

APPEAL BY MACTAGGART AND MICKEL STRATEGIC LAND

APP/X0360/W/25/3364304

LAND BETWEEN LODGE ROAD AND TAPE LANE, HURST

**LOCAL PLANNING AUTHORITY'S
CLOSING SUBMISSIONS**

Introduction

1. This inquiry has considered an appeal by Mactaggart and Mickel Strategic Land ("the Appellant") against the refusal of planning permission for the following development:

Up to 99 no. dwellings, green infrastructure, open space, pedestrian and cycle links, recreational facilities and other associated infrastructure and access points on Lodge Road and Tape Lane with required improvements

on land between Lodge Road and Tape Lane ("the Appeal Site").

2. In summary, the Council's case on each of the main issues identified by the Inspector is as follows:

(a) The location of the development in relation to the spatial strategy of the Local Plan, including scale and location of development

The proposed development is in clear conflict with both the current and emerging spatial strategies of the development plan, being located outside of the settlement boundary of Hurst and of a scale far in excess of that planned for the village which is – and will remain – in the lowest tier of the Borough's settlement hierarchy. The access and development parameters for which approval is sought at this outline stage represent a poor-quality design out of keeping with the prevailing settlement pattern of Hurst.

(b) The effect on landscape character and appearance

The proposed development will result in lasting and unacceptable harm to the landscape and visual amenity of the area by urbanising the village's rural setting.

(c) Accessibility to facilities and services

The Appeal Site is not a sustainable location for development of the scale proposed. The findings of the Inspector for the previous appeal relating to the Appeal Site (dismissed in 2023) remain valid, even with the additional measures now proposed by the Appellant: the range of everyday facilities and services available in Hurst is limited and sustainable transport modes to higher order settlements do not provide a genuine alternative to the use of the private car.

(d) Flood risk

The Appellant has very belatedly resolved the Environment Agency's objection to the development by providing a further revision of the Flood Risk Assessment and Drainage Strategy ("FRADS") underpinned by an adequate, site-specific hydraulic model. That evidence shows that large sections of the main access and one of the secondary accesses, and at least six dwellings and additional driveways and gardens within the southern development block, are within the design and extreme fluvial flood envelopes.¹ This is contrary to the sequential approach to managing flood risk but it is not a purely technical concern as it will have real adverse consequences for residents of the proposed development. In addition, the majority of the site was confirmed to be at high risk of groundwater flooding equivalent to Flood Zone 3 and to also contain areas of high and medium surface water flood risk.

The sequential test is required and it is common ground that the proposed development fails the sequential test. In these circumstances, the proposed development is contrary to paragraph 174 of the NPPF which states unequivocally that development should not be permitted. This (along with the real-world impacts of significant areas of the development parameters being affected by fluvial and pluvial flooding) provides a "strong reason" for refusing planning permission and disappplies the "tilted balance" that would otherwise be required due to the agreed shortfall in the Council's housing land supply.

(e) The effect on best and most versatile agricultural land

It is common ground that the proposed development would result in permanent loss of best and most versatile agricultural land.

(f) The effect on ecology and biodiversity

¹ It should be noted that the parameter plan for approval shows a greater extent of the southern block in the fluvial flood zone.

It is now agreed that the proposed development is capable of achieving the statutory requirement for a 10% biodiversity net gain. There are two outstanding areas of dispute as to which the Council's position is as follows. First, in line with the position taken by the Environment Agency, the existing culvert of the Hatchgate Ditches should be removed and an open watercourse reinstated. Second, there has been deliberate felling of two trees that were potentially of veteran status and therefore "irreplaceable habitat" has been lost as a result of the proposed development. The loss of this irreplaceable habitat, without exceptional circumstances capable of justifying the grant of permission, provides a strong reason for refusal and also disapplies the tilted balance.

(g) The effect on infrastructure and public services, including vocational initiatives, affordable housing, highway works, provision of open space and sport and recreational facilities

The Council's sixth, seventh and eighth reasons for refusal have now been resolved by the planning obligations agreed in the draft section 106 agreement.

3. Overall the Council submits that the proposed development is in conflict with the development plan and, applying the ordinary planning balance, there are no material considerations of sufficient weight to justify granting planning permission for it despite that conflict (and the other planning harms identified above). Those harms significantly and demonstrably outweigh the benefits of the proposed development. Therefore this appeal should be dismissed.

Main issues

Spatial strategy

4. It is common ground that the proposed development is in conflict with the spatial strategy of the development plan. The inspector in the previous appeal decision for this Appeal Site [CD7.1] provided a helpful summary of what he described as the development plan's "*spatial vision*" and its consistency with the NPPF:

20. In summary, the spatial vision explains that in order to deliver the necessary development within the Borough the Council has identified a number of high quality Strategic Development Locations (SDLs) where the majority of the 13,230 new houses to be delivered in the CS Plan period will be located. This approach seeks to locate schemes where they can provide easy access to existing facilities or where improvements are readily deliverable. In addition, the spatial vision seeks to

concentrate development in those towns and villages that either have a significant range of infrastructure including facilities and services now - or will have them as a result of the development proposed through the CS. Development is stated to be less likely in locations where these facilities and services will not be available.

21. With these points in mind a number of areas are identified as being the most appropriate locations for growth, and the vision also details 'other locations with facilities and services together with access to the major locations', and identifies these as appropriate for modest levels of development. Hurst, along with 8 other settlements, falls into the 'other settlements' category of the spatial vision. Such settlements are deemed appropriate to accommodate limited development, to support the vitality of existing local services.

22. I consider that this spatial vision accords with the requirements of paragraph 11(a) of the Framework as it promotes a sustainable pattern of development which seeks to meet the development needs of the area; align growth and infrastructure; and make effective use of land in urban areas. These matters are carried forward in CS Policy CP9, which states that the scale of development proposals in Wokingham Borough must reflect the existing or proposed levels of facilities and services at or in the location, together with their accessibility. It identifies Hurst as one of nine 'Limited Development locations', where development proposals within development limits will be acceptable. The policy's supporting text explains that such locations are those which contain a basic range of services and facilities and are physically and socially cohesive; and that within such settlements limited development would be acceptable, including affordable housing to meet identified local needs.

5. The proposed development is clearly in conflict with that spatial strategy:

- (a) it is located outside of the settlement boundary of Hurst (as defined by Core Strategy Policy CP11 and Managing Development Delivery Policy CC02) in the countryside;
- (b) it is not allocated for any form of development (and nor is it proposed for allocation in the emerging Local Plan Update);
- (c) developing the appeal site would more or less completely fill the area between the loose-knit areas of housing on the edge of the settlement, projecting development well into the countryside and eroding what remains of the visual and physical gap separating Whistley Green and Hurst. That would undermine a key spatial aim of the development plan which is to protect separate settlement identity;

- (d) it is not in an accessible location considering its scale (as to which see paras 32-50 below);
- (e) the quantum of housing proposed is far in excess of the scale of development planned for a limited development location. Core Strategy Policy SP17 sets out an expectation that 100 dwellings would be provided across *all* nine limited development locations (within settlement boundaries) with individual sites generally not exceeding 25 dwellings [CD12.1]. In fact, within the parish of St Nicholas Hurst there had been 36 dwelling completions to 2024 with extant permission for 23 additional dwellings at land between School Road and Orchard Road [CD7.5].² Therefore, for a limited development location, Hurst has made a generous contribution to the Council's housing land supply but – crucially – through much smaller-scale schemes in keeping with the pattern of incremental growth experienced by the settlement over the last century and more.
6. In this appeal, there is no serious challenge to Mr Croucher's point that the spatial strategy has functioned effectively to deliver a very significant number of homes in Wokingham. This provides important context for understanding why the Council's current housing land supply is 2.5 years [CD12.8] and for attributing an appropriate degree of weight in the overall planning balance to the proposed development's conflict with the spatial strategy.
7. The Council has achieved a surplus of housing completions against all national policy requirements since the Core Strategy period began in 2006.³ As previous appeal decisions have recognised, the Council's performance under the Housing Delivery Test has been extremely impressive, with results well in excess of 100% every year since 2018, resulting in a surplus of 1,701 completions against local housing need. High levels of housing completions achieved during the Core Strategy period are evident from 2021 census data, which show that between 2011 and 2021 the housing stock in the borough increased by 14.5% and the population by 15%.⁴
8. Those high levels of housing completions have been achieved by applying the spatial strategy set out in the development plan, which has sought to concentrate growth within the four SDLs by planning for the expansion of the existing settlements within them. Although it is true that settlement boundaries were defined with reference to a superseded housing requirement (13,230 in Core Strategy Policy CP17), the reality is that a much higher number of dwellings have been completed without routinely breaching planned settlement boundaries. This was acknowledged in the appeal decision at Trowes Lane [CD7.8] which noted that the majority of

² Mark Croucher proof of evidence [CD4.1] para 5.16

³ Wokingham Borough Five Year Housing Land Supply Statement at 31 March 2025 [CD12.8] paras 3.42-3.46 and Table 3.10

⁴ Ibid paras 3.47-3.48

schemes which had been consented outside development boundaries were within Strategic Development Locations and had been permitted “*under a normal planning balance in order to help deliver highway infrastructure*” (para 40).

9. It can be seen that the spatial strategy of the development plan has functioned effectively to deliver large amounts of housing, well above the minimum figure originally set by Policy CP17 of the Core Strategy [CD12.1]. Therefore, although there is a shortfall today, there has not been an under-supply of homes in earlier years. Indeed the current shortfall is heavily influenced by the revisions made to the standard method in December 2024 which overnight increased the Council's local housing need by 78%.
10. As was also recognised in the Trowes Lane appeal, the Council is taking positive steps towards addressing the shortfall by progressing towards adoption of its Local Plan Update [CD12.3]. The Local Plan Update has been submitted for examination in accordance with the transitional arrangements set out in Annex 1 of the NPPF. This means that the housing requirement has been calculated with reference to the Council's local housing need at 1 April 2024 which produces a minimum housing requirement of 12,763 dwellings, an average of 751 dwellings per annum (see emerging Policy SS10).⁵ Once adopted, the Council's housing trajectory (a public document which forms part of the evidence base for the Local Plan Update) confirms that it will have a five-year supply of housing land against the development plan's housing requirement and, on the strength of this evidence, the Council has confirmed the same to the examining inspectors.
11. In its written case, the Appellant sought to make much of the point that the Local Plan Update's housing requirement is lower than the Council's current local housing need according to the new standard method. This is factually correct but its significance has been considerably overstated:
 - (a) in revising the NPPF in December 2024, the government made a deliberate policy decision to include transitional arrangements for local planning authorities who had reached an advanced stage of the plan-making process, presumably in recognition of the fundamental importance of the planning system being genuinely plan-led;

⁵ This is an annualised average calculated by simply dividing the total housing requirement by the number of years in the plan period. There is no policy requirement to deliver exactly 751 homes per year (which would clearly be impossible for the Council to enforce) and therefore Mr Slatter's reliance – presented for the first time only in oral evidence – on this average to calculate the Council's housing supply on adoption of the LPU is obviously wrong.

- (b) the Council's submission and progression towards adoption of a new local plan with a housing requirement lower than current housing need is therefore entirely in line with the transitional arrangements in the NPPF;
- (c) Annex 1 of the NPPF sets out explicitly how the shortfall between current housing need and a housing requirement adopted under the transitional arrangements should be addressed:
 - i. (provided that the authority can demonstrate a five-year supply of deliverable housing sites and housing delivery test results in excess of 75% over the previous three years) policies within newly-adopted development plans *"should not be regarded as out-of-date on the basis that the most up to date local housing need figure (calculated using the standard method set out in planning practice guidance) is greater than the housing requirement set out in adopted strategic policies, for a period of five years from the date of the plan's adoption"*: para 232;
 - ii. the authority should *"begin work on a new plan under the revised plan-making system provided for under the Levelling Up and Regeneration Act 2023⁶ ... in order to address the shortfall in housing need"*: para 236.

12. Therefore the Appellant is clearly wrong in its argument that the Local Plan Update will be rendered out-of-date on adoption because its housing requirement is less than current local housing need.⁷ If that was the correct interpretation, the transitional arrangements would be rendered completely redundant. Instead the NPPF makes clear that the shortfall between an adopted housing requirement and current local housing need is to be addressed through the plan-making process – and that full weight can be given to new local plans adopted under the transitional arrangements for a period of five years post-adoption. It does not fall to be addressed through speculative applications and appeals for unplanned housing development in conflict with the spatial strategy.

13. In addition, there remains significant capacity within the Council's developable supply from sites that are continuing to be built out within the strategic development locations. Although not expected to come forward within the next five years, these sites – and others – will form part of the Council's deliverable housing supply in future years.⁸

⁶ The government has indicated that draft national development management policies will be subject to consultation but there are currently no published timescales for the consultation or when they will be brought into force.

⁷ Stuart Slatter proof of evidence [CD5.1] para 5.24. Mr Slatter appeared to walk back from this argument in cross-examination.

⁸ *Wokingham Borough Five Year Housing Land Supply Statement at 31 March 2025* [CD12.8] paras 3.50-3.51

14. All of these factors must be taken into account when considering the wider context to the current shortfall in housing land supply, particularly the positive steps that the Council has taken and is taking to address it. Although, by virtue of the shortfall, the Council recognises that full weight cannot be given to the restrictive policies that comprise the spatial strategy of the development plan, for the reasons set out they should nonetheless be given significant weight in the overall planning balance.

Scale and location of development

15. Although an outline scheme, the main and secondary accesses, quantum and development parameters are all fixed at this outline stage. It is therefore important to ensure that these foundational elements can ensure that “*high quality, beautiful and sustainable buildings and places*” – which are “*fundamental to what the planning and development process should achieve*” – can be realised through the detailed design process (see para 131 of the NPPF).
16. The proposed main access for the Appeal Site is located in an isolated position in the north-west corner of the site on Lodge Road. It lies a considerable distance from both the core of the settlement of Hurst and built development within the Appeal Site itself. Its design and relationship with the two proposed blocks of development appears to have been heavily influenced by comments made in the previous appeal decision [CD7.1] that new dwellings visible from the access at Lodge Road was a contributing factor to the inspector’s assessment that that scheme would have introduced “*a much more urban feel to this stretch of road*” (para 59). In response, this revised scheme proposes an access at more or less the same location but this time with a meandering route through open land before arriving at the northern and southern development blocks.
17. This design bears no resemblance to any street pattern within the settlement. A key characteristic of Hurst is its unusual dispersed settlement pattern with housing generally aligned along the organic network of roads and lanes which developed along historic field boundaries, with some subsequent small-scale infill development between these roads and lanes. These roads and lanes are well-defined and enclosed by housing and vegetation. In contrast, the proposed main access lacks definition and enclosure. The absence of buildings along a long stretch of the access means it lacks active frontages, passive surveillance and therefore interest, creating an unsuccessful street scene without a sense of place. The result is a utilitarian movement corridor rather than a street with a clear role in the wider settlement

hierarchy. As such the design of the main access runs contrary to both national and local guidance on good design.⁹

18. The quantum of the proposed development is, as has been noted above, far in excess of that envisaged by the development plan for a limited development location. At a more granular level, it is completely at odds with the character of the settlement of Hurst which has grown through small-scale, incremental expansion over a very long period of time.
19. The settlement's distinctive "reversed-C" form has evolved over several centuries.¹⁰ The historic nature of that settlement pattern is acknowledged in the Design and Access Statement:

*"Today, remnants of this pattern are still evident within the village, with older buildings situated along the main roads, and some 20th-century redevelopment occurring. Infill schemes behind the plots fronting these historic roads have created intimate, rural cul-de-sacs, contributing to the current "reversed C" pattern of the village. This pattern is sharply defined, with buildings ending abruptly and open fields beginning, especially noticeable to the north, east, and west."*¹¹

20. The series of historic maps between 1912 and 2005 presented by Mr Adams¹² illustrate this process of incremental growth. The framework of roads and lanes apparent on the 1912 map is clearly well established by this date and remains largely unaltered today. New residential developments which came forward throughout the 20th century are small in scale and are stitched into the village envelope by their alignment with the road network (whether linear or infill on non-agricultural land):

- (a) the 1912 map shows a dispersed settlement pattern with residential development aligned along the organic network of roads running through the village. These roads follow historic field boundaries. Notable brownfield sites which are later developed for housing include plant nurseries on the east side of Lodge Road and south of Whistley Green, the allotment gardens north of School Road and the gravel pit to the east of Tape Lane;
- (b) the 1933 map (21 years later) shows five and three new pairs of semi-detached homes at Sawpit Road and Broadwater Lane respectively. All are aligned with the highway and set in substantial plots, although the overall size of the development parcels are small (less than 1ha). Both parcels have low densities of approximately 13 dwellings per hectare;

⁹ Mark Croucher proof of evidence [CD4.1] paras 6.9-6.20

¹⁰ Design and Access Statement Part 1 [CD1.5] p.28

¹¹ Ibid

¹² Marcus Adams proof of evidence [CD5.6] Appendix 2

- (c) the 1960s map (approximately 30 years later) shows the construction of 25 new dwellings aligned with Tape Lane and in a new cul-de-sac development east of Tape Lane. These are again small development parcels (approximately 1.5ha) and have low densities of approximately 16 dwellings per hectare;
- (d) the 1970s map (approximately 10 years later) shows the construction of 14 detached houses aligned with Tape Lane and School Road on the site of the former gravel pit. These dwellings are set in substantial plots and therefore have very low density (approximately 5 dwellings per hectare);
- (e) the 1980s map (approximately 10 years later) shows the construction of seven detached houses on a former nursery site east of Tape Lane;
- (f) the 2005 map (approximately 20 years later) shows four discrete areas of new development:
 - i. Barber Close (14 dwellings), granted planning permission in 1988, was developed on the site of a Victorian nursery and therefore did not extend the village envelope. It is low density (approximately 12 dwellings per hectare) and is a small parcel of just over 1ha. Included within this wider parcel are a handful of properties dating back to the 19th and early 20th centuries;
 - ii. Martineau Lane was developed on former allotments (and therefore not open farmland) in two phases, with the initial phase consented in 1982 and constructed around 1988 and the second phase constructed in 1995. The overall density is noticeably higher (around 29 dwellings per hectare) than any other example of 20th century development which reflects the relatively small size of the development parcel (approximately 1.5ha). It integrates into the village form, sitting east of Barber Close and west of existing housing at the south end of Tape Lane and replicates the linear form of development within the village;
 - iii. land between School Road and Orchard Road comprises eight discrete phases of very small-scale development, with the largest being Orchard Chase which was itself developed in three phases (five detached dwellings permitted in 1998 followed by two detached dwellings in 1991 and a further detached dwelling in 2000). These developments are generally detached and occupy substantial plots and therefore have low densities;
 - iv. Dalby Close was permitted in 1994 and comprises 21 detached dwellings in cul-de-sac formation. The site is small (less than 1.5ha) and has relatively low density

(approximately 15 dwellings per hectare). The development did not extend the village form as it effectively infills land between Hogmoor Lane and Hinton Road. It is the only one of the four parcels identified by Mr Adams to have been developed in a single phase.

21. Taken together, these maps show incremental development over a period of more than a century. There is no example of a single phase of development comparable to the proposed development in terms of site area (more than 10ha), quantum (up to 99 dwellings) or extending the village envelope into open agricultural land.
22. The extension of the settlement into open agricultural land is important. It does not follow the natural grain of the village and would result in fragmented and undefined pockets of open land and countryside to its north, south and west.¹³ The two development parcels are essentially perimeter blocks which do not integrate with existing built form in the village, given that they do not adjoin existing housing or roads and therefore sit at arm's length from the village, rather than being a natural extension to it. By filling-in the most significant area of open land within the village's distinctive reversed-C form, its characteristic loose, dispersed pattern would be lost and a more formalised and intensively developed settlement pattern would be the result.
23. The proposed densities of the two development parcels are unsympathetic to the existing built form. The density study in the Design and Access Statement¹⁴ identifies a total of 13 study areas each of which are significantly smaller in terms of area and quantum than the proposed development and therefore do not offer meaningful comparisons. The study areas generally exhibit much lower densities than the proposed 24.5 dwellings per hectare of the proposed development. Those with comparable or higher densities are on much smaller sites and are generally interspersed with lower density areas, providing a loose grain of development. The proposed development, in contrast, seeks to replicate an atypically high density over a large area, with perimeter blocks four to six dwellings deep.
24. As Mr Croucher concludes, the scale of the proposed development would overwhelm the settlement of Hurst, appearing as a bolt-on housing estate rather than a natural or sustainable expansion. It does not respect the prevailing character, form and scale of the village. Significant weight should be given to this harm in the overall planning balance.

Landscape impacts

¹³ Mark Croucher proof of evidence [CD4.1] Fig 10

¹⁴ Design and Access Statement Part 1[CD1.5] pp.34-35

25. The appeal site has no formal landscape designation. However, its significance in landscape terms is a consistent theme in appeal decisions for proposals on or near the Appeal Site going back to the 1980s:

(a) in an appeal decision from 1988¹⁵, the Secretary of State refused permission for a substantial mixed-use scheme (including 177 houses) on the Appeal Site, finding that it would be unacceptable in landscape and visual terms:

15. *The [Secretary of State] agrees with the Inspector that development of the appeal site would project development into the open countryside. ... He shares the Inspector's view that the proposal would represent an intrusion into the countryside and would, by substantially filling in the inside area of what was described at the inquiry as an inverted 'C', completely alter the form and visual character of the village. He further agrees with the Inspector that extension westwards of development would tend to visually close the gap between the development to the north and south to the detriment of the visual amenity of the area.*

(b) subsequent appeal decisions in the early 2000s described the Site as forming “*an integral part of the village's rural setting*”¹⁶ and maintaining the “*rural character of the wider area ... [which] retains a particularly attractive pastoral appearance and provides visual separation between loose knit areas of housing which surround it to the north, east and south*”¹⁷;

(c) more recently, on land adjacent to the Appeal Site's western boundary, an inspector noted that the open land of which the Appeal Site forms the major part provides the “*open space which separates the northern and southern arms of the identified settlement of Hurst/Whistley Green*” with a “*clear character [as] that of a rural and largely undeveloped tract of land*” which serves the purpose of “*retaining the rural character along Lodge Road*”¹⁸;

(d) the inspector for the 2023 appeal [CD7.1] considered the landscape and visual qualities of the Appeal Site at some length, noting the “*open, undeveloped nature of this landscape within the 'reversed C', predominantly comprising the appeal site, which makes a significant contribution to the rural setting of Hurst*” and attaching particular significance to the rural character of Lodge Road and Tape Lane.

¹⁵ Mark Croucher proof of evidence, Appendix 4 [CD4.1] para 15

¹⁶ Mark Croucher proof of evidence, Appendix 6 [CD4.1] para 14

¹⁷ Mark Croucher proof of evidence, Appendix 9 [CD4.1] para 6

¹⁸ Mark Croucher proof of evidence, Appendix 12 [CD4.1] para 23

26. As Mr Ryder observes in his evidence, the Appeal Site exhibits strongly three out of five “valuable landscape attributes” for the Landscape Character Area C2 (Hurst River Terrace) and partially one additional attribute¹⁹:

- (a) **peaceful and open character** of the undeveloped arable and pastoral landscape when removed from the intrusion of major roads to the south, which provides an escape in close proximity to the urban population;
- (b) **rural settlement pattern** of small villages with historic cores and farmsteads unified by the cohesive use of redbrick which provides a cultural record of the past and adds local distinctiveness;
- (c) **gently undulating terrace landform provides open and clear views** to the wooded backdrop of the adjacent Loddon Valley; and
- (d) **a network of narrow rural lanes** with characteristic roadside ditches which contribute to scenic quality.

These characteristics of the Appeal Site contribute positively to the moderate condition of the landscape character area as a whole, with minimal features that detract from its landscape condition. They help to provide a rural setting for the settlement which previous appeal decisions have recognised and is self-evident to anyone in the vicinity of the Appeal Site.

27. It is not surprising that previous appeal decisions have highlighted the distinctive form of the settlement of Hurst (the reversed-C). Although not a landscape designation of itself, it is clearly important in landscape character and visual terms. As Mr Ryder explained in his evidence, it affords extensive views around the majority of the Appeal Site and provides a valuable sense of openness and the definite impression of a gap between the historic villages of Whistley Green and Hurst. Towards the historic core of Whistley Green, within the Hurst Village Centre Area of Special Character, the absence of development on the Appeal Site allows open space to run up to the building lines, providing a rural backdrop to the south side of Broadwater Lane.

28. Although Mrs Brockhurst rather tied herself in knots to avoid the conclusion that the proposed development will cause landscape harm, there is actually no dispute between the parties that this will be the result.²⁰

¹⁹ Stuart Ryder proof of evidence [CD4.3] paras 5.18-5.19

²⁰ Main statement of common ground [CD3.1] para 7.5

29. Mr Ryder assessed a large number of significant adverse effects on landscape character, drawing the overall conclusion that there will be permanent, moderate adverse effects on landscape character even after the landscape mitigation has become established.²¹ The recurring theme in Mr Ryder's analysis is the loss of rural context currently provided by this extensive open, agricultural field which forms a distinct settlement edge:

- (a) its current peaceful and open character and contribution to Hurst's rural settlement pattern will be lost altogether;
- (b) Tape Lane and Lodge Road's distinctive character as rural roads will be lost. The concerns identified by the previous inspector about the urbanisation of Lodge Road in order to create the main access are carried over almost entirely to this scheme (with the only material change being the set back of the northern development parcel to the north-eastern corner of the Appeal Site).²² Tape Lane would have housing located on either side, but without actually enclosing any of the dwellings within the Appeal Site due to the substantial and incongruous setback;
- (c) the perceptible gap between Hurst and Whistley Green apparent in views along the western, southern and eastern extents of the Appeal Site would be eroded by the insertion of housing into the sensitive open space between them. Built form will significantly expand into the open countryside, with increased visual and functional connections between the two historic villages which (as the previous Inspector put it) are "*lightly touching*" rather than fully merged;
- (d) although extensive areas of public open space are proposed, and trees and hedgerows will for the most part be retained and enhanced, these will naturally be read together with the housing blocks and therefore within a new urban context. Their significance in landscape terms will therefore alter from attractive features of a rural landscape to formalised elements of a landscaping scheme for a new housing estate.

30. In visual terms, similarly, Mr Ryder also identifies a large number of significant adverse effects to visual amenity, drawing the overall conclusion of a permanent, moderate adverse effect:²³

- (a) views west from Tape Lane (viewpoints 1, 2, 3, 4, 5 and 7²⁴) across the open Appeal Site towards the Loddon Valley are critical in allowing an understanding of the village's rural

²¹ Stuart Ryder proof of evidence [CD4.3] Table 5 and para 7.34

²² [CD7.1] para 59

²³ Stuart Ryder proof of evidence [CD4.3] Table 8 and para 8.18

²⁴ All references to viewpoints are references to those in Stuart Ryder proof of evidence [CD4.3] Appendix E pp.83-98

setting. Two large housing blocks apparent in these views, even allowing for some mitigation through screening, will create a sense of encroachment into the countryside. The open space between the northern and southern blocks will be flanked by the two housing blocks and crossed by vehicle, cycle and pedestrian routes reducing its sense of openness and creating an urbanised appearance;

(b) views from the Tape Lane allotments (viewpoint 6) will lose the last remaining visual connection to the agricultural landscape;

(c) views from Lodge Road (viewpoints 9, 10 and 14), particularly at the access, will be noticeably more urbanised through the need for highway widening, signage and visibility splays. It will form a noticeable contrast with the existing rural nature of the road which is enclosed by vegetation on both sides and lacks urbanising elements such as footways, signs and street lighting. Further south, the southern housing block will result in urban encroachment closer to the road corridor.

31. Given the extensive size of the Appeal Site, which makes up the major part of the open space separating the northern and southern arms of the reversed-C settlement form, significant weight should be attached to the proposed development's failure to maintain or enhance the quality of the environment and the condition, character and features that contribute to the landscape, in conflict with Core Strategy Policies CP1, CP3 and MDD Policies CC03 and TB21.

Accessibility

32. Read together, Policies CP1, CP3 and (in particular) CP6 of the Core Strategy [CD12.1] require new developments to promote a modal shift away from travel by private car. Wokingham continues to have one of the highest rates of car ownership in the country. Therefore the imperative to reduce journeys by car is a key aim of the development plan.

33. That is also clearly the aim of national policy. Paragraph 104(c) of the NPPF includes as a key objective that development proposals should identify and pursue "*opportunities to promote walking, cycling and public transport use*". Paragraph 110 requires the planning system to "*actively manage patterns of growth in support of these objectives*". Crucially, it provides that:

"Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes."

34. This objective has been now given particular prominence by paragraph 11(d)(ii) of the NPPF which requires decision-makers to have “*particular regard to key policies for directing development to sustainable locations*” when considering the application of the “tilted balance”.
35. The proposed development is clearly “significant” development, whether that is judged by the standards of the development plan (Hurst is and will remain in the lowest tier of the settlement hierarchy) or by its size and scale relative to the existing settlement. Capable of accommodating close to 250 residents, the proposed development is likely to generate significant demand for services and facilities – to meet basic living requirements, as well as school, work and leisure trips – making it more important to ensure that this proposed development is sustainably located.
36. The instruction to “focus” significant development on locations which are or can be made sustainable necessarily influences the interpretation of the final sentence of paragraph 110 of the NPPF, which requires decision-makers to acknowledge that “*opportunities to maximise sustainable transport solutions will vary between urban and rural areas*”. When read as a whole, the paragraph tends to suggest that “significant” development should be located in locations closer to the “urban” end of the spectrum, given that rural locations are unlikely to have sufficient quality and quantity of facilities and services to accommodate the demands of such development. The inspector in the previous appeal for the Appeal Site explained why the accessibility of a location is sensitive to the size and scale of a proposed development:

“Whilst the opportunities to use alternative modes of travel may be the same whether a few houses are involved – as was the case in the recent Sawbridge Road appeal for 4 dwellings – or a couple of hundred houses, as here – the implications of people not being able to take advantage of those opportunities, for whatever reasons, could well differ significantly. Small housing developments are only likely to have a modest impact if new residents need to use the private car, for reasons such as convenience or expediency, whereas larger, more significant developments, possibly housing several hundred people, are likely to have a much greater impact if these large numbers of people use unsustainable modes of travel. In summary, therefore, I am satisfied that the question of scale of development is an important determinant when the sustainability of a location is under consideration.”

37. The Council submits that the Appeal Site is not an accessible location for this proposed development. The reality is that for most day-to-day needs of prospective residents, they will be forced to travel out of the settlement.

38. It can reasonably be expected that a majority of the residents will be of working-age which makes it highly significant that there are very few employment opportunities within the settlement. Even with the rise of remote working, only 11% of workers are fully remote, meaning 89% will still have a need to commute for at least part of the week.²⁵ Remote working tends to lend itself to desk-based, and therefore higher-paying, jobs meaning that the jobs more likely to be done by occupants of the affordable housing units (50% of the total) are less likely to be done remotely.
39. Around 33 primary school-aged children and 20 secondary school-aged children²⁶ are likely to be living in the proposed development. Again, it is highly significant that there are no secondary schools within the settlement. As for the one local primary school, it is at capacity and children living at the proposed development are likely to result in the displacement of some children who would otherwise have been entitled to attend. In addition, as a faith school it would not be an option for all families.
40. The single shop within the settlement has historically suffered from viability problems and is in the process of re-opening after a long period of closure. Although it previously had a post office counter, there is no assurance from the Post Office that one will return. The shop has previously offered opportunities for no more than “top-up shopping”. For regular family shopping, or for workers who cannot use the shop during trading hours, they would be forced to go elsewhere.
41. The remaining facilities – the village hall, the cricket club, the pubs and other facilities typical of those of a rural village – are unlikely to be everyday destinations for most residents and are more likely to be used seasonally or occasionally. In terms of other key facilities and services, there is no GP, pharmacy or petrol station within the settlement.
42. It can be seen, then, that the limited range of facilities and services available within Hurst does not (in the language of paragraph 110 of the NPPF) “*limit the need to travel*”.
43. Nor is it a location which offers residents “*a genuine choice of transport modes*” for journeys to higher-order settlements with a greater range of facilities and services to meet everyday needs.
44. For facilities and services outside of Hurst (particularly in Twyford), although these are theoretically accessible on foot the reality is that this is not a realistic choice for most residents, given the distances involved – beyond even the preferred maximum walking distances of

²⁵ Steven Jenkins proof of evidence, Appendix A [CD5.2] p.95

²⁶ The parties’ estimates vary slightly: see Mark Croucher proof of evidence [CD4.1] para 9.35; Stuart Statter proof of evidence, Appendix 1 [CD5.1] para 2.1

2000m (commuting) and 1200m (other journeys)²⁷ – and the poor or absent footway provision beyond the settlement and limited street lighting. The attractiveness of walking also depends on other factors, such as fitness and physical ability, encumbrances (e.g. wheelchairs, pushchairs), the weather and the availability and convenience of other transport modes.

45. The Appellant has placed a great deal of emphasis on cycling between Hurst and Twyford. It should be noted that cycling generally has a very low mode share and the majority of cycle journeys are done for leisure purposes. Hurst is very unlikely to buck that general trend. The Appellant's cycle survey data²⁸ lacks context and therefore one cannot draw any conclusions from it other than some people were observed cycling north or south along Hurst Road. It is snapshot data showing a single morning and a single evening, unsupported by any qualitative evidence (as to journey purpose, origin/destination, etc) or by a wider travel survey of Hurst residents, which might have shed some light on travel habits. As such, it is impossible to tell whether the number of cyclists observed during the short survey period represent a large number or, more likely, small number of journeys to and from the settlement.
46. The Appellant admits that the "*main beneficiaries*" of the proposed improvements to the cycle route between Hurst and Twyford will be commuters using Twyford station.²⁹ This naturally limits the cohort of residents of the proposed development who will benefit, even before one considers that cyclists will generally be fit and active adults confident enough to undertake the journey on two wheels. Even with the improvements in place, the route remains fragmented in the sense that cyclists will need to dismount and cross the highway at two points in each direction in order to use it. The reality is even an upgraded route is unlikely to significantly displace car journeys in favour of cycle.
47. In any case, the Council's position is that the proposed improvements fail the test in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and therefore cannot be accepted as a planning obligation: they require extensive off-site transport works as far as Twyford Station – almost 2.5km away from the Appeal Site – which are out of proportion with the limited benefit they will provide for a relatively small cohort of prospective residents of the proposed development.
48. As for the 128/129 bus service – the only route serving the settlement – on any view, the provision is poor:
- (a) the service continues to suffer from reliability problems, with a substantial proportion of journeys running late (bearing in mind that "late" means more than 1 minute earlier or 5

²⁷ Grace Blizzard proof of evidence [CD4.2] Table 1

²⁸ Steven Jenkins proof of evidence [CD5.2] paras 2.8.5-2.8.10

²⁹ Steven Jenkins cross-examination

minutes later than the scheduled time) and cancelled.³⁰ The service is inherently at risk of poor reliability because, as the bus operator put it, the route is “*susceptible to being less reliable than many others which we operate, and perhaps more noticeable given it operates broadly hourly*”;

- (b) for time-critical journeys such as commuting to work or school, there are just two services during the weekday morning peak. For journeys north of the settlement (including to Twyford Station), the first service leaves so early (0723) that working parents would struggle to drop children off at childcare or school beforehand and young people travelling to school would arrive long before the school gates opened. The next service requires more than an hour’s wait (0830);
- (c) options for evening weekday return journeys are similarly limited and inflexible. The first post-5pm service (1739 from Twyford Station) would likely require a London commuter to leave work before 5pm. The next service is more than an hour later (1850) and the final service (1920) would make use of the bus for most evening leisure journeys impossible;
- (d) there is a two-hourly Saturday service terminating so early in the evening that most leisure journeys to places like Reading or Wokingham would be impossible. There is no Sunday service at all. The severe limitations on the weekend service would make it very difficult to impossible for those working at weekends (in often lower-paid jobs) to rely on it for commuting;
- (e) the timetable is not well-aligned with catchment schools serving the settlement. The Appellant has not promoted the use of the bus for journeys to any local primary school and only three of the six catchment secondaries. For Forest School, the bus is scheduled to arrive at 0804³¹ – more than 30 minutes before the school day starts at 0840 – meaning a long wait for children outside potentially closed school gates in the morning. For Emmbrook School, the bus is scheduled to arrive at 0812 and requires an approximately 8 minute walk, meaning an effective arrival time of around 0820 – when the school day starts five minutes later, at 0825. However, the bus could arrive five minutes after its scheduled time and still be “on time”, meaning Emmbrook students would therefore be late. Finally Holt School is, until Sixth Form, a girls-only school, limiting the number of prospective residents likely to travel there.

³⁰ Grace Blizzard proof of evidence [Table 4.2] Appendix 2 (2022 data); CD10.22 (2023 data); CD10.23 (2024-25 data)

³¹ Steven Jenkins rebuttal proof of evidence [CD5.9] Table 4.1

All in all, the inflexibility of the limited timetable, its continued lack of reliability and its poor alignment with time-critical journeys mean that the Inspector's conclusion in the previous appeal [CD7.1] still holds good: *"the 128/129 bus service is unlikely to be seen as an attractive alternative to the private car, and therefore would not offer residents a genuine choice of transport modes"* (para 92).

49. The Appellant's proposed solution to the poor baseline situation is to take the unusual (for a residential scheme) step of funding a bespoke private bus service for a period of up to 15 years. This does not represent a viable solution nor would it make a material improvement to the accessibility of the Appeal Site:

(a) surprisingly, the proposal has not been worked up in consultation with the Council as statutory bus authority. The proposal was discussed with one Council officer, in passing, at a single meeting in December 2023 [CD10.14] and not thereafter. This means it does not have the formal support of the Council and would, in any event, appear to undermine the Council's aspirations for improving the public service, given that its Bus Improvement Plan 2024 seeks:

- i. to increase the frequency of *existing* services (Proposal 1C seeks a 30 minute frequency for the 128/129); and
- ii. to deliver a new bus corridor route between Spencers Wood, Shinfield, Winnersh and Twyford (Proposal 5G), of which the private bus service would serve only a small part (and would not be usable by the general public);

(b) its proposed hours of operation (0700-1000 and 1500-1900), and its route (via Twyford) are focussed on commuting journeys and therefore of less value to residents who are not commuting via Twyford. These hours of operation are not well-suited to journeys on Saturday and there is no Sunday service, again limiting the service's value for leisure trips at weekends. The proposed timetable does not resolve the existing problems suffered by the 128/129 service of having no late evening services and limited weekend services;

(c) its proposed route raises some obvious questions about its utility. For instance, it terminates at Piggott School which, although useful for the handful of children likely to be travelling to that school (it is one of the furthest away from the Appeal Site of the catchment secondaries), is of effectively no help to anyone else, given the school's location between Twyford and Wargrave with no other facilities or services nearby. There is no point running a service to the school on Saturdays or during the extensive school holidays throughout the year or during the school day (which runs between 0830 and 1500). It is quite obviously a very inefficient use of resources to service journeys just one secondary school (and no

local primaries or other secondaries). The route's emphasis on Twyford, although understandable as the nearest highest-order settlement, should also be seen in the context of the services and facilities available there, particularly its limited recreation and leisure offering;

- (d) the route of the private bus service overlaps – and will therefore compete – with the existing 128/129 service. This could yet worsen the substantial funding gap already suffered by the 128/129 service as residents of the proposed development opt for the private service;
- (e) funding is secured for up to 15 years on the basis that the service is not – and is unlikely to become – self-sustaining. This does not represent a long-term solution to the Appeal Site's lack of accessibility by public transport. It depends, in part, on mandatory service charge contributions from occupiers of the market homes – a not insignificant sum of £240, on top of other mandatory contributions they will be required to make, as well as travel costs for journeys not covered by the service – regardless of whether they use the service or not. Although a few local bus operators have expressed interest, there has been no proper viability study to establish whether the route as proposed can be delivered at the estimated cost. It should be noted that the option remains to the Council to call-in the funds earmarked for the private bus service at any time which would be sufficient (assuming the full £1.5m is called-in) to close the £250,000 funding gap for the 128/129 service³² (i.e. maintaining the status quo) for just six years.

50. Taken together, the Appellant's proposed improvements to the Appeal Site's accessibility do not make alternative transport modes to the private car of sufficient attractiveness to offer a "*genuine choice*" to prospective residents of the proposed development. For these reasons, the Council submits that the proposal is not sustainably located, in that its location does not minimise the need for travel or offer a genuine choice of transport modes. Therefore it conflicts with Policies CP1, CP3, CP6 and CP11 of the Core Strategy and Policies CC01 and CC02 of the MDD Local Plan. Given the scale of the development, this is a matter which should attract significant weight in the overall planning balance.

Flooding

51. The Appellant has belatedly resolved the Environment Agency's objection to the inadequacy of its FRADS which, now underpinned by a satisfactory site-specific hydraulic model, confirms that:

³² CD10.21 para 2.3.4.i

(a) for fluvial flooding from the Hatchgate Ditches³³:

- i. the design flood (1% annual exceedance probability (AEP) plus a 46% allowance for climate change) results in a flooding envelope encompassing large sections of the main access near the junction with Lodge Road, the secondary access serving the southern development block and at least six dwellings and additional gardens and driveways within the southern block. The maximum depth of flooding predicted to be 0.20m;
- ii. the extreme flood (0.1% AEP with a 40% allowance for climate change) has an even wider and deeper flooding envelope, with the maximum depth of flooding predicted to be 0.26m;
- iii. areas of built development – both accesses and development parameters – are therefore located in Flood Zone 3³⁴;

(b) for pluvial (surface water) flooding³⁵:

- i. the design flood (1% AEP plus a 40% allowance for climate change), multiple areas within the northern development block, and the section of Tape Lane at the location of the proposed northern pedestrian/bus access would be within the flooding envelope. The maximum depth of flooding is predicted to be 0.20m;
- ii. the extreme flood (0.1% AEP plus a 40% allowance for climate change), the flooding envelope increases significant to encompass parts of the southern development block with maximum flooding depths of 0.20m;
- iii. parts of the northern development block are therefore located in the equivalent of fluvial Flood Zone 3 and other parts of the northern block as well as parts of the access and southern blocks are located in the equivalent of Flood Zone 2³⁶;

(c) for groundwater flooding, the risk is treated as equivalent to Flood Zone 3 (high probability of flooding) due to the close proximity of groundwater to the surface.³⁷

³³ SLR Consulting Ltd, Flood Risk Assessment and Drainage Strategy [CD9.15] para 5.7.1; Figures FRA002 and FRA004

³⁴ Ibid para 5.8.1

³⁵ Ibid para 5.7.2 and Figures FRA006 and FRA008

³⁶ Ibid para 5.8.2

³⁷ Ibid para 5.8.3

52. In principle, there is no reason for the areas of built development to be located within areas at risk of flooding to this extent. The reason why this proposed development places significant areas of built development in areas at risk of flooding is that the design was conceived without a proper understanding of the flood risks to the Appeal Site. It should be recalled that the Environment Agency's original objection to the application, submitted in October 2024, included an advisory that the FRADS should be supported by a site-specific hydraulic model. That advice having not been taken, the proposed layout does not follow the sequential approach of avoiding areas of flood risk – albeit high risk areas of groundwater flooding extend across most of the Appeal Site.
53. In these circumstances, the proposed development must be subject to the sequential test. It is common ground that the sequential test is failed. In policy terms, this is a very significant failure because para 174 of the NPPF provides unequivocally that *“development should not be ... permitted if there are reasonably available sites for the proposed development in areas with a lower risk of flooding.”* Where the sequential test is failed, the exception test does not arise: see par 177 of the NPPF. Therefore it is not strictly necessary to consider whether there are wider sustainability benefits outweighing the flood risk or whether the development will be safe for its lifetime without increasing flood risk elsewhere.
54. Although the proposed development's failure of the sequential test strongly indicates refusal, that failure nonetheless needs to be considered in the overall planning balance. It is for this reason that both parties have sought to explore the “extent” of that failure. The Appellant's sequential test [CD9.20] reports a misleading headline figure of 17 sites (with a total capacity of 1,553 dwellings) as if this was the total number of sequentially preferable sites. It is not: these are the sequentially-preferable sites which, on the Appellant's analysis, *also* meet the NPPF definition of “deliverable”. However, as Mr Slatter now accepts, “deliverability” does not form part of the sequential test.
55. The Appellant's own analysis concluded that 35 groups of sites are “reasonably available for the proposed development”³⁸ and are therefore sequentially preferable to the Appeal Site. To these 35 should be added 2 additional sites subsequently acknowledged in Mr Slatter's rebuttal note [CD5.14]. Collectively these 37 sites have a capacity of more than 14,500 dwellings. This number is not reported in the Appellant's sequential test which is therefore misleading, being higher by almost one order of magnitude than the headline figure quoted in that document's conclusion (para 7.3).
56. This number of course excludes any site subject to a draft allocation in the emerging LPU which, as noted above, seeks to allocate sites to accommodate almost 13,000 dwellings. As

³⁸ Planning Potential, *Flood Sequential Test Report* [CD9.20] para 4.7

Mr Slatter has now acknowledged, some draft-allocated sites will be sequentially preferable to the Appeal Site.³⁹ Yet these sites have been excluded from the Appellant's analysis altogether. Therefore it follows that there are more than 37 sites (with a *minimum* capacity of 14,500 dwellings) which are sequentially-preferable to the Appeal Site. This is, as Mr Croucher put it, a "*spectacular*" failure of the sequential test. Indeed, against the Appellant's "longlist" of sites, the Appeal Site performs very poorly (225/257) in the bottom 15%.

57. The recent revisions to the PPG on flood risk make clear what should already have been obvious to the Appellant: that matters of housing land supply should not be confused with the application of the sequential test:

"The absence of a 5-year housing land supply is not a relevant consideration in applying the sequential test for individual applications. However, housing considerations, including housing land supply, may be relevant in the planning balance, alongside the outcome of the sequential test."

58. Therefore it is clear that the Appellant's sequential test is trying to answer the wrong question:

"3.4 Mr Croucher makes a number of points in Para 2.3 that stem from discounting the draft allocations in the Emerging Local Plan. The Appellant does not dispute that these sites 'could' represent Sequentially Preferable, Reasonable Available, and some may be deliverable sites. The reason for discounting such sites is that the Appellant accepted early in the ST process that failure was likely, and as set out in Section 1 and 2 above, we wanted to identify if any other sites could contribute to reducing the shortfall in five year housing land supply."

3.5 Whether or not these sites (draft allocations) are included as Sequentially Preferable, considered Reasonable Available alternatives, and in some cases Deliverable, would not change the outcome of lessening the shortfall in 5 year land supply, given that these sites are already in the LPAs Housing Trajectory, and would otherwise result in a double count."⁴⁰

59. The extent to which the Council may be reliant on sites that perform as badly or worse in flooding terms as the Appeal Site to make up a five-year supply of housing land must therefore be considered as part of the overall planning balance, where it may – but will not inevitably – influence the weight to be given to the proposed development's failure of the sequential test.

³⁹ Stuart Slatter supplemental proof of evidence on sequential test [CD5.14] para 3.4

⁴⁰ Ibid paras 3.4-3.5

60. Where the sequential test is failed, para 177 of the NPPF is equally clear that the exception test does not arise. This test seeks to establish whether development – which *cannot* be located in areas at lower risk of flooding – should nonetheless be brought forward on an exceptional basis. The Appellant’s approach – in suggesting that the exception test is passed based on various proposed mitigations – confuses the sequential and exception tests.⁴¹ It also runs contrary to the revised PPG which maintains a strict approach to the sequential test for sources of flooding other than surface water.⁴²

61. These are not technical concerns. The extent of flooding at the Appeal Site from all sources will have material adverse “real world” impacts on the amenity and quality of life of prospective residents:

- (a) living in a property at risk of flooding, or which has been flooded, is distressing, even if the flooding does not pose an objective to risk life;
- (b) inundation of the access road with moving water to a depth of 0.13m (during the design flood) and 0.18m (during the extreme flood) would make use by residents in private cars challenging. The AA advises against driving through moving floodwaters greater than 0.10m deep. The Environment Agency advises there is no safe depth of floodwater to drive through, given the risk of hidden hazards. Whether technically possible or not, many would be unwilling to take the risk;
- (c) even relatively shallow flood water can cause damage to property and land. The amenity value of gardens for recreation, storage and other everyday uses is seriously diminished if the land is flooded or at risk of flooding. The same is also true for the amenity value for public open space;
- (d) residents would likely face more costly insurance premiums and other potential financial burdens of protecting or remediating property which has been flooded;
- (e) there is a potential risk to essential services which are generally unsealed against water ingress and located underground;⁴³

⁴¹ See the appeal decision in Mark Croucher supplementary proof of evidence [CD4.5] Appendix 4 para 55

⁴² Revised para 7-027 now provides that a sequential test is not required where a site-specific flood risk assessment “*demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development ..., without increasing flood risk elsewhere*”. That relaxation is not extended to other sources of flooding.

⁴³ FRADS [CD9.15] para 7.4.3

- (f) the drainage strategy is dependent on engineering solutions which are fallible, particularly the need to maintain free passage through the culvert on the Appeal Site's western boundary.

62. The Appellant's argument that there would be no "real world" impacts amounts to no more than saying that there is an engineering solution to the flood risks which should ensure that the development would be safe for its lifetime without increasing off-site flood risk. These of course depend on fallible management and maintenance systems. In any case, this argument overlooks the obvious point that there will be real world impacts on residents that fall short of immediate danger to their personal safety. In any case, the phrase "real world impacts" derives not from planning policy but apparently from a single appeal decision [CD9.23]. Therefore considerable caution is required when applying it as a principle, because it sits in tension with the instruction in the PPG that:

"Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied."

Discounting a failure of the sequential test simply because an engineering solution can be found would make the sequential approach redundant.

63. In light of the above, the Council submits that the sequential test is failed and that a minimum of 37 sites (with a total minimum capacity of c.14,500 dwellings) are sequentially-preferable to the Appeal Site. In these circumstances, para 174 of the NPPF provides that permission should be refused. To be added to the harm caused by the failure of the sequential test in principle, and the very large margin by which it fails, are the real world impacts caused by locating vulnerable areas of built development within areas at risk of flooding. Taken together these should be afforded significant weight in the overall planning balance.

64. These impacts could have been minimised by an alternative design based on a proper understanding of the true extent of the flood risks affecting the Appeal Site. However, the appeal was issued before the Appellant had prepared a site-specific hydraulic model, as the Environment Agency had advised at the application stage [CD9.1], and therefore those risks were not fully appreciated. This represents a failure to follow the sequential approach in determining the site layout and therefore compounds the harm in the planning balance.

Best and most versatile agricultural land

65. It is common ground that the proposed development would sterilise approximately 5.9ha of subgrade 3a agricultural land (around 50% of the Appeal Site area), which is Best and Most Versatile (BMV) agricultural land according to the NPPF definition. In this regard, the Council reiterates the conclusions of the inspector in the previous appeal decision [CD7.1] that although there is no evidence that active agricultural use of the Appeal Site is likely in the foreseeable future, “[t]imes do change, however, and it is clear that if this development proposal goes ahead, the land would be lost for any future agricultural use” (para 72).

Ecology and biodiversity

66. The Council’s outstanding objection in relation of ecology and biodiversity relates to the loss of two oak trees (T85 and T86) which the arboricultural evidence indicates had the potential to be veteran trees but were felled in March 2021 prior to the previous application for planning permission submitted by the Appellant.⁴⁴

67. The two trees in question sat squarely in the path of the proposed access and it is accepted by the Appellant that their biodiversity value must be included in the baseline biodiversity value of the BNG metric by virtue of paragraph 6 of Part 1 of Schedule 7A to the Town and Country Planning Act 1990. Where, as is the case here, evidence of the trees’ biodiversity value has been lost, their biodiversity value must be “*taken to be the highest biodiversity value ... which is reasonably supported by any available evidence*”: paragraph 6A.

68. Schedule 7A was enacted in November 2023 and therefore, as Mr Croucher explained in his evidence, there was no legal or policy basis for retrospectively assessing the biodiversity value of onsite habitat which had been lost or degraded. This explains why the Council did not raise an objection to the loss of these trees in response to Appellant’s earlier application and appeal. Given the subsequent change in policy – which seeks to “*discourage the deliberate degradation of existing onsite habitats to reduce the pre-development biodiversity value*”⁴⁵ – the Council is well within its rights to raise this objection to this scheme.

69. In this regard, the Appellant’s retrospective tree assessment [CD11.3] identifies that both trees had potential to be veteran by virtue of their:

- (a) age: the evidence, taken at its highest, indicates that T85 could have been around 150 years old and T86 around 200 years old⁴⁶. According to the Woodland Trust’s *Ancient Tree*

⁴⁴ Mark Croucher proof of evidence [CD4.1 para 11.3]

⁴⁵ PPG 74-036-20240214

⁴⁶ Tyler Grange, *Tree Assessment and Compensation Strategy* [CD11.3] para 2.21 (allowing for an additional four years since they were felled in 2021)

Inventory, a veteran oak is typically between 150-300 years of age⁴⁷, meaning both trees had the potential to be sufficiently old as to be veteran. It should be noted that the field boundary – which is indicated as being treed – along which they were planted is shown in Ordnance Survey mapping from 1873 (approximately 150 years ago)⁴⁸;

- (b) condition: the evidence is severely limited by the absence of the full structure and component parts of the trees. However, the Appellant's evidence acknowledges the potential that they may have exhibited a degree of hollowing and advanced decay⁴⁹ and deadwood, snapped branches and small decay pockets;⁵⁰ and may have hosted rare or specialist fungi, lichens and deadwood invertebrates.⁵¹ Although perhaps unlikely to have been significantly established, these features would nonetheless have been indicators of the trees' potential veteran status.

In short, taken at its highest, the Appellant's own evidence does not rule out the possibility that the trees were veteran and there is a reasonable basis for concluding that, particularly with reference to their age, that they were indeed veteran trees.

70. There is a clear dispute between the parties as to the relevant test for assessing whether a tree is a veteran. The Appellant seeks to elevate the definition contained in the glossary to the NPPF⁵² to the status of a policy test without also having regard to the guidance in the PPG on the Natural Environment. Crucially, in answer to the question "*How can I find out whether a site contains ancient or veteran trees?*" the PPG states:

"Ancient trees are trees in the ancient stage of their life. Veteran trees may not be very old but exhibit decay features such as branch death or hollowing. Trees become ancient or veteran because of their age, size or condition. Not all of these three characteristics are needed to make a tree ancient or veteran as the characteristics will vary from species to species." (emphasis added)⁵³

⁴⁷ Ibid para 2.22

⁴⁸ Stuart Ryder proof of evidence [CD4.3] Appendix Bii p.96

⁴⁹ Ibid para 2.33

⁵⁰ Ibid para 2.38

⁵¹ Ibid para 2.47

⁵² "A tree which, because of its age, size and condition, is of exceptional biodiversity, cultural or heritage value." (emphasis added)

⁵³ The PPG explicitly refers to the Forestry Commission's guidance on *Ancient woodland, ancient trees and veteran trees: advice for making planning decisions*. This document defines ancient and veteran trees as irreplaceable habitats and advises that the "attributes" of an ancient tree "*can includes its: great age; size; condition; biodiversity value as a result of significant wood decay and the habitat created from the ageing process; cultural and heritage value*". Again this indicates that a cumulative approach – as put forward by the Appellant – does not apply; it is sufficient for one or more of the attributes to be present.

In other words, the PPG could not be clearer that the NPPF definition is not intended to act as a policy test and that it is sufficient for a tree to demonstrate at least one of the “age, size or condition” veteran characteristics to be treated as a veteran tree for planning purposes. Given the Appellant’s recognition that the trees had potential to be veteran by virtue of their age and/or condition, they must be treated as such for the purposes of this appeal. It is now clearly established by *Mead Realisations Ltd v Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 32 [CD9.21] that not only do the NPPF and PPG enjoy equal status as expressions of national planning policy but that one of the purposes of the PPG is to “[explain] a particular policy and how it is meant to operate” (*emphasis added*) [30]-[35]. It follows that the Appellant is wrong (and the appeal decisions on which it relies) to read the NPPF in isolation without regard to the guidance in the PPG on how the NPPF policy for veteran trees is meant to operate.

71. Veteran trees are explicitly referred to in para 193(c) of the NPPF as “*irreplaceable* habitat”. It is therefore not surprising that they should be afforded very strong policy protection by the planning system, particularly in the context of a biodiversity crisis which has prompted a raft of legislative duties to preserve and enhance biodiversity. It requires not only a compensation strategy (which has been agreed) but also “*wholly exceptional circumstances*” to justify the loss or degradation of the irreplaceable habitat. That this sets a very high threshold is evident not only from the strong language (“*wholly exceptional*”) but also from the examples given in footnote 70 of the types of projects envisaged as providing wholly exceptional circumstances: major infrastructure (including nationally significant infrastructure projects) delivering very weighty public benefits at a national or regional level that very few general housing schemes could achieve. It is telling that, notwithstanding the emphasis placed in the NPPF on housing delivery, a local shortfall in housing land supply is not among the list of examples. As this is the principal public benefit relied on by the Appellant, it must follow that the Appellant has not demonstrated wholly exceptional circumstances for the loss of irreplaceable habitat and therefore, pursuant to paragraph 193(c) of the NPPF, permission should be refused.

Planning balance and conclusion

72. Notwithstanding the shortfall in housing land supply, this is an appeal that must be decided under the ordinary planning balance. This is because the proposed development is in conflict with two separate policies expressly cited in footnote 7 to paragraph 11(d)(i): habitats sites (i.e. para 193(c)); and areas at risk of flooding (i.e. para 174). Both of these policies self-evidently provide “strong reasons for refusal” because they say, explicitly, that conflict with them should

result in an application being refused.⁵⁴ That is not to say that the decision-maker is *bound* to refuse the application; these policy conflicts and any other planning harms must be weighed in the *ordinary* planning balance.

73. The planning harms caused by this development are extensive and significant:

- (a) the proposed development is contrary to the spatial strategy of a development plan which has functioned effectively to significantly boost the supply of housing in Wokingham;
- (b) it causes harm to the landscape character and appearance of the surrounding area by projecting built development into a sensitive area of open space within Hurst's rural setting;
- (c) the quantum, parameters and location of the main access would relate poorly to the form, character and appearance of Hurst and the surrounding area;
- (d) for a development of its scale, it will be in a location which does not limit the need to travel or offer a genuine choice of transport modes to prospective residents and is therefore in an inaccessible location;
- (e) it fails the sequential test by a very considerable margin and unnecessarily exposes vulnerable areas of development to the risk of flooding;
- (f) it results in the permanent loss of BMV agricultural land; and
- (g) it results in the loss of irreplaceable habitat.

Even under the tilted balance, these harms would significantly and demonstrably outweigh the benefits of the proposed development.

74. The principal benefits of the proposed development are its contribution to housing land supply (albeit less than 50% would be currently considered deliverable) and the provision of 50% affordable housing. These benefits are rightly accorded significant weight. However, they do not decisively tip the balance in favour of the proposed development, not least because of the

⁵⁴ See *Monkhill Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 74, [37]: "The 'tilted balance', or positive presumption, under paragraph 11d)ii is not available in every case where there are "no relevant policies" of the development plan or the 'most important policies' in the plan are 'out-of-date'. It is deliberately disappplied in the situation provided for in paragraph 11d)i, where policies of the NPPF that 'protect areas or assets of particular importance' – the footnote [7] policies – are engaged, applied and found to justify planning permission being withheld ... Otherwise, the 'tilted balance' could work against the protection afforded by those policies and undermine them. This would not only be hostile to the evident objective of the policy in paragraph 11d)i. It would also be inimical to the explicit strategy of the NPPF itself for "sustainable development".

historic oversupply achieved by the existing development plan and the demonstrated progress towards the adoption of a new development plan which – entirely in line with national planning policy – is capable of achieving a five-year supply of housing land on adoption. That can be done without relying on sites that perform worse on the sequential test to the Appeal Site and therefore there is no reason in principle to reduce the weight to be given to the proposed development's failure of the sequential test. The shortfall between the LPU's housing requirement and current local housing need will be addressed at an appropriate time in the future – again in line with national policy – through the plan-making process and not through speculative appeals such as this.

75. The remaining benefits should attract limited to moderate weight, given that they mostly act to mitigate the impact of the proposed development (particularly the provision of open space, upgrade of footways, tree and hedgerow management). The benefits, in the round, are significantly and demonstrably outweighed by the harms of the proposed development.
76. Under an ordinary planning balance, the Council submits that the conflict with the development plan, alongside the planning harms identified above, mean that planning permission should be refused and this appeal dismissed.

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25 September 2025