7.6 The development will effect a major change to the landscape on the appeal site itself. It will change from being an open field into reasonably dense urban building. The change and contrast will be stark. It was notable that, in his evidence, Mr Withycombe was not prepared to say whether the change would be positive or negative.<sup>122</sup> The Council suggests it is plainly a negative change in the landscape at that local level. There is no suggestion that the wider landscape is affected by the proposal. In those circumstances, the evidence of Mr Woods should be accepted. There will be harm to the landscape, and in visual amenity terms. Mr Woods noted that the site is physically and visibly detached from the built environment at Hale and Farnham by the recreation fields and hockey pitch to the north, allotments and sports pitches associated with the David Lloyd Facility to the east, and allotments and open fields to the south.<sup>123</sup> The open nature of the site represents a visual barrier that signifies an end to the developed area.<sup>124</sup>
- 7.7 This area has, for a sustained period of time running from 1984<sup>125</sup> to date, been part of the AVSI which seeks to prevent the coalescence of Hale and Farnham. All of the observations made by Mr Woods about the nature of the site, as set out above, also apply to this point.
- 7.8 In rejecting suggestions that it should be removed from the AVSI, the 2002 Local Plan Inspector identified the appeal site in the following terms, which Mr Withycombe accepts is a fair judgment of the situation as it existed at the time:

*'3.153 The objection site at Monkton Lane, Farnham lies at the northern end of the important wedge of ASVI land abutting the Policy C4 Strategic Gap land to the north and east of Farnham. Whereas the objector sees the site as comprising an open intrusion or indentation into the built-up area, I regard it in the converse manner. The wedge in this location is slightly 'pinched' by tongues of development protruding into it from each side. The character of the area comprising the ASVI in this location is certainly one of a green lung and the 'coalescence' argument is a strong argument in this position . . .'*<sup>126</sup>

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<sup>120</sup> Proof of Mr Withycombe paragraph 4.25 and in cross-examination

<sup>121</sup> Evidence of Mr Woods based on *Cawrey [2016] EWHC 1198 (Admin) at [49] – [50]* (Inquiry Doc 13

<sup>122</sup> During cross-examination

<sup>123</sup> Mr Woods' proof of evidence paragraph 8.12

<sup>124</sup> *Ibid* paragraph 8.15

<sup>125</sup> Inspector's Report into the 2002 Local Plan (paragraph 3.136) – Appendix 13 to the proof of Mr Woods

<sup>126</sup> Mr Woods Appendix 13

- 7.9 In his evidence, Mr Woods said he endorsed the Local Plan Inspector's conclusions and that they applied equally today and that, if anything, the importance of the designation was enhanced by some additional building which had occurred over time (eg the David Lloyd Centre). In cross-examination, Mr Withycombe was given the opportunity to say what had changed in relation to the appeal site since the Inspector's decision, given that he was not criticizing the Inspector's judgment as made at the time. He identified only one change – the building of the David Lloyd Centre. He did not explain why he thought that was important. Looking at the location of that building, and the associated sports fields, as Mr Woods has,<sup>127</sup> it is clear that this development does not disturb the essential reasoning of the Inspector. His view should be upheld. This land does represent a key part of the AVSI in this area.
- 7.10 An issue of interpretation has arisen in relation to the AMEC report<sup>128</sup> in this respect. The Council's position should be preferred. It is consistent with the Inspector's findings as set out above, and it is also noteworthy that that is how officers of the Council have understood the AMEC report – that the 'green break' includes reference to the appeal site - the officer's report<sup>129</sup> referring to the transitional nature of the area, the physical detachment of the site, and the relevant passages of the AMEC report. The officer concluded that the appeal site was a key area for transition, in light of her views about the green break provided by the site and the issue of coalescence.
- 7.11 The land does not have a landscape designation, but it is agreed that the AVSI designation is conferred for different, functional reasons, not related to landscape quality *per se*. In any event, as set out above, the appellant expressly accepts that the appeal site is typical of the surrounding greenfield land. Thus, Mr Withycombe's evidence, focused as it was on the quality of the landscape *per se*, misses the essential point of the AVSI policy protection.
- 7.12 Mr Withycombe's evidence was deeply unpersuasive on this central point about coalescence, in a way that affects the balance of his evidence. In oral evidence, on at least three occasions, he opined that the development would have no effect whatsoever on coalescence. When it was pointed out to him that in writing,<sup>130</sup> he had acknowledged it would have such an effect, he tried to say he stood by that written evidence, but still continued to contend that there was no effect on coalescence. That evidence was simply nonsensical. It gave the appearance that cross-examination was trying to resile from a concession he had perfectly sensibly made, that policy C5 was breached.
- 7.13 Moreover, as Mr Withycombe accepted, he wrote that there would be an impact on coalescence at a time when he thought that the minimum distance between the appeal site and 15% into the available ASVI – leaving '*a minimum 850m gap (or 85%) in place*'.<sup>131</sup> In fact, the correct distance is a fraction of that, even taken from the northern boundary of the site at around 400 metres

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<sup>127</sup> Mr Woods' proof of evidence paragraph 8.12

<sup>128</sup> AMEC Landscape Study and Landscape Designation Review commissioned by the Council (August 2014) - see appellant's LVIA Appendix A (Mr Withycombe Appendix 2), Mr Withycombe Appendix 5, Mr Charles Appendix 5 and Mr Woods Appendix 6

<sup>129</sup> Mr Woods Appendix 1 pages 45-47

<sup>130</sup> Paragraph 4.16 of his proof of evidence

<sup>131</sup> Ibid

(398.48 metres)<sup>132</sup> or less than half. It must follow that the impact on coalescence would be significantly greater than Mr Withycombe was prepared to acknowledge in his written evidence.

- 7.14 Accordingly, as Mr Woods said, it is a major development over the whole of the site and there is a clear and substantive breach of policy C5. He also said that the function and purpose of the designation would be destroyed within the appeal site by this very urban development, which did nothing to produce any sense of transition, in contrast to the sporadic and low density development on the western side of Hale Road.<sup>133</sup>
- 7.15 Policy C5 is entitled to full weight. There can be no sustainable suggestion that a policy which seeks to prevent coalescence, or the existence of green lungs (wedges or gaps), is inconsistent with the Framework. It is a policy which the Council seeks to continue within the emerging Local Plan as part of policy RE3.
- 7.16 In his evidence, Mr Charles took a strange route on his approach to C5. Firstly, he accepted that it was not unusual for emerging local plans to seek to have policies protecting green wedges, or protecting against the risk of coalescence. Next, he said such policies were not necessary here because policies such as C2, a settlement boundary policy, would provide sufficient protection. Because he adopted that approach, he was driven to conclude in cross-examination that in fact, policy C2 insofar as it provides strict control against development in the countryside, would be fully compliant with the Framework (subject to any application of paragraph 49 Framework) thus dealing with any issues relating to coalescence by that means. Accordingly, whichever route is adopted – it is clear that Mr Charles accepts that policy seeking to protect against coalescence, or seeking to protect green wedges or lungs, remains appropriate against the backdrop of the Framework/Planning Practice Guidance.
- 7.17 Whilst he described the history of the emerging AVSI policy as obscure,<sup>134</sup> it is clear that is because he had not considered the reasoning and conclusions of the Local Plan Inspector,<sup>135</sup> as at the date he wrote his proof of evidence. Equally, in offering the evidence he did in relation to Water Lane, he had not considered any of the background decision making papers informing those decisions within the emerging Local Plan process.
- 7.18 Returning to the reasons for refusal, the proposal will, by virtue of the number of dwellings, scale, urbanizing impact and harm to the character and appearance of the area from the introduction of significant built form to an otherwise open site free of development cause planning harm. It will cause coalescence and fail to maintain or enhance the ASVI. Neither will it aid transition between the developed area and the open countryside.
- 7.19 For all those reasons, the proposal fails to comply with policies C2 and C5, as well as the provisions of the Framework.

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<sup>132</sup> Inquiry Doc 5

<sup>133</sup> Mr Woods' proof of evidence paragraph 8.6

<sup>134</sup> Mr Charles' proof of evidence paragraph 7.41

<sup>135</sup> Mr Woods Appendix 13

### ***Whether the housing mix is appropriate***

- 7.20 The housing mix is not appropriate. That conclusion is arrived at whether the proposal is tested against (a) the precise requirements of the 2002 Local Plan; (b) the need identified by the recent and robust SHMA; or (c) the emerging Local Plan policies on this question.
- 7.21 As for the first of the main issues as set out above, the starting point remains the statutory development plan. Accordingly, the mix of housing is not appropriate. It does not reflect the SHMA (and therefore emerging policy) or policy H4. It does not provide for local needs in the way and to the extent that it should. It will, of course, make a contribution to those needs, but it should do so in a way that reflects an appropriate mix of housing. That is precisely the point of having a policy which seeks to influence the mix of housing. As Mr Woods said in cross-examination, there is no reason why there should not be more smaller units in the proposal. The appellant could have fixed this issue, but has chosen not to do so. The evidence of Mr Charles does not provide any real assistance as to why a proposal reflecting the SHMA could not have been provided.
- 7.22 The deviation from what would amount to an acceptable mix is substantial. For example, no one-bed market units are proposed. The number of market two-bed homes proposed is substantially under the SHMA figure (around 30% of the SHMA figure). Together, they make up some 40% of the SHMA requirement (at 8.1% and 31.9%). Yet the proposal provides only 8.8% of its housing within this bracket.
- 7.23 Accordingly, the proposal is also in breach of policy H4. The breach of the policy is itself entitled to weight (see the Frensham Vale decision<sup>136</sup>). Further, the failure to accord with the SHMA requirements, and thus the emerging Local Plan, is also entitled to weight. It is clear that the Frensham Vale Inspector found a failing in the material before him, and gave that breach weight.
- 7.24 The argument that a substantial deviation can be allowed on this site without causing overall harm to the figures should be rejected. It is precisely the kind of argument that can be repeated too often, over this and other housing proposals which come forward.

### ***The Housing Land Supply position***

#### *The buffer*

- 7.25 The Council contends that a 5% buffer remains appropriate. Whether or not there has been persistent under delivery is a matter of judgment, upon which Inspectors may properly reach different views depending on the evidence and arguments advanced. The decision of the Hewitt's Industrial Estate Inspector<sup>137</sup> represents one conclusion, but it is open to the Inspector to conclude that 5% should still apply. Prior to the Hewitt's decision, there were decisions applying 5% and describing the situation as borderline, thus indicating the ability to reasonably reach different views.

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<sup>136</sup> APP/R3650/W/15/3008821 (Appendix 3 to the appellant's statement of case)

<sup>137</sup> APP/R3650/W/15/3141255 (Inquiry Doc 9)

- 7.26 In this appeal, the appellant accepts that it is right to measure the question of whether there has been persistent under delivery over the longer term, in accordance with the Planning Practice Guidance. Mr Henshaw advanced a period of ten years for these purposes on the basis that, in his experience, it was a normal period to take. He opined that '*It is common in appeals for the assessment to be made over the last ten-year period*'.<sup>138</sup> Pausing there, it does not appear that the Hewitt's Inspector proceeded in that way. It is not clear why he did not accept that, in applying the Government's planning guidance, ten years would be a normal period.
- 7.27 Starting from that position, it is clear that in fact there have been years during that ten year period when the Council has met or exceeded its requirements. As Mr Woods pointed out, in the years 2006/2007, 2007/2008 and 2008/2009 the requirements were exceeded.
- 7.28 Taking the 14 year period starting in 2002, roughly coincident with the adoption of the extant Local Plan, in fact the Council met its requirement continuously for the first seven years of that period. It is therefore worth noting that, for each year in which the Local Plan was operative in terms of its housing provision (to 2006) the Council met its requirements. It is also worth observing that the deficit in 2012-2013 was very modest, at 20 units.
- 7.29 It is only more recently that difficulties have emerged. The first period of difficulty directly coincides with both the recession, which the appellant accepts would have been operative for a two year period 2008-2010. It also coincides with the moratorium made necessary due to the requirements of Natural England in relation to the SPA. On Mr Woods' recollection, that ran between 2009-2011. It is, of course, necessary to factor in some further time for completions to recover after the end of the moratorium on deciding planning applications, so that applications can be made, processed, determined, planning conditions discharged and the permissions implemented. It is clear that Mr Charles, in quoting the planning guidance,<sup>139</sup> accepts that a moratorium may be relevant to this question.<sup>140</sup>
- 7.30 Lastly, the Council has set out in its evidence base the need for time to adjust to the setting of a housing target at 519 dpa, which was over double the previous requirement. It is self-evident that adjusting to such a quantum shift would take time.
- 7.31 To its credit in this respect, the Council has engaged positively with the emerging Local Plan process, such that the current timeline suggests Hearings in May 2017 and adoption in September 2017, only seven months away. The Plan is submitted on the basis it is considered to be sound and will require, as at the date of adoption, to make provision for a five year housing land supply. The Plan Inspector can require such main modifications (and potential Sustainability Appraisal work) as, and if necessary to reach that position. Similarly, the Council has fulfilled its role in facilitating the promotion of the emerging Neighbourhood Plan for Farnham, with the Examiner's report

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<sup>138</sup> Paragraph 3.9 of Mr Henshaw's original report attached at Appendix 8 to the proof of Mr Charles

<sup>139</sup> Mr Charles' proof of evidence paragraph 5.15

<sup>140</sup> Mr Charles' proof of evidence paragraph 5.15

expected any day now.<sup>141</sup> The emerging Neighbourhood Plan makes a number of allocations for new housing.

- 7.32 As Mr Woods made clear, the Council has also engaged proactively with planning applications, by permitting developments that were in breach of policy C2, placing only a modest level of weight on that policy in light of the housing land supply position which prevailed until relatively recently. It is also Mr Woods' evidence that the Council is meeting informally with developers to see what more can be done to encourage existing permissions to be taken up. Another example of proactivity is the second resolution requiring the S106 agreement at Dunsfold Aerodrome to be completed within six months. As Mr Woods said, a risk attendant on a 20% buffer, especially perhaps at this point in the plan cycle (nearing examination and adoption), is that development may occur in the wrong places.
- 7.33 It is clear from the Framework that the production of local plans is the main strategic stimulus to boosting the supply of housing. Accordingly, it is reasonable to infer (as appears to have happened in the past) that the housing land supply will be more secure as at the adoption of the emerging Plan, and in the following years. Similarly, in development management terms, it is clear that the number of permissions granted has increased very substantially, totalling 1,289 for the year 2015/2016.<sup>142</sup>
- 7.34 All of these factors point towards a situation where, looked at in the round, there has not been persistent undersupply and a 5% buffer should be applied.
- 7.35 Nothing in Mr Charles' evidence alters this conclusion. It is, to say the least, surprising that he sought to actively disagree with Mr Henshaw's evidence on this issue, bearing in mind Mr Henshaw was called as the individual with specific expertise in these matters. Nevertheless, on analysis it appears that Mr Charles' approach was mistaken – he relied for the essential justification of his taking five years on caselaw which arose prior to the planning guidance, and on a number of Inspectors' decisions, when in at least two of those decisions Inspectors giving reasons prior the guidance specifically referred to the fact there was no further definition of '*persistent under supply*'. The planning guidance plainly provides further important advice on that point – and in particular the value of taking a view over the longer term.

#### The housing figures

- 7.36 The Council is entitled to rely upon footnote 11 to the Framework in relation to sites which have planning permission. There is no policy or guidance that seeks to apply a lapse rate for that category of the five year housing land supply. The evidence which the appellant has sought to provide does not amount to clear evidence demonstrating that the relevant permissions will not be implemented within the next five years. It is not open to the appellant to cherry pick which pieces of the Framework/Planning Practice Guidance they wish to apply. Framework footnote 11 is clear in its terms and has not been modified by the introduction of the Planning Practice Guidance, or any of the later amendments to that document. For that reason, reliance on Secretary of State Decisions which predate the Planning Practice Guidance is misplaced.

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<sup>141</sup> The Inspector's Report was issued to the Council for fact checking just before the close of the Inquiry.

<sup>142</sup> Table 3 of the 2017HLS (Inquiry Doc 10)

- 7.37 In relation to sites with resolutions to grant but which are subject to S106, the position is similar, although of course footnote 11 will not apply. Therefore, as for other classes of case, it becomes a matter of evidence as to whether there is a realistic prospect that the site will be developed within five years. However, the fact that a planning application has been made and a resolution accepting it in principle has been made, are highly material factors as to whether a development is likely to be deliverable.
- 7.38 On the LAA sites included in the five year supply – it is important to recognise the degree of filtering which has been applied to sites which appear there. Those sites number in the order of 800. A very small percentage has been taken further as being deliverable. It is also notable that, of those coming forward, the appellant has sought only to criticise a small number of them. As Mr Withycombe was inclined to agree in cross-examination, that points towards a methodology which has, by and large, been successful in identifying appropriate sites.
- 7.39 It is key to note that the five year deliverability threshold does not require either a planning application to have been made, or for a site to have been allocated. Accordingly, either is positive evidence supporting the realistic prospect of a site coming forward as deliverable. As Mr Henshaw said, the making of a planning application on sites of any size, especially full applications, requires a substantial amount of work, and consequently will not be undertaken lightly.
- 7.40 Accordingly, the fact that the strategic allocations are proposed in the emerging Local Plan counts in their favour. They are, necessarily, proposed on the basis that they are considered to be sound allocations. The proposed allocation can be a substantial factor, especially in circumstances where the emerging Plan is fast progressing towards adoption, and where the local planning authority accepts (and everyone agrees) that it will be necessary to release greenfield land outside the existing settlement boundaries to secure the land necessary for the plan period. In those circumstances, it would be difficult for an objector before the Examiner to resist the inclusion of a site simply because it is greenfield outside the existing settlement boundary. However that may be, the Council has provided a narrative for each of the LAA sites and for each of the proposed allocations setting out why, in its view, the site is considered to be deliverable.
- 7.41 It appears from the appellant's evidence on housing land supply that they had put the bar for inclusion in the five year supply significantly too high. That is demonstrated by Mr Henshaw's repeated references to the idea of '*certainty*'. There is no requirement for certainty. What is required is a realistic prospect of the site coming forward, which is quite a different thing. That that was Mr Henshaw's logic is most clearly indicated in his supplemental proof of evidence (RH2).<sup>143</sup> Although he said in cross-examination that '*realistic prospect*' should be inserted on each occasion: (a) there is no good reason why he should not be taken at his clearly expressed written position, and (b) that simple substitution does not make sense. For example, in paragraph 5.13 it would mean that the site had no realistic prospect of coming forward simply because no s.106 had been signed. That cannot be right. Whereas, it is perfectly

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<sup>143</sup> Inquiry Doc 6 paragraphs 5.13 and 5.20

possible to say that in the absence of a signed s.106 it is not certain the site would come forward. As Mr Woods made clear, it is not realistic to discount a site or allocation simply because there is an objection or a potential constraint; let alone in circumstances where a resolution has been made but a s.106 not yet signed. As he said in cross-examination, those issues have to be balanced out as a matter of judgment. What is notable is that the appellant did not advance the idea that there were insuperable barriers to any of the developments within the five year period.

- 7.42 Twinned with that, but in similar vein, Mr Henshaw's approach to housing land supply was overly forensic, involving a number of criticisms of detail that might be met by other developers appearing in the context of a local plan examination, where each developer seeks to promote their respective sites. In this Inquiry, whilst the local planning authority can garner some evidence from developers, there are limits, and issues of commercial confidentiality can come into play. In short, it is not appropriate to descend to the over-forensic level of detail the appellant has within the context of a Section 78 inquiry.
- 7.43 Nor is it appropriate to purport to require that Councils investigate information provided by developers which appears to be reasonable. That would amount to an unworkable burden – simply consider the large number of sites which feature in both the LAA and the five year supply. If there is an obvious problem, it may require investigation. Dunsfold Aerodrome is a good example of where the authority has moderated assessments made by the developer of the likely timing. The fact that guidance only requires assessments to be updated once a year is the clearest indication that it will normally be acceptable to rely on material that is less than one year old.
- 7.44 Accordingly, the Council has demonstrated by its evidence that it has sufficient sites which meet the criteria for deliverability. That will, in all probability, continue to be the case going forward in light of the soon scheduled examination of the emerging Local Plan, and its adoption.
- 7.45 In the event that the Inspector finds any deficit in the five year supply, then paragraph 49 Framework will apply. However, as Mr Charles agrees, applying Hopkins Homes,<sup>144</sup> the extent of any deficit is relevant to the weight to be accorded to Local Plan policies, so too is the action taken by the authority to address the shortfall, as well as the particular purpose of a restrictive policy – such as the protection of a 'green wedge' or of a gap between settlements. Nor would it be correct to apply Mr Charles' mantra of '*greatly reduced weight*' in those circumstances.<sup>145</sup>
- 7.46 As such, as noted in that case, there will be cases where, even in circumstances of a lack of a five year supply of housing land, the provisions of the development plan will carry the day.

#### Benefits of the scheme

- 7.47 The Council accepts that the provision of both market and affordable housing carries weight in favour of the proposal. However, those benefits do not

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<sup>144</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East*, SSCLG [2016] EWCA Civ 168 paragraphs 46 and 47

<sup>145</sup> Mr Charles' proof of evidence paragraphs 7.16, 7.30, 7.32, 7.51, 7.54, 7.66

overcome the various harms identified above, in particular in circumstances where the benefits proposed by this development do not exceed those which might be expected to be provided by housing development in more suitable locations, and where the proposal fails to comply with policies H4/AHM3.

### ***Emerging Neighbourhood Plan***

- 7.48 The Examiner has concluded that, subject to a number of recommended modifications, the emerging Plan meets the Basic Conditions and can proceed to referendum. As such, it is a material consideration to which considerable weight can be given.
- 7.49 The emerging Plan proposes no changes to the existing built-up area boundary in this location, the appeal site falling outside the boundaries of any built-up area.
- 7.50 The emerging Plan and its relevant policies are considered to add considerable weight to the Council's case in respect of the impact of the proposal on the beauty and character of the countryside (reason for refusal 1) the impact on the ASVI (reason for refusal 2) and the lack of an appropriate housing mix (reason for refusal 4).
- 7.51 It also adds weight to the Council's housing land supply position. In particular attention is drawn to the findings of the Neighbourhood Plan Examiner's report at:

*Para 4.28 – "I consider that the Plan contains robust mechanisms for monitoring housing supply in the years up to 2031 and, if necessary, a formal review can be undertaken in response to any changed circumstances".*

and

*Para 4.29 - "I am therefore satisfied that the proposed housing allocation sites all accord with the relevant national and local policy guidelines."*

### ***Conclusion***

- 7.52 The proposal does not comply with the development plan. Material considerations do not indicate that the appeal should be allowed. The proposal fails both the environmental and social elements of the test of sustainability. For those reasons the appeal should be dismissed.

## **8. The Case for other persons appearing at the Inquiry**

- 8.1 ***Councillor Mrs Carole Cockburn*** spoke to the Inquiry. She is the Leader of the Town Council and chairs the Neighbourhood Plan Group.

*The main points were:*

- 8.2 Notwithstanding the constraints imposed by the proximity of the TBHSPA, the Neighbourhood Plan allocates a number of housing sites. It was amended following suggestions by the Examining Inspector, including factual updates in relation to the provision of SANG and differences in housing capacity based on the advice in the Framework and the planning guidance. Revised documents were sent to the Examining Inspector in December 2016.

## **9. Written Representations**

9.1 The planning application attracted a number of individual letters of objection.

A letter of objection was also submitted by Farnham Town Council. All those representations are summarised in the officer's report.<sup>146</sup>

9.2 In response to the appeal notification, a further three individual letters of objection were received together with additional comments from Thames Water. The comments therein generally reflect those previously made as referred to above.

## **10. Conditions**

10.1 Should the appeal succeed, recommended conditions, and the reasons for them, are set out in Appendix C below. They are based on the draft conditions suggested by the Council at the Inquiry.<sup>147</sup>

10.2 The conditions were discussed in detail, on a without prejudice basis, in the light of the advice in the Framework and the planning guidance. During that discussion, one of the suggested conditions was deleted on the basis that it was unnecessary,<sup>148</sup> with others deleted on the basis that their provisions were, or would be better covered by other conditions.<sup>149</sup> The conditions set out in Appendix C, including amended wording, reflect the discussion.

10.3 Possible additional conditions were also discussed. It was agreed that a condition was necessary to secure the submission of details for the proposed areas of public open space. Whilst a condition requiring details of the sub-station shown on plan No 14-1030-102-A at the eastern end of the site, adjacent to a proposed footpath link was also mooted, those details are shown on plan No 14-1030-145-A. Such a condition is therefore unnecessary.

10.4 The numbers in brackets below reflect the numbering in the above schedule and not the numbering on Inquiry Docs 22 and 32.

10.5 In addition to the standard time limit on commencement of development (1) it is necessary to identify the plans to which the decision relates as this provides certainty (2). I was advised that, if approved, the scheme might be delivered in phases. A phasing strategy is required therefore, to ensure that the necessary infrastructure is provided in a timely manner for each phase (3).

10.6 Construction is likely to take place over a number of years. Whilst local residents and those travelling through this part of the Borough may well be inconvenienced by that, adverse impacts can be reduced if the hours during which construction works can take place are controlled, and if an effective Construction Management Plan is in place (4, 5).

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<sup>146</sup> Appendix 1 to the proof of Mr Woods pages 17, 18 and 23- 26

<sup>147</sup> Inquiry Docs 22 and 32

<sup>148</sup> The suggested condition relating to the provision and equipping of the LEAP is unnecessary since that is provided for in the planning obligation

<sup>149</sup> Including the bulk movement of earth/materials, cycle storage, location of services in relation to RPAs, dust suppression, sustainable urban drainage etc.

- 10.7 In the interest of visual amenity, conditions relating to external materials and hardsurfacing, and the need for details of finished ground and floor levels are required. (6 and 19).
- 10.8 In the interest of visual amenity and in order to ensure acceptable living conditions for future occupiers, it is necessary to ensure that the properties are provided with adequate bin storage facilities. (7)
- 10.9 In order to protect the living conditions of future occupiers in terms of privacy and outlook, conditions requiring the obscure glazing of some windows, the removal of permitted development rights in relation to the addition of windows, and the provision of screen walling are necessary ( 8, 9 and 10).
- 10.10 In the interest of highway safety, it is necessary to ensure that the access onto Monkton Lane is provided with the required visibility splays. (11) There was disagreement as to whether a 30 metres length as suggested, or a 15 metres length of the new access road, as preferred by the appellant, should be provided prior to commencement of the rest of the development. The requirement related mainly to the prevention of deposition of materials onto the highway. However, that is a matter that is covered by the Construction Management Plan secured and by other legislation and I have not included it.
- 10.11 Off-road car parking is required for the occupiers of each property and their visitors in the interest of highway safety, together with cycle parking/storage and the provision of footpath links in order to encourage sustainable travel. (12, 13, 14) To help mitigate and adapt to climate change, in accordance with national policy and the County Council's 'Travel Plans Good Practice' document, a condition securing the provision and operation of electric car charging points within the development is justified. (15)
- 10.12 Whilst a Travel Plan Statement was submitted with the planning application, a formal Travel Plan is required in order to promote more sustainable travel choices in accordance with national policy and local guidance. (16)
- 10.13 In the interests of visual amenity and biodiversity conditions are necessary to secure the submission of landscaping details (17) and an Arboricultural Method Statement (18). In the interest of biodiversity and the protection of wildlife, clearance works should not take place other than in accordance with the Extended Phase 1 Survey Report for nesting wild birds, and the great Crested Newt Report.(20) For the same reason, a post-development Ecological Management is required.(21)
- 10.14 In order to avoid pollution and prevent increased risk from flooding, it is necessary to ensure compliance with the recommendations in the appellant's Flood Risk Assessment, including the implementation of a scheme of sustainable drainage on the site together with details for ongoing management, which is essential to ensure that the scheme continues to perform as intended. (23)
- 10.15 At the Inquiry I drew attention to the condition suggested by Thames Water in relation to the need to prevent development from commencing until on/off site drainage works had been agreed, due to the current lack of capacity at the existing waste water treatment works. It was suggested that such a condition was unnecessary as this would be a matter controlled under the Building

Regulations. I do not agree. Given that a developer has a right to connect a development to a public sewer, it is important to ensure that there is sufficient capacity to accommodate waste water from that development *before* development commences in order to avoid the possibility of housing being left vacant pending completion of improvements. Having suggested the condition themselves, there is no reason to suppose that Thames Water would not be able to accommodate waste water from the development in due course. I have, therefore, recommended a condition to prevent discharge to the public system until appropriate drainage infrastructure is in place.(22)

10.16 It transpired that there may be the potential for some buried archaeology on the site, although no details were before me. There is nothing to suggest in the consultee comments though that this could not be addressed by an appropriate condition.(24)

## **11. Planning Obligations**

11.1 A signed but undated planning obligation in the form of a deed of agreement was before the Inquiry.<sup>150</sup> However, in the related discussion, a typographical error was spotted. A revised version was submitted after the event with the agreement of the parties.<sup>151</sup> It includes a provision whereby, should the Secretary of State determine that any obligation provided for therein does not comply with Community Infrastructure (CIL) Regulations 122 or 123, that obligation would be deemed to be severed from the deed.

11.2 Consideration of the obligations provided for is to be undertaken in the light of the advice at paragraph 204 of the National Planning Policy Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms; are directly related to the development; are fairly and reasonably related in scale and kind to it; and, since April 2015, must not be a pooled contribution where more than five such pooled contributions have already been collected.

11.3 In order to assist the related discussion at the Inquiry, a CIL compliance statement was provided by the Council at my request.<sup>152</sup> The statement comprises six sections relating to transport, education, waste and recycling, leisure, SANG and affordable housing. I was also provided with the Council's TBHSPA Avoidance Strategy Review 2016, a related Counsel's opinion and Tariff Guidance produced by Natural England.<sup>153</sup>

11.4 The planning obligation secures:

- the provision of 22 units of affordable housing;
- the provision and management of public open space within the site, the Local Equipped Area of Play and the recreational footways, the provision of parking and management of the parking for the affordable housing units and the sustainable drainage scheme;

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<sup>150</sup> Inquiry Doc 2

<sup>151</sup> Inquiry Doc 31

<sup>152</sup> Inquiry Doc 17

<sup>153</sup> All at Inquiry Doc 16

- contributions towards environmental improvements, parks and leisure, waste and recycling;
- contributions towards highways works and a cycle and public transport voucher scheme;
- an early years and secondary education contribution;
- contributions towards mitigating the impact of the development on the ecological integrity of the TBHSPA through SANG and SAMM.

11.5 I appraise in my conclusions below, the merits of the obligations and the extent to which the various provisions satisfy the relevant tests.

## **12. Inspector's Conclusions**

12.1 The following conclusions are based on the written evidence submitted, on my report of the oral and written representations to the Inquiry set out above, and on my inspection of the site and its surroundings. The numbers in square brackets thus <sup>[1]</sup>, refer to paragraphs in the preceding sections of this report from which these conclusions are drawn.

12.2 The main considerations in this appeal relate to:

- the effect of the development on the character and appearance of the area and on the designated Area of Strategic Visual Importance; and,
- the proposed housing mix.

12.3 Paragraph 49 of the Framework provides that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Given the disagreement between the parties on the supply of housing land, I look at this matter also.

12.4 In my reasoning below, I have had regard to Framework paragraph 215, which states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework - the closer the policies in the plan to the policies in the Framework, the greater the weight they may be given. In addition, Framework paragraph 216 confirms that policies in emerging plans may also be given weight.

### ***Character and Appearance/Area of Strategic Visual Importance***

12.5 The appeal site lies adjacent to but outwith the development boundary for Hale as defined by the Local Plan, the emerging Local Plan and the emerging Farnham Neighbourhood Plan.<sup>[4.3, 7.5]</sup> It is also beyond the defined settlement boundary for Farnham, which lies to the south-west. In planning policy terms therefore, it is in the countryside. It is not allocated for housing in the development plan, or either of the emerging plans, and it was common ground that general residential development in the countryside would be contrary to policy C2 of the Local Plan, which resists such development.

- 12.6 However, the policy seeks to protect the countryside for its own sake.<sup>[4.4]</sup> Moreover, it is not a criteria based policy against which proposals for development on or affecting landscape areas can be judged, as required by paragraph 113 of the Framework.<sup>[6.3]</sup> On that basis, I find it to be inconsistent with the Framework and thus, it is not up-to-date. That significantly reduces the weight it can be afforded.
- 12.7 Although not part of the development plan at the present time, the policies of the emerging Local Plan (eLP) and emerging Neighbourhood Plan (eNP) are a material consideration.<sup>[4.8-4.19]</sup> In areas such as this, policy RE1 of the eLP requires that the intrinsic character and beauty of the countryside be recognised and safeguarded in accordance with the Framework, with policy FNP11 of the eNP (as proposed to be modified)<sup>[4.19]</sup> requiring that development proposals be assessed in terms, among other things, of their potential impact upon the visual setting and landscape features of the site and its surroundings. Policy RE3 of the eLP also requires that development should respect and, where appropriate, enhance the distinctive character of the landscape in which it is located.
- 12.8 Policy FNP10 of the eNP also gives priority to protecting the countryside from inappropriate development. It sets out that development proposals will only be permitted in certain specified circumstances. There is no suggestion in this regard that the development proposed would result in any harm to the majority of interests that the policy seeks to protect. However, criterion e) of the policy seeks to enhance the landscape value of the countryside and, where new planting is proposed, requires that appropriate, native species should be used.
- 12.9 I find no reference in the Framework to 'safeguarding' the countryside *per se*<sup>154</sup> and it does not contain specific policies (as identified in footnote 9 to its paragraph 14) indicating that development in locations such as this should necessarily be restricted. Nevertheless, one of its core planning principles is that planning should, amongst other matters, take account of (as opposed to safeguard) the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside. Notwithstanding the above caveat, I find the emerging policies to be in broad accordance with the Framework.
- 12.10 The development proposed would result in the loss of countryside, which the Framework refers to as having an intrinsic character and beauty. However, the appeal site is unremarkable in appearance, comprising a relatively flat swathe of open grazing land which lacks a strong landscape pattern or structure. Indeed, the AMEC Landscape Study and Landscape Designation Review (2014)<sup>155</sup> sets out that this segment of the Study area (FN10-A) has few landscape qualities, is of low visual prominence, low landscape sensitivity and low value, with low intervisibility.<sup>[6.8]</sup> The Council did not resile from that description and it was no part of the Council's case that, other than its role in preventing coalescence (a matter I deal with later) this is a valued landscape

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<sup>154</sup> Paragraph 109 of the Framework seeks to protect (and enhance) *valued* landscapes. That is different from a blanket protection for all countryside.

<sup>155</sup> AMEC Landscape Study and Landscape Designation Review commissioned by the Council (August 2014) - see appellant's LVIA Appendix A (Mr Withycombe Appendix 2) Mr Withycombe Appendix 5 and Mr Woods Appendix 6.

in the terms of Framework paragraph 109. The Review goes on to conclude that the southern part of FN10-A, south of Monkton Lane (which area includes the appeal site) could be considered as having capacity for development, although the conflict with the ASVI designation is noted. That conclusion was adopted in the Council's LAA,<sup>156</sup> which gave the site a capacity of 56 dwellings, also noting that the site was well-contained by existing screening.<sup>[6.9]</sup>

- 12.11 I saw that, other than from a vantage point on Hale Road (A325) to the west, which is slightly elevated at this point in relation to the appeal site, and possibly glimpsed views from Weybourne Road to the east,<sup>[6.10, 7.3]</sup> the land continues to benefit from a high degree of visual enclosure and containment, with no long or middle distance views into or of the site from the wider area.<sup>[6.10]</sup> Moreover, there are strong urban fringe influences on the character of the site, including Hale Road and Weybourne Road, both of which are busy A-roads that converge at the large Six Bells Roundabout just to the south; electricity lines and pylons both on and adjacent to the site; the existing dwellings on Monkton Lane/Radford Close and the cluster of buildings around the junction of Monkton Lane with Hale Road; the nearby all-weather sports pitches and associated floodlighting and car parking; the David Lloyd Tennis centre; the allotments; and a sewage treatment works to the south-east.<sup>[2.2, 2.4-2.6]</sup> From my own observations, I consider that the appeal site contributes little to the intrinsic character and beauty of the countryside.
- 12.12 Notwithstanding its visual containment, I did not find the site to be physically or visually isolated from the built-up edge of Hale. Almost half of the northern site boundary is contiguous with the existing dwellings on Monkton Lane and Radford Close, which properties lie within the settlement boundary.<sup>[2.3]</sup> There is also some, albeit sporadic development on the far side of Hale Road. That said, whilst not impacting on the wider area, it is clear that the erection of 56 dwellings would bring about a significant material change to the character and appearance of the site itself.<sup>[6.17, 7.6]</sup> However, the buildings would be set within a strong landscape infrastructure,<sup>[6.18]</sup> comprising a retained and expanded native hedgerow network, extensive areas of native tree and shrub planting, street trees and ornamental planting within the site, and wetland habitat associated with the water attenuation basin shown within the south-eastern part of the site.<sup>157</sup> Built development is also shown as being set back from viewpoints on Hale Road, from the nearby listed buildings, and from the southern and eastern site boundaries.
- 12.13 In particular, the development would be set behind the existing wide grassed verge along Hale Road, and the few trees within it, with only two houses to be located near to that boundary. Whilst those passing the site would be aware of the development, the significant space that would remain around those buildings would be sufficient to ensure that they would not intrude into the sense of spaciousness along this part of Hale Road, with the other dwellings proposed being set back further into the site.<sup>158</sup> The layout proposed has an organic form which would create a fluid, as opposed to 'hard' settlement edge to Hale at this point.

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<sup>156</sup> Mr Charles Appendix 9

<sup>157</sup> Mr Withycombe's proof paragraph 6.3

<sup>158</sup> See Mr Withycombe Appendix 8

- 12.14 To my mind, the absence of any strong landscape pattern or character results in the site being more closely related in character to the urban fringe of Hale than to the wider countryside landscape around either Hale or Farnham. All in all, given its visual containment and its largely urban fringe context, I agree with the conclusion of the LVIA, that the impact of the appeal scheme would be slight adverse<sup>[6.19]</sup> in terms of the general character and appearance of the area.
- 12.15 The appeal site also lies within an Area of Strategic Visual Importance (ASVI) as currently defined by the 2002 Local Plan. Policy C5 of the 2002 Local Plan, and policy RE3 of the emerging Local Plan seek to ensure that the *appearance* (my emphasis) of ASVIs is maintained and enhanced, resisting development that is inconsistent with that objective. Since they are not policies that seek to prevent development *per se*, I find no fundamental conflict with the Framework.
- 12.16 The second of the Council's reasons for refusal states that the primary function of this ASVI is to aid transition between the developed area of Farnham and the open countryside beyond. However, that is not referenced in the policy itself or the supporting text. That supporting text does, however, set out that ASVIs need protection because of the crucial role they play in preventing the coalescence of settlements or because they penetrate into urban areas like a green lung. It also confirms that they are *strategic* areas because of the part they play in retaining the character of specified settlements, including Farnham (but not Hale). It was confirmed by the Council at the Inquiry that the role of this particular part of the ASVI is that of preventing coalescence, in particular the gap between Farnham and Hale.<sup>[7.7]</sup> I am mindful, in this regard, that policy FNP11 of the eNP, as recently modified, is not supportive of proposals that would clearly lead to the increased coalescence of settlements within the Plan area and beyond.
- 12.17 The AMEC Study reviewed the ASVIs. It concluded, among things, that Farnham Area 1 (the appeal site lies at the northern edge of this area)<sup>159</sup> makes a contribution, but not a significant contribution, to the purposes of ASVIs.<sup>160</sup> The review states that whilst there is some green space, it does not completely fulfil the criteria for ASVIs in that it is not true open space, given the structures of the sewage works and its infrastructure. It goes on to note that the trees to its boundaries provide a green break between the industrial estate to the south-east and other developed areas, aiding the prevention of coalescence of the developed areas.<sup>[6.14, 7.10]</sup>
- 12.18 As acknowledged earlier, the development proposed would, as a matter of fact, change the appearance of the site from an open grassed field to a small residential estate. To that extent, the appearance of this particular part of the ASVI would not be maintained. However, the strong landscape infrastructure proposed, including reinforcement of the existing boundary hedgerows and extensive areas of tree and shrub planting would, to some extent enhance this ASVI, reinforcing the green break, one of its defining characteristics here.

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<sup>159</sup> Inquiry Doc 11.

<sup>160</sup> Mr Woods Appendix 6 pages 9 and 15

- 12.19 I have found that the site benefits from a high degree of visual enclosure and is not open to middle or long distance views from the wider area. Whilst there is a view into the site from a short stretch of Hale Road, that view is contained largely to the site itself. It does not, for instance, form part of a wider ranging view that encompasses the settlement edges of both Farnham and Hale and the site does not, of itself provide a visual link between the two or make a material contribution to their visual separation. Rather, it is the vegetated boundaries and trees (which would be reinforced by the appeal scheme) together with the more densely wooded land south of the pylons bordering the allotments and the fields to the south of Weybourne Road that provide a strong visual separation between the settlements.<sup>161</sup>
- 12.20 I am mindful that Hale Road is the main transitory route between Hale and Farnham.<sup>[6.19]</sup> However, for the reasons set out in paragraphs 12.12-12.14 above, I am satisfied that any sense of transition between the two settlements would be maintained. As such, whilst the development proposed would result in a change in use and a change in the character and appearance of the site itself, it would not impact significantly on the degree of physical and visual separation between Hale and Farnham, or between Hale and the trading estate to the south of the nearby sewage works. The relationship between the closest areas of built development to one another would be altered but the development proposed would not lead to adjoining settlements coalescing or the gap between them reducing to such an extent that their distinctiveness would be seriously eroded. There would still be a meaningful separation between the settlements and they would remain clearly distinguishable from one another, as individual entities.
- 12.21 As to any contribution the site might make to the character of Farnham, not only is the appeal site visually well contained, it is located on the southern edge of Hale and is visually and physically distinct from Farnham. That would remain the case even were the appeal scheme to proceed. I am not persuaded that the site has an integral role in terms of the setting of Farnham and I find no harm to its character in this regard.
- 12.22 I recognise that potential development of the appeal site was rejected by the Inspector who examined the 2002 Local Plan.<sup>162</sup> However, I do not know the details of any scheme proposed for the site at that time, if indeed a scheme had been drawn up. My views are informed by the detailed scheme before this Inquiry, considered in the light the AMEC Study, which looked in more detail at the ASVIs and is of much more recent date, and the current environs, which include the more recent David Lloyd tennis centre.
- 12.23 To conclude on this issue, I find that there would be no material harm to the appearance of the ASVI and that the development proposed would not result in the coalescence of Hale and Farnham (nor Hale and any other built-up area) or in any harm to the character of Farnham. There would be no conflict with the development plan or the relevant emerging policies on this basis. I have, however, found that there would be some harm to the general character and appearance of the area, although that is categorised as slight adverse in the terminology of the LVIA. There would be conflict, therefore, with policies RE1

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<sup>161</sup> See eg Inquiry Doc 5 and photos in the Design and Access Statement

<sup>162</sup> Mr Woods Appendix 13 paragraph 3.153

and RE3 of the eLP and policies FNP10 and FNP11 of the eNP (as proposed to be modified). As a consequence of the site location outwith a defined settlement boundary, there would also be conflict policy C2. However, this policy is to be considered as not up-to-date, given its conflict with the provisions of the Framework.

### **Housing Mix**

- 12.24 Paragraph 50 of the Framework sets out that, in order to deliver a wide choice of high quality homes, to widen opportunities for home ownership and to create sustainable, inclusive and mixed communities, local authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community. They are also required to identify the size, type, tenure and range of housing required in particular locations, reflecting local demand.
- 12.25 The requirements of policy H4 make no distinction between market and affordable housing. Whilst the housing mix proposed would include roughly the required proportion of dwellings with three bedrooms or less (76.7% vs a requirement of 80%) there would be a shortfall in terms of the number of dwellings with 2 bedrooms or less (35.7% vs a requirement of 50%).<sup>163</sup> There was no dispute that the housing mix proposed would conflict with the numerical targets in Local Plan policy H4. However, those targets are of considerable age and, as identified by colleague Inspectors,<sup>164</sup> the policy embraces a rigid, overly prescriptive approach that does not reflect the more flexible evidence based approach of the Framework. There was agreement that only limited weight should be attached to this policy conflict.<sup>[6.22, 7.23]</sup>
- 12.26 Policy AHN3 of the eLP does not set out a numerical approach to housing mix. Rather, it requires that housing developments make provision for a range of different types of housing to meet the need of the community, reflecting the most up-to-date evidence in the SHMA. The most recent and robust evidence before the Inquiry in terms of any breakdown of housing need in Farnham is found in the West Surrey SHMA - Waverley Sub Area Addendum (November 2015).<sup>165</sup>
- 12.27 Neither the emerging policy nor the SHMA and its Addendum have been tested yet as part of the Local Plan process. In principle, however, the policy accords with the Framework and can therefore be afforded some, albeit limited weight at this stage.
- 12.28 I have also had regard to the two appeal decisions referred to earlier. In the Frensham Vale Decision (an outline application for up to 46 dwellings) whilst the range of affordable homes on the site closely matched the proportions referred to in the SHMA, all the market units were of four bedrooms or more, the Inspector concluding that the mix did not reflect the aims of the Framework. Whilst the scheme before me does not faithfully reflect the proportions referred to in the SHMA Addendum, it does include a much wider range in terms of the size of both affordable and market housing than the

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<sup>163</sup> Inquiry Doc 21 paragraph A6B.8

<sup>164</sup> APP/R3650/W/15/3023031 Gardener's Hill Road (Focus Homes) and APP/R3650/W/15/3008821 Frensham Vale (Bargate Homes) - Appendix 3 to the appellant's statement of case

<sup>165</sup> Appellant's Statement of Case Appendix 2

Frensham Vale scheme. As such, that previous decision is not directly comparable to the development before me.

12.29 In the Gardener's Hill Decision (an outline application for up to 43 homes) the Inspector found that whilst there were differences between the mix of both affordable and market homes proposed and those recommended in the SHMA, an element of judgement was required, given that the requirements were indicative for a large area. On that basis, and having regard to revised indicative plans submitted during the appeal process, the Council raised no objection on the basis of housing mix in that case.

12.30 The table below sets out the mix of housing proposed on the current appeal site, compared with the SHMA Addendum.

<i>Number of units proposed</i>	<i>Size</i>	<i>% of on-site provision</i>	<i>SHMA Addendum % for Farnham</i>
Affordable Housing			
8	1 bed	36.4%	45%
9	2 bed	40.9%	28.7%
5	3 bed	22.7%	24.3%
0	4 bed	0	1.9%
<b>Total 22</b>		<b>100%</b>	<b>99.9%</b>
Market Housing			
0	1 bed	0	8.1%
3	2 bed	8.8%	31.9%
18	3 bed	52.9%	39.7%
13	4+ bed	38.2%	20.4%
10	4 bed		
3	5 bed		
<b>Total 34</b>		<b>99.9%</b>	<b>100.1%</b>

Table based on figures set out in Mr Charles Appendix 6B<sup>166</sup>.

12.31 With regard to affordable housing, whilst the 3 (and 4) bed provision is not too dissimilar from the indicative requirement for Farnham, there would be an over provision of 2 bed homes and under provision of 1 bed homes. In terms of market housing, there is a complete absence of 1 bed homes and a significant deficiency in 2 bed homes in favour of an overprovision of 3, 4 and 5 bed properties.

12.32 The appellant sought to combine the total numbers of 1 bed and 2 bed homes within the development, irrespective of tenure, to demonstrate that as a whole, they would comprise 35% of the total number of dwellings to be provided, with 1, 2 and 3 bedroom units comprising some 76.7% of the total.<sup>167</sup> [6.26] That seems to me to miss the point. The SHMA Addendum clearly identifies separate affordable housing needs to the need for open market housing.

<sup>166</sup> Inquiry Doc 21 Table 3

<sup>167</sup> Inquiry Doc 21

- 12.33 However, this is a relatively small housing development in the scheme of things. As a consequence, there will be limitations in the ability to secure a mix of housing that fully corresponds with the recommendations of the SHMA Addendum. Moreover, the figures referred to in the SHMA Addendum relate to the Farnham area as a whole, not just the appeal site. As pointed out by the appellant, sites may well come forward in the town centre, where a larger proportion of one and two bed properties might expect to be provided, possibly in the form of flats/apartments, with limited scope for larger properties.<sup>[6.27]</sup>
- 12.34 In coming to a view on the proposed mix, I am also mindful that emerging policy AHN3 is supportive of new housing to meet the needs of specific groups identified in the SHMA, which currently include families with children.<sup>[4.16]</sup> I note that the vast majority of homes proposed on the site would be of two bedrooms or more, meeting the current needs of one of the specific groups identified in the SHMA Addendum.
- 12.35 All in all, whilst the range of properties proposed would not encompass the full range of size of properties referenced in the SHMA Addendum for the Farnham area, I consider that the 40% on-site affordable homes provision at a time when there is no policy requirement for such on the site, and which provision exceeds the related policy in the emerging Plan, together with the range in size of both market and affordable homes that is proposed, would provide a sufficiently inclusive and varied development to the extent that it would provide an appropriately mixed community as required by paragraph 50 of the Framework. On balance, whilst there would be conflict with the development plan, I find no material harm in this regard.

### ***Housing Land Supply***

- 12.36 At the time that the planning application the subject of this appeal was determined, the Council accepted that it could not demonstrate a five year supply.<sup>168</sup> However, the Council's position at the Inquiry was that it can now demonstrate a five year supply, relying on the evidence base that informs the emerging Local Plan,<sup>169</sup> including the Land Availability Assessment August 2016 (updated December 2016)<sup>170</sup> and the Council's latest Five Year Housing Land Supply Document dated 1 January 2017 (2017 HLS<sup>171</sup>).
- 12.37 The Waverley Borough Local Plan 2002<sup>172</sup> only covers the period up until 2006. The latest West Surrey Strategic Housing Market Assessment (September 2015) and the West Surrey SHMA – Waverley Sub Area Addendum (November 2015)<sup>173</sup> have informed the proposals being taken forward in the currently emerging Local Plan, which has a time horizon of 2013-2032. From that, the Council derives an '*unvarnished*' minimum annual requirement of 519 dpa (an overall five year figure of 2,595 dwellings).<sup>[6.32, 7.30]</sup>
- 12.38 Based on an overall five year requirement of 3,768 dwellings the Council's position, as set out in SoCG2, was that it could demonstrate a housing land

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<sup>168</sup> Officer's report

<sup>169</sup> The emerging Plan was submitted for Examination to the Secretary of State at the end of last year. On 6 February 2017, the Examining Inspector issued some initial comments and questions (Inquiry Doc 18)

<sup>170</sup> Inquiry Docs 14 and 26

<sup>171</sup> Inquiry Doc 10

<sup>172</sup> Appendix 3a to the appellant's statement of case and Inquiry Docs 3, 4 and 24

<sup>173</sup> Both at Appendix 12 to the proof of Mr Charles

supply of some 4,359 dwellings indicating a supply of some 5.79 years, predicated on a 5% buffer and adopting the 'Sedgefield' approach to the current under-supply.<sup>174</sup> The same evidence indicates that, if a 20% buffer was required (a requirement of 4,306 dwellings) the supply would fall to 5.06 years.

12.39 The appellant takes issue with a number of the supply sites. As set out in SoCG2, the appellant considered the housing land supply to be in the region of 2,664 dwellings. On that basis, with a 5% buffer, the Council would have a supply equating to 3.53 years, reducing to 3.09 years were the 20% buffer preferred by the appellant to be applied.

12.40 As set out later, it was a matter of agreement between the parties at the Inquiry that 72 dwellings should be removed from the supply, reducing it to 4,287 dwellings. On that basis, on the Council's own figures, whilst it would still have a five year supply with a 5% buffer, it could not demonstrate a five year supply if a 20% buffer was required. At the end of the Inquiry, the appellant's position, incorporating the agreed reduction, was that the supply was between 3.16 – 3.89 years.<sup>175</sup>

12.41 I recognise that both the housing requirement and the supply sites that inform the emerging Local Plan are subject to objection. Nevertheless, for the purposes of this appeal, both parties produced evidence based on the requirement set out above. I have no reason to take a different approach.

5% or 20% buffer<sup>[6.43-6.49, 7.25-7.35]</sup>

12.42 Paragraph 47 of the Framework requires that authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years housing supply against their housing requirements with an additional buffer of either 5% or, where there has been a record of persistent under delivery, 20% (moved forward from later in the Plan period) to ensure choice and competition in the market for land. The Council maintained that a buffer of 5% is appropriate here, its view informed by assessing delivery over the last fourteen years.<sup>[7.25-7.35]</sup> Conversely, the appellant maintained that a 20% buffer is warranted, whether assessed over a ten year period (Mr Henshaw) or a five year period (Mr Charles).<sup>[6.43-6.49, 7.26, 7.35]</sup>

12.43 The Government's planning guidance confirms that the approach to identifying a record of persistent under delivery of housing embraces a range of issues, such as the effect of imposed housing moratoriums and the delivery rate before and after any such moratoriums. It goes on to advise that the assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle.

12.44 Looking at delivery over the 14 year period preferred by the Council,<sup>176</sup> there was a surplus in delivery against the relevant requirement between 2002 and 2009. Even so, delivery over that fourteen year period shows a current

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<sup>174</sup> Inquiry Docs 10 and 20

<sup>175</sup> Appellant's closing submissions paragraph 99 (Inquiry Doc 30)

<sup>176</sup> Delivery figures for the fourteen year period are set out at Appendix 1 of the Council's Five Year Housing Supply paper dated 1 January 2017 – Inquiry Doc 10.

shortfall of more than 900 dwellings. I am also mindful that the annual requirement was very low up to 2012, in comparison with the Objectively Assessed Housing Need figure of 519 dwellings per annum for 2013 onwards.

- 12.45 Whilst housing completions for the first seven years exceeded the requirement, the Council has not met the relevant requirement in each year since 2009/2010. For the Council, it was argued that this period included the effects of the recession and a housing moratorium introduced in 2009-2011 pending a solution to provision of necessary mitigation measures in relation to the TBHSPA.<sup>[7.29]</sup> In relation to the latter point, I note that the 5 kilometre TBHSPA Zone of Influence only extends across a relatively small part of the Borough. I am not persuaded, therefore, that the impact of the moratorium would, necessarily, have been as significant as is suggested in relation to housing delivery across the Borough as a whole. With regard to the recession, agreed as being between around 2008-2010, undersupply then was against a lower requirement figure than is currently the case and, in any event, we are some years on from that now.
- 12.46 The Council also referred to what it described as step changes in the requirement: for the first four years, the annual requirement, as set out in the South East Plan, was 187 dpa; for the next seven years, the requirement was 250 dpa as set out in the 2002 Local Plan; for the last almost four years, the requirement has been 519 dpa. It was the Council's case that the delivery of housing takes time to 'catch up' with the increased requirements and that there will be a consequent a lag in supply. However, that is not wholly borne out by the figures. In the three years following the increase from 187 dpa to 250 dpa, completions exceeded requirement.
- 12.47 In answer to the question put as to what the Council was doing to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land stimulate delivery, as required by the Framework, Mr Woods advised that a meeting was taking place at the Council offices that very day to look at the issue, although he did not have any detailed evidence on that.<sup>[7.32]</sup>
- 12.48 I was also referred to the substantial increase in planning permissions granted over recent years as set out at Table 3 of the 2017 HLS. Even so, completions since 2013/2014, following the introduction of the 519 dpa requirement have not been meeting even the lower South East Plan requirement that was in place at the beginning of the 14 year period. In essence, there continues to be a significant shortfall in delivery against current requirements.
- 12.49 In addition, Mr Wood referred to allocated sites in the emerging Neighbourhood Plan. However, my understanding is that those sites are identified in the housing land supply and are not additional sites. Whilst I was also referred to the grant of permissions for housing in the countryside, it was accepted that there was no current policy or other mechanism to deal with stimulating delivery.
- 12.50 I recognise that the emerging Local Plan is proceeding on the basis of a 5% buffer as being appropriate. Be that as it may, that has yet to be tested through the Examination process. The evidence submitted in relation to this

appeal demonstrates that, over the last almost four years,<sup>177</sup> the shortfall has now accumulated to some 993 dwellings.<sup>178</sup> Over the last 7.75 years, the shortfall in delivery averages at 128 dwellings per annum and even includes four years where the requirement was only 250 dwellings per year. There is nothing in the evidence before me either, to suggest that there is any prospect of the current year delivering a surplus.

- 12.51 Based on the evidence to this Inquiry I conclude, for the purposes of this appeal that, even when looked at over the fourteen year period suggested by the Council, this is an authority where a 20% buffer is warranted. In coming to that view I note that, following examination of evidence through the Inquiry process, at least three other Inspectors<sup>179</sup> have recently concluded that there is *at least* a borderline case for a 20% buffer being warranted. Moreover, the housing figures before me are even more up-to-date than in the most recent of those decisions (Hewitt's Industrial Estate).
- 12.52 In cross-examination, Mr Woods referred to a Hearing Decision relating to development at Horsham Road, Cranleigh, where the Inspector concluded that a 5% buffer was appropriate.<sup>[7.25]</sup> However, that Decision was not produced in evidence. I have no information, therefore, as to why that Inspector came to the view that he did but, in any event, I understand that it pre-dates the three Inquiry decisions referred to above. The evidence before me is very detailed and it is on the basis of that, that my decision is based.

Lapse Rates<sup>[6.50-6.55, 7.36]</sup>

- 12.53 The appellant took issue with the Council not currently applying a 10% lapse rate to its supply sites, noting that such is referred to in the Council's LAA document, updated in 2016. However, I find no reference to the need to include a blanket lapse rate in the advice for calculating supply as set out in the planning guidance. Whilst expected delivery on some sites does sometimes slip, as is demonstrated by the evidence in this case,<sup>180</sup> other sites may deliver more housing than was anticipated. Moreover, other unanticipated sites may come forward, one example being the recent permission granted on appeal in relation to for 120 dwellings at Hewitt's Industrial Estate.
- 12.54 I recognise that other Inspectors have, applied a lapse rate on occasion, as indeed has the Secretary of State. However, the Secretary of State decision referred to dates from 2013,<sup>181</sup> with the Inspector's decision relied on dating from 2012, which in turn relied on a Roger Tym and Partners report of 1995.<sup>182</sup> Both decisions pre-date the Government's planning guidance.
- 12.55 The current guidance clearly sets out a presumption that sites with planning permission will come forward unless there is clear evidence to the contrary. A table produced by the appellant setting out the Council's predictions in terms

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<sup>177</sup> The timing of this Inquiry means that the figures for 2017-2017 are for three quarters of the year. The final figures for the full year are not yet published.

<sup>178</sup> RH2 Appendix 1 (Inquiry Doc 6)

<sup>179</sup> Hewitt's Industrial Estate Decision, the Badshot Lea Decision, and the Frensham Vale Decision referred to earlier.

<sup>180</sup> Appendix 2 to the Supplementary proof of Mr Henshaw (Inquiry Doc 6)

<sup>181</sup> APP/F1610/A/11/2165778 – at Mr Charles Appendix 3

<sup>182</sup> APP/H1840/A/12/2171339 – at Mr Charles Appendix 3

of completions against actual delivery,<sup>183</sup> which suggest that its predictions appear to have been optimistic. However, seven years of those completions were at a time when the requirement was much lower than it is now. Moreover, the Council appears to be updating its housing land supply figures more often than once a year (at least lately) so any slippage should, in theory at least, be quickly picked up. On balance, therefore, I am not persuaded that it is appropriate to apply a standardised lapse rate to all of the housing sites identified as part of the Council's five year supply. Rather, each site should be considered having regard to its own particular circumstances, which is what I have done.

Housing Land Supply<sup>[6.56-6.79, 7.36-7.44]</sup>

- 12.56 As set out above, in the event that the Secretary of State agrees that a 20% buffer is appropriate, then, on the Council's own evidence, it cannot demonstrate a robust five year supply of housing land, following the agreed removal of a total of 72 units from the supply as set out below.<sup>184</sup> Should the Secretary of State consider a 5% buffer to be appropriate, I go on to look at the housing land supply, as set out in the Council's latest Housing Supply Paper, dated 1 January 2017 (2017 HLS).<sup>185</sup>
- 12.57 It was agreed in cross examination of the Council's witness, that whilst when made, the Neighbourhood Plan would be part of the development plan for the area, it did not look at the housing requirement for the area and that there had been no examination of any plan leading to adoption since 2002. On that basis, it was agreed that the application is not being considered in the scenario envisaged by paragraph 033 of the planning guidance.<sup>186</sup>
- 12.58 The evidence at the Inquiry focussed on delivery of some of the larger sites identified in the supply. First though, let me say something about the 2017HLS document. The Framework and the planning guidance clearly set out what is required to be included in such documents. I recognise that it is, necessarily, a summary of the information held by the Council on the various sites. However, contrary to the advice and guidance, I found it to be lacking basic information such as an anticipated trajectory, information as to why sites with planning permission had not progressed, risks to delivery etc. In some cases it had not been updated to reflect revised information that was before the Council prior to publication of the document. It also transpired that the evidence used was not, in some instances realistic and was not publicly available. In essence, I have concerns as to whether the judgements on deliverability of the sites are clearly and transparently set out, which in turn makes the 2017HLS difficult to analyse robustly.
- 12.59 Looking first, then, at some of the **larger sites with planning permission/ resolution to permit**:<sup>[6.49, 6.66-6.77, 7.36-7.37]</sup>
- 12.60 14-18 Lower Street, Haslemere:<sup>187 [6.49]</sup> this site appears twice in the Council's 2017HLS, once as delivering seven dwellings and once as delivering nine. At

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<sup>183</sup> RH2 Appendix 2

<sup>184</sup> 14-18 Lower Street, Haslemere and land south of High Street between Alfold Road and Knowle Lane

<sup>185</sup> Inquiry Doc 10

<sup>186</sup> Paragraph ID 3-033-20150327

<sup>187</sup> RH2 paragraph 5.12 and Inquiry Doc 15 Appendix 2

the Inquiry, it was confirmed that the scheme for nine dwellings is being implemented and thus seven dwellings should be deleted from the supply.

- 12.61 Land at Sturt Road, Haslemere (135 dwellings)<sup>188</sup>:<sup>189</sup> [6.66-6.68] The site benefits only from an outline planning permission granted in March 2015, with no reserved matters applications having been submitted to date. I note, in this regard, that there are 17 pre-commencement conditions. Although not referred to in the 2017 HLS document, it transpires that there are problems with the access in the approved position as a consequence of a likely ransom strip. Two applications for alternative access arrangements have been submitted, including a hybrid application, but both were withdrawn. In addition, the development requires the provision of SANG to mitigate impacts on the ecological integrity of nearby SPA heathlands. I am advised that, in the absence of appropriate management and maintenance in perpetuity, Natural England maintains objections to various elements of the hybrid application.<sup>190</sup>
- 12.62 It seems to me, that the absence of any approved reserved matters or approval of a detailed application at this stage means that I cannot be satisfied that all 135 dwellings would be delivered by the end of 2021. Moreover, no means to overcome the ransom strip problem were before the Inquiry and, as pointed out by the appellant, the willingness of the ransom holder to sell is unknown, as is the willingness of the developer to pay. That could have implications for the viability of the development. My concerns in these regards are exacerbated by the outstanding objections in relation to the SANG, which could also have implications for viability and deliverability.
- 12.63 In the absence of any detailed or substantiated information on these matters, I am unable to conclude that the site can be considered as deliverable having regard to the provisions at footnote 11 of the Framework. Consequently, 135 dwellings should be removed from the supply at the present time.
- 12.64 Land south of High Street between Alfold Road and Knowle Lane, Cranleigh (425 dwellings):<sup>191</sup> [6.70-6.72] Outline planning permission for 425 dwellings on this site was granted at appeal in early 2016, with all matters other than access reserved for future consideration. In August 2016 an application to vary some of the conditions to allow for a phased approach was submitted. A further application for approval of reserved matters in relation to phase 1 (55 dwellings) was validated in October 2016. At the time of the Inquiry, neither application had been determined. I also understand that the site requires significant pre-housebuild infrastructure before phase 2 can commence.
- 12.65 However, notwithstanding that consent, it was confirmed by the Council's witness when giving evidence in chief and in cross-examination, that information currently before the Council indicates delivery of 360 homes by the end of March 2022 (some three months beyond the end of the current five year period) reducing the anticipated supply by at least 65 units.
- 12.66 Mr Woods was unable to confirm exactly how many dwellings were expected to come forward within the five year period. The appellant, however, produced a

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<sup>188</sup> The figure in brackets here and subsequently is the number of dwellings set out in the 2017 HLS.

<sup>189</sup> RH1 paras 6.12- 6.18; RH2 paragraph 5.9- 5.11 Inquiry Doc 15 Appendix 1

<sup>190</sup> Inquiry Doc 15 Appendix 3

<sup>191</sup> RH1 paragraph 6.8- 6.11; RH2 paragraph 5.8 and Appendix 6; Inquiry Doc 15 Appendix 1

trajectory for the site, which the Council did not challenge. That anticipates delivery of 202 dwellings within the five year period, with 26 dwellings delivered in the first quarter of 2022. When those completions outside the five year period are removed from the 360, the projected delivery is 334, reducing the supply as set out in the 2017 HLS by 91. IN the absence of any detailed information from the Council, that seems to me a reasonable adjustment in the circumstances that prevail.

- 12.67 Land at East Street, Farnham (235 dwellings):<sup>192</sup> [6.69] This site benefits from full planning permission. However, the site involves Council land and other private interests and has been the subject of a CPO. In May 2016, the Borough Council agreed to sell the necessary land to Crest Nicholson and the County Council. That decision is subject to judicial review, the appellant arguing that, at best, this is likely to delay delivery, at worst it could result in the development not proceeding.
- 12.68 The Council advised that the judicial review, the outcome of which was unknown at the time of the Inquiry, related to procurement matters, not the planning merits of the scheme, although it was acknowledged that it could impact on deliverability. That said, I have nothing on which to gauge any appropriate reduction. After careful consideration, I consider that it is appropriate to leave this element of the 2017 HLS unaltered at the present time.
- 12.69 Dunsfold Aerodrome (273 dwellings):<sup>193</sup> [6.74-6.77, 7.43] this site had previously been included in the supply as a strategic site in the emerging Local Plan. However, an outline application for 1800 dwellings was recently considered by the planning committee who resolved to grant permission subject to a s106 planning obligation.<sup>194</sup>
- 12.70 Although the committee report relating to this site refers to delivery of 130 units over the period, the Council now relies on delivery of 273 dwellings based on a report that pre-dates the committee meeting.<sup>195</sup> However, as pointed out by the appellant, the methodology on which the 273 figure is based is not clear. Moreover, the report is only in draft form. On that basis, I am inclined towards the 130 dwellings figure.
- 12.71 The Council's resolution on the planning application means that the permission will automatically be refused if the obligation is not completed within six months of the resolution. However, the draft report on which the Council relies for the 273 figure indicates that at least 6-12 months should be allowed because of the complications of the scheme. I am in no doubt that in coming to a view on the planning application the Council would have been well aware of the complications presented by a planning obligation for a scheme the size of this. I was advised that negotiations are underway, the Council having appointed external consultants in order to expedite things and, in the absence of any substantiated evidence to the contrary, I have no reason to suppose that negotiations might not reasonably be expect to be concluded within the available 'window'. However, that does not alter my view that, for the time

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<sup>192</sup> RH1 paras 6.5-6.7; RH2 paragraph 5.7.

<sup>193</sup> RH1 paras 6.42- 6.46; RH2 paragraph 5.15-5.16; Inquiry Doc 15 Appendix 1

<sup>194</sup> Mr Woods Appendix 5

<sup>195</sup> Inquiry Doc 27

being, an allowance of 130 dwellings for this site is appropriate, equating to a reduction in the supply of 143 dwellings.

- 12.72 I also understand that a number of Parish Councils have requested that the application be called-in by the Secretary of State. At the time of the Inquiry, no-one could advise definitively on the outcome of those requests. Were it to be called-in, that clearly would have implications for the anticipated delivery which the Secretary of State would need to take into account.
- 12.73 **Emerging Allocations:**<sup>[6.58- 6.60, 7.40]</sup> Caselaw<sup>196</sup> makes it clear that, where an allocated site in an emerging plan is the subject of unresolved objections, an Authority is not entitled to assume that the site is deliverable. It is only a starting point. In the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. On the contrary, in the absence of site specific evidence, the only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of Framework paragraph 47 is fact sensitive in each case
- 12.74 The Council produced no site-specific evidence on the merits of the respective objections to the emerging allocations. Moreover, the emerging Local Plan has not yet been the subject of Examination and there can be no certainty as to which of the allocated sites will survive the scrutiny of the Examination process. Accordingly, such sites should be included in the five year supply only where there is sufficient site-specific evidence to make their delivery over the five year period a realistic prospect. The appellant takes issue with three of the sites in this category.
- 12.75 Coxbridge Farm, Farnham (180 dwellings):<sup>197 [6.58]</sup> This is the only site that the appellant takes issue with that is in the emerging Neighbourhood Plan. At the time of the Inquiry, the Inspector's report on the Plan was awaited. That report has now been published, with the allocation coming through unscathed.
- 12.76 However, the timetable for development of this site, as provided by the developer, is already out of date, as demonstrated by the evidence of Mr Henshaw. Whilst correspondence from the developer indicates that work is not anticipated on site until the first quarter of 2019, that is based on the submission of an outline application in the last quarter of 2016, with a decision anticipated in the first quarter of 2017 and reserved matters to be submitted in the third quarter etc. At the time of the Inquiry, ie the first quarter of 2017, no planning application had been submitted. Were an application to be submitted in the second quarter of this year, commencement would not be anticipated until the third quarter of 2019. That casts considerable doubt as to the realistic delivery of all 180 dwellings by the end of 2021. I agree with the appellant therefore, that a more realistic figure for this site is likely to be in the region of some 100 dwellings (a reduction of 80).
- 12.77 Horsham Road, Cranleigh (101 dwellings):<sup>198 [6.59]</sup> This is part of a two-part scheme for this site, the other part comprising dwellings which are referred to

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<sup>196</sup> *WainHomes v Secretary of State* [2013] EWHC 597 (Admin) at [35].

<sup>197</sup> RH1 paragraph 6.34- 6.37; RH2 paragraph 5.19 and Appendix 7

<sup>198</sup> RH1 paras 6.39- 6.41; RH2 paragraph 5.20

in the 'outstanding planning permissions' category. That relates to an outline application submitted in September 2014 but which was not determined until January 2016, with reserved matters submitted immediately thereafter but which application was not determined until October 2016, a total of some two years.

12.78 The developer estimate for the 101 dwellings was provided some nine months ago now. However, no planning application has yet been submitted, although the Council advised that public consultation on a potential layout is to take place in February/March this year. Even so, an application, never mind a permission, is clearly some way off yet. All in all, I am not persuaded that this equates to site-specific evidence as to the realistic deliverability of the site, particularly since the allocation is the subject of unresolved objections. In the absence of such it would not, in my view, be appropriate to include these dwellings in the five year supply at the present time. A reduction of 101 dwellings is therefore justified.

12.79 Milford Golf Course (180 dwellings):<sup>199</sup> [6.60] This site lies within the green belt and is in active use as part of a golf course. Those constraints are not mentioned in the 2017 HLS document. There is no planning application either for the dwellings. Moreover, the allocation is subject to objections. No information was available as to any likely start date for development on the site, nor the likely trajectory for delivery. In addition, there will be a need to relocate the holes on the affected part of the course, for which there is no planning application at the present time and which will take quite a while before they are playable. There was no substantiated evidence either, to indicate what very special circumstances would be relied on to allow for permission to be granted. Whilst there was anecdotal reference to viability issues relating to the golf club, that was unsubstantiated. On balance, I am not persuaded that this site should be included in the supply at the present time - a reduction of 180 dwellings.

12.80 **Potential sites in the LAA**: [6.62-6.6.65, 7.38-7.39] The identified supply includes what are considered to be deliverable sites in the Land Availability Assessment (i.e. those that are suitable, achievable and available and which are either within a settlement boundary in the 2002 Local Plan, or on previously developed land.

12.81 Land at Oakdale, Portsmouth Rd, Haslemere (50 dwellings):<sup>200</sup> [6.62-6.63] Although within the settlement boundary for Haslemere, this site is largely within the 400 metre Wealden Heath SPA exclusion zone and is subject to an as yet unresolved objection from Natural England on habitats grounds. Whilst Mr Woods suggested that a solution might be found along the lines of what he said had been discussed at other sites, no substantiated evidence was before the Inquiry either to demonstrate whether/how/ when the Natural England objection might be overcome. For instance, it was mooted that a planning obligation might restrict the age of future occupants of the sheltered apartments and retirement cottages proposed. However, the age of future occupiers would not necessarily preclude them from being sufficiently mobile to increase pressure on the nearby SPA. Absent any detailed information on

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<sup>199</sup> RH2 paras 5.21-5.22

<sup>200</sup> RH1 paragraph 6.19- 6.28

this, I am not persuaded that the site should be included in the supply (a reduction of 50 dwellings).

- 12.82 Weyburn Works (70 dwellings):<sup>201 [6.64]</sup> Notwithstanding that it is included in the five year supply for 70 dwellings, the Council has refused planning permission for 69 dwellings and a 60-bed care home on the site, apparently on the basis of impact on the green belt and the AONB, and also on the loss of employment space. That application is the subject of an appeal, the outcome of which is awaited. A new application for 61 dwellings has also been submitted. It had not been determined at the time of the Inquiry, although it appeared likely that it would be refused unless the scheme is amended.
- 12.83 However, this is a brownfield site and, as set out in the 2017HLS, is a site where development is acceptable in principle. Development schemes have been drawn up for the site although they have not, it would seem, found favour with the Council in terms of detail. On balance, I am satisfied that the site should remain in the supply pending the outcome of the appeal and/or a decision is made on the current application.
- 12.84 Clement Windows (39 dwellings):<sup>202 [6.65]</sup> A previous planning permission in 2010 for 31 dwellings on this site was never implemented and has expired. A later application for 55 dwellings has subsequently been refused. Whilst the Council and the landowner may have different aspirations for the site, there does not appear to be any impediment in principle to 39 dwellings on this site coming forward within the five year period, lying as it does within a defined settlement boundary. Given the relatively small number of dwellings involved, I am content that it should remain in the supply.

#### Conclusion on housing land supply

- 12.85 I recognise that the emerging Local Plan is proceeding to Examination on the basis of a 5% buffer and delivery of the identified sites. It will be for the Local Plan Inspector to examine the Council's evidence on the sites in its supply in more detail at the Examination, with the benefit of input from numerous other parties, including developers. He will no doubt also come to a view as to whether it is appropriate to apply a lapse rate as suggested by the appellant. However, for the reasons set out above, and based on the evidence before this Inquiry, I consider that whilst a lapse rate is not appropriate, the Council has either been over-optimistic regarding anticipated delivery, or was not able to justify the figures included in the 2017 HLS document. As a consequence, and solely for the purposes of this Inquiry, I am of the view that at least 787 dwellings need to be removed from the identified supply at the present time. That reduces the supply from 4,359 to some 3,572 dwellings. Accordingly, based on a requirement of 3,767 dwellings over the five year period (even including only a 5% buffer as suggested by the Council) the Council cannot demonstrate a five year supply. Were the delivery I have allowed for to slip, were the Secretary of State to agree with me that a 20% buffer is required and/or were he to consider that a 10% lapse rate should be applied, the position would be materially worsened.

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<sup>201</sup> RH1 paras 6.29-6.30

<sup>202</sup> RH1 paragraph 6.31

### ***The Planning Obligation***<sup>203</sup> [11.1-11.5]

- 12.86 A planning obligation was submitted in relation to the appeal scheme. Prior to the Inquiry, I requested that the Council provide a CIL Compliance Statement setting out matters relating to the need for the various obligations secured, the basis for the financial contributions sought and where/on what they would be spent, and details of any policy support for the obligations. However, the requested information was not provided until part way through the Inquiry.<sup>204</sup>
- 12.87 Affordable Housing: on policy compliant sites (generally those within development boundaries) Local Plan policy H5 seeks a minimum 30% affordable housing provision. However, the policy, and indeed the development plan as a whole, is silent in terms of affordable housing provision on non-compliant sites such as this. Whilst policy AHN1 of the emerging Local Plan requires a minimum 30% provision on any development site, details of how that figure is derived were not examined at this Inquiry and the figure has still to be tested through the Local Plan process.
- 12.88 The Council advised that, notwithstanding the policy in the emerging Plan, it has, in granting planning permission on other non-compliant greenfield sites, sought provision in the order of 40%. The planning obligation secures 22 units of affordable housing within the appeal scheme, equating to a provision of some 39.3%, which would correspond with those other decisions. Whilst, as noted by the Gardener's Hill Road Inspector, there is little policy evidence to support the 40% figure, affordable housing continues to comprise an important and pressing element of the overall housing need in the area, as demonstrated by the SHMA and SHMA Addendum. I am satisfied therefore that the arrangement secured meets the relevant tests. Affordable housing is excluded from the pooling regulations
- 12.89 Open Space/Play Area/Management Plan: the obligation secures the on-site provision of the public open space shown on the submitted plans and a Local Equipped Area of Play. Once provided, should the relevant authority not wish to adopt the play area and/or the open space, it would be transferred or leased to a management company to be set up, which would manage it thereafter. The submission of a plan demonstrating the means by which car parking spaces (other than those allocated to open market units) public open space and the play area, footways within the site and the sustainable drainage scheme are to be managed is also provided for. These provisions and arrangements are directly related to the development proposed and are necessary to meet the needs of future occupiers. I am satisfied that they meet the relevant tests.
- 12.90 Environmental Improvements: a sum of £13,146 is secured towards environmental improvements. There is no reference to such in the CIL Compliance Statement. In answer to my questions at the Inquiry, I was advised that the request was related to the Town Centre Management Plan 2013. However, no information was available as to what that entailed or exactly what harm would be caused in this regard as a consequence of the development proposed. No information was available to indicate what the

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<sup>203</sup> Inquiry Docs 2, 16, 17 and 31

<sup>204</sup> Inquiry Doc 17

contribution was to be spent on, how the figure had been calculated, or whether any other contributions might already have made for this purpose. On that basis, it was accepted by the Council that it could not justify this particular contribution. I find, therefore, that it does not meet the tests and I have not taken it into account.

- 12.91 Parks and Leisure: a contribution of £55,300 is secured towards the provision of a ranger office/visitor centre/café at Frensham Pond and toward a junior football pitch at Weydon Lane, Farnham. Section 4 of the Council's CIL Compliance Statement goes some way towards explaining the justification for the contribution. As well as setting out the need, it indicates that £21,000 is required towards redevelopment of the ranger office etc and £34,300 is required towards the provision of the new pitch.
- 12.92 I am advised that only one other contribution has been secured towards the football pitch and changing facilities. Two other contributions towards the ranger centre etc at Frensham Great Pond are pending (£24,735 and £71,300) with a further contribution having been requested in connection with another scheme (£37,000). A fourth contribution was requested in connection with a further application, but planning permission for that was refused. I am satisfied therefore, that the contributions secured in relation to the appeal scheme do not conflict with the pooling restrictions. Whilst there is no detailed information as to exactly how the contributions have been calculated, I have no reason to suppose that they do not relate in scale to the quantum of the development proposed and am satisfied that there would be some material harm due to increased use of already stressed facilities in close proximity to the appeal site. On balance, therefore, I consider that they meet the relevant tests.
- 12.93 Waste and Recycling: a contribution of £1,627 is secured towards the provision of recycling bins and food waste caddy sets for each dwelling unit, together with a communal food waste bin for the flats proposed. The provision will ensure that the bins used within the development are compatible with the collection vehicles used by the waste collection contractor, and will encourage recycling and composting to help deliver sustainable development by driving waste management up the waste hierarchy in accordance with the Surrey Waste Plan 2008<sup>205</sup> and the Waste Management Plan for England. The calculations on which the contribution is based are set out at section 3 of the Council's CIL Compliance Statement and I am satisfied the relevant tests are met.
- 12.94 Highways/Transport: The obligation secures the provision (via a S278 Highways Agreement) of off-site highways works comprising new shared pedestrian/cycle links between the site and the surrounding highway network as shown on drawing Nos 131223-02 Rev C and 131223-03 Rev C contained within the Transport Statement that accompanied the application. A sum not exceeding £30,000 is also secured towards works to upgrade the existing footway between the Monkton Lane/Weybourne Road priority junction and the Weybourne Road/Hale Road junction, to provide a 3 metres wide shared footway/cycle way. In addition, the obligation secures the offer to each

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<sup>205</sup> Appendix 3A of the appellant's Statement of Case

household of a discount voucher towards the purchase of a bicycle or towards the purchase of a bus pass to be managed and monitored via a scheme to be agreed.

- 12.95 Accessibility to the surrounding area for future residents by means other than the private car is important in terms of the sustainability credentials of the site. It is also confirmed that no other payments have been secured in relation to the financial contribution for the upgrading works. The basis for the arrangements and contribution are set out at section 1 of the Council's CIL Compliance Statement and they are supported by policies D13 and D14 of the 2002 Local Plan. I am satisfied that they meet the relevant tests.
- 12.96 Education: an education contribution comprising £37,691 towards an Early Years Education Project at Farnham Montessori and a contribution of £210,987 towards increasing the number of secondary school places at Farnham Heath End School. No other contributions have been made towards the early years project. The secondary contribution would go towards a new classroom at the school. It is confirmed that four other contributions have already been secured for that infrastructure project. Since this would be the fifth, there would be no conflict with the pooling regulations. The basis for the calculations is set out at section 2 of the Council's CIL Compliance Statement and the contribution is supported by policy D14 and D15 of the 2002 Local Plan. I am satisfied that the relevant tests for these obligations are met.
- 12.97 TBHSPA: The appeal site lies within 5 kilometres of the TBHSPA. Either of itself, or in combination with other developments, additional housing within that 'buffer' zone is likely to have a significant adverse impact on the ecological integrity of the SPA. To that end, and pursuant to policy NRM6 of the SEP, the Council's TBHSPA Avoidance Strategy Review 2016,<sup>206</sup> sets out two avoidance and mitigation measures to protect the TBHSPA from such adverse impact: the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring Measures (SAMM).
- 12.98 The obligation secures a contribution of £177,773 towards the maintenance, improvement and operation of SANG at Farnham Park, a deer park in the Council's ownership, in line with the Avoidance Strategy. The Avoidance Strategy, which includes a tariff for developer contributions, demonstrates in more detail the necessity for the mitigation measures set out therein. It also explains how the contribution has been calculated and on what it would be spent. In relation to Farnham Park, which is in close proximity to the appeal site, the works comprise improvement/maintenance of existing infrastructure within the SANG. The Counsel's opinion appended to the Avoidance Strategy document, which opinion was not contested at the Inquiry, sets out that, as the contribution is towards the maintenance and improvement of the existing SANG as appropriate avoidance measures, as opposed to the provision or funding of new SANG, the pooling restrictions on contributions are not engaged.
- 12.99 I accept that the *operation* or *maintenance* of a SANG is unlikely to involve the provision of infrastructure, depending on the exact nature of the works the money would be applied to. However, it seems to me that the *improvement* of

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<sup>206</sup> Inquiry Doc 16

a SANG may, at times, involve the provision of infrastructure, depending on what is proposed. I am mindful, in this respect that, in relation to Farnham Park, the Avoidance Strategy Document include items such as replacement of ageing footbridges, installation of scalplings/grasscrete matting in some parking and vehicle entrance areas, re-landscaping of a car parking area, bench replacement, culvert/bridge replacement and the provision of a new oak barway to replace an ageing metal gate.<sup>207</sup> In the scheme of things, I accept that these are not likely to constitute infrastructure and thus the contribution is not caught by the pooling restrictions.

12.100 The obligation also secures a contribution of £40,940 for SAMM. Again, the Avoidance Strategy and associated tariff for developer contributions set out in more detail the necessity for the SAMM and explain how the contribution has been calculated. In terms of what the monies secured would be spent on, the Avoidance Strategy sets out that, in addition to 'soft' measures such as a wardening service, monitoring of visitors, bird surveys, education and communication with key organisations etc, it could also include 'hard' measures, such as limiting car parking or providing pathways.<sup>208</sup> Whilst local authorities collect the SAMM contributions, Natural England acts to host the SAMM project. On the basis that such measures do not constitute infrastructure, the pooling restrictions would not be engaged.

12.101 If the Secretary of State were satisfied, as I am, that the contributions sought in relation to SANG and SAMM do not include the *provision* of infrastructure, I have no other reason to suppose that they do not meet the relevant tests.

### ***Emerging Farnham Neighbourhood Plan***

12.102 The appellant has a number of concerns with the Inspector's report on the emerging Plan and suggests that it is set to be challenged in the courts. Be that as it may, whilst the report advances the stage that the emerging Plan has reached, it has still not been to referendum. I am mindful of the Written Ministerial Statement (WMS) of December last year which indicates that, where there are relevant policies for the supply of housing in a recently made neighbourhood plan, these policies should not be considered out-of-date where the Council cannot demonstrate a five year supply of housing land, unless there is a significant lack of supply. The emerging Plan is still some way off being made and thus, the provisions of the WMS are not engaged at the present time. Nevertheless, the eNP clearly carries some weight and its provisions need to be weighed in the planning balance.

12.103 In addition, whilst the eNP may well contain robust mechanisms for monitoring housing supply up to 2031 allowing, if necessary, for a formal review to be undertaken in response to any changed circumstances, the Council witness agreed in cross-examination that it did not look at housing numbers per se.

### ***Other Matters***

12.104 The appeal site lies within some 500 metres of a number of heritage assets, including listed buildings. The development proposed would not have any

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<sup>207</sup> Appendix 4 to the Avoidance Strategy (Inquiry Doc 16)

<sup>208</sup> At paragraph 5.2

direct physical effect on any identified asset and the Council is satisfied that there would be no harm to their special interest or heritage significance. I am, however, required to consider the effect of the proposal on the setting of heritage assets: section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the setting of listed buildings. Whilst no statutory protection is afforded to the setting of other heritage assets, paragraphs 128 and 129 of the Framework also require an assessment of the significance of heritage assets that might be affected by a development proposal, including any contribution to their significance made by the setting of those assets. Paragraph 132 of the Framework confirms that the significance of a heritage asset can be harmed or lost through development within its setting.

- 12.105 The planning application was accompanied by a Heritage Impact Assessment, which sets out the special interest of the six nearest listed buildings and a locally listed building,<sup>209,210</sup> all of which are clustered around the crossroads junction of Upper Hale Road with Hale Road, just to the north-west of the appeal site. The buildings range from a substantial farm house, to farm labourers' cottages, with both timber-framed and brick structures with clay tile or slate roofs. Most are typical examples of small domestic structures such as can be found in many parts of Surrey, but the church is less typical, being an interesting example of an 1840s neo-Romanesque church building by a nationally known architect.
- 12.106 The report concludes that the assets are significant mainly for their architectural and historic interest, showing the development of vernacular architecture in Hale over the last 300 years or so. It also concludes that numerous changes over the years, including their now mainly urban, as opposed to rural context, mean that their significance and special interest derives little, if anything from their setting. In particular, in relation to the two closest buildings (the church and the Hale Farm complex) there is no evidence that either had designed or extensive views over the appeal site and so it would have been on the periphery of their settings. Moreover, the original setting of the Hale Farm complex was greatly altered in the 1980s, when the listed buildings were converted to dwellings and new houses and roads were constructed.
- 12.107 As noted in the report, the built development proposed is set well back from the north-western corner of the site, with the space between the dwellings proposed and the site boundary here to be laid out as public open space, including a play area, with additional tree planting along the boundary with the Hale Farm complex. In addition, it is proposed that hedgerow would be reinstated along the western site boundary along Hale Road, together with additional tree planting, which would mitigate any intrusion into the setting of the church.
- 12.108 From my own observations, and on the basis of the evidence before me, I concur that the development proposed would not affect the ability of the public

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<sup>209</sup> The church of St John the Evangelist, Hale (grade II), Maskoun House and adjacent kiln (grade II), outbuilding to the south of 1 Upper Hale Road (grade II), Nos 3-7 (odd) Upper Hale Road (grade II), The White Cottage, 2 Hale Road (grade II) and Ravenswood Farm Cottage, Hale Road (grade II).

<sup>210</sup> No 4 Upper Hale Road

to appreciate or interpret the heritage significance of those buildings. I find no harm in this regard.

- 12.109 Local residents raised concerns in relation to sewerage infrastructure and highways. Both these matters were raised at application stage, with highways implications being the subject of a detailed report that accompanied the planning application.
- 12.110 Dealing with highways matters first, vehicular access is proposed onto Monkton Lane, which is subject to a 30 mph speed limit. At its western end, the lane is a no-through road for vehicular traffic (pedestrians and cyclists can still exit onto Hale Road) and to the east is a cross-road junction, where Monkton Lane crosses the B3007 Weybourne Road. The Transport Statement concludes that the junction with Weybourne Road would not be subject to any capacity constraints that are likely to lead to unacceptable periods of delay and that there would be no adverse disruption to the free flow of traffic on the local highway network.
- 12.111 Whilst the development proposed would result in an increase in traffic on the adjacent highways, there is no substantive evidence before me that leads me to a different conclusion from that in the Transport Statement. I note that, subject to measures to improve accessibility by non-car modes of travel (which are provided) the Highway Authority raises no objection to the scheme.
- 12.112 With regard to sewage, the initial comments provide by Thames Water suggested that the existing waste water infrastructure is unable to accommodate the development proposed, suggesting a Grampian type condition to preclude commencement of development until a drainage strategy has been submitted to and approved by the authority. I have addressed this in Section 10 above. Suffice it to say, I am content that this is a matter that could be dealt with by condition.
- 12.110 The occupiers of a couple of industrial units raise concerns about the possibility of future restrictions on the business as a consequence of residential development in close proximity. However, the industrial estate is approximately 1 kilometre away from the appeal site, separated by the sewage treatment works and the employment site on Water Lane allocated in the eLP. In that context, I have no reason to suppose that the concerns raised are well founded.

### **13. Overall Planning Balance and Conclusion**

- 13.1 Whilst I have found no conflict with policy C5 in terms of any adverse impact on the ASVI, there would be conflict with policy C2 and with policy H4. Thus, the development would be contrary to the development plan. However, I have found that the latter two policies are not to be considered as up-to-date, because of their conflict with the provisions of the more recent Framework.
- 13.2 I have also found that the Council is unable to demonstrate a five year supply of housing land, whether a 5% or 20% buffer is applied. In such circumstances, the Framework advises that policies relevant to the supply of housing should be considered out of date. Whilst I am not persuaded that policy H4 is necessarily a policy relevant to the supply of housing *per se* (in that it does not seek to control the overall quantum of housing nor its location: rather, it seeks to control the mix of dwellings within a development scheme in

terms of their size – a parallel might be the requirement for a development to include a certain proportion of affordable housing) policy C2, in seeking to strictly control development in the countryside, is such a policy. As such, it is to be considered out-of-date by this route also. In these circumstances the Framework notes that proposals should be considered in the context of the presumption in favour of sustainable development meaning that permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits.<sup>[6.95, 7.47]</sup>

- 13.3 The provision of 56 dwellings, including 22 affordable homes, on a site that is conveniently and sustainably located in terms of accessibility to local services and facilities and in the context of the identified shortfall in the Council's five year supply, is a consideration that carries substantial weight. Even were the Secretary of State to come to a different view on the supply of housing land, the provision particularly of affordable housing, a provision that is over and above the requirement for such even in the emerging Local Plan, at a time of pressing need, would advance the social and economic roles identified in the Framework, which roles would not be diminished by the housing land supply position.
- 13.4 In addition, although not quantified anywhere, there was no dispute that the development would also bring benefits in terms of construction expenditure, employment and consumer expenditure. The Council would also benefit from the New Homes Bonus. These economic benefits carry significant positive weight.
- 13.5 Other environmental benefits include improvements to biodiversity that would be a consequence of the planting proposed and the water attenuation basin.
- 13.6 The development would provide areas of public open space, including a play area. Whilst intended as a necessary facility for future residents of the scheme, existing local residents would also be able to use that space. The provision of new footways through the site, linking to the adjacent area, would also benefit local residents in that walking routes to some services and facilities would be shortened. However, whilst these are benefits, I am not persuaded, in the scheme of things, that they carry any more than limited weight, in the absence of any suggestion that there is a shortfall in public open space/play areas in the area.
- 13.7 To be weighed against all the above benefits is the harm that I have found in relation to the general character and appearance of the area. That harm would be no more than slight adverse. The adverse impact in this regard, would not outweigh the significant benefits of the proposal, let alone significantly and demonstrably outweigh them when assessed against the Framework as a whole. In these circumstances, I conclude that the appeal scheme would comprise sustainable development and the presumption in favour of such, as set out in the Framework, applies. That is a significant material consideration that outweighs any conflict with the development plan.

## **14. Recommendation**

### **Appeal Ref: APP/R3650/W/16/3152620**

- 14.1 For the reasons set out above, I recommend that the appeal be allowed and that planning permission be granted subject to the conditions set out in Appendix C attached hereto.

*Jennifer A Vyse*  
INSEPECTOR

## **Appendix A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr W Beglan, of Counsel	Instructed by the solicitor to the Council
He called	
Mr B Woods	Managing Director of WS Planning and
BA(Hons), MRTPI	Architecture

Mr B Devlin (planning solicitor with the Council) also appeared on Day 3 of the Inquiry to assist with the discussion on the planning obligations.

### FOR THE APPELLANT:

Mr J Pereira, of Queen's Counsel	Instructed by Mr Charles
He called	
Mr R Henshaw	Land and Planning Director with Intelligent Land
BA, DipSurv, MRTPI	
Mr Withycombe	Director of Land Management Services Limited
MSc, CMLI	
Mr W A Charles	Principal of Portchester Planning Consultancy
DipTP, MRTPI, MCMi	

Mr T Webber (Land Manager for Cove Construction Limited) also appeared on Day 3 of the Inquiry to assist with the discussion on conditions.

### INTERESTED PERSONS:

Councillor Mrs Carole Cockburn	Leader of the Town Council and chair of the Neighbourhood Plan Group
Mr D Howell	Farnham Society (attended the site visit)

## **Appendix B: INQUIRY DOCUMENTS**

### **DOCUMENTS HANDED UP DURING THE INQUIRY**

- Doc 1 Appearances for the Council
- Doc 2 Signed planning obligation – see also Doc 31
- Doc 3 Policies H4 and H5 of the 2002 Local Plan – see also Doc 24
- Doc 4 Local Plan Proposals Map
- Doc 5 Aerial photographs of the appeal site showing appeal site with ASVI overlain
- Doc 6 Supplementary proof of Mr Henshaw
- Doc 7 Opening statement for the appellant
- Doc 8 Opening statement for the Council
- Doc 9 Appeal Decision (APP/R3650/W/15/3141255) Hewitt’s Industrial Estate, Elmbridge Road, Cranleigh, Surrey
- Doc 10 Council’s Five Year Housing Land Supply Document (1 January 2017)
- Doc 11 Plan showing ASVIs - Farnham
- Doc 12 Farnham Neighbourhood Plan - Map A: Farnham Built Up Area Boundary
- Doc 13 Cawrey Limited v SSCLG & Hinckley and Bosworth Borough Council [2016] EWHC 1198 (Admin)
- Doc 14 Extract from the Councils Land Availability Assessment August 2016 (updated December 2016) – see also Doc 26
- Doc 15 Council’s response to various questions raised in cross-examination
- Doc 16 TBHSPA Avoidance Strategy Review 2016 (adopted 19 July 2016) including Counsel’s opinion
- Doc 17 Council’s CIL Compliance Statement in relation to the obligations offered
- Doc 18 Local Plan Inspector’s initial questions and comments (6 February 2017)
- Doc 19 General statement of common ground
- Doc 20 Housing statement of common ground
- Doc 21 Appendix 6B to the evidence of Mr Charles
- Doc 22 Suggested conditions – see also Doc 32
- Doc 23 Itinerary for the site visit
- Doc 24 Further extracts from the 2002 Local Plan
- Doc 25 Policy extracts from the emerging Local Plan
- Doc 26 Additional extracts from the Council’s Land Availability Assessment August 2016 (updated December 2016) – see also Doc 14
- Doc 27 Extract from a draft report prepared for the Council by Troy Planning and Design relating to an assessment of delivery rates on the Dunsfold Aerodrome site
- Doc 28 Plan showing the allocated employment site at Water Lane (emerging Local Plan)
- Doc 29 Closing submissions on behalf of the Council
- Doc 30 Closing submissions on behalf of the appellant

### **DOCUMENTS SUBMITTED AFTER THE INQUIRY**

- Doc 31 Amended Planning Obligation
- Doc 32 Revised suggested condition relating to the removal of PD rights
- Doc 33 Inspector’s Report on Farnham Neighbourhood Plan 22 February 2017
- Doc 34 Council’s comments on the Inspector’s report
- Doc 35 Appellant’s comments on the Inspector’s report

## Appendix C: RECOMMENDED CONDITIONS

### Commencement

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

### Plans

- 2) Unless required otherwise by the conditions set out below, the development hereby permitted shall be carried out in accordance with the following approved plans:

Site Plan 14-1030 100 J	Site Location Plan 14-1030 101
Coloured Site Layout 14-1030 102 A	Massing & Active Frontage 14-1030 105 G
Refuse Strategy 14-1030 106 G	Plot 1 Floor Plans & Elevations 14-1030 110 B
Plot 2 Floor Plans & Elevations 14-1030 111 C	Plot 3 Floor Plans & Elevations 14-1030 112 C
Plot 4 Floor Plans & Elevations 14-1030 113 C	Plot 5 Floor Plans & Elevations 14-1030 114 C
Plots 6 & 7 Floor Plans & Elevations 14-1030 115 C	Plot 8 Floor Plans & Elevations 14-1030 116 C
Plot 9, 10 & 11 Floor Plans & Elevations 14-1030 117 C	Plots 12 & 13 Floor Plans & Elevations 14-1030 118 C
Plot 14 Floor Plans & Elevations 14-1030 119 B	Plot 15 Floor Plans & Elevations 14-1030 120 C
Plot 16 Floor Plans & Elevations 14-1030 121 C	Plots 17 & 18 Floor Plans & Elevations 14-1030 122 C
Plot 19, Floor Plans & Elevations 14-1030 123 C	Plots 20 & 21 Floor Plans & Elevations 14-1030 124 C
Plots 22 & 23 Floor Plans and Elevations 13-1030 125 C	Plot 24 Floor Plans & Elevations 14-1030 126 C
Plots 25 & 26 Floor Plans & Elevations 14-1030 127 C	Plots 27 & 28 Floor Plans & Elevations 14-1030 128 C
Plot 29 Floor Plans & Elevations 14-1030 129 B	Plots 30 & 31 Floor Plans & Elevations 14-1030 130 D
Plot 32 Floor Plans & Elevations 14-1030 131 D	Plot 33 Floor Plans & Elevations 14-1030 132 B
Plots 34 & 35 Floor Plans & Elevations 14-1030 133 C	Plots 36-38 Floor Plans & Elevations 14-1030 134 C
Plots 39-44 Floor Plans 14-1030 135 C	Plots 39-44 Elevations 14-1030 136 C
Plots 45-50 Floor Plans 14-1030 137 C	Plots 45-50 Elevations 14-1030 138 C
Plots 51-52 Floor Plans & Elevations 14-1030 139 D	Plots 53 & 54 Floor Plans & Elevations 14-1030 140 D
Plots 55 & 56 Floor Plans & Elevations 14-1030 141 D	Single Garage, Car Ports & Sub Station 14-1030 145 A
Boundary Walls & Fencing Details 14-1030 146	Site Sections 14-1030 150 G
Site Section A (extended) 14-1030-155	Site Section J, K & L 14-1030 156
Site Sections M, N & P 14-1030 157	Site Section R – with/without hedges 14-1030 158 (x2)
Site Section S – with/without hedges 14-1030 159 (x2)	Hard Landscape West LMSL/20/MLMP/3
Hard Landscape East LMSL/20/MLMP/4	Planted Landscape West LMSL/20/MLMP/5
Planted Landscape East LMSL/20MLMP/6	Landscape Masterplan LMSL/20/MLMP/2 Rev B
Surface Water Drainage Plan A018-01-Rev P7	Attenuation Basin Section A018-02 Rev P1

### Phasing

- 3) Should the development hereby permitted proceed in phases, a phasing plan shall be submitted to and approved by the local planning authority prior to

commencement of development, with the conditions below applying to each and any phase. The phasing plan shall include details of the location of the phases and a programme for implementation of the development. The development shall be carried out in full accordance with the approved phasing plan.

### **Construction**

- 4) Construction works, including works of site clearance and ground preparation, shall not take place other than between 08.00-18.00 hours Monday-Friday, 08.00-13.00 hours on Saturdays and at no time on Sundays or on Bank or Public holidays.
- 5) No development, including works of site clearance and ground preparation, shall commence on any part of the site unless and until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period. The Construction Management Plan shall include, but is not limited to, the following matters:
  - site management arrangements, including provision for on-site storage of materials, plant and machinery, including any concrete batching plant; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
  - a programme of works, including measures for traffic management and vehicle routing;
  - the provision of any boundary hoarding behind visibility splays;
  - measures to prevent the deposition of mud or other material on the highway;
  - measures to minimise the emission of dust during the construction period;
  - prevention of the burning of any materials on the site;
  - before and after construction surveys of adjacent highways;
  - details of any security or floodlighting to be employed; and,
  - a construction waste management plan that identifies the main waste materials expected to be generated during construction, together with measures for dealing with such materials so as to minimise waste and to maximise re-use, recycling and recovery.

### **Dwellings**

- 6) No development shall commence in any phase, other than works of ground clearance and site preparation, unless and until details of all external facing materials for the buildings in that phase, and associated hardsurfacing, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No dwelling unit hereby permitted shall be occupied until associated facilities for the storage of refuse and waste, including recyclables, have been provided in accordance with details that shall previously have been submitted to and approved in the writing by the local planning authority.
- 8) No development shall commence on any phase unless and until details of glazing to side facing windows at first floor level and above for the units within that phase have been submitted to and approved in writing by the local planning authority. The details to be submitted shall indicate which windows are to be fitted with clear or opaque glazing and shall show opening lights. Development shall be carried out in accordance with the approved details, with the approved arrangement to be retained thereafter.

- 9) No dwelling within any phase shall be occupied until screen walls or fences, or other means of enclosure within that phase have been erected in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. Walls and fencing erected pursuant to this condition shall be retained thereafter.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows or other openings other than those expressly authorised by this permission shall be constructed in any of the following elevations at first floor level or above:
  - Plot 1 West
  - Plot 3 North
  - Plot 14 South
  - Plot 25 North-west
  - Plot 29 South-east
  - Plot 33 North-east

### **Access and Parking**

- 11) The development hereby permitted shall not begin unless and until the vehicular site access from the site to Monkton Lane has been constructed and the vehicular access provided with 2.4m x 43m visibility splays, as shown on Motions Drawing No. 131223-05-Rev B. Thereafter the visibility splays shall be kept permanently clear of any obstruction exceeding 0.6 metres in height above ground level.
- 12) No dwelling unit shall be occupied unless and until space which is designated for that property for vehicles to be parked, including garaging, and for vehicles to turn so that they can enter and leave the site in forward gear, has been provided in accordance with the approved plans. Thereafter the parking/ turning areas shall be retained and maintained for their designated purpose and any garaging hereby permitted shall be used and retained solely for the purpose of the parking of vehicles and domestic storage and shall at no time be used for habitable accommodation.
- 13) Prior to first occupation of any dwelling unit, details of secure cycle storage for that accommodation shall be submitted to and approved in writing by the local planning authority. The cycle storage provision shall be retained thereafter for that purpose.
- 14) No dwelling in any phase shall be occupied unless and until the footpath links and visitor parking areas for that phase, as shown on plan No 14-1030 102 A have been provided and surfaced in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.
- 15) No dwelling unit shall be occupied unless and until an electric vehicle charging point for that dwelling unit has been installed and is operational in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Once provided, the charging points shall be retained thereafter.

### **Travel Plan**

- 16) No dwelling in any phase shall be occupied unless and until a Travel Plan pursuant to the sustainable development aims and objectives of the National Planning Policy Framework, Surrey County Council's "Travel Plans Good Practice Guide", and in general accordance with the Motions 'Travel Plan Statement' document dated July 2015, submitted with the planning application, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include arrangements for the appointment of a Travel Plan coordinator for a period to be agreed, objectives, targets, mechanisms and measures to achieve the targets, and timescales for implementation, together with monitoring and review provisions and an enforcement mechanism for failure to meet the Travel Plan targets. The Travel Plan shall be implemented as approved.

### **Landscaping/Ecology/Trees/**

- 17) No dwelling unit within any phase of the development hereby permitted shall be occupied unless landscaping for that phase, including the landscaping of areas of public open space, has been carried out in accordance with a detailed scheme that shall previously have been submitted to and approved in writing by the local planning authority. The details to be submitted shall accord with the landscape masterplan and the planted landscape west and planted landscape east plans as appropriate, and shall include a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas. The landscape management plan shall be carried out as approved.
- 18) Prior to the commencement of development in any phase, including works of ground clearance and site preparation, an Arboricultural Method Statement for that phase specifying the measures to be put in place during the construction period for the protection of those trees and hedgerows to be retained, shall be submitted to and approved in writing by the local planning authority. The Method Statement shall be prepared in accordance with the principles set out in BS5837:2012 – *Trees in relation to design, demolition and construction: Recommendations* and in accordance with the measures set out on drawing No TPP01 Tree Protection Plan (within the Arboricultural Survey and Arboricultural Impact Assessment submitted with the planning application). Development shall be carried out in accordance with approved Method Statement.
- 19) Prior to the commencement of development in any phase, including works of ground clearance and site preparation, cross sections/details indicating finished floor levels and finished ground levels surrounding the buildings in that phase, shall be submitted and approved in writing by the Local Planning Authority. Development shall be carried out only in accordance with the approved details.
- 20) The development hereby permitted, including works of ground clearance and site preparation, shall not take place other than in accordance with the recommended actions set out in Section 7 of the Extended Phase 1 Survey Report for nesting wild birds, and Section 5 of the great Crested Newt Report, including the biodiversity enhancements detailed in the Reports.
- 21) Prior to the first occupation of any dwelling, a post-development Ecological Management Plan to ensure the continued maintenance of the site for its biodiversity value shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken and maintained in accordance with the approved Plan.

### **Drainage/Flooding**

- 22) No development shall take place unless and until a foul water drainage strategy for the site as a whole has been submitted to and approved in writing by the local planning authority. No surface or foul water shall be discharged from the site into the public system until the drainage works in the approved strategy have been completed in accordance with approved details.
- 23) No development shall take place on any part of the site, including works of site clearance and ground preparation, until details of a sustainable surface water drainage scheme, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. The scheme to be submitted shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- ii) include a timetable for implementation of the scheme; and
- iii) provide a management and maintenance plan for the scheme, for the lifetime of the development, which shall include the arrangements for adoption of the scheme by any public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme throughout its lifetime.

**Archaeology**

24) No development shall take place on any part of the site, including works of site clearance and ground preparation, unless and until implementation of a programme of archaeological works has been secured in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the local planning authority in respect of that phase. Development shall be carried out in accordance with the approved details.

-----END OF SCHEDULE-----



# Ministry of Housing, Communities & Local Government

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

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

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

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

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

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

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

## **SECTION 2: ENFORCEMENT APPEALS**

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

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

## **SECTION 3: AWARDS OF COSTS**

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

## **SECTION 4: INSPECTION OF DOCUMENTS**

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