

**IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF
LAND NORTH OF READING ROAD,
ARBORFIELD.**

**CLOSING SUBMISSIONS
ON BEHALF OF
THE APPELLANTS**

Introduction:

1. These Closing Submissions are made on behalf of the Appellants in respect of a refusal by Wokingham Borough Council of an application for outline planning permission for up to 111 dwellings (including 40% affordable houses), public open space and associated infrastructure [‘the scheme’] on land north of Reading Road, Arborfield [‘the site’]¹. The site sits in the context of the existing residential development of Arborfield on three sides, with its eastern boundary fronting fields. It is, consequently, well contained in visual and landscape character terms. Its use-class is agricultural, although there are structures and hard surfacing associated with former activities. It is not subject to any heritage, environmental or landscape designations and is agreed not to form a ‘valued landscape’ for the purposes of para. 187(a) of the NPPF².

¹ Planning SoCG [CD05.02]

² Landscape SoCG [CD05.04]

2. Arborfield is a settlement which does not have a ‘development limit’ in the adopted development plan. However, the site is well connected by sustainable transport modes to a range of services and facilities, with accessibility improvements proposed. Moreover, the adopted Core Strategy (2010)³ and the Managing Development Delivery DPD (2014)⁴ are acknowledged no longer to plan for development needs based on any NPPF up-to-date assessment; further, the Council recognises that it cannot demonstrate the required 5-year housing land supply. The adopted spatial strategy is, as consequence, out of date and failing to deliver the development needs of the area, including much needed affordable housing. As such (and as acknowledged in the Council’s Officers’ Report⁵) paragraph 11(d)(ii) of the NPPF and the ‘tilted balance’ is engaged in favour of the grant of this scheme.
3. None-the-less, the Council resolved to refuse permission under delegated powers for ten Reasons for Refusal⁶. These may be summarised as: (1) principle; (2) scale; (3) landscape; (4) accessibility; (5) agricultural land quality; (6) flood risk on a given watercourse; (7) SPA; and (8), (9) and (10) concerning the absence of a s.106 obligation.
4. Through its Statement of Case⁷, the Council recognised that Reasons for Refusal (8), (9) and (10) could be overcome with a suitably worded s.106 obligation. In addition, Reason (6) was now put in the context of an updated FRA being required due to altered EA mapping since the determination, and an EA objection to a ‘new culvert’ at the access point.
5. However, in its Statement of Case, the Council added four, as it termed them, ‘Additional Issues’: (1) an allegation of prejudice to the delivery of the proposed Loddon Valley Garden Village (on highways grounds); (2) an objection to the access and visibility splays; (3) an allegation of harm to veteran or ancient trees [thereby disapplying NPPF para. 11(d)(ii) by reference to Footnote 7]; and (4) an allegation of

³ CD06.01

⁴ CD06.02

⁵ CD03.02

⁶ CD03.01

⁷ CD04.03

harm to protected species (bats) along Reading Road and the need for a revised BNG calculation.

6. Since that time, it has been confirmed that the Council no longer opposes the scheme by reference to Reasons for Refusal 8, 9 or 10 (although there is dispute on some of the contributions sought⁸) nor 'Additional Issues' 2 (visibility splays) or 4 (bats and BNG). Additionally, the EA's 'culvert' issue that had become associated with Reason for Refusal 6 was considered resolved by the imposition of a suitable condition.

Main Issues:

7. In the light of the above, the Inspector, at start of the inquiry, identified ten 'Main Issues' as follows:

- (1) Whether the proposal amounts to sustainable development, having regard to its location and opportunities for sustainable travel⁹;
- (2) The effect of the proposal on the character and appearance of the area;
- (3) Whether the quantum and scale of development is appropriate;
- (4) Whether the proposal is safe from flooding for the lifetime of the development; whether or not it would increase flooding elsewhere, and whether it was acceptable in the absence of a Sequential Test¹⁰;
- (5) Whether potential impacts on the Thames Basin Heath SPA can be adequately mitigated;
- (6) The impact of the proposal on ancient or veteran trees;
- (7) Whether the proposal would prejudice the delivery of the Loddon Valley Garden Village by reason of highways matters;
- (8) Whether the loss of Best and Most Versatile agricultural land is acceptable;
- (9) The position on Housing Land Supply;
- (10) The over-all planning balance.

⁸ As discussed in the s.106 RTS, Day 5

⁹ The Council wished this also to embrace compliance with locational policies in the adopted development plan [JP, Day 1]

¹⁰ The Council confirmed that its flooding concern solely related to the absence of a Sequential Test [JP, Day 1]

8. Following the hearing of the oral highways evidence¹¹, the Council has confirmed that it no longer pursues an objection based on alleged prejudice to the delivery of the Loddon Valley Garden Village¹². As such, the Council's 'Additional Issue 1' and the Inspector's 'Main Issue 7' falls away.
9. These submissions follow the remaining Main Issues, in the order presented.

Main Issue 1: Whether the proposal amounts to sustainable development, having regard to its location and opportunities for sustainable travel:

10. On the question accessibility by sustainable transport modes, the 'Sustainable Transport Round Table Session'¹³ confirmed that the wide range of existing services and facilities available to future residents of the proposals is not disputed, nor are the distances to them¹⁴.
11. There are existing pedestrian facilities along Reading Road giving good access to Arborfield Cross, a route already traffic-calmed. These facilities are to be improved, with localised widening of the footway and new lighting, benefitting all users¹⁵.
12. In addition, the site is immediately adjacent to a good bus service with bus stops located at the site's boundary with Reading Road. The bus service provides ready access to Arborfield Cross and Wokingham in one direction and Shinfield and Reading in the other. The bus stops themselves are to be improved, including 'real time information'¹⁶. The proposals provide a financial contribution for supporting the continuation of the bus service, which would have wider benefits if these services were under threat in the future¹⁷.

¹¹ Lewis and Stevens, Day 3

¹² JP, Day 4

¹³ Day 3

¹⁴ See Highways SoCG Table 5.1

¹⁵ See highways drwgs in the pack ID13

¹⁶ See ID13 and also contributions package set out in ID12

¹⁷ As suggested might be the case by Mr Lewis for the Council [Sust Tpt RTS, Day 3] – for the contributions, see ID12

13. Consequently, it may safely be concluded that, while the site may be ‘countryside’ in policy terms, it is accessibly located for opportunities for sustainable travel as things stand today. It is notable, in this regard, that while Ms Carter attributed a ‘moderate negative’ weight to sustainability of location¹⁸, she also attributed a ‘moderate positive’ weight to the proposed accessibility improvements, benefitting, as they do, existing as well as proposed residents¹⁹.
14. Thus, the Council’s own planning evidence does not conclude, on balance, that the site is unsustainably located, having regard to the test in NPPF para 110²⁰.
15. Further, looking to the future, although not *relied* upon by the Appellant for assessing the site’s sustainability²¹, with the arrival of the Council-promoted Loddon Valley Garden Village, the site will be in easy walking distance of its retail, education and other service provision, which lie to the immediate north of Church Lane, and may readily be accessed via a foot and cycle route from the appeal site²². The Council does not assert that the site would be unsustainably located with LVGV in place.
16. As such, now, and in the future, the site is ‘sustainable development having regard to its location and opportunities for sustainable travel’ and Main Issue 1 may be resolved in favour of the development.
17. It should be added that it is under (or separately to²³) this ‘Main Issue’, that the Council seeks to maintain its Reason for Refusal 1 – and in-principle objection to development outside the ‘settlement limits’ in a spatial strategy. However, that policy objection does not withstand scrutiny.
18. First, as Ms Carter sought to characterise the point²⁴, the policy objection here really amounts to a re-statement of the Council’s ‘character and appearance’ objection [Main

¹⁸ Carter proof 8.40 (NB her text conflated that with prejudice to LVGV, which she removed during xx [Carter xx CBKC, Day 4])

¹⁹ Carter proof 8.49

²⁰ ‘Significant development should be focussed on locations which are *or can be made* sustainable through limiting the need to travel and offering a genuine choice of transport modes.’ [emph added]

²¹ Contrary to an erroneous but repeated assertion by the Council

²² See the LVGV illustrative masterplan CD12.16 and the Church Lane s.278 works in the clip of highways drawings, ID13.

²³ JP to Miss Taylor, Day 5

²⁴ Carter proof 8.37

Issue 2] in harming the rural character of the area by developing rural countryside outside the settlement boundaries. Alternatively, it is linked to Main Issue 1 by reference to alleged locational unsustainability.

19. Ms Carter sought, orally²⁵, to establish a ‘spatial’ aspect to that character and appearance objection by reference to policy CS11, contrary to the Council’s Statement of Case²⁶, but was left with asserting that this was because of an alleged change in character to Reading Road. Not only is this unfounded²⁷ given the extremely minor works proposed to that road, it is of course by its nature a ‘character and appearance’ point.

20. The truth of the matter is that the spatial policies said to be breached are ‘out of date’, both by reference to *Hopkins Homes*²⁸ (being predicated on out-of-date [2010] assessments of development need) and on an agreed failure to be able to demonstrate a 5-year housing land supply²⁹.

21. While limited weight may still be given to breach of the out-of-date policy boundaries, such a policy objection cannot withstand the tilted balance in para 11(d)(ii) of the NPPF. In any event, the presence or absence of a line on a plan denoting a ‘settlement limit’ does not define whether or not a location is, in the real world, a sustainable location for with opportunities for sustainable travel, as sought by NPPF para 110.

22. As already submitted, this Main Issue, respectfully, falls in favour of the grant of permission.

Main Issue 2: The effect of the proposal on the character and appearance of the area:

23. The Council’s landscape objection proceeds on very shaky evidential ground indeed.

²⁵ Carter xx CBKC, Day 4

²⁶ CD04.03 at para...

²⁷ See Brockhurst xic and xx, Day 1

²⁸ CD09.03, see Lord Carnwath at para 63

²⁹ See HLS SoCG [CD05.03]

24. The site is agreed not to form part of a ‘valued landscape’ within the meaning of para 187(a) of the NPPF. It, therefore, falls ‘off the bottom of the scale’ of the hierarchy in para 188 – a point Ms Carter, as the planning witness seemed to struggle to comprehend³⁰, although it is a factor which goes directly to weight.
25. Mrs Brockhurst was the only witness who had undertaken a GLVIA-compliant assessment of landscape character and visual effects³¹, building on the submitted LVA³² which had identified the relevant Receptors and established the ‘baseline’ conditions. The methodology used by the Appellants has not been challenged³³.
26. Mrs Brockhurst found significant impact only in respect of the *on-site* loss of pasture, as a landscape feature, and the impact on private residential of the immediately adjacent properties on the north side of Reading Road³⁴. In terms of ‘settlement’ character, Mrs Brockhurst found that the scheme would not be materially uncharacteristic with the receiving landscape³⁵.
27. By contrast, Miss Crafer, the ‘Tree and Landscape Officer’ who wrote the consultation response³⁶, did not purport to undertake a GLVIA-complaint assessment of landscape impact. The furthest she got was to make an observation on the ‘value’ of the *site* itself – a finding at ‘medium to high’ which flies in the face of the LVA methodology Table 2.2, which would place such value in the realm of local or national designations³⁷. She made no finding in respect of magnitude or, hence, impact³⁸. Thus, although the case officer (not a landscape architect) alleged³⁹ a ‘significant’ effect on ‘*the landscape*’, Mr Hannington accepted that that was a conclusion unsupported by any GLVIA-compliant evidential assessment⁴⁰.

³⁰ Carter xx CBKC, Day 4

³¹ Brockhurst proof

³² CD01.12 series

³³ Hannington xx CBKC, Day 1

³⁴ NB, *not* amounting to an amenity objection.

³⁵ Brockhurst proof para 5.14

³⁶ CD02.22

³⁷ See CD01.12.01

³⁸ Hannington xx CBKC, Day 1

³⁹ CD03.02

⁴⁰ Hannington xx CBKC, Day 1

28. Mr Hannington, himself, then compounded the Council's evidential failure, neither conducting an assessment of baseline, magnitude or significance of effects in his Proof nor in his Landscape Rebuttal. The inquiry was left with vague and emotive assertions of 'remoteness', 'tranquillity', a welcomed 're-wilding' and the presence of 'brooding skies'. Even Mr Hannington had to explain that these attributes (of the *site*, it will be noted) were 'nuanced', stemming from 'a special sensitivity' of the absent Miss Crafer⁴¹.
29. None of this is substitute for proper expert landscape evidence. Development of a greenfield site is bound to carry some site-level landscape harm; what is needed is an assessment of the impact of the development on the landscape and visual receptors in the surrounding area. The acknowledged (and testable) vehicle for doing this is GLVIA⁴², augmented by TGN02/21 on valuing non-designated landscapes⁴³. The Council has singularly failed to present this evidence.
30. The truth of the position is as set out in Mrs Brockhurst's evidence: this is a well contained site in a settled landscape with limited on-site landscape impact and localised visual impact, in the context of it being part of an 'ordinary' 'para 187(b)' landscape, not a 'valued' 'para 187(a)' landscape. While the limited and localised landscape impact may be accorded a negative weight in the planning balance, it is by no means prohibitive to the grant of planning permission.
31. Ms Carter's characterisation of weight as 'substantial' negative⁴⁴ (only one rung down from 'very substantial'⁴⁵) is wholly misplaced for a limited and localised impact on this para 187(b) landscape. Miss Taylor accords it a more realistic 'moderate' adverse weight⁴⁶.

Main Issue 3: Whether the quantum and scale of development is appropriate:

⁴¹ Hannington xx CBKC, Day 1

⁴² CD18.01

⁴³ CD18.20

⁴⁴ Carter proof 8.38

⁴⁵ Where, one asks, would that leave an equivalent degree of impact located in a National Park or a National Landscape, or even in a 'valued landscape')?

⁴⁶ Taylor proof 8.18

32. As may be seen from the summary in Ms Carter's proof⁴⁷, the Council's case on quantum is really just a different way of putting its landscape and/or accessibility points. When she tried to articulate how and why it might be a separate objection she simply returned to how it was uncharacteristic of the surrounding built form⁴⁸. That is a 'character and appearance' point, the surrounding built form being part of the landscape character and the question of 'congruence' with that existing built form being a question of how closely the proposal follows its character.
33. Thus, this is not a separate 'head' of objection with its own weighting. In terms of the development proposed (setting aside landscape or locational objections), the site can readily accommodate up to 111 dwellings. There is a very significant excess of public open space against requirements⁴⁹ and the density of the residential area is neither over- nor under-played.
34. The DAS amply demonstrates how, at reserved matters stage, good design and placemaking can be achieved in line with Chapter 12 of the NPPF. To undershoot appropriate density would be to fail to make efficient use of land in line with the NPPF's direction and para 11(d)(ii) in particular, adding to the pressure on more sensitive areas elsewhere.
35. It is respectfully submitted that Main Issue 3 resolves itself in favour of the grant of permission.

Main Issue 4: Whether the proposal is safe from flooding for the lifetime of the development; whether or not it would increase flooding elsewhere, and whether it was acceptable in the absence of a Sequential Test:

36. The Council's 'flooding' objection has been something of a chameleon in this inquiry.

⁴⁷ Carter proof 3.39

⁴⁸ Carter xx CBKC, Day 4

⁴⁹ See Indicative Open Space Typologies plan, CD26.07

37. It started life as Reason for Refusal 6, a concern from the case officer⁵⁰ about flood risk to the adjacent watercourse and the need for an FRA – despite the absence of objection on those grounds from either the LLFA or the EA.
38. It gathered a ‘foul water’ aspect from an objection from the EA in respect of capacity of the nearby WWTW; an allegation which was flatly contradicted by Southern Water, the sewerage undertaker in question. The Council no longer pursue a foul drainage capacity objection⁵¹.
39. The Council’s ‘flooding’ issue then embraced two further contributions from the EA: that the flood maps had been updated and a new FRA would be needed to see if a Sequential Test was triggered; and that there was an in-principle policy objection to a new culvert of the ditch [‘main river’] at the site entrance.
40. The ‘culvert issue’ has since been resolved, subject to conditions, it having been demonstrated to the satisfaction of the EA that there is an existing 300mm culvert at the location of the access point, and the proposal does *not* introduce culverting there⁵².
41. In line with the new flood maps, the FRA was updated⁵³ and submitted to the Council and EA. It concluded that there was no development proposed in Flood Zones 2 and 3 and so no Sequential Test was required.
42. It would have been thought that that would have satisfied the Council, as no development is proposed in the Flood Zones 2 and 3, but, no, the Council, through Ms Carter’s proof, took a ‘procedural’ objection, namely that because this is an outline scheme with no fixed parameters plan, the Council could not be certain that development at reserved matters stage would be outside the Flood Zones 2 and 3.
43. The unrealism of this should strike the observer at once: were that to occur, the Council would be at perfect liberty to refuse the reserved matters and/or demand a Sequential Test. However, the Appellants, to overcome this ‘procedural’ objection indicated

⁵⁰ CD03.01

⁵¹ For discussion of the appropriateness of the proposed EA condition, see the Conditions RTS, Day 5

⁵² Again, for discussion of the wording of the EA proposed conditions, see the Conditions RTS, Day 5

⁵³ CD17.06

through Miss Taylor's Rebuttal that they were content for a Land Use Parameters Plan to be bound in by condition. This led to the production of CD23.06 which makes it clear that, at reserved matters stage, there would be no development in Flood Zones 2 and 3.

44. Again, one might have thought that would satisfy the Council, but, again, no, the Council continued to allege that a Sequential Test would be required as the 'access' between the development parcel and the open space to the west along Church Lane would cross the 'main river' (ditch) and that 'access' is included in the description of development in the NPPF⁵⁴.
45. Mr Seymour has explained that this non-vehicular internal access route is envisaged to cross the ditch as a free-span bridge with no footings falling in Flood Zones 2 or 3. As such, it does not trigger the requirement of a Sequential Test⁵⁵. Ms Carter seemed unable to grasp this, saying 'it is not before me', despite this being a reserved matter issue and being offered a condition detailing the design and construction of the bridge so as to avoid Flood Zones 2 and 3⁵⁶.
46. But matters do not stop there. The Council, unable to otherwise make good its demand for a Sequential Test by reference to fluvial or surface water flooding, mounted a case, first articulated in any detail in Mr Parker's Opening Submissions⁵⁷ that there would be a risk of *groundwater* flooding. Remarkably, this point was pursued in detail by Ms Carter orally, despite her accepting that she was not and did not purport to be a drainage expert, and accepting (as it had indicated) that the Council did not lead drainage evidence⁵⁸.
47. The groundwater flooding case was founded on the Council's reading of monitoring results provided, during the formulation of evidence, at its request; it formed no part of the Council's case at refusal or even Statement of Case stage. It opportunistically grasps – and misuses – information to create what amounts to a new objection; it is a case mounted in the context of there remaining no objection by the LLFA; and, on proper

⁵⁴ NB *this* 'access' is an internal matter for reserved matters, *not* the site access referred to by Ms Carter in her proof at 8.42, which is *not* in Flood Zones 2 and 3

⁵⁵ Seymour xx JP, Day 2

⁵⁶ Carter xx CBKC, Day 4

⁵⁷ ID2

⁵⁸ Carter xx CBKC, Day 4

analysis, it amounts to a kite, flown – it seems - to keep alive an argument that NPPF para 11(d)(i) and Footnote 7 is in play.

48. Mr Seymour, the only drainage expert to give evidence to the inquiry, explained⁵⁹ the purpose of the groundwater monitoring, namely to inform detailed design of matters such as foundations and drainage systems. It was not for the purpose of calling into question the findings of the SFRA, and it is not fit for use for that purpose. That evidence is, in expert terms, uncontradicted.
49. As such, the Council's attempt to raise groundwater as triggering a requirement for a Sequential Test is evidentially unfounded. It would be scientifically erroneous, ie irrational, to use the provided information to this end. But the attempt by the Council to mount this case also flies in the face of the unequivocal terms of national policy in NPPF para 174 which categorically states that it is the SFRA which is the basis of undertaking the Sequential Test.
50. A moment's reflection shows the wisdom, indeed the necessity, of this being so: the Sequential Test is a strategic exercise to direct development to places least at risk of flooding; all sites must, therefore, be assessed on a common evidence base, or else the Sequential Test either fails its purpose (it might be directing development to places in fact at equal or greater risk of flooding) or impossible to undertake (as requiring site investigations of each and every candidate alternative site). Hence, the NPPF's instance on the use of the SFRA. The Council's attempt to use site-specific information, even if fit for purpose (which this is not), is, therefore, flawed as a matter of national policy.
51. The irony is that if this is a kite to keep a 'Footnote 7' argument alive, it fails in any event. As the Faversham appeal⁶⁰ makes clear, in the absence of a 'real world' flooding risk, a failure to undertake a Sequential Test is not a 'strong reason' to resist development under para 11(d)(i). Here, there is no 'real world' consequence – the issues identified by (the non-expert) Ms Carter (eg foundation design and drainage details) are actually the very issues about which, (the expert) Mr Seymour explained, the

⁵⁹ Seymour xx and rx, Day 2

⁶⁰ ID17 at para's 90 and 101

groundwater monitoring was intended to inform the design of the proposals, at reserved matters stage.

52. Similarly, even if a Sequential Test were required (which very manifestly it is not), its absence is not fatal to the grant of permission⁶¹.

53. In answer to the terms of the Main Issue: the development is safe from flooding for its lifetime; it does not increase flood risk elsewhere; and it is acceptable in the absence of a Sequential Test, even if one were needed, which it most emphatically is not.

54. Main Issue 4 resolves itself in favour of the grant of planning permission.

Main Issue 5: Whether potential impacts on the Thames Basin Heath SPA can be adequately mitigated:

55. It is agreed that the site lies within the Zone of Influence of the Thames Basin Heaths SPA and that, in combination, harm to the qualifying interests by reference to recreational disturbance cannot be excluded without adequate mitigation. As such, in considering the grant of planning permission, the Inspector needs to undertake an ‘appropriate assessment’ under Reg 63 of the Habitats Regulations.

56. In this location, the established strategy for mitigating recreational impact, as agreed with Natural England, is monitoring payments in respect of the SPA, itself, together with the provision of Suitable Alternative Natural Greenspace [‘SANG’]. Where a development does not provide its own SANG⁶², it may contribute financially to a suitable SANG with sufficient capacity within the relevant catchment area⁶³. These third party SANGs can be in public or private ownership. In this location there are two principal SANG providers: the Council and the University of Reading, across a number

⁶¹ See Gladman in the High Court, ID14

⁶² As, for example did the Berkeley’s scheme on the Blagrove Lane site [CD10.05.01]

⁶³ See eg Limmerhill [ID15] and North of School Road, Arborfield Cross [CD10.01.01]

of existing and planned SANG sites. The agreed SANG capacity required for mitigating the full 111 dwellings sought in the application is 2.13ha⁶⁴.

57. This is an outline application and the final SANG requirement (and provision) will be established (and secured) at reserved matters stage. This being what is called a ‘multi-stage consent’, there will be an ‘appropriate assessment’ to be undertaken by the Council in approving the reserved matters/discharge of conditions⁶⁵.

58. Although a draft unilateral undertaking⁶⁶ has been presented as a matter of caution, both parties are agreed that the securing of SANG both can and (as a matter of national policy) should be secured by an appropriately worded Grampian condition⁶⁷. The condition proffered comes from a decision in Wokingham⁶⁸.

59. Cognisance is taken of the ‘advice note’ from Natural England in terms of how it likes to see Grampian conditions framed, but there is no legal necessity that a specific SANG be tied into the condition. This is, for practical reasons, particularly undesirable for an outline application, where SANG provision may come from one or more of a number of SANGs which are available at the time of the discharge of that condition.

60. The provision of third party SANG is a market place with a number of providers and sites and commercial decisions will be made at the time of securing the necessary SANG provision and allowing the later appropriate assessment to be favourably concluded. What the Inspector needs at *this* stage, in order to undertake a favourable appropriate assessment is evidence of the availability of suitable SANG provision with sufficient certainty of its use today; future SANG availability may in due course be utilised.

61. The SANG SoCG⁶⁹ summarises the current state of play in the various SANGs of relevance.

⁶⁴ Confirmed Mr Fisher, SANG RTS, Day 5

⁶⁵ See *CG Fry* litigation, including the Supreme Court [citation]

⁶⁶ ID19

⁶⁷ Confirmed by Mr Fisher at the SANG RTS, Day 5

⁶⁸ [ref...]

⁶⁹ ID21

62. It remains the Appellant's case that the Council is being unreasonable in withholding the 50 unit or so capacity at the existing Rooks Nest (having delivered more than Rooks Nest was intended to support, there is no reason to withhold the surplus from the appeal scheme if otherwise found acceptable⁷⁰).
63. Similarly, once Rooks Nest Extension has its permission (expected by the Council to be this summer, in support of the LPU HRA), there is ample capacity over and above proposed allocations, expressly to accommodate 'windfall' development sites, of which the appeal site (if approved) would be one. It would, therefore, be available to the appeal development by the time of reserved matters/discharge of conditions. Draft policy NE3 is subject to scrutiny in the LPU examination and, on its face, unduly restrictive, but even it allows flexibility in practice.
64. However, even setting these two Council-owned SANGs to one site, the University of Reading has a number of existing and pipe-line SANGs that are or will become available. Langley Mead Extension has capacity for the proposed development; it is expected to come on stream shortly and has already been relied upon by the Council to mitigate developments it has recently resolved to approve. The Ridge SANG is both available and has capacity for the development.
65. At Limmerhill⁷¹, a Grampian condition and a letter from Berkeley Homes⁷² in respect of the availability of SANG capacity at Blagrove Lane was agreed by the parties and NE to provide sufficient certainty to pass the European tests in the appropriate assessment. In the appeal case, the Appellant has gone a significant stage further in obtaining Heads of Terms with the University of Reading, confirming availability of SANG capacity, including at The Ridge. Although commercial negotiations must follow (as at Limmerhill), this is in the nature of private SANG provision, and the Grampian condition, in the meantime acts as an absolute prevention of the pathway of harm (recreation) being opened up in respect of the SPA.
66. As such, SANG provision would be secured by the proposed Grampian condition and the Inspector has the evidential basis she needs for concluding a favourable 'appropriate

⁷⁰ See Rectory Farm, Dacorum [CD11.01]

⁷¹ ID15

⁷² ID27

assessment’ so as to be able to exclude harm to the SPA. Para 195 of the NPPF is satisfied and Footnote 7 is not engaged by the SANG issue.

Main Issue 6: The impact of the proposal on ancient or veteran trees:

67. The third potential ‘Footnote 7’ issue raised by the Council is the alleged impact on veteran trees⁷³. It is, with respect, as ill-founded as the other two.

68. First, it should be noted that there is no ‘tree’ reason for refusal. Miss Crafer, the Tree and Landscape Officer, considered the impact on veteran trees could be adequately covered by a condition⁷⁴. It is an outline application after all, with an abundance of land proposed to remain undeveloped. Avoiding impacts on veteran trees could (indeed should) properly be a matter for the reserved matters stage. Similarly, the case officer did not consider the potential impact on veteran trees warranted either a reason for refusal nor amounted to a para 11(d)(i)/Footnote 7 point that disapplied para 11(d)(ii) and the ‘tilted balance’⁷⁵.

69. It was with the arrival of Mr Hannington that that all changed and the Council’s Statement of Case⁷⁶ alleged as ‘Additional Issue 3’ impact on veteran trees, the engagement of Footnote 7 and a consequent disapplication of para 11(d)(ii).

70. Mr Wilkins’ Appx 1 Table 1 sets out the trees in issue, and the plan at Appx 2 maps them. Tree T85 is not in Table 1 as the parties are agreed that it is not a veteran tree and so does not fall to be considered under this issue⁷⁷. Although trees T87 and T3 are asserted by Mr Hannington as veteran trees, he has provided no evidence to support that. Table 1 records that the independent Ancient Tree Inventory has them down as ‘notable’; Mr Wilkins terms them ‘mature’. However, in order to narrow areas of

⁷³ There is a debate as to whether T72 is a veteran or an ancient tree, but it is academic for present purposes and both have the same policy status and both are accorded the same RPAs and Buffer Zones by the published guidance

⁷⁴ CD02.22

⁷⁵ CD03.02

⁷⁶ CD04.03

⁷⁷ Although account has been taken of it in delineating the area for development on the Land Use Plan, CD23.0, and the Open Space Typologies Plan, CD23.07

argument, they have been treated by Mr Wilkins as if they were veteran trees, and accorded a NE Buffer Zone as if they were such.

71. For each of the veteran trees the BS5837 root protection areas [‘RPAs’] has been drawn in magenta and the NE Standing Advice ‘Buffer Zones’ has been drawn in red. At the request of Mr Hannington the NE Buffer Zone for T72 has been extended by a further 2m from 28m to 30m diameter.
72. There is no dispute that these RPAs/Buffer Zones are correctly annotated according to the published guidance. In addition, for trees T3, T4 and T50, at the request of Mr Hannington, Mr Wilkins has shown an area marked in blue to represent the Buffer Zone extended to accommodate 100% of what would otherwise lie under Reading Road, in recognition that the carriage way represents a restriction on growth of some, at least, of the root-plate that would otherwise have grown in that direction. Mr Hannington is content that that reflects the potential constraints of the road.
73. As regards the extent RPA/Buffer Zones shown, Mr Hannington maintained two further objections: that trees in close proximity to others should have buffers extended to reflect their being ‘in competition’ [trees T3, T4 and T50]; and that where the buffers fall in land outside the appeal site, that fact should lead to an off-set in the appeal site [trees T56 and T87].
74. In cross-examination, however, Mr Hannington accepted that neither of these propositions were supported by the published guidance⁷⁸. In respect of the ‘off-site off-set’ point, he further accepted that it was not supported by the findings of the appeal decision he partially quoted in aid of his argument⁷⁹. In respect of the ‘in competition off-set’, he admitted in response to a question from the Inspector that he was unaware of any example where he had requested or achieved an off-set on that basis⁸⁰.
75. His objections in respect of the extent of the buffers shown are, therefore, unfounded.

⁷⁸ Hannington xx CBKC, Day 2

⁷⁹ Ibid – see ID10, para 12 as well as the quoted para 13

⁸⁰ Hannington ix, Day 2

76. Although accepting that published guidance prohibited neither the land in the RPA/buffer being used for open space, nor land beyond it being used for development⁸¹, Mr Hannington nonetheless sought to argue that the veteran trees would be at risk of harm by being on land marked ‘natural/semi-natural green space’ and that T72 in particular would be at risk of harm from development outside its (extended Buffer Zone).
77. Both allegations come perilously close to an ‘in-principle’ objection to development *per se* (a position he expressly eschewed in cross-examination, but returned to in re-examination), which is not the Council’s case. The layout and management of the open space on the site is entirely in the control of the Council in the discharge of conditions; there can be no in-principle objection to veteran trees standing in natural/semi-natural greenspace. Indeed, Mr Wilkins considers that the growing conditions of T72 will be improved compared to the present situation. Similarly, there can be no objection to development *outside* the relevant Buffer Zone – that is precisely what the RPA/Buffer Zone is identified for: to delineate where built development can and cannot acceptably go.
78. For on-site trees, that leaves the ‘phoenix’⁸² lime tree, T39. Its magenta and red RPA/Buffer circles are shown all within the natural/semi-natural greenspace notation. Its fallen and re-growing limbs are to the north and east of the main trunk. On the west side, there is a proposal to put a footpath in the NE Buffer Zone, outside the BS5837 RPA, which, with appropriate detailing, is entirely acceptable under the NE Standing Advice⁸³. As such, there is no objection to such a proposal.
79. In respect of off-site veteran trees on the Reading Road, one is on the north side, which is unaffected by the proposed s.278 works; the other two are on the south side, but as Mr Wilkins pointed out⁸⁴, the footway widening works are *into* the carriageway (ie away from the tree trunks, not towards them. Pedestrians and vehicles passing along the road do not affect the trees themselves and the prospect (however unlikely) of

⁸¹ Hannington xx CBKC, Day 2

⁸² Wilkins xic, Day 4

⁸³ CD18.06, p 7

⁸⁴ Wilkins xic, Day 4

schoolboys doing unpleasant things to bugs with tennis rackets is simply not a matter which goes to the vitality or longevity of the veteran trees at all.

80. There is, it is respectfully submitted, nothing in ‘Additional Issue 3’/’Main Issue 6’: veteran trees will not be lost or deteriorate as a result of the proposals; rather they will be carefully and beneficially integrated into the landscape scheme. ‘Impact on veteran trees’ does not amount to a ‘strong reason’ to resist development under para 11(d)(i) or Footnote 7, or, indeed, an objection to the scheme at all.

81. Miss Crafer was right (on this point at least): protection of veteran trees is a subject for conditions and reserved matters approval. It does not stand in the way of the grant of permission.

Main Issue 7: Whether the proposal would prejudice the delivery of the Loddon Valley Garden Village by reason of highways matters:

82. Following the hearing of the oral evidence on this matter on Day 3, the Council informed the inquiry that it would no longer be pursuing any objection on the basis of prejudice to the delivery of Loddon Valley Garden Village⁸⁵.

83. As such, no further observations are made on this ‘Main Issue’, which now falls away.

Main Issue 8: Whether the loss of Best and Most Versatile agricultural land is acceptable:

84. The area of Grade 3a land (BMV) on the site is agreed at 0.7ha (about 11% of the site total) all located in the western portion of the site, proposed for no development.

⁸⁵ JP, Day 4

85. In the light of the past absence of use for active agricultural purposes, and the limited and isolated area of the BMV in question, the Council accorded only ‘very limited’ negative weight to this issue⁸⁶. Miss Taylor, for the Appellants, agrees⁸⁷.

86. Ms Carter volunteered⁸⁸ that this issue would not justify the refusal of planning permission. Weight being accorded as above, that is common ground between the parties.

87. Main Issue 8 does not stand in the way of the grant of permission.

Main Issue 9: the Housing Land Supply position:

88. In respect of the Housing Land Supply situation, it has been agreed that the Council cannot demonstrate the required supply⁸⁹. The respective positions are set out in Annex 1 to Miss Taylor’s evidence: the Council considers it can show 2.50 years’ supply; the Appellants consider the Council can only show 2.30 years’ supply⁹⁰.

89. There is no dispute that either figure engages para 11(d); there is no dispute that both shortfalls are significant. The parties give ‘substantial’ positive weight to this factor⁹¹.

90. Housing land supply is agreed to be a forward-looking matter⁹² based on today’s needs; its importance is not diminished, on the basis of past delivery against old assessments of need.

91. Similarly, looking to the emerging plan is of no assistance in the matter. Until the LPU is adopted, HLS is measured against the current Standard Method figure (1371 dpa). As the LPU is seeking to undershoot the Standard Method figure (providing only

⁸⁶ Carter proof 8.45

⁸⁷ Taylor proof 8.18

⁸⁸ Carter xx CBKC, Day 4

⁸⁹ HLS SoCG [CD05.03]

⁹⁰ See Table 3

⁹¹ Carter proof 8.51; Taylor proof 8.15

⁹² Carter xx CBKC, Day 4 and see Limmerhill appeal, ID15

751dpa) it would only lock in, for a temporary period a lower-than-need housing requirement which would always, as a result, have been subject to an immediate review under the NPPF. However, in this case the MHCLG announcement of 6th March⁹³ has confirmed that Wokingham is on the list of authorities directed to start their new-style Local Plans by June of this year.

92. In addition to the 5-year housing land situation, this might be an appropriate place to identify the pressing need for affordable housing in the area. The details are set out in Annex 3 of Miss Taylor's evidence, but the parties are agreed that the 40% provision of the 111 dwellings as affordable housing is to be accorded 'substantial' positive weight⁹⁴.

93. Both these aspects weigh heavily in favour of the grant of permission.

Main Issue 10: the planning balance:

94. The most important development plan policies are out of date both by reason of the development plan being predicated on meeting an out of date non-NPPF-compliant assessment of development needs⁹⁵ and by virtue of the agreed inability of the Council to be able to demonstrate the required 5-year housing land supply⁹⁶.

95. As such, it is agreed that the appeal falls to be determined by reference to para 11(d) of the NPPF.

96. For the reasons given above, the three 'Footnote7' issues raised by the Council (flooding, SPA and veteran trees) do not amount to 'strong reasons' to resist development under para 11(d)(i); and the scheme is, therefore, to be determined by reference to para 11(d)(ii) and the 'tilted balance' – with particular attention to national policies on sustainability of location, efficient use of land, provision of affordable housing, good design.

⁹³ ID16

⁹⁴ Carter proof 8.51; Taylor proof 8.15

⁹⁵ *Hopkins Homes* supra

⁹⁶ NPPF Footnote 8

97. As to the benefits, both parties, through their planning witnesses ascribe ‘substantial’ positive weight both to the provision of housing *per se* and to the provision of much needed affordable housing at 40%⁹⁷.
98. To these two ‘substantial’ benefits, a variety of other agreed beneficial aspects (economic contribution, accessibility improvements, ecological enhancements and open space provision) are added, with varying positive weights, into the ‘basket’ on the positive side of the balance. Miss Taylor ascribes substantial weight also to the timely delivery of housing within the context of the absence of a 5-year land supply and the evidence of acute need, as well as avoiding pressure on more valuable landscapes and the creation of a high-quality living environment in accordance with Chapter 12 of the NPPF.
99. These benefits are then weighed in their totality on the positive side and, whether one looks to the Council’s evidence or the Appellants they are a compelling compound of substantial weights together with other additional individual positive weights.
100. On the harms, Ms Carter started with a long list in her Section 8, but as the inquiry progressed, some weighty (indeed sometimes ‘very substantial’) elements had to be removed, by consent, from the negative basket⁹⁸.
101. Thus, protected species (‘very substantial’), SPA⁹⁹ (‘very substantial’), Loddon Valley Garden Village (‘very substantial’) and the culvert (‘moderate’) had, by the end of the inquiry, to be taken out of the Council’s negative basket. That alone must affect the resultant weight of that side of the balance.
102. Turning to what was left in the Council’s basket: BMV only garnered ‘very limited’ weight and was agreed, rightly, not to be a bar to development¹⁰⁰; locational sustainability was accorded ‘moderate’ negative weight by Ms Carter, which matched

⁹⁷ Carter proof 8.51; Taylor proof 8.15

⁹⁸ Carter xx CBKC, Day 5

⁹⁹ For the sake of undertaking the para 11(d)(ii) analysis, Ms Carter, very properly, accepted that one had to assume that the Inspector had concluded that the Habitats Regulations had been satisfied such that permission was capable of being granted as a matter of law, and therefore SPA issues would not be a Footnote 7 matter, nor feature in the 11(s)(ii) basket [Carter, xx CBKC, Day 5]

¹⁰⁰ Carter xx CBKC, Day 5

exactly the ‘moderate’ positive weight she gave to the package of sustainable transport enhancements¹⁰¹. That left ‘flooding’, veteran trees, and a clutch of related topics (spatial policy, quantum and character and appearance).

103. For all of the reasons set out above, the issues of flooding and veteran trees resolve themselves in favour of the grant of permission; they are not in the negative balance at all. Ms Carter’s attribution of negative weight depends on the evidence led in support of those issues; as it fails, so does her analysis.

104. Offence to spatial policies as a pure policy point cannot be afforded substantial weight in the context that they are agreed to be out of date and their purpose – to direct development to sustainable locations – is met once this site is acknowledged to be well served (and improved) in terms of its transport accessibility.

105. However it is put, quantum as an objection is linked to policy and accessibility on the one hand, and offence to the character of the area on the other. Density of 28dph net is by no means objectionable *per se*; indeed too low a density would fail the NPPF’s drive for efficient use of land and profligacy with a well-located site in a landscape outside any valued landscape places more pressure on less-well located and more sensitive areas, especially in the context of existing housing need and of increased future housing requirements.

106. That leaves ‘character and appearance’ itself, which, it is respectfully submitted cannot sensibly be accorded ‘substantial’ weight given the status of the landscape and the limited and localised impacts of the scheme (on-site for character; immediately adjacent for visual).

107. Against all this, it must be remembered that to displace the presumption in favour of sustainable development, the negatives (together) must ‘significantly and demonstrably’ outweigh the benefits (together): ie the negative basket must be *significantly* more weighty than a basket containing multiple (agreed) ‘substantial’ benefits, plus a range of others besides.

¹⁰¹ Carter proof 8.49

108. This cannot sensibly be claimed, just looking at the matters rehearsed above. We add into the mix the Government's 'particular' emphasis on the four matters that make up the tail of para 11(d)(ii): accessibility, efficiency, affordable housing, good design. This appeal proposal accords well with each and all of those. NPPF para 11(d)(ii) strongly endorses the grant of permission.

Conclusion:

109. For all of the above reasons, this is a sustainable and much needed development, providing housing and affordable housing in a location well served by opportunities for sustainable transport modes, without harm to heritage, flooding, amenity or ecology (including veteran trees and the TBH SPA) and with only minor and localised impact on the landscape.

110. The site may be outside settlement boundaries in the adopted development plan, but those boundaries are out of date by reference to the NPPF; the adverse impacts by no means outweigh the many and weighty benefits of the scheme – indeed the reverse is the case.

111. Taken together, this is a proposal which benefits from the presumption in favour of sustainable development enshrined in para 11(d)(ii) of the NPPF and it is respectfully submitted that planning permission should be granted, in the public interest.

CHRISTOPHER BOYLE KC,

19th March 2026

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