

Land between Lodge Road and Tape Lane, Hurst

Appeal Ref: APP/X0360/W/25/3364304

Appellant's Closing Submissions

Introduction

1. These Closing Submissions should be read together with the Appellant's Opening Statement [CD13.1] and the Statements of Common Ground [CD3.1-3.3] to avoid unnecessary repetition. They focus on the main issues that have been identified by the Inspector and agreed by the parties. They address each of the issues in relation to which the Council has defended the appeal, before addressing any wider issues that third parties have raised.
2. Overall, this is a rare opportunity to provide much needed housing in a borough with a desultory 5YHLS and no plan led solution on the horizon. The development would fit well within the context of Hurst and Whistley Green, a natural progression for the village's development which meets the housing needs of today, rather than taking forward the small scale incremental approach of 100 years ago the Council appears to prefer. That comes with clear strategic advantages, including the significant new infrastructure and open space provisions, which are not only a wider benefit but indicate a step change in the offer from the 2023 Appeal decision. It is, overall, an exemplar of how new development can contribute towards the very real housing need in a respectful way to Hurst and Whistley Green and deliver real sustainability benefits for the new and existing residents.

Wokingham BC's context

3. As the Appellant set out in Opening, the housing context in Wokingham is bleak. The borough suffers from a substantial shortfall of 3,456 homes over the next 5 years. It has no greater than a 2.5 years' supply. Calculated another way, if the supply were averaged over the 5 years, the borough still has a shortfall of 691 homes per year. See [CD12.8] at Table 4.1.
4. Affordable housing provision is in a similarly parlous state. The Affordable Housing Topic Paper for its Emerging Local Plan [CD12.5] shows 1,160 people on the Council's housing register, of which 582 had "*the most urgent and exceptional need for housing*" (Table 6 and para 4.10).
5. So, not only is it agreed that the tilted balance is engaged, but those simple metrics give you an idea of the scale of the problem faced by this borough.
6. The fact that the Council has such an issue on its hands is, regrettably, unsurprising. Notwithstanding the requirement to review local plans every 5 years, the Council's Local plan is old. The Core Strategy [CD12.1] is from 2010, the Managing Development Delivery Plan [CD12.2] is from 2014.
7. There is, moreover, no plan-led solution in sight.
 - (1) The Council's emerging Local Plan progress has been nothing short of glacial. The first Issues and Options consultation took place in 2016, almost a decade ago. Notwithstanding Mr Croucher's hope that a new plan will be adopted next year, there is already at least 5-6 months' slippage behind the LDS' rather optimistic projections of 8 months from now. There is no clear indication of when the examination will start and nothing published on the Examination website that hearings will start in November this year as suggested (Croucher XX, day 5).
 - (2) Moreover, *even if* by some miracle of policy making the emerging Local Plan is adopted in May 2026 it only aims to deliver c.750 dwellings per

annum, just over 50% of the Council's actual local housing need of almost 1,400. So (i) the actual needs of this borough will still not be met; (ii) on day one the Council will likely have a c. 3.8YHLS so will be out of date¹ (Slatter EIC day 5); and (iii) pursuant to para. 236 of the NPPF the Council will need to start on an entirely new local plan (not simply review the old one), which may well require revision to the settlement boundaries, in any event.

- (3) In relation to affordable housing, the Affordable Housing Topic Paper **[CD12.5]** explains that a previous Local Housing Needs assessment (i.e. when the Council still considered its general housing needs was almost 800 per annum, rather than the almost 1,400 it is now) identified an affordable housing need of 352 dwellings per annum. It accepts, candidly, that delivering 352 affordable homes per year is unlikely to be achievable (paras. 6.8-6.9).
8. So, for the people of Wokingham who desperately want and need a house – whether affordable or market – there is little on offer by this Council through the plan system.
9. One would think the Council would embrace a well-designed, contextually appropriate scheme in a sustainable location, delivering a range of community and environmental benefits and cycle infrastructure that its recently approved own Local Cycling Walking Infrastructure Plan (LCWIP) identifies as important. Instead, however, it has raised a litany of minor complaints, unsubstantiated objections, adventurous references to tools (which nobody can check), reliance on an out-of-date Local Plan and a previous appeal decision which bears no similarity at all to what is proposed now.

¹ While in XX of Mr Slatter (day 5), Mr Lewin indicated the Council's policies would attract full weight if it complied with NPPF para. 232. However, at no stage has there been any evidence that it could do so.

The Scheme

10. The design philosophy underlying this scheme is set out in the Design and Access Statement at **[CD1.5]**. Of the 10.68ha, 3.98 will be set aside for the 99 new homes (50% affordable) that this scheme will deliver. The majority of the site (some 6.79ha) will be given over to green infrastructure, as secured by the Parameter Plan **[CD1.4]**. The intention is to provide a community orchard, new allotments, new playspace, a new pond, a new Common, and retained and enhanced vegetation, as set out on the illustrative parameter plan **[CD1.3]**. That 3.9ha will be split into three development parcels, reflecting – as we will come to below – the most recent residential development schemes in Hurst. Alongside this residential development are a wealth of sustainable transport improvements and ecological enhancements, as set out in more detail below.

The 2023 Appeal

11. The appeal scheme is fundamentally different to the one before the Inspector in 2023. As was set out in the Appellant's Opening **[CD13.1]**, the only similarity between the two is they deliver much needed housing. The quantum of development has more than halved from the 2023 proposal, creating more opportunities for a sensitive design that integrates the new development into its context. This has paid dividends:-

- (1) As Ms Brockhurst explains (PoE para 2.25 at **[CD4.3]**) this change provides for a new green treatment to the site entrance and Lodge Road corridor, a simplification of the road network, a better relationship between the site edge and Tape Lane and enhanced green infrastructure functionality. The change to Lodge Road is a particularly significant development. For those travelling from Hurst to Whistley Green, the sense of separation between the two will be retained. The site entrance

will appear as just another junction with another rural lane, running adjacent to hedgerows and orchards.

- (2) In design terms, as Mr Adams explained in EIC (day 3) how the appeal scheme is a “*fundamentally different proposition*” to the previous scheme. This is addressed further under Issue 1.
- (3) The package of highways works and improvements is a step change in what was offered by the 2023 appeal scheme. Mr Jenkins ran through this in EIC (day 3) by reference to the diagrammatic representations in his proof of evidence [CD5.2] figures SJJ2 (PDF60) and SJJ3 (PDF59). Taking the Council’s LCWIP [CD12.6] as a starting point, and having undertaken a topographic survey to ensure that all these are deliverable, the Appellant is offering: (i) new footways and crossing improvements to the south of Tape Lane, facilitating access to the school; (ii) new and/or widened footways to the north of Tape Lane and on the A321 alongside crossing improvements at the Hurst/Tape lane junction and village shop; (iii) an on-street cycling facility in a loop around Whistley Green; (iv) a new 3m footway/cycleway running north along the A321 using the highway verge; (v) an on-street cycling facility on the approach to Twyford station; (vi) a new footway extension on Lodge Road; and (vii) a new private bus service focused on facilitating journeys to work and school paid for by a £1.5 million endowment which the Council can draw upon for measures in support of its Bus Services Improvement Plan if it prefers.

12. The Issues are now considered against this background.

Issue (1) - location and scale of development

Context

13. As Mr Adams outlined (EIC, day 3 and para 3.18 and following of [CD5.6]), Hurst is characterised by a series of lanes, roads or routes defined by

agricultural use. Although there is, and traditionally has been, clustering at some of the junctions, it has no identifiable centre. Instead, homes have been developed around those clusters and along the lanes, roads and routes, over time creating continuous frontage development (e.g. along Broadwater Lane to Whistley Green) followed by subsequent infilling behind. Whilst growth has been incremental, the Council's suggestion that this has always been 'small scale' is wrong. To the contrary, four of the most recent parcels of development (Barber Close, Martineau Lane, Dalby Lane and Orchard Chase/School Road) are similar in size to the parcels now proposed for the Site (Adams PoE [CD5.7] Fig 4 at PDF16).

The development response

14. The development response is entirely appropriate to that context. It is set out in detail in the DAS [CD1.5]. In broad summary, as Mr Adams set out for you (EIC, day 3):-
 - (1) The three development parcels have been specifically chosen to draw on the existing pattern of development in the village. This is reflected in their size and geographic placement, with Parcel A close to Martineau Lane and Barber Close, with Parcels B and C close to and reflecting the level of development at the Tape Lane / Broadwater Lane junction.
 - (2) The attention to detail has gone beyond the placement and also considered the feel and design of the routes delivered. The route through the Site, which will add permeability and connectivity (a benefit in and of itself), will be closer to development on the Tape Lane end, but more rural and screened at the Lodge Road end, reflecting those two very different areas. While there needs to be some tree and hedgerow loss to facilitate the Lodge Road access, over time it will become similar to other country lanes, but with the attractive boundary of a hedgerow and an orchard. There is no reason why at reserve matters stage it cannot be designed to

look and feels like a rural country lane instead of the long sweeping road through open countryside that Mr Croucher characterised it as.

- (3) Moving beyond the specific parcels of development, the extant field boundaries are retained and reinforced, keeping intact that particular characteristic of Hurst and its historic development.
15. Therefore, the parcels now proposed, and the development blocks secured by the Parameter Plan [CD1.4] are entirely in keeping with their context and an appropriate response to the character and appearance of the area.
16. However, in contrast to previous piecemeal development in the village, the advantage of the unified approach is that there are additional community benefits which can be delivered, which there could not be if a less comprehensive approach was being taken. In particular, the creation of the new Common, alongside the other Green Infrastructure, could not be delivered and managed if each plot were consented and delivered in isolation, at separate points in time years apart.
17. The criticisms of Mr Croucher² (not, with respect, a witness with any design or highways qualifications) and others, go nowhere:-
 - (1) It was suggested that the historic development of Hurst is “*small scale*” as well as incremental (Croucher PoE [CD4.1] at para 4.15). As Mr Adams outlined, the Appellant disagrees but even if the Council is right, so what? Growth is inevitable in this borough, with its poor housing land supply. Even if Hurst has grown at a more incremental pace in the past, the level of growth has to meet the scale of the need challenge faced today, not in 1960s or some earlier period. The maximum of 99 homes is entirely proportionate to the village. Mr Croucher’s reliance on a figure of 25 in

² We deal here with only the significant points made, rather than every point made. For example, suggestions by Mr Lewin in XX of Mr Adams that Parcels B and C are in fact one parcel because they have a car club bay and cycle path between them are so devoid of merit that they do not require a response.

an out-of-date local plan is of no help to him whatsoever. Bringing forward the development in one go will, as outlined already, deliver additional advantages not available if Mr Croucher's preferred small scale approach were adopted.

- (2) In XX of Mr Adams there was some suggestion that not all the housing had been on what was once greenfield land. That is obviously wrong – go back far enough and it was all green fields. Even if some development parcels were once allotments, or a quarry, they were fields before that.
- (3) Mr Croucher's suggestion that the access onto Lodge Road would suffer from a lack of surveillance (Croucher POE **[CD4.1]** para 6.10-6.13) is, frankly, baffling. It is not uncommon for there to be rural country lanes with limited surveillance, transitioning to more developed areas. As Mr Adams outlined (day 3) this is simply characteristic of the area.
- (4) Mr Croucher's concern about the access road being a 'long sweeping road' (EIC day 5) or "*utilitarian movement corridor*" (Council Closings para 17) is similarly misplaced. Insofar as there are concerns about its borders, those can easily be addressed at RM stage, and the road made to look like a rural lane. Mr Croucher's subsequent reliance on road classification (although he is not a traffic expert) is similarly hopeless: people walk and cycle along rural lanes all the time in the countryside, as anyone who has lived in the country will know.
- (5) Mr Croucher's focus on the back gardens of Martineau Lane and their proximity to the public open space (**[CD4.1]** para 6.30) again goes nowhere. This addresses a very small element of the southern border of the Site and Parcel C (see **[CD1.7]**). While Mr Adams very fairly acknowledged that having two sets of back-to-back gardens is often considered good practice, there are many cases where another approach is preferable. Here, the decision was made to retain and protect the

hedgerow marking the field boundary which is the southern extent of the Site. However, there is ample space within the Parameter Plan to ensure that those areas of public open space can be overlooked by the frontage of the development plots (see **[CD1.7]** as an illustration). This can all be dealt with at RM stage.

- (6) The suggestion that the two blocks will present as “*perimeter blocks*”, not adjoining existing housing or roads (Croucher POE **[CD4.1]** Fig 10 and Council Closings para 22) is similarly misplaced. As shown on the illustrative Masterplan **[CD1.3]**, each of the three blocks is partly adjacent to existing development and/or Tape Lane. Similarly, there can be no serious suggestion, contrary to the Council’s Closings (para. 22), that the development will lead to “*fragmented and undefined pockets of open land and countryside to its north, south, and west*”.
- (7) Mr Croucher’s focus on density is similarly misplaced (para. 6.34 **[CD4.1]**). As the DAS illustrates (**[CD1.5]** Part 1 PDF34) the areas of density across Hurst are variable, ranging from 7dph (Tape Lane South) to 59dph (Barker Court). The Site’s proposed density of 24.5 dph is well within that range. Moreover, the decision to be taken now is in the context of an NPPF which focuses on optimising the use of sites in a manner consistent with the character and history of the area. This scheme does that.
- (8) It will not lead to the coalescence of Whistley Green and Hurst (further discussed in the Landscape section below).
- (9) The concerns of local residents that this will fundamentally change the nature and character of the village is similarly misplaced. Again, as this has both design and landscape/character aspects, we deal with this in more detail in the next section. With the proposed development, Hurst will remain a rural village in a rural setting, surrounded by fields and

countryside. All that will change is that the proposed development will be a part of that village.

18. So, stepping back and viewing this objectively, the design, scale, and character of this development is entirely appropriate to what has come before, and will integrate well with the existing village of Hurst. It is certainly not “*significantly out of scale*” with Hurst and the level of existing infrastructure within it (*cf* RfR1). To the contrary, development of the Site is the natural next step in the evolution of the village which will keep it a village, offer the opportunity for new residents to form part of the community (the lifeblood of village activities), and secure significant public benefits such as a common and community orchard which would not otherwise exist with the small scale development that the Council, and some residents, would prefer.

Issue (2) - The effect on landscape character and appearance

19. This is really quite a short point. It is agreed that the Pegasus LVIA [CD8.1] is compliant with GLVIA; used baseline photography prepared in accordance with TGN 06/19; and is proportional to the landscape and visual issues (see the Landscape SOCG [CD3.2] paras. 1.1-1.3 and confirmed by Ryder in XX (day 1)). It has not been explicitly criticised by Mr Ryder (again confirmed in XX). It has been reviewed by Ms Brockhurst, who adopts its conclusions: see para 1.17 of her POE [CD5.3]. It provides a thorough, robust, and sensible basis for the assessment of the landscape and visual effects. Rather than quote extensively from it, reference should be made to the summary of landscape and visual impacts in Section 8 of the LVIA [CD8.1].
20. Notwithstanding that the Pegasus LVIA was agreed as being appropriate and compliant with GLVIA3, Mr Ryder (for reasons that are unclear) undertook his own LVIA assessment. His LVIA, however, suffers from seven fundamental flaws:-

- (1) It was prepared by a witness who had not been on to the Appeal Site itself (Confirmed in XX, Day 1).
- (2) In contrast to the agreed LVIA with its bespoke methodology, Mr Ryder's LVIA used a generic methodology fixed in 2016 and not updated. It therefore did not take into account updates such as the Landscape Institute's own *Notes and Clarifications on Aspects of [GLVIA 3]* [CD8.5]; or the Landscape Institute's 2019 guidance on undertaking Townscape Character Assessments.
- (3) Mr Ryder's 2016 methodology is not in line with GLVIA. The definition of susceptibility, for example, found in Table 3 of Mr Ryder's Appendix (PDF p. 12 of [CD4.3]) adopts a different approach to susceptibility to that set out in GLVIA itself (PDF p. 158 of [CD8.4]).
- (4) It includes 6 additional 'contextual areas' (not receptors) that add little to the actual analysis of how landscape and visual effects should be understood, as Ms Brockhurst explained in EIC (day 2).
- (5) The impact of points (2) and (3) is substantial. Notwithstanding the guidance in GLVIA (see e.g. para. 2.24, 8.10 [CD8.4]) and Mr Ryder's acceptance of the need for transparency (XX), there are key areas in both his assessment of landscape and visual impacts where the basis and reasoning for Mr Ryder's assessment is entirely opaque. His 99 page proof of evidence and 106 page appendix provide, for example, no explanation for how he has accorded value to particular landscape receptors. This cannot be cured by his methodology as Table 2 in his Appendix A (p. 9 in [CD4.3]) and the accompanying reference to Box 5.1, are so generic that they offer no guidance as to how the decision has been reached in the context of this appeal. Similarly for susceptibility, there is no narrative accompanying Mr Ryder's assessment. On the visual impact side there are similar shortcomings – i.e. no explanation - for Mr Ryder's assessment of

susceptibility and value in Table 7 of his PoE [CD4.3] or his Appendix E. Once again this cannot be cured by reference to his methodology, as Table 9 of Appendix A is generic, and Mr Ryder accepted in XX that while he had, for example, accorded Medium/High values to certain views, they do not in any way accord with the “High” value row of his Table 9. The complete absence of a narrative makes it difficult for anyone to follow and validate Mr Ryder’s assessment. That is precisely why the requirement for narrative was introduced in 2013, as Ms Brockhurst explained (EIC day 2). Mr Ryder’s approach was, as he accepted, not compliant with GLVIA (XX).

- (6) Mr Ryder seems to have wholly misunderstood Green Infrastructure and what it is intended to do, simply equating it with the countryside (Ryder EIC day 1). As Ms Brockhurst outlined, by reference to the Landscape Institute Green Infrastructure papers (of which she was an author), Green Infrastructure concerns the variety of assets and their functionality: see her PoE at Table 2.1 [CD5.3]. When Green Infrastructure is properly understood, the proposal, with its Common, Orchard, allotments, and myriad other measures, offers Green infrastructure functionality well beyond the present state of the Site which is currently a degraded open field used for grazing horses and donkeys with no public access to it.
- (7) Finally, and notwithstanding all of the myriad methodological issues, Mr Ryder’s judgment calls were not reliable. In part this is because, as just covered, they do not accord with his methodology. Mr Ryder tried to hold firm on the suggestion that the views were nevertheless of medium value. But, looking at Mr Ryder’s own definition in his Appendix A Table 9, he accepted that these views are not related to “*local visitor attractions or public open space and routes where views and visual amenity form an integral part of the attraction*”. He accepted there are no views “*from regional or local landscape designations such as Special Landscape Areas or equivalent*”. Nor did he identify

any locally important views. All he could say was that it was his opinion from “*ground truthing*” that they were views on the edge of the village and some of the views featured in the Area of Special Character (“AOSC”) assessment. It is submitted that does not stand up to any sort of scrutiny. All villages have edges. That is the definition of an “*every-day location*” (Mr Ryder’s ‘low’ value). The viewpoints do not benefit from any designation or cultural association (again, Mr Ryder’s low value). Low value is clearly correct.

21. For these reasons, the analysis set out in the agreed LVIA should be preferred. Mr Ryder’s analysis, and the Council’s Closings which rely heavily on his evidence (paras. 26-31) should be disregarded. Turning then to what Mr Ryder sought to add with his additional viewpoints 12-14 it is submitted that:-

- (1) The analysis of Viewpoint 12 (SR PoE Appendices PDF96 of **[CD4.3]**) suffered from the same lack of narrative as the rest of Mr Ryder’s analysis. His suggestion of a medium/large magnitude of effect, and moderate adverse outcome is over-egged. The houses on the cul-de-sac face one another, and the impact is said to arise from the change in the end component of the view from green field to housing. But the view is already framed by built development, in an area of built development, and is short lived. It can only be experienced by those walking along the road towards Tape Lane. As Ms Brockhurst outlined in her EIC (day 2) this is an unremarkable view, undesignated, and already with its own detractors (such as the existing housing and on street parking), so it has low susceptibility to change and low sensitivity. Against that distinctly unremarkable baseline, the proposed development would simply add housing into a view which already has housing in it, and that (new) housing will be framed by existing hedgerows and be set back behind open space (see the Parameter Plan at **[CD1.4]** and Illustrative Masterplan at **[CD1.3]**). There is no loss of quality associated with the vista or depth

of view and the magnitude of change would be low. Mr Ryder's suggestion otherwise is simply not credible.

- (2) Mr Ryder's Viewpoint 13 was only ever listed as a potential adverse effect as he was not sure if trees were to be removed on the west side of Lodge Road and, therefore, whether any adverse effect would arise (as he confirmed in XX). As Ms Brockhurst confirmed in EIC (day 2), the trees would not be removed and there will be no impact.
 - (3) Mr Ryder's Viewpoint 14 (PDF98 of **[CD4.3]** Appendices) is premised entirely on the suggestion that extending the existing footway along Lodge Road with an additional length of footway would create a moderate adverse effect. But as he accepted in XX, it is not unusual for rural roads to have footways next to them, and his fallback that it would be unusual for Lodge Road because it consists of a green tunnel is misconceived for two reasons. First, suggesting that introducing something new would be unusual because it does not currently exist would apply to every development, without actually engaging with whether there is harm. Second, the highways plans have been specifically design to enable the retention of trees (see e.g. **[CD10.9]** drawing 102A), thus the wooded character will remain as will the green corridor.
22. Overall, on the basis of the agreed LVIA and Ms Brockhurst's clear and careful analysis, it is submitted that the proposed development will have limited landscape and visual impacts. What will come forward are three parcels of houses alongside significant green spaces which will become an integral part of the village of Hurst.
23. There can be no objective suggestion that Hurst will become a town. There will be change but change should not be assumed to be negative. As Mr Adams outlined (day 3), short of UNESCO World Heritage Sites, change is an inevitability. The residents of Hurst 150 years ago might well have said the same

about the number of houses and residents present in the village now. The question is whether that change will be so significant, or fundamental, that it would change the nature of Hurst. It is submitted that the answer is “no”:-

- (1) Hurst, currently, has a strong village feel. As Mr Fines eloquently set out on day 1, it has a cricket club and a bowling group, a Morris dancing group, real church bells and a horticultural group and, of course, the village show. All of that will continue, and there is no reason to suspect that the ‘new blood’ cannot integrate successfully into village life. Indeed, it might reasonably be expected that those new residents will have chosen to move to Hurst for exactly those reasons
- (2) This also has to be viewed with an element of objectivity. It cannot be, as Mr Fines put it, “*the way the village sees itself*” (response to the Inspector’s questions on day 1) as that will always be a reason to block to change. Objectively, as Ms Brockhurst explained (response to your question, day 2), local people always value the areas where they live. Where communities come together to protect a particular view, or parcel of land, that value finds its way into policy. In deciding how to balance that, it is necessary to take account the objective assessments such as the LVIA and that there could in fact be benefits to a proposal (such as, here, increased access, the Common, the Orchard) which local objectors will often not recognise because they are so opposed to a scheme.
- (3) When looking objectively at the facilities and the scale of the proposed development, Hurst will remain a village. The village, though now slightly larger, will continue to be a “*small, recognisable, but scattered village set within an open agricultural landscape*”, as described in the 2005/2009 Design for Hurst document ([CD8.2] PDF8) and contrary to the suggestion in RfR3. For the avoidance of any doubt, as explained eloquently by Ms Brockhurst under XX (day 2) the setting of the village is not confined to the Appeal

Site, and there is no basis for suggesting either that it is, or that the Appeal Site is even a particularly important part of that setting.

24. The oft repeated suggestion, again set out in RfR3, that it will lead to the coalescence of Whistley Green and Hurst is wholly wrong:-
- (1) There is little difference between the settlements in any event. The previous Inspector referred to them 'lightly touching' but as Ms Brockhurst outlined (EIC) he was being asked to compare 'lightly touching' and 'full coalescence'. There obviously is a high degree of linkage between the settlements as the AOSC draws a line encompassing them both ([CD8.13]).
 - (2) Moreover, whatever the baseline is, this scheme does not significantly alter it. On the Broadwater Lane boundary there is continuous frontage between Whistley Green and Hurst as will have been seen from the site visit. There is no discernible difference between the two. Along Lodge Road there is a gap, but crucially that will remain. Any traveller on that road will see simply another country lane, bounded by trees and hedgerows.
25. For all those reasons, therefore, on Main Issue 2 it is submitted that there will be some adverse impacts on the landscape and the character appearance of the immediate area but they are neither significant nor unacceptable. As Ms Brockhurst explained (EIC day 2) they are the impacts which inevitably arise from the development of a green field for housing.

Issue (3) - Accessibility to facilities and services

26. This is a site that is, or can be made, sustainable and offers good access to a range of facilities and services.

27. Nobody expects this site to have the sustainability credentials of a flat above Victoria station. That would be neither fair nor reasonable. However, there is a good starting baseline:-

(1) Hurst has within it a good range of services and facilities. It has a village shop, a primary school, pubs, a village and community hall, sports clubs and playing fields. Local people spoke passionately about the village and its strong community feel. Indeed, out of all the settlements within the District, Hurst has the joint-highest ranking for key services and facilities (see Jenkins PoE **[CD5.2]** PDF210) and Hurst provides a good range of local services/facilities within a walkable distance to meet many of the day-to-day needs of residents. Two lines of attack were made by the Council:

- a. While Ms Blizzard sought to downplay the range of facilities through a focus on higher order services, only one tier 3 settlement (Sonning) has one higher order service or facility. Hurst is in the middle of the Tier 3 settlements for distance to the closest Tier 1 settlement and while it has limited public transport accessibility, that does not take account either of the new bus services or the proposed improvements.
- b. In XX of Mr Jenkins, Mr Lewin sought to draw a distinction between every-day facilities and those such as the village hall. However, all are listed as “Key facilities” and for very good reason – they are key to a happy, sustainable life in a settlement such as Hurst. Any artificial distinction should be disregarded.

(2) Hurst has the 128 and 129, a bus service that is approaching “fair” (Jenkins XX) and which provides access to local schools and Twyford station, with its well-timed connections to Reading and central London. Further, Thames Valley Buses has announced an additional service in the

morning peak. While Ms Blizzard complains that it does not meet the Council's own definition of 'good', and while the Council labours the timetable at some length in its closings (para. 48), as Mr Jenkins highlighted, that is a very high bar which very few rural locations would meet. The existing service, however, is comfortable and reliable as Mr Jenkins explained in XX and RX from his own experience of using the bus; and its reliability is in line with or better than the national average once the roadworks and other factors pre-2023 have been discounted³.

- (3) Moreover, as covered by interested parties, people already park along the Hurst Road and walk to Twyford station, indicating it is walkable.
- (4) The walking and cycling surveys show significant pedestrian and cycle movements between Twyford and Hurst (indeed, Mr Lewin himself referred to having taken the train to Twyford and then cycled on his Brompton bike to Hurs). Although Ms Blizzard sought to shoehorn criticism of the walking and cycling surveys into answers to questions asked by Mr Litton KC on other matters, they are baseless. She never criticised the surveys in her EiC when she had the opportunity to do so and the surveys set out in **[CD10.2]** Tables 2.3 and 2.4 were specifically designed to avoid capturing, for example, those who were only parking along Hurst Road and walking back to the station.
- (5) There is good access to Secondary school education, as set out in Mr Jenkins' POE paras 2.11.4 and following **[CD5.2]**. While the Council has criticised the use of the 128 and 129, it is listed on both the Council's own

³ It is noted that the Council has in its Closing Submissions sought to rely on data provided by Thames Valley Buses at CDs 10.22 and CD10.23. The document Ms Blizzard relied on were the FoI request from 2024 and 2025. These new documents were not referred to by Ms Blizzard in either her written or oral evidence. They have not been admitted into Inquiry by the Inspector and Mr Jenkins has not had an opportunity to comment on them. They cannot now be relied on by the Council without unfairness to the Appellant and should be rejected.

My Journey campaign and often on those schools' own webpages and as Mr Jenkins outlined (XX, day 3) what that route delivers is acceptable.

28. From that auspicious starting point:-

- (1) A substantial package of walking and cycling improvement works, as set out above, are proposed. This has significant support in the Council's own documents, such as the LCWIP [CD12.6] and Bus Service Improvement Plan [CD13.3]. Each improvement has been the subject of detailed design (see [CD10.9]) and the subject of a Road Safety Audit, which has been passed. They are agreed with the Council's Highways Officers, who had been supportive of the measures, and will be delivered pursuant to a s. 278 agreement.
 - a. Ms Blizzard's criticism of these proposals only emerged in her EiC and are also baseless. To take just one example, while Ms Blizzard may have reservations about walking on Tape Lane, it is a very quiet road (as will have been seen from the site visit), it is identified as a quiet link suitable for walking and cycling in the Council's My Journey (Jenkins EIC, day 3), and its quiet nature is borne out by the evidence provided (see Table 5.1 of the TAA at [CD10.3]). Mr Jenkins was in EIC, and the Appellant has always been, candid that there are areas where the full design width one might like cannot be delivered. But that is unsurprising in a constrained village environment, with its narrow carriageways, footways, and dual side frontage development. However, the Appellant has taken up every opportunity that it can, and no reasonable person could fail to consider these to be an improvement.
 - b. The Council's criticism in its Closing (para 45) that cycling has a low mode share generally and Hurst is "*very unlikely to buck that general trend*", and its related criticisms of the improvements proposed (para. 46), fails

to take account of the fact this is sought in the Council's own documents, as set out above.

- (2) The new private bus service, intended to facilitate commuting to school and work, is targeted at two of the most significant causes of car journeys (Jenkins EIC, day 3). Private bus services are not new⁴ - they are a well-established method of reducing car commuting. For example, schools frequently run school buses.
 - (3) As covered by Mr Jenkins, there is a significant package of sustainability improvements, beyond those listed above. The Sustainable Transport strategy includes, for example, the delivery of broadband infrastructure to facilitate home working and the digital delivery of services such as GP appointments, a sustainable travel voucher, car club, EV charge points in every home, and an on-site mobility hub. See Mr Jenkins PoE Table 2.15 **[CD5.2]**. None of these have been challenged.
 - (4) Although residents expressed concerns about the business and speed on Broadwater Lane, the traffic volume is not high (see Table 5.1 of the TAA at **[CD10.3]**) and although some people speed, it is the exceptional few, the top 15%, and far from the norm (see Table 3.5 of the TA **[CD10.2]**). Moreover, the Appellant's proposals will provide a benefit by helping to reduce car speeds.
29. Turning then to Ms Blizzard's assessment, notwithstanding the multiple assertions that she was completely at one with the Council (see e.g. Blizzard PoE para. 3.33, 4.2 **[CD4.2]**), it was unclear whether her objections were supported by the Council's Highways Officer (bearing in mind all that is available with **[CD10.14]** and **[CD10.3]**) or whether they were her own opinions, which she believed were the Council Highways Officer's. She repeatedly sought to give

⁴ Or particularly unusual, of the Council's Closing at para. 49.

the impression she and the Council's Highways Officers were 'at one' but that is simply not borne out by the evidence before the Inquiry.

30. The issues with Ms Blizzard's evidence are many and varied:-

- (1) There is no reference, at all, to the LCWIP [CD12.6]. That document sets out the Council's long-term plan to improve walking and cycling in Wokingham borough. It explicitly seeks to "identify specific active travel infrastructure schemes that can be incorporated into local transport policy and capital investment" (PDF9). It has been through several rounds of consultation (see Sections 5 and 6). It is, on any objective measure, an important material consideration. Ms Blizzard's reason for excluding any reference to it is telling. In XX (day 2) Mr Litton KC specifically asked why she had not mentioned it and she said "*I thought I'd made my point without its reference*". In short, rather than inform her opinion and come to a balanced, neutral, expert view, Ms Blizzard thought she had made her case and therefore did not feel the need to engage with this important material consideration.
- (2) She refused to acknowledge, at all, that the Appellant's proposals are consistent with the LCWIP. Appendix D2 of the LCWIP connects Hurst to Twyford along a primary cycle route. Appendix D3 extends the walking network to, broadly, Whistley Green. Nowhere is this acknowledged. Ms Blizzard had no satisfactory answer to this. She first suggested that the LCWIP simply provides high level indications of an intention, which is obviously wrong. Second, she claimed, entirely without any evidence, that the Council agreed with her. Given the difficulties in discerning which parts of Ms Blizzard's evidence were her views and those of the Council's her suggestion that the Council's Highways Officers might distance themselves from their own policy document is not credible.

- (3) Her use and reliance on the Connectivity Tool to demonstrate that Hurst is not a sustainable location was misleading and inappropriate because:
- a. As a matter of principle it should not have been used. It is a beta version only available to government bodies. Neither the underlying methodology nor the outputs can be checked or verified because it is not available to the public. It purports to break down the connectivity for every area in the Country by 100m² grid squares but it is wholly unclear whether it is updated every time an input changes (shops open and close, transport links change etc.). It is not sufficiently tested to know whether it is reliable.
 - b. The way Ms Blizzard sought to use the tool has no evidential value. She came to the simplistic view that any level of connectivity score less than 50 was below average, without being able to contextualise that in any way. We do not know what a flat above Victoria station would score. We do not know what Twyford would score. We do not know what Wokingham, or any of the areas marked for development in the emerging local plan, would score. These are very simple, very basic checks that could have been done. A simple number without any context or reference value except her invented “average” is useless.
 - c. Ms Blizzard sought to manually add additional bus routes but her inputs cannot be verified.
 - d. The tool does not take into account proposed walking or cycling improvements and it is impossible to know what impact those improvements would have on the score.
- (4) Recognising the significant shortfalls in her case, Ms Blizzard sought to bolster it during EiC through criticisms of the proposed improvements when assessed against LTN 1/20. Nowhere in her written evidence are these points made, notwithstanding the references to sporadic paragraphs

(5.13, 6.12, 7.1) she sought to pray in aid during XX. For the reasons set out by Mr Jenkins, the criticisms were hopeless.

- (5) Ms Blizzard sought to argue that the addition of a new private bus would provide only a “*limited*” benefit (EIC day 2). Again, that makes little sense and, when pressed, she could not justify her position. She started off by suggesting it only provided routes to Piggott school (obviously wrong as it goes to Twyford Station); that it would undermine the 128/129 by covering some of the same destinations / that the route to the station was of no benefit because it was covered by the 128/129 (notwithstanding the fact she had also suggested that the 128/129 would not be used as it was unreliable); then suggested that it might be unreliable because sometimes busses fail to meet their timetables (before acknowledging, grudgingly, that if the residents are funding the bus, and there are issues, they would likely push for changes). Only then, did she acknowledge it “*may provide some benefit*”. This amply demonstrates her lack of objectivity. The Council’s Closing seeks to present this as the views of the Council but, for the reasons covered already, that inference should not be drawn.
- (6) Not content with trying to minimise the benefit of the new private bus, Ms Blizzard’s pessimism then found its expression in the rest of her evidence, suggesting that a £1.5 million injection into the transport system was “*not a long term solution*” and that funds might be reallocated or, remarkably, spent, after which it was not clear what would occur. Again, however, this completely ignores the facts that: (a) the Council itself has identified this corridor as one for public service improvements in its Bus Improvement Plan ([CD13.11] PDF2 fig 2.2); (b) the Appellant’s approach is consistent with the aspirations of that plan (see e.g. Proposal 1C and 5G); (c) during this inquiry, Thames Valley Bus announced an additional service; and (d) she was unable to give any example of a bus service failing after the money ran out.

- (7) Ms Blizzard seemed to misunderstand the requirements of the NPPF (and the Local Plan), suggesting during XX that the Site was not sustainable because, whether 25 or 99 homes came forward, there would be reliance on the car. However:
- a. The 25 figure is set out in the Local Plan, Ms Blizzard is paying scant regard to the Council's evidence and policy base.
 - b. The definition of Sustainable Transport in the NPPF includes "*including walking and cycling, ultra low and zero emission vehicles, car sharing and public transport.*" The appeal scheme proposes walking improvements, cycling improvements, public transport, a car club, and EV charge points for all dwellings (see Jenkins PoE para 4.15 **[CD5.2]**). All of these are sustainable transport measures, and the NPPF does not suggest otherwise.
- (8) Until Ms Blizzard's oral evidence, she did not accept that there was any benefit at all to what the Appellant proposes. That is obviously not a tenable position and further demonstrates the lack of objectivity in her evidence.
- (9) Ms Blizzard – not an education expert – sought to suggest that there would be out-commuting for primary school places as the pupil generation from the existing village more than filled the primary school places. This was hopeless. It should be obvious that pupil yields from existing housing are different to those from proposed housing and do not calculate the number of pupils every year or even every four years. The timing of when pupils will come forward is important and Ms Blizzard's simplistic assertion took no account of that. Indeed, if the actual evidence is examined, as set out in the education technical note in Annex 1 to Mr Slatter's Appendices **[CD5.1]** (PDF8 para. 3.4) there appear to be only 13-15 applications from within the catchment. Ms Blizzard's assertions

were therefore wrong. The new tangential suggestion in the Council's Closing para. 39 (i.e. that it will lead to displacement of some children who would otherwise attend) is similarly hopeless, and is an example of the Council's mission creep - endeavouring to expand its case without warning or notice. *Even if* there were something in the point, the Council has offered no evidence of where these children (who are commuting into Hurst), come from, or would go. The suggestion it has any impact on the sustainability of Hurst is therefore fanciful.

31. Ms Blizzard's evidence as a whole failed to take into account significant material considerations, demonstrably lacked objectivity and is unreliable.
32. It is submitted that not only is Hurst a sustainable village and the Appeal Site a sustainable location but that the Appellant's proposed package of improvements will substantially improve their sustainability. Indeed, when asked, Ms Blizzard was unable to identify anything more the Appellant could do to make Hurst or the Site more sustainable. There is no merit in RfR4.

Issue (4) - Flood risk

33. As confirmed in its email of 18 September 2025 at 16.42 and attached letter, the EA has withdrawn its objection subject to conditions [CD13.22]. As explained by Mr Walton in his EiC (Day 5) by reference to the calculations he has provided in his Supplemental Proof [CD5.15], assuming that all developed areas that might be subject to flooding, flood compensation can be provided for the loss of any flood plain as a consequence of raising the floor levels 600mm above the predicted flood levels and the access roads to ensure they remain dry in the modelled flood event such that there is no risk of increasing flooding off site. No one, including the Council, has suggested that the condition cannot be discharged. The Council's complaint about the sequential approach to internal siting of development (Closing para. 52) is therefore hopeless.

34. Moreover, any predicted flooding should not be overstated. Mr Walton's unchallenged evidence is that even if the access roads are not raised, any flooding would be in the order of 100-200mm and not pose any hazard to safety. Nor would any works to provide any necessary flood compensation be significant and are of an order to be expected on any development site. In XX, Mr Croucher agreed that neither the Council nor the LLFA had any concerns relating to the proposed drainage scheme or SUDS and accepted that the proposed development would be safe for its lifetime and not increase flooding off site. There is much detailed evidence from the Appellant on the issue of flood risk in the Flood Risk and Drainage PoE at **[CD5.5]**, **[CD5.12]** and **[CD5.13]** and documents contained in the **[CD9]** folder and confirmation from the statutory consultee that they no longer object to the development.
35. This also dispenses with the aspects of the Dolinski/Norris initial flooding objection which is premised on the EA's objection continuing **[CD13.6]**. No one can say that the EA hasn't thoroughly reviewed and tested the Appellant's hydraulic modelling and flood risk assessments.
36. While Mr Butler's objection **[CD13.7]** is more detailed, it is submitted that the evidence of the expert flooding witnesses (**[CD5.5]**, **[CD5.12]** and **[CD5.13]**) and the various flooding documents (**[CD9]**) and the EA's withdrawal of their objection demonstrate that there is nothing in it. While further points were made by objectors in relation to the August FRA **[CD15.1]** to **[CD15.7]** they were addressed comprehensively by Mr Walton's Supplemental Proof **[CD5.16]** and in his responses to the questions put to him by interested parties (day 5).
37. In the absence of any flood risk objection from the EA it is submitted that the technical issues of flood risk have been resolved in the Appellant's favour. Indeed, Mr Croucher accepted (XX day 5) that save for sequential test issues, RfR 5 was resolved. We will deal with the sequential test below.

Issue (5) - The effect on best and most versatile agricultural land

38. As set out in the Appellant's Opening, 5.6 ha or 52% of the Site is Grade 3a (i.e. best and most versatile) with the rest of the Site Grade 3b or below. Of the Grade 3a land, 2.4ha will be lost to development. There is no dispute this is a matter to weigh in the balance which is addressed below in the planning balance section of these submissions.

Issue (6) - The effect on ecology and biodiversity

39. As outlined at the start of the Ecology Roundtable ("RT") (day 4), issues regarding the classification of the grassland in the west corner of the Site, and the encroachment multiplier, have been resolved. As this is an outline application, all that it is necessary for the Appellant to demonstrate is (a) the baseline; and (b) that at least 10% BNG gain (the statutory requirement) is achievable⁵. As Ms Major outlined during the RT, the Appellant has demonstrated both those things and the Council has confirmed its removal of RfR6 (see Ms Major's PoE at [CD5.4] PDF101).
40. The issues remaining in dispute are (1) the veteran trees issue between the Appellant and the Council; and (2) deculverting of the Hatchgate ditches between the Appellant and the EA. We will also pick up here the implications of the LNRS as raised by Ms Robinson.

Veteran Trees

41. This issue relates to two oak trees lawfully felled by the landowner in 2022.
42. There are two elements to this which it is important not to elide. Para. 6 of Sched 7A TCPA 1990 contains anti-avoidance provisions for pre-development biodiversity value for the purposes of calculating the statutory BNG, which relates to activities carried out on or after 30 January 2020. Contrary to the

⁵ PPG on BNG para. 019, ref ID 74-019-20240214

Council’s misunderstanding, at no point has the Appellant accepted that the two oak trees were veteran trees, as para 2.3 of Ms Major’s PoE [CD5.4] and Mr Pratt’s PoE [CD5.7] make clear. However, for BNG purposes the Appellant has assumed, on a precautionary basis, that the two trees removed were veteran trees for the purposes of the metric: see section 2 of Ms Major’s PoE at [CD5.4]. Mr Croucher confirmed during the ecology RT that no issue was taken with the tree compensation package. So, the matter does not turn on the BNG question at all.

43. However, whether the trees should be considered veteran for BNG purposes is an entirely different question to what is required under the NPPF, and whether the “*wholly exceptional reasons*” test in NPPF para. 193c is engaged. The Council seeks to elide the two, as made very clear by Mr Croucher in XX (day 5) but they are different. The NPPF contains no equivalent of para. 6 of Sched 7A. That can only be a deliberate choice. It is the long-standing position in the NPPF, in contrast to, for example, what is now NPPF para. 209 (neglect of heritage assets).
44. The Council obviously understood that to be the position under the previous NPPF, as it did not allege that the felled trees were veteran trees as any part of the 2023 Appeal. Indeed, Mr Croucher suggested they could not have done (XX day 5). As the NPPF was re-issued in 2024 (after Sched 7A came into effect) it would have been easy for a similar anti-avoidance provision to be included if the Secretary of State had wanted to but no such provision was included.
45. During the RT Mr Lewin said the “*legal position had changed*” and Mr Croucher in XX (day 5) argued that what had changed was the legislation – presumably a reference to Sched. 7A. However (a) the policy position has not; and (b) there is no indication at all that Sched 7A was intended to change what constitutes a material consideration outside of the BNG regime. That is simply wishful

thinking on the Council's part. It is necessary to look at the situation as it stands now, not as it stood four years ago. Accordingly, for NPPF purposes, the test in para. 193c is not engaged even if the trees were properly considered to be veteran trees before they were felled because the development does not result in the loss of the trees.

46. That simple point really is the start and end of this matter, whether or not the trees were veteran. As with the veteran status for BNG purposes, it is unnecessary to determine whether the two lawfully felled trees were veteran trees for the purposes of the NPPF.
47. However, as the Council has maintained its argument that the felled trees are veteran trees within the NPPF Glossary definition it is submitted as follows:-
48. For the reasons outlined by Mr Pratt in and during the RT, there is good reason to conclude they were not in fact veteran trees.
49. The starting point is how a “veteran tree” is defined. The definition in the NPPF, (which as Mr Pratt **[CD5.7]**, **[CD5.11]** explained is regularly used in hundreds of assessments, is supported by previous appeal decisions (see **[CD5.7]** at paras 2.12-2.13) and is proportionate to the high level of protection imposed by the “*wholly exceptional circumstances*” policy test), is cumulative. A tree is not a veteran trees unless because of its age, size and condition, it is of exceptional biodiversity, cultural or heritage value. Meeting one or two of the age, size and condition criteria is not enough to make a tree a veteran tree.
50. The Council seeks to rely on and import into the NPPF the BNG definition of a veteran tree but, as already submitted, that is a separate regime. Mr Croucher's suggestion in the RT that if the BNG definition is not applied, “*there would be veteran trees that would be missed*” presupposes that the definition in the BNG provisions is somehow the ‘right’ one. Had the Secretary of State wanted the NPPF to mirror the BNG definition, she could have updated it to do so.

51. The Council next relies on para 32 of the Natural Environment section of the PPG and a cross reference to the Forestry Commission guidance. However, the NPPF Glossary definition and para. 32 of the PPG were in the same terms now as they were when the 2023 Appeal was heard but the Council did not make the point, notwithstanding that Mr Croucher was the case officer (and involved in the 2023 Appeal) and Mr Lewin was representing the Council as he has done in this Appeal. If it is a good point, no doubt the Council would have raised it in that appeal but did not.
52. Mr Croucher then indicated that the NPPF test is whether it is of exceptional biodiversity value. That is a partial reading of the definition which requires a veteran tree to be of “*exceptional biodiversity, cultural or heritage value*” “*because of its age, size and condition*” (emphasis added). Age, size, and condition taken together are therefore the key elements of the definition.
53. Mr Croucher’s suggestion, that the NPPF definition is not helpful because it does not tell one what age or size or condition a tree to be in is hopeless. Those are all matters of judgment and areas around which there is a wealth of best practice analysis from qualified arboriculturists as Mr Pratt explained.
54. Lastly, on the evidence there is no reason to believe the two oaks were in fact veteran trees. As Mr Pratt explains in Section 3 of [CD5.7] and [CD11.3] and during the RT, when the trees’ age, size and condition are assessed, they fall short of any indication that they were veteran. For the avoidance of doubt the two trees do not meet the definition of the BNG definition either and his evidence as the only arboriculturalist has not been challenged by the Council. Indeed, as Mr Croucher helpfully confirmed, the Council case is premised on the Appellant’s treatment of the trees as being veteran for the purposes of the BNG baseline. But, as submitted above and explained by Mr Pratt, they were assumed to be veteran to ensure robustness of the BNG baseline. Accordingly, notwithstanding the time spent on this point, it, in fact, goes nowhere.

De-culverting

55. The proposed development is already providing a significant ecological benefit by removing the present encroachment onto the watercourses and increasing permeability within the site the Site. Further, the Appellant can already demonstrate more than 10% BNG on site without deculverting the Hatchgate Ditches.
56. For the reasons outlined during the RT, the Appellant is not willing to commit to deculverting the entire watercourse and providing an open span structure over the watercourse as the EA would prefer. That would involve an amendment to the scheme, which neither the Appellant nor the Council considers could be achieved within the ***Holborn Studios*** principles. The Appellant has, however, offered a condition for the deculverting those portions of the Hatchgate Ditches within the site *other than* the access. The issue is whether the EA can justify its ‘all or nothing approach’. It is submitted it cannot.
57. First, Ms Sproat was unable to point to any harm arising from this development which needed mitigation. Instead, relying on its unpublished internal policy, the EA’s position seems to be that it wants greater ecological improvements than the development is currently providing (and are considered acceptable by the Council), in the hope that the culverted sections of the Hatchgate Ditches outside of the Site may also be deculverted one day (including the culvert passing under Lodge Road and, presumably, its replacement with an open span structure), no matter that there are no proposals to do so. Nonetheless, Ms Sproat position was that not deculverting the watercourse below the proposed access would render deculverting the rest of the watercourse pointless. This has the following problems:-
- (1) It is wrong. As Ms Major explained in the RT and demonstrated [CD5.10], deculverting the watercourse except under the proposed access

would provide additional betterment to the watercourse and leaving a culverted section may deter some wildlife, but it depends on the actual wildlife in question.

- (2) The additional betterment achieved by deculverting the section of the watercourse below the proposed access would be marginal.
- (3) Deculverting the watercourse under the proposed access would still leave an extensive culvert in place (including under Lodge Road) leaving the EA's aspirations unrealised.

58. Third, the question is whether not deculverting the whole of the Hatchgate Ditches within the Appeal Site will cause ecological harm. Not even the EA contends it will do so. The fact that deculverting the additional section of the watercourse below the proposed access is irrelevant and not a reason to refuse permission.

LNRS

59. This is dealt with on the assumption that the LNRS is adopted prior to the appeal being determined. If it is, the obligation is to “*consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective*” and then “*take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.*” The general biodiversity objective “*is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England*”: s. 40(A1)-(1A) Natural Environment and Rural Communities Act 2006 (“NERCA”). In so doing, regard has to be had to an LNRS (s. 40(2A)(a) NERCA). The PPG indicates it can be used as an evidence base containing information which may be a material consideration (PPG on the Natural Environment para. 047).

60. Therefore, the starting point is having regard to the LNRS, and to take such actions as are appropriate to conserve and enhance biodiversity consistently

with the proper exercise of determining the appeal – i.e. it does not fundamentally change the s. 70(2) TCPA 1990 or 38(6) PCPA 2004 duties.

61. In terms of the impact for this case, as set out in Tyler Grange's Note **[CD13.17]**:-

(1) The proposed development is consistent with the objectives of the LNRS. The TG Note sets out a number of measures to be implemented by the proposed development (para 6.3) which are consistent with the opportunities set out in the LNRS. This is of course only at an outline stage and if further opportunities present themselves during the RM and detailed design stage, they can be taken.

(2) For BNG purposes, the adoption of an LNRS changes the significance multiplier to be added to the BNG metric. As the TG Note sets out (para 7.1), 10% is always achievable on the Site. For clarity, the watercourse unit change numbers do **not** include deculverting – they would be higher if the deculverting condition is imposed.

62. So, if the LNRS is adopted it is another material consideration, but one which does not weigh against the development on the facts of this case. What the Appellant is seeking to achieve is already consistent with the LNRS.

63. Ms Robinson's response of 17 September **[CD15.3]** does not take matters further. As regards the main points, it is submitted that:-

(1) The complaint that the biodiversity strategy of the Appellant was produced prior to the LNRS is of no consequence because the Appellant's ecological enhancements already met the LNRS goals.

(2) While Ms Robinson takes issue with the amount (in real terms) of the improvements being provided and argues that these are inconsistent with parts of the Site being developed, the BNG metric

demonstrates that there is an overall betterment on the Site as a whole.

- (3) The proposition that if a site appears in an LNRS it cannot be developed is wrong. Nowhere in any statute or guidance is that set out.

Issue (7) - The effect on infrastructure and public services etc

64. Any infrastructure issues are addressed by the s. 106. This section simply deals with the remaining areas of dispute.
65. The **Travel Plan (Schedule 5)**. As Mr Jenkins explained (day 4), both a contribution to the Council's strategic package and the bespoke package of measures on offer from the Appellant are necessary and proportionate and meet the CIL tests. The Council's My Journey campaign, on which it heavily relies, is borough wide rather than site specific and so likely falls outside the definition of "travel plan" in the NPPF. Therefore, the Appellant's bespoke travel plan is necessary. To the extent there could be any overlap between the travel plan and the My Journey campaign, the Council can ensure there is none, pursuant to its approval power in Sched 5 para 1.2. In any event, this is an unusual situation where an Appellant is offering more than the Council is seeking, so cannot be a reason for refusing the scheme.
66. As to **the Bus Improvement Strategy (Schedule 9)**, Mr Jenkins clearly explained why a private bus can and should be provided and that is the Appellant's preference. Although some concern was raised by the Council during the s.106 RT about whether a management company would have the necessary expertise, no evidence was offered to that effect and as Mr Jenkins outlined this is something that is commonly done (his own consultancy provides such a service). Moreover, the bus would be provided and operated by a bus company, such as Thames Valley Bus who have already been

approached. In any event, the Council has the option to take the £1.5 million. Either way, this is not a reason for refusal.

67. In relation to the **Highways Works (Schedule 10)**, the Council confirmed during the RT that it had no concern the provisions *would secure* the necessary highway works. Its position is instead that the Lodge Road/Twyford Cycle Route would not be of no benefit. If, as the Appellant submits it will provide a real benefit and help to mitigate the impact of the proposed development, it plainly meets the reg. 122 tests. The Council has now recast its case in Closing to suggest the proposed improvements are “*out of proportion with the limited benefit they will provide for a relatively small cohort of prospective residents*” (para. 46-47). This is an entirely new point and in any event is meritless. It appears based on the current approach of the Council’s team that cycling will be low (again which runs contrary to the Council’s own aspirations). Moreover, the development will bring new homes into the area where the Council is seeking to encourage cycling, the development will facilitate that. No issue on proportionality is taken by the Appellant, and it is clear that this is simply an approach taken by the Council to be unduly and unnecessarily obstructive.
68. Accordingly, there is nothing on this main issue which would warrant a reason for refusing the appeal.

Third Party Matters

69. Third party issues outside of the main issues are addressed primarily in Mr Slatter’s PoE and in the specialist consultants’ evidence. They are not repeated here.

Planning Considerations and Balance

70. Turning to the balance, the benefits and disbenefits are set out in Mr Slatter’s POE [CD5.1]. His analysis should be preferred to that of Mr Croucher who was unclear as what scale he was applying in assessing the benefits/harms. This

is not a question of it being a mathematical exercise but a simple understanding of the relative weight to be given to the benefits and harms to be weighed in the balancing exercise. Not to be clear about the scale being applied shows a surprising lack of rigour and consistency in undertaking that exercise.

71. Moreover, it is notable that the Council's Closing are not at one with the evidence given by its own witness. Para 73 lists all the alleged harms as “*extensive and significant*”, notwithstanding Mr Croucher giving, for example, loss of BMV land only modest weight (Croucher PoE [CD4.1] para 14.9 and XX day 5).

Harms

(i) Conflict with the Spatial Strategy.

72. There is no dispute that there is some conflict with the spatial objectives of the development plan, as Mr Slatter accepts [CD5.1] para 11.9. However, where there is at most a 2.5YHLS, and no plan led solution on the horizon, the breach should attract no more than limited weight (Slatter PoE Table 10.1).
73. Mr Croucher's weighting of “significant” harm (Croucher POE 14.2) is unrealistic. The Council sought to mitigate these issues by suggesting that the spatial strategy has “worked well”, as demonstrated by the Council's recent past over-delivery and the Trowes Lane decision. However, there is no substantive analysis before this inquiry of how much of the Council's housing was delivered in conflict with its local plan, and as Mr Slatter pointed out (EIC) the Council has been subject to many appeals. Moreover, the Council's case focuses on its past performance (Council Closing paras. 6-10) but the entire thrust of national policy is focused on the step change required to meet present and future needs, not the past.

(ii) Conflict with the Spatial Strategy of the emerging local plan

74. As submitted above, there clearly are problems with the emerging local plan, both in terms of its progress and what it is likely to achieve. Any conflict with its spatial elements should be given very limited weight (Slatter POE Table 10).

(iii) Landscape and Character of the Area

75. For the reasons submitted above, the Council's case for harm arising from the impact on the character and appearance of the area, and the design of the development, is exaggerated. Mr Croucher has this at the very top of his semantic scale (see Croucher POE 14.7 and 14.8). Nothing heard at the Inquiry justifies such a weighting. It should, as Mr Slatter says, attract only moderate weight **[CD5.1]** paras 5.55-5.58.

(iv) Loss of BMV

76. Whilst a material consideration to be weighed in the planning balance, the loss of best and most versatile land is limited in this case. As Mr Slatter explains (**[CD5.1]** paras 5.70 and following) the benefits of this isolated piece of BMV land are limited. The entirety of the Site (both 3a and 3b land) has been grazed by horses, ponies and donkeys for many years without differentiating between the two. The grade 3a land has not achieved the land uses and yields expected of that type of land (see **[CD2.1]** Appendix 7 para 4.7). Moreover, there is no likelihood of the Site being used again for agricultural purposes. This has never been a consideration given significant weight - the previous appeal inspector considered it a disbenefit of moderate weight, (**[CD7.1]** para 72). In light, of the increasing national and local pressure for housing, it is submitted that Mr Slatter correctly gives it limited weight.

(v) Failure of the Sequential Test

77. The recent revisions to the PPG have put beyond doubt that that current administration requires a practical, proportionate and sensible approach to be

taken to the sequential test, and its failure. As this must be read alongside the NPPF, the Council's focus on NPPF paras. 174 and 177 (Closing para. 53) goes nowhere.

78. Where the sequential test is failed – as we accept it is here – that does not *automatically* result in there being a ‘strong’ reason for refusal as the Council contends. That would be an unduly formulaic application of the policy, contrary not only to ***Mead***, but many recent appeal decisions concerned with various forms of flooding and the application of the sequential test and the consequences of failing it⁶. Mr Croucher’s suggestion otherwise, that failing the sequential test automatically provides a “strong” reason for refusal is untenable. His attempt to justify his position by distinguishing those appeal decisions was hopeless. Nobody disputes that each appeal decision turns on its facts, but the point put to him in XX (day 5) was whether the absence of a sequential test (when one was required) or failing the sequential test automatically provides a strong reason for refusal; and his answer that it did is inconsistent with those decisions and wrong.
79. It is submitted that whether failing the sequential test provides a strong reason for refusal is dependent on what the consequences of failing the test are. In this case:-
- (1) The Council accepted that they have no concerns that the proposed development would be unsafe for its lifetime or increase flooding offsite (Croucher XX, day 5). Indeed, Mr Walton’s unchallenged evidence (accepted by the EA) is that the Appeal Site will in fact lead to a benefit in reducing flood risk overall [CD9.28] para 7.4.1).
 - (2) Mr Croucher’s suggestion of real-world harms (emphasised in the Council’s Closing para. 61) appeared for the first time in his oral evidence

⁶ Yatton [CD9.22], Faversham [CD9.23], Feneton [CD9.24] and Lidney [CD5.14] Appendix 1.

and the XX of Mr Slatter. This does not arise from the EA's withdrawal of its objection and frankly if there was any merit in the points they could, and should, have been made in his written evidence and put to Mr Walton. They were not. This is perhaps unsurprising, as on any analysis, they were entirely untenable, on the facts and as a matter of policy.

- a. On the facts, Mr Croucher emphasised, for example, concerns that the access road could be underwater – but the entire purpose of [CD5.15] is to show that that need not be the case⁷. The same applies to Mr Lewin's suggestion (XX of Mr Slatter) that people might not be able to leave their homes. Mr Croucher also suggested that one could not leave the development via the emergency exit on to Tape Lane (if required) but again, as set out by Mr Slatter (EIC and [CD9.28] Appendix F), that is wrong. If there was any merit in this, the Council should have put the point to Mr Walton when it was given the chance to but declined to ask any questions of him.
- b. As a matter of policy, the amendments to the PPG make clear that the concern of the sequential test is whether occupiers and users would remain safe. That is clear from the amendment to PPG paragraph 026.⁸ It is not concerned with, for example, residents' insurance premiums, or the amenity value of a garden, contrary to the Council's list in Closing para. 61.

⁷ The Council's suggestion in Closing (para. 62) that this is a "*fallible management and maintenance system*" is entirely new. The Council had its opportunity to XX Mr Walton, it failed to do so. It cannot fairly suggest for the very first time in closings that there could be issues with its efficacy. That element of its case should be disregarded.

⁸ "In applying paragraph 175 a proportionate approach should be taken. 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 (therefore addressing the risks identified e.g. by Environment Agency flood risk mapping), without increasing flood risk elsewhere, then the sequential test need not be applied."

- (3) While Mr Lewin sought to XX Mr Slatter on the particular points made in the *Mead* case ([CD9.21] at para 152⁹) there can be no realistic suggestion that the Court was intending to be exclusive in the various factors to take into account in weighing up any failure of the sequential test. While Mr Lewin suggested that there is no strategic benefit here (by reference to [CD9.24] para 84) that is wrong – as Mr Slatter said in XX, delivering benefits in compliance with the LCWIP and the HLS contribution would be of more than local benefit.
- (4) The Council has undertaken no separate analysis of the number of reasonably available alternative sites, as Mr Croucher confirmed in XX (day 5). Although it took the Council 5 weeks to criticise the Appellant’s analysis:-
- a. The Council’s criticism that the ST excluded the HELAA sites goes nowhere. The PPG makes clear that to be reasonably available, sites must have a reasonable prospect of being developed at the same time as the proposal. The HELAA looks at sites that may be available over the whole plan period. It is not a comparable exercise.
 - b. The Council’s reliance on the 35/37 sites, as opposed to the 17, is misplaced for the reasons explained by Mr Slatter:
 - i. The Appellant has looked at sites that could come forward in the same timescale as the development, as now required by the PPG changes to para. 028. That is not, as suggested by Mr Lewin in XX, inconsistent with the PPG para. 027. As Mr Slatter explained, that indicates that whether there is a 5YHLS is not relevant for deciding whether to apply the sequential test, but it might well be relevant *within* the overall balance.

⁹ It may be that the Council has changed which *Mead* judgment is online at CD9.21. Those who downloaded the documents some time ago, including (it appears) Mr Lewin and Mr Grant, have the High Court judgment at CD9.21. Currently online, however, is the Court of Appeal judgment.

- ii. Moreover, *and in any event*, even if one were to look at the 37 sites, they do not address the 5YHLS problem that the Council has. To address that, it would have to build on more than the 17 sites identified.
- iii. Mr Croucher's suggestion that other sites might be able to avoid flood risk where this Site could not because its parameters being fixed ([CD4.5] para 2.12) is mistaken. As Mr Slatter explained in XX, to assess how all possible alternative sites might be developed in terms of their layout etc would be a very onerous exercise. If not impossible, it would certainly be inconsistent with the PPG's repeated guidance that the Sequential Test should be applied proportionately.
- iv. Mr Croucher agreed that passing or failing the Sequential Test is binary. You either pass or fail it and there is no basis for greater weight to be given to failing the test in a significant way as the Council asserts in this case.

80. In the present case, it is accepted by all that the proposed development can be made safe for its lifetime and will not increase the risk of flooding off site. Indeed, the unchallenged evidence is that it will improve flooding. The proposed development also delivers significant infrastructure improvements in addition to help meeting the Council's 5YHLS. There is no real world harm and it is submitted that failing the Sequential Test should only be given only moderate weight as set out by Mr Slatter ([CD5.1] Table 10.1).

Benefits

81. Against these limited harms, there are significant benefits. There is no dispute that the provision of much needed affordable housing, and housing itself, gains weight at the very top of the range: Very significant for the former, significant for the latter according to Mr Slatter. Even Mr Croucher is constrained to give

them “substantial” weight (Croucher PoE para 14.6) which is at the top of his scale (XX day 5). Given there is no dispute on the weight to be given to these benefits, Mr Lewin’s line of attack in XX of Mr Slatter (day 5), relating to how many would come forward within five years specifically, does not help the Council.

82. The delivery of cycle infrastructure to Twyford is also a benefit, of significant weight for the reasons already covered above. Insofar as Mr Croucher relied on Ms Blizzard’s evidence, his judgment is flawed for the reasons already covered at length. The suggestion by Mr Croucher that a scheme which aligns with the LCWIP, delivers a tangible sustainable transport benefit and is supported by the Council’s Highway Officers should only be given “negligible” weight (XX day 5) is untenable.
83. Improvements to pedestrian infrastructure throughout Hurst are given moderate weight, as explained by Mr Slatter. Mr Croucher’s “limited” weight (XX day 5) again is not a credible position.
84. Economic benefits should receive moderate weight as set out by Mr Slatter. An additional £200,000-300,000 spend in the local area, £2m overall ([CD5.1] Appendices PDF53), is not insignificant and should attract more than the limited weight suggested by Mr Croucher (para 14.5).
85. The delivery of secured, publicly accessible open space is a benefit which again should attract moderate weight, as set out by Mr Slatter ([CD5.1] Table 10.1). Mr Croucher relies on the previous appeal decision, but what is proposed now is fundamentally different to what the previous appeal inspector was considering. The Common is intended and likely to be a real community asset.
86. The BNG benefits are agreed to attract limited weight (Slatter POE Table 10.1 and Croucher XX).

87. The bus improvement strategy is also agreed to attract limited weight, as Mr Croucher confirmed in XX.

Overall balance

88. Neither the purported loss of veteran trees nor failing the Sequential Test provide strong reasons for refusing the appeal. Consequently, the question is whether the harms significantly and demonstrably outweigh the benefits of the proposed development having particular regard to those policies referred to in para. 11d)ii) NPPF to disapply the tilted balance and presumption in favour of the development. It is submitted they do not.

Conclusion

89. The proposed development is substantially different from the scheme refused permission on appeal in 2023. The careful redesign of the present scheme respects the form and how the village has grown organically over the years. A horse/donkey paddock will change to provide much needed housing together with a proposed common which will be of great community value. There will be environmental benefits and a substantial package of pedestrian/cycle and sustainable travel measures to enhance the sustainability of the Site and the village as a whole. It will deliver 99 homes (up to 50% affordable), in an authority that cannot demonstrate a 5 year housing land supply, and has no plan-led solution to deliver one. There is no strong reason to refuse the appeal nor do the limited harms substantially and demonstrably outweigh the significant benefits the proposed development will deliver. The Appellant submits that the appeal should be allowed.

Dated 26 September 2025

John Litton KC

Nick Grant

Landmark Chambers