

I object to planning application **261839** for the reasons set out below.

[Note: the Planning Support Statement (PSS) cites policy reference numbers from the 2024 National Planning Policy Framework (NPPF). A new version of this was published on 17th August 2026 and so I refer instead to their revised equivalents throughout. The content of the policies in question is largely unchanged.]

1. 'Isolated' dwelling in the countryside

Paragraphs 1.4, 1.7 and section 6 of the PSS make explicit that the primary justification for this application is that, despite being contrary to certain development plan policies, it engages the provisions of paragraph HO11 (1)(e) of the NPPF. This gives:

'Development proposals for isolated homes in the countryside should only be supported where one or more of the following circumstances apply:

(a)-(d)....

(e) The design is of exceptional quality, in that it:

- i. Is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
- ii. Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.'*

From this, it is clear that a threefold test exists: the dwelling must first be considered 'isolated' and then both limbs of subsection (e) must be met. I disagree with the applicants' assertion that the policy is engaged because I do not believe it is supported by the facts of the case.

In paragraph 6.9 of the PSS, the applicants cite *Braintree District Council v Secretary of State [2018] EWCA Civ 610* ('*Braintree*' after) and *City & Country Bramshill Ltd v Secretary of State [2021] EWCA Civ 320* ('*Bramshill*') as legal authorities on which they seek to rely. In their absence from the documents submitted to support this application, these are attached at **appendices 1 and 2** for reference. Both cases deal with the separate (but linked) issues of the meaning of the words 'isolated' and 'settlement', and their application in a planning context. In précis, the findings in the judgement are as follows:

- (a) whether or not a dwelling is isolated from a settlement is established solely by its physical separation from the latter. There is no functional test necessary (for example, its distance from local shops or other services and facilities), merely distance (paragraphs 31 and 42 (*Braintree*) and paragraph 32 (*Bramshill*) refer);
- (b) there is no minima for the number of dwellings required to constitute a settlement: it can include a cluster of properties or hamlet. The test is whether or not they form an identifiable grouping (paragraph 32 of *Braintree* refers); and
- (c) The NPPF is not prescriptive in its definition of either word and does not bear over-analysis. As in any other sphere of public law where the matter of statutory interpretation is engaged, words and phrases should be given their normal meaning. Consequently, establishing either matter involves the exercise of planning judgement by the decision-maker alone, being fact-sensitive to the case in question (paragraphs 28, 30 and 31 (*Braintree*) and paragraphs 30 and 32 (*Bramshill*) refer).

The above is reflected in paragraph 6.10 of the PSS but it is then asserted in paragraph 6.11 that Bridge Cottages “do not make up a settlement” and, in 6.13, that the ‘isolated’ criterion is met, regardless of the existence of ‘scattered’ properties nearby: both without any detailed reasoning or analysis being provided that is demonstrably consistent with the principles of the legal authorities. Instead, reliance is placed solely on pre-application advice received from the LPA in 2024 and the opinion of the Design Review Panel Ltd (paragraph 1.6 of the PSS) but this disregards the fact that pre-application advice is not binding and also that, as per the authorities mentioned, what constitutes both concepts is a matter of fact and planning judgement for the decision-maker. An advisory panel established to consider architectural design aspects of planning proposals has no legitimate ambit in respect of this particular policy, its role being restricted exclusively to that defined in paragraph DP4 2(a) NPPF. Consequently, its view on this matter (as per paragraph 6.13) is not material and so does not stand to be considered.

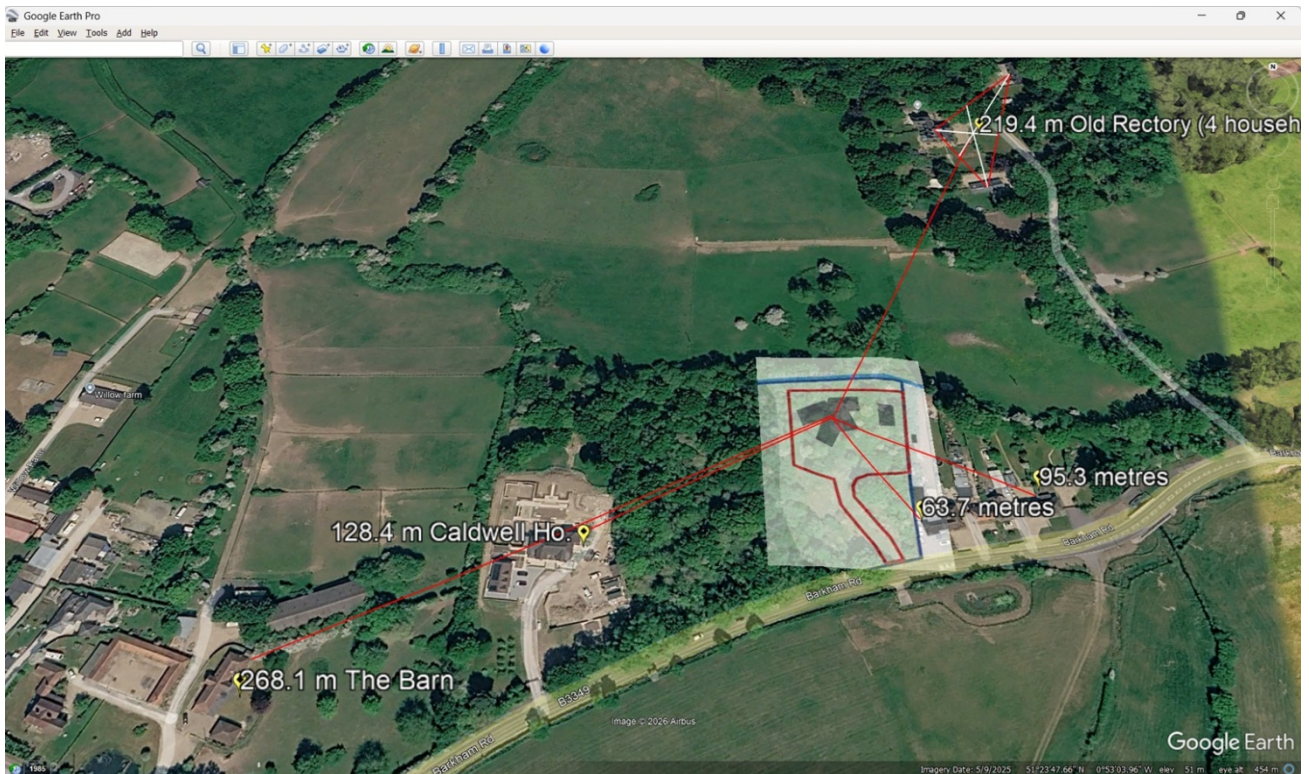
It is my contention that the properties at Bridge Cottages do constitute a settlement, for the following reasons:

- i) paragraph 32 of *Braintree* emphasises that there is no minima required to form a settlement. A collection of six households adequately satisfies the definition of ‘cluster’ (*ibid.*), in terms of the commonly-understood meaning of the word: it connotes a small group of similar things located together closely;
- ii) the properties are not dispersed geographically but form an identifiable assemblage of buildings experienced within the predominantly-undeveloped, prevailing landscape setting;
- iii) they share a common road frontage and exhibit a coherent linear pattern of development, of the same vernacular, within the established rural street scene; and
- iv) the absence of shops/other facilities does not preclude Bridge Cottages from being a settlement: there is no functional test involved, in the same way as there is not for the consideration of isolation.

As pre-application advice is not published, its content on this topic is unavailable to me but I have no reason to disbelieve the statement in paragraph 6.10 of the PSS. However, as mentioned, the LPA is not bound by it and, in light of points (i)-(iv) above being consistent with *Braintree*, I would respectfully request that the case officer affords this matter further and careful consideration. It is important that a formal decision on this matter (as opposed to pre-application advice) reflects the settled position at law.

On the subject of whether the new dwelling would be ‘isolated’, I would like to make the following points:

- 1) The proximity of surrounding properties is illustrated in the diagram below (source: Google Earth Pro™). In the interest of fairness, when measuring, the approximate centre of the proposed dwelling has been selected, as has the point used for the four properties which comprise The Old Rectory. The median distance for nos. 1-6 Bridge Cottages can be calculated from their nearest and furthest properties. The distances to Caldwell House and The Barn are to their closest points. The other properties visible further west in the image have been omitted to simplify matters graphically.



From this, it is obvious that the proposed new dwelling cannot be regarded as isolated when applying the normal meaning of that word or, crucially, the test of isolation which *Braintree* and *Bramshill* specify explicitly (point 2 below refers). Should permission be granted for it, 13 dwellings in total would then co-exist within a radius of 270 metres of each other. The properties in School Road would be within 300 metres of the proposed dwelling. It would not, therefore, be isolated.

- 2) The PSS advances the discrete arguments that the proposed dwelling would be separated both visually and perceptually from surrounding properties due to intervening vegetative screening and the site's landscape character (paragraphs 2.5, 6.11-6.13, 6.40-6.43 and 8.3 refer). They are of no pertinence to the situation because the *Braintree* and *Bramshill* judgements establish that the test for isolation is limited solely to that of physical separation (per paragraphs 31 and 42 of *Braintree* and paragraph 32 of *Bramshill*). Both individually and combined, the arguments are therefore a nullity.

However, should the LPA determine that Bridge Cottages do not constitute a settlement, the application site is isolated and paragraph HO11 (1)(e) is engaged then separately and, in the alternative, I make the following points:

1(e)(i) Design

What constitutes good or poor architectural design is a wholly-subjective matter; notoriously so, I would suggest, given the level of public debate it has attracted for decades. One person's 'carbuncle' is another's treasure. The PSS argues extensively that, because the design of the proposed dwelling has been subject to reviews by the Independent Review Panel Ltd, the outcome of that process is a material consideration attracting significant weight in favour of the proposal (summarised in paragraph 8.8). This exaggerates the meaning of the content of paragraph DP4 2(a) of the NPPF, which gives:

'The local planning authority should: Ensure that they have access to, and encourage the appropriate use of design review and other design tools and processes (especially for strategic sites and other significant projects), and take into account their outcomes, including any design recommendations made by design review panels.'
[My emphasis added].

To 'take account' of something does not mean that it must automatically attract great weight or be considered determinative. If the latter had been the Government's policy intention, then the wording of paragraph DP4 2(a) would reflect this. It does not and the PSS therefore imputes a meaning to it beyond that articulated.

I make no comment on the design of the proposed dwelling specifically. Undeniable, however, is the abundance of descriptive prose employed in the PSS to promote it. However, the question for consideration in the case of HO11 (1)(e) being engaged is whether or not it is 'truly outstanding'. This is a very high bar and the claim made that it is met has a distinct familiarity because the LPA has been invited previously to accept that:

- a *Huf Haus*, a proprietary brand of building design/construction (F/2010/1692);
- a five-bedroom executive-style house, which adhered to the content of the Barkham Village Design Statement SPD (F/2011/1412); and
- another executive-style dwelling of significant scale (F/2013/0461)

...each did too, either by virtue of the quality of materials proposed to be used, the method of construction or the inherent excellence of design. Those submissions did not succeed. Whilst this is in the past, the point is that, by so doing, the applicants have reduced the credibility of this argument to the extent that it is not unreasonable for the LPA to now approach it with an appropriate degree of caution. Because of this, I certainly do not believe the 'outstanding/exceptional' attribute is the foregone conclusion it is being presented as or that its weight in the planning balance is anything other than a matter for the decision-maker.

1(e)(ii) – enhancement of setting

The PSS outlines measures intended to improve the site's environment, highlighting that areas of it are unmanaged and various trees and shrubs are in poor condition. This situation exists only because the applicants have allowed it to. The site has been in their ownership for a significant period of time (certainly in excess of 15 years) and could have been maintained to a reasonable standard easily; instead, the decision was taken not to do so. I suggest that engineering decline of this nature, in order to exploit it as justification to secure planning permission, is inappropriate. If such an approach were permitted, LPAs across the country would be inundated with applications for parcels of land which have been allowed to deteriorate deliberately, with the only viable possibility for their 'rescue' being to build on them. This would subvert the proper aims and operation of development control and I submit that it should not be legitimised in this instance. Separately, I question whether the building of anything, and the proposed dwelling in particular, could truly 'enhance' what is already an attractive plot of land within the prevailing countryside landscape setting.

Adopted Core Strategy Policy CP11

The applicants do not dispute that policy CP11 is engaged and the proposal is in direct conflict with it (tables at pages 9 and 30, and paragraphs 5.10, 5.11, 6.2 and 7.5 of the PSS refer) but that, if the case for HO11 (1)(e) being engaged is accepted, then (a) the conflict between their two opposing aims has to be resolved in the (tilted) planning balance and (b) when assessed in this way and, alongside other material considerations, planning permission should be granted (paragraph 6.3).

I agree with point (a) because it is consistent with the findings in recent appeal **APP/X0360/W/26/6005646** (the ADN for which is attached at **Appendix 3**). Whilst that case did not involve an isolated dwelling, the inspector found that, from a strategic policy perspective, CP11 serves broader planning purposes (directing growth, protecting countryside character, maintaining settlement identity, providing certainty) and that it should be afforded "*due weight*" in the overall planning balance, even when the latter is tilted (paragraphs 97-98 of the ADN refer). Those findings of principle are pertinent directly to this application.

Clearly, however, the corollary to point (a) is that, if the case for HO11 (1)(e) is found not to be demonstrated, the proposal's acknowledged incompatibility with CP11 means it must fail by default. Naturally, I do not agree with point (b) above for the reasons set out in this submission.

Section 1: summary

The applicants assert that Bridge Cottages do not constitute a settlement, without providing adequate justification to support this. Placing reliance on pre-application advice and the opinion of a design review panel is insufficient, for the reasons explained. I contend that it must be informed by the principles expressed in the authoritative judgements concerned and have explained my reasons why a finding in the affirmative is supported. I suggest the burden falls on the applicants to demonstrate why they believe the prevailing situation differs from the 'cluster/hamlet' concept endorsed by the courts. Consequently, I respectfully submit that it has **not** been demonstrated satisfactorily that NPPF paragraph HO11 (1)(e) is engaged by the proposal. If I am incorrect, I do not think it has been demonstrated adequately that the proposal satisfies both of its limbs, as required. Finally, Adopted Core Strategy CP11 still retains weight and is not diminished automatically by HO11 (1)(e) in the tilted balance scenario, as per the findings in **APP/X0360/W/26/6005646**.

2. Planning history and principle of development

Although every planning application must be considered on its individual merits, the planning history of a site is capable of being a material consideration (Planning Policy Guidance paragraph: 010 Reference ID: 21b-010-20190315 refers). I suggest that this is the case in this instance because, as mentioned in section 1 above, whilst the design of individual proposals may change over time, policy considerations endure unaltered and are applied consistently. It has been determined consistently by the LPA and via appeal that development in this location is unacceptable as a matter of principle, not as a consequence of the iterative designs submitted, how those dwellings would have 'responded' to the application site or mitigation measures to offset their impacts.

The provisions of Policy CP11 have not changed since 2012. The application site has not moved and remains outside development limits in the countryside. Furthermore and, importantly, the argument for isolation has similarly been advanced and rejected on three separate occasions because, when the first two applications were made, the applicants sought to rely on the content of Planning Policy Statement 7, as then extant. The intention of that government policy was to restrict development in the countryside, save for two exceptions: one relating to the provision of essential housing for agricultural workers and the other the familiar 'exceptional/innovative design' test still reflected in the current NPPF. Crucially, however, both exceptions of PPS7 were contingent on the matter of isolation being demonstrated and neither application succeeded in that respect. Neither did the most recent application, submitted when the 2012 version of the NPPF had replaced individual PPSs, and its paragraph 55 contained similar provisions relating to isolated new homes in the countryside.

The applicants' perseverance in trying to achieve traction with this argument does not remove the fact that nothing of a material nature relating to the physical location of the site or the application of policy CP11 has altered in the intervening period.

3. Sustainable development

Because the 'tilted balance' of the NPPF (when applied) represents the presumption in favour of sustainable development, any planning application subject to it is required to demonstrate that proposal(s) meet its three-limbed test: economic, social and environmental. In respect of each in this situation:

- Economic – throughout the PSS, it is emphasised that this is a 'genuine' self-build project. Clearly, it is also a single dwelling. Both of these factors mean the economic benefits that would accrue from the proposal would be limited, particularly in the absence of the widespread employment of local trades during construction and considering the inherent ceiling on any ongoing financial contribution from one property.
- Social – similarly, because it is to be a self-built dwelling, the PSS makes explicit that the applicants intend to seek CIL relief (paragraph 6.109 refers). CIL funds community infrastructure projects, many of which serve to improve community/social cohesion. This is certainly the case in Barkham CP. It is not apparent what other meaningful social benefit arises from the building of a single dwelling.
- Environmental – again, the applicants seek exemption from achieving statutory biodiversity net gain (BNG). Although the PSS claims that overall improvement will result from the ecological measures proposed at the application site, absent the statutory requirement there is no guarantee that the 10 per cent increase against baseline required by it will be met. Indeed, if planning permission is granted, the applicants could instead do little or nothing and no redress would be available to the LPA.

Given these factors, I suggest that the proposal does not constitute sustainable development as defined in paragraph 17 of the NPPF.

4. Landscape & Visual Impact Assessment

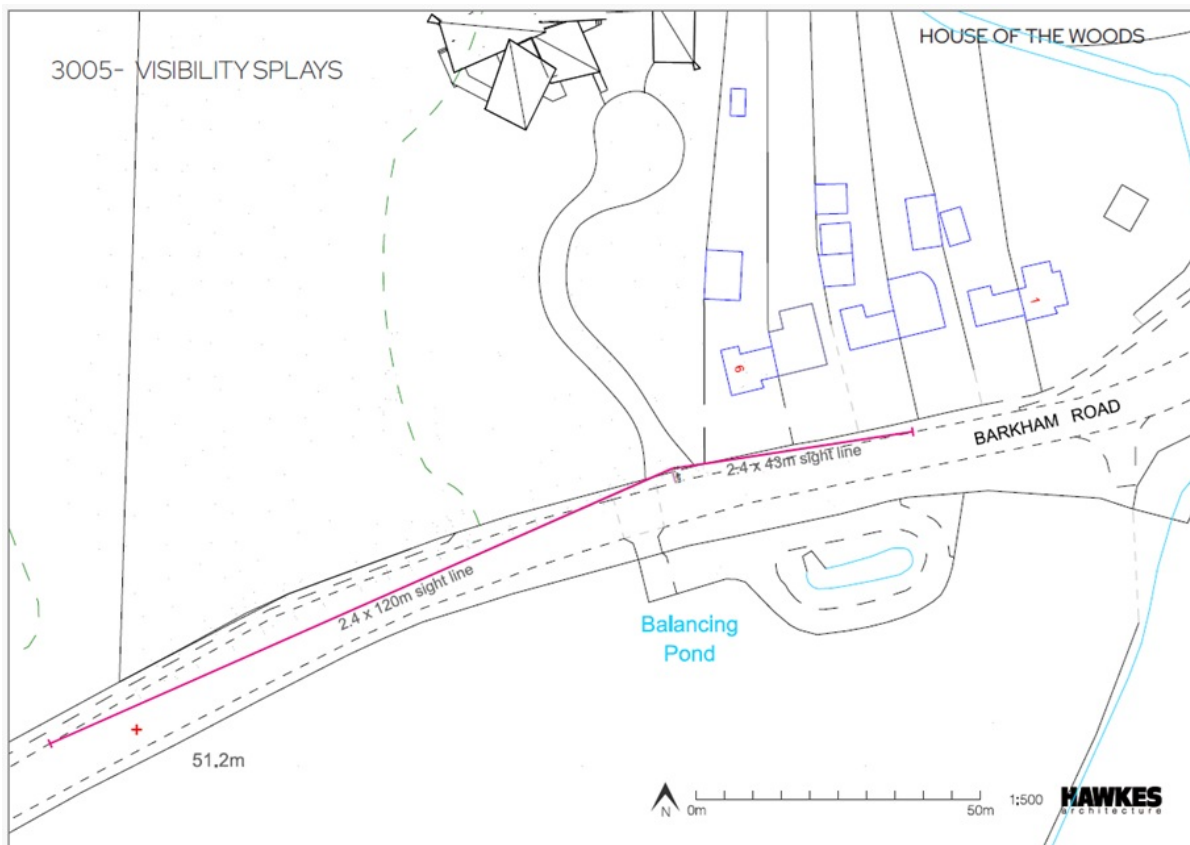
The LVIA was based on selected views of the application site available from various points in the public domain in September 2024, during leaf-on conditions. In leaf-off conditions, views available from them into the site are more extensive (in particular, the mature woodland on its northern edge is easily visible from the B3349 Barkham Road) and so the LVIA does not represent accurately how the proposed dwelling would be perceived by sensitive receptors using this designated Green Route (pedestrians in particular, where the dwell times involved in passing the site are greater than visual receptors travelling in vehicles). Even the leaf-on conditions between 2025 and 2026 have altered as a consequence of the weather conditions experienced this year, resulting in reduced foliage cover. There is consensus within the (meteorological) scientific community that periods of high temperature and episodes of heat waves are increasing and will become the norm, not the exception. This will have direct consequences on the degree of screening available on the periphery of and within the application site in the future, as plants lose foliage under stress (as currently).

It is not clear why a viewpoint was not selected from the footpath adjacent to the B3349 Barkham Road, at the site's current access point, given this would be retained. Instead, the photo depicting view 1 on page 16 of the LVIA is taken from the bell-mouth on the opposite side of the highway. This forms access to a SUDs pond used only by Wokingham BC's drainage contractors, not the general public, and is approximately 9 metres (30 feet) further away from the view which pedestrians would actually experience of the proposed development from that described. Consequently, the visual impact from view 1 is not representative. It is also not clear why certain viewpoints located substantial distances from the application site have been selected (for example, nos. 4-5, 8-13) other than to minimise the visual impacts of the proposal. At the moment, the important views available of the site show a naturalistic, semi-wooded plot typical of the surrounding landscape and I dispute the conclusions of the LVIA that the impacts of the proposal would be negligible and beneficial overall.

5. Ecology

Great Crested Newt (GCN)

The application site is located in an amber risk zone for GCN. The updated Preliminary Ecological Assessment (PEA), GCN Statement (which draws from the former) and PSS (ditto) all exhibit a significant omission. They identify various bodies of water located in proximity to the site that have the potential to support GCN (summarised in the tables on pages 3 and 7 of the GCN Statement) but omit from them a SUDs balancing pond located less than 30 metres distant SE from the site boundary (the closest identified is 194 metres distant). Although the level of water in this pond fluctuates as per its intended purpose, it always contains a permanent residual volume, has been in existence for six years and so is sufficiently established to offer potential habitat suitable for GCN. Given the existence of a ditch on the application site which has been identified as being of possible use for GCN to commute between bodies of water or shelter via, a pond in such close proximity to the site is of importance. It appears on relevant mapping (including the Government's interactive Magic Map) and is also depicted in plan no. 3005 demonstrating visibility splays submitted with the application (reproduced below), therefore its absence from the PEA is baffling. Section 3 of the GCN Statement explains that document's purpose from a legislative and local validation perspective. Given it contains an omission of such significance, it is difficult to foresee how the LPA can have full confidence in it (or the PEA) in this respect. At the very least, I suggest it renders the application invalid until the significance of this pond as potential GCN habitat can be suitably assessed, perhaps by sampling for eDNA.



Other fauna

The proposal would introduce built form and human presence into the sensitive priority habitat of the Barkham Brook, where it has never been before. This water course supports a population of indigenous White-clawed Crayfish (*Austropotamobius pallipes*), a species protected under the Wildlife and Countryside Act 1981 and categorised as endangered on the IUCN Red List. Its presence was confirmed by the Environment Agency in 2020 and the Barkham Brook is one of only two watercourses in its entire southern region to host this rare crustacean. The mature woodland on the northern boundary of the application site provides habitat for a wide range of species, notably a sizeable population of bats. Light spill from the proposed dwelling would affect adversely these and other nocturnal and crepuscular species also present.

Most damaging to wildlife of any species, however, is the permanent presence of humans in their natural habitat and this proposal would result in this in the heart of it. A 'morning garden' is planned for the NE section of the site; vehicles would be manoeuvred within the turning/parking area proposed in the same area; an extensive artificial lighting scheme is planned in a setting which is currently dark; the creation of a 'woodland walk' is proposed in the LDAS; the list goes on. All of this would result in the displacement of wildlife species including, potentially, protected species. By contrast, nos. 1-6 Bridge Cottages and Caldwell House have long rear gardens leading to the brook and so the wildlife species which either inhabit or make use of it and its environs are left largely undisturbed by human activity/noise/light spill. The location of the proposed dwelling within the application site would thus be disproportionately and unnecessarily harmful to them.

Flora

The tree survey identifies that 29 trees on the application site will be felled in order to facilitate the proposed development, whereas the list on the (unnumbered) page entitled '*Step #1 – Removal of diseased and non-native species*' of the Landscape Design & Access Statement is ambiguous and could be interpreted as a greater number of losses being involved. Whichever is accurate, I suggest that this number is excessive and, in large part, unnecessary because dead and decaying trees provide valuable habitat for insects and saprophytic organisms, enabling nutrients to return to the soil naturally, and preventing captured carbon from being released into the atmosphere.

The proposed works represents an intervention typical of woodland managed for residential amenity rather than the wellbeing of trees themselves. In this regard, I am also concerned that a change of use from agricultural/forestry land to residential curtilage will increase pressure for further trees to be removed from the site, in order to either increase its area or adapt it more suitably for residential enjoyment. Whilst this may not be the current intention of the applicants, the situation may change or, if the proposals are approved, the ownership of the dwelling will inevitably pass hands at some point in the future. The LPA placed TPOs on this site in order to preserve its visual amenity and so the widespread tree loss resulting from the proposal would be contrary to this.

6. Flood risk

The location of the proposed dwelling within the application site is unacceptable in terms of flood risk. The Barkham Brook floods regularly in winter months because it is not kept clear of vegetation or obstructions by land owners or the relevant authorities. Fluvial loading on it will increase further when the 660 additional dwellings proposed for Barkham Square in the LPU are built (the SUDs is intended to drain into it) and as a consequence of additional winter rainfall arising from climate change.

The flood risk map at paragraph 4.16 of the Flood Risk Assessment (FRA) illustrates that an area in the northern section of the application site falls within the Environment Agency’s flood zones 2 and 3, as acknowledged in paragraph 4.17. This is corroborated by plan **P400.2** submitted in support of PA **F/2013/0461**, reproduced below:



However, the FRA is deficient in that it does not illustrate the relationship between the location of the proposed dwelling and the flood zone, the closest approximation being just the red-line area of the application site in the diagram in its Appendix 1. By overlaying an excerpt from site plan **no. 3000** submitted for this application onto the plan above (the same could be achieved by using the version at paragraph 4.16 of the FRA), it is evident that parts of the proposed dwelling and garage fall within this zone:

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Google Earth image

Overall Site Plan



0 1 2 3 4 5

Proposed new dwelling
Land between Cadwell and 6 Bridge
Cottages, Barkham, England

Overall Site Plan



by **m r r a u m**
architecture and design
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This drawing is copyright to mrarum. Do not scale from this drawing as dimensions are to be checked on site and any discrepancy, error or omission is to be reported to the architect.
This drawing shall be read in conjunction with all relevant architect and engineers drawings and specifications.

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Planning

rev	project	date	drawing no	drawn by
0130	11/03/2013	P400.2	all	

It is stated in paragraph 6.76 of the PSS that there is no history of the application site having been subject to flooding. This is factually incorrect. Its northern area has been flooded on at least two occasions: winter 2001 and July 2007, both events corresponding approximately with the flood area shown in the diagram above. The following photograph illustrates the extent of flooding in the immediate area in 2007 (affecting Bridge Cottages). This also extended along the course of the Barkham Brook along the northern boundaries of these properties and, similarly, the application site. Had the proposed dwelling been *in situ* in its intended location at that time then parts of it would have unquestionably been submerged by floodwater. The statement in the PSS perhaps might reflect the fact that the site has always been undeveloped agricultural land and the recording of flooding incidents of such land is afforded less priority generally by the relevant authorities, given its operation as functional flood plain when proximate to water courses, and the absence of residential properties to suffer inundation.

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7. The position of the proposed dwelling within the site – other factors

The position of the proposed dwelling would be inconsistent with the prevailing building line along this section of the B3349 Barkham Road. If a line is drawn between the approximate roof ridge-lines of Bridge Cottages, that of the proposed dwelling (ie approximate = centre) would be circa 66 metres behind it, when measured perpendicularly, as per the following image (source: Google Earth Pro™):



This would result not only in incongruity with the existing grain of development within the streetscape but also affect adversely the residential amenity of the residents of nos. 1-6 Bridge Cottages by introducing built development in an area from where it has always been absent, the significant massing of which would easily be visible from their first-floor rear and side windows, and gardens.

A substantial hedge is indicated between the proposed dwelling and no.6 Bridge Cottages on various plans submitted but hedging cannot be relied upon as a permanent mitigation measure because it is susceptible to loss or removal. Screening alone cannot make acceptable proposals which would otherwise be unacceptable, a point emphasised by a senior planning inspector qualified in arboriculture, in linked appeal

APP/X0360/C/16/3142135 (paragraphs 55 and 116 of the ADN refer – attached at **Appendix 4**) and relied on by the LPA in defending subsequent appeals elsewhere. There is also a distinct contradiction manifest in planting a domestic hedge on the boundary of what is celebrated throughout the application documents as a naturalistic, broad-leafed native woodland environment. I would welcome the opinion of the Trees and Landscape team on this matter in particular.

Ultimately, if the proposed dwelling is of such exceptional design and responds perfectly to the woodland setting as claimed, the inevitable question is why is it being hidden away at the back of the application site behind a tree and introduced hedging? If it truly demonstrates these qualities, surely the building could sit comfortably in the centre of the site, as per previous proposals, without adverse impact either on the habitat of the Barkham Brook or the residential amenity of neighbours this proposal would cause. I suggest the reality of the situation is that, because it has been determined via a series of applications and appeal that the development of this plot of land is unacceptable in principle, the current arrangement is an attempt to overcome the reasons which resulted in those decisions, without adequate consideration being given to the harms that relocating the dwelling nearer to the brook would cause.

8. Conclusion

I do not believe the site is isolated, applying the principles of the Braintree/Bramshill judgements. If it is, I do not consider that NPPF HO11 (1)(e) outweighs CP11 in the tilted balance, which retains due weight as per the recent appeal findings for land east of Edney's Hill, Barkham. The application site has been undeveloped agricultural land in all living memory (and beyond). Planning history has established that its development is unacceptable in principle and the factors bearing on that assessment remain unaltered. The location of the proposed dwelling would be particularly harmful to wildlife species and subject to flood risk. For these and the other reasons I have set out in this document, I respectfully submit that the application be refused.

R. King

26th August 2026



Neutral Citation Number: [2018] EWCA Civ 610

Case No: C1/2017/3292

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MRS JUSTICE LANG DBE
[2017] EWHC 2743 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 March 2018

Before:

Lord Justice McCombe
and
Lord Justice Lindblom

Between:

Braintree District Council

Appellant

- and -

**(1) Secretary of State for Communities and
Local Government**
(2) Greyread Ltd.
(3) Granville Developments

Respondents

Dr Ashley Bowes (instructed by **Sharpe Pritchard LLP**) for the **Appellant**
Mr Stephen Whale (instructed by **the Government Legal Department**) for the
First Respondent
Mr Paul Shadarevian Q.C. and Mr John Dagg (instructed by **Ellisons Solicitors**) for the
Second and Third Respondents

Hearing date: 14 March 2018

Judgment Approved by the court
for handing down
(subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. Did an inspector determining a planning appeal misinterpret and misapply government policy in paragraph 55 of the National Planning Policy Framework (“the NPPF”) that local planning authorities “should avoid new isolated homes in the countryside unless there are special circumstances ...”? That is the central question in this appeal. It involves no controversial issue of law.
2. With permission granted by Lewison L.J. on 8 January 2018, the appellant, Braintree District Council, appeals against the order of Lang J., dated 15 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 challenging the decision of an inspector appointed by the first respondent, the Secretary of State for Communities and Local Government, allowing appeals by the second and third respondents, Greyread Ltd. and Granville Developments, respectively under section 174 and section 78 of the 1990 Act. Granville’s section 78 appeal was against the council’s refusal, on 13 April 2016, of an application for planning permission for the erection of two detached single-storey dwellings on the sites of two agricultural buildings with landscaping on land to the east of Lower Green Road, Blackmore End, Wethersfield in Essex.
3. The site is in the village of Blackmore End, but was outside the settlement boundary defined in the emerging development plan. It lies between Wright’s Farmhouse to the north and Lealands Farmhouse to the south. Two pre-fabricated agricultural buildings that had once stood on the site were demolished in 2015. Greyread’s section 174 appeal was against an enforcement notice issued by the council on 25 April 2016 against an alleged breach of planning control on the same site, involving, on one part of the site, the demolition of a cattle shed and the partial erection of a single-storey building, the laying of footings and a concrete base, and on the other, the demolition of a cattle shed and the laying of footings and a concrete base.
4. The two appeals were dealt with together, on the parties’ written representations. The inspector undertook a site visit on 17 January 2017. His decision letter allowing the appeals, and granting planning permission for the development, is dated 3 February 2017.

The issue in the appeal

5. The council’s challenge to the decision was on a single ground, which was that the inspector had misunderstood and therefore misapplied the policy in paragraph 55 of the NPPF. That argument, rejected by Lang J., is now pursued in this court. The crucial issue is the meaning of the word “isolated” in the expression “new isolated homes in the countryside”.

Paragraph 55 of the NPPF

6. Paragraph 55 of the NPPF is in section 6, “Delivering a wide choice of high quality homes”. It states:

“55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling.

Such a design should:

- be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
- reflect the highest standards in architecture;
- significantly enhance its immediate setting; and
- be sensitive to the defining characteristics of the local area.”

7. The corresponding guidance in paragraph 50-001-20160519 of the Planning Practice Guidance (“the PPG”) states:

“How should local authorities support sustainable rural communities?

- It is important to recognise the particular issues facing rural areas in terms of housing supply and affordability, and the role of housing in supporting the broader sustainability of villages and smaller settlements. This is clearly set out in [the NPPF], in the core planning principles, the section on supporting a prosperous rural economy and the section on housing.
- A thriving rural community in a living, working countryside depends, in part, on retaining local services and community facilities such as schools, local shops, cultural venues, public houses and places of worship. Rural housing is essential to ensure viable use of these local facilities.
- Assessing housing need and allocating sites should be considered at a strategic level and through the Local Plan and/or neighbourhood plan process. However, all settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence
- [The NPPF] also recognises that different sustainable transport policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas [NPPF Part 4 “Promoting sustainable transport” para 34].”

The council’s refusal of planning permission and statement of case

8. The council refused planning permission for three reasons. The relevant part of the decision notice, in the first reason for refusal, states:

“1. ... Guidance on new development within rural areas is also set out in [the NPPF]. ... Para.55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. ...

The site is located in the countryside beyond any defined settlement boundaries and in a location where there are limited facilities, amenities, public transport links and employment opportunities. ... The proposal would introduce new housing development beyond the defined settlement limits and would be contrary to the objectives of securing sustainable patterns of development and the protection of the character of the countryside. Development at this location would undoubtedly place reliance on travel by car.”

9. In its statement of case, under the heading “Environmental Considerations (Reason 1)”, the council amplified that reason for refusal. Having noted that Greyread and Granville had in their statement of case referred to paragraph 55 of the NPPF, it acknowledged that “the NPPF encourages LPAs to be responsive to rural circumstances and to plan housing developments to reflect the local need”. It went on to say:

“As highlighted by the appellant [the NPPF] also requires the intrinsic character and beauty of the countryside to be recognised, seeks to support the transition to a low carbon future in a changing climate, conserving and enhancing the natural environment and reducing pollution. This is in addition to actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.

Quite clearly, as with many planning decisions, there is a need to balance all material considerations and it is highly likely that future occupants of the two dwellings proposed would be heavily reliant upon the private motor car to access everyday services, community facilities and sources of employment.

... .”

The inspector’s decision letter

10. The inspector identified four main issues in the section 78 appeal: first, “[the] effect of the development on the character and appearance of the area”; second, “[the] effect on the setting of neighbouring listed buildings”; third, “[accessibility] to services and facilities”; and fourth, “[the] overall balance and whether the appeal proposal constitutes sustainable development in the countryside” (paragraph 2).
11. Before dealing with those four issues, the inspector considered relevant planning policy in the development plan and in the NPPF. He said that Policy CS5 of the Braintree District Council Local Development Framework Core Strategy (adopted in September 2011) “strictly controls development outside town development boundaries and village envelopes to uses appropriate to the countryside”, and that Policy RLP2 of the Braintree District Local Plan Review (adopted in July 2005) “has a similar effect” (paragraph 3). He referred to the policies in paragraphs 49 and 14 of the NPPF (paragraph 4), noted that the council “now acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites”

(paragraph 5), concluded that “[on] the most favourable analysis, deliverable housing sites fall significantly below the 5-year supply required by the Framework”, and that “Policies CS5 and RLP2 ... must be considered out-of-date so that Framework paragraph 14 is also engaged” (paragraph 6).

12. On the first main issue, the effect of the development on the character and appearance of the area, the inspector said (in paragraphs 8 and 9 of his decision letter):

“8. Blackmore End is a recognisable village and is characterised by linear development extending along several roads. There is a dispersed pattern of development along Lower Green Road. The Council refers to the change to village character and to the suburbanising effect it considers would result from the development. However, the site has previously been occupied by two agricultural buildings and the two dwellings would reflect the footprint of those buildings. The proposed dwellings would be single storey and would be of a simple form. The site is well screened in views from the road by hedging, although the provision of visibility splays would reduce that to some extent. Much of the appeal site would remain undeveloped and further planting could be required by condition. A condition could also control extensions and further buildings, so that the site could retain much of its open character. The fenestration and doors shown on the submitted drawing would give the dwellings an inappropriate suburban character. However, there is scope to require revised details of those matters, allowing a more appropriate design to be achieved. Details of materials could also be controlled by condition to reflect local character.

9. I conclude that subject to appropriate conditions the development would not result in material harm to the character and appearance of the surrounding area. The site is not within a settlement boundary and the development would therefore conflict with policies CS5 and RLP2. It would not accord with the development plan’s approach of concentrating development in towns and in village envelopes. On the other hand there are a number of dwellings nearby and the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers.”

13. On the second main issue, the inspector concluded that there would not be material harm to the settings of the grade II* listed Wright’s Farmhouse to the north of the site or to the setting of the grade II listed Lealands Farmhouse to the south (paragraph 13).

14. On the third main issue, the accessibility of services and facilities, he concluded (in paragraph 14):

“14. Blackmore End has a very limited range of services and facilities. There is, for example, no local shop, the nearest being about 2 miles away. In its emerging Local Plan the Council identifies 5 Service Villages. They do not include Blackmore End, the nearest being Sible Hedingham which is about 4 miles away. It is likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment. While this weighs against the development, it is consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas.”

15. Under the heading “The Overall Balance and Sustainable Development”, the fourth main issue, the inspector stated his main conclusions (in paragraph 16):

“16. Accessibility to services, facilities and employment from the site other than by car would be poor. On the other hand, the development would make a modest contribution to meeting housing need. In addition, subject to appropriate conditions, there would not be material harm to the character and appearance of the surrounding area or to the setting of listed buildings. A minor economic benefit would arise from developing the site and the economic activity of those occupying the dwellings. There would be conflict with policies CS5 and RLP2 but those policies are out-of-date and are worthy of limited weight. Applying the test set out in Framework paragraph 14, I find that there are not adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole. Nor are there specific policies in the Framework which indicate that the development should be restricted. The proposal would amount to sustainable development. Permission should be granted in accordance with the Framework’s presumption in favour of sustainable development.”

Did the inspector misinterpret and misapply the policy in paragraph 55 of the NPPF?

16. The relevant legal principles are clear and uncontentious. They need not be set out at length. The interpretation of planning policy, whether in the development plan or in statements of national policy, is ultimately a matter for the court. When the meaning and effect of a planning policy are contested, the court must avoid the mistake of treating the policy in question as if it had the force or linguistic precision of a statute – which it does not – and must bear in mind that broad statements of policy do not lend themselves to elaborate exegesis. The court’s task is to discern the objective meaning of the policy as it is written, having regard to the context in which the policy sits (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 19 to 22, Sullivan L.J.’s judgment in *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2015] P.T.S.R. 274, at paragraph 18, and the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraph 24, and the judgment of Lord Gill at paragraphs 72 to 74). The application of policy, however, is for the decision-maker, on a true understanding of what the policy means, but with freedom to exercise planning judgment as the policy allows or requires – subject to review by the court on *Wednesbury* principles alone (see my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraphs 41 and 42).
17. The court will not lightly accept an argument that an inspector has proceeded on a false interpretation of national planning policy or guidance (see Lord Carnwath’s judgment in *Suffolk Coastal District Council*, at paragraph 25). Nor will it engage in – or encourage – the dissection of an inspector’s planning assessment in the quest for such errors of law (see my judgment in *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraph 7). Excessive legalism in the planning system is always to be deprecated (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraphs 22 and 50).

18. The policy with which we are concerned – the policy in paragraph 55 of the NPPF – has already received some attention in this court – though only slight. In *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, Lewison L.J., in paragraph 15 of his judgment, said the relevant definition of previously developed land took as its starting point that the proposed development would be within the curtilage of an existing permanent structure, and it followed, therefore, that “a new dwelling within that curtilage will not be an ‘isolated’ home” for the purposes of the policy in paragraph 55.
19. In the court below, Lang J. recorded the council’s argument, in the light of the policies in paragraphs 28 and 55 of the NPPF and the corresponding guidance in the PPG, that “in applying [paragraph 55 of the NPPF], and considering whether proposed development amounted to “new isolated homes in the countryside”, it was irrelevant that the development was located proximate to other residential dwellings”, and that “[the] key question was whether it was proximate to services and facilities so as to maintain or enhance the vitality of the rural community” (paragraph 22 of the judgment).
20. The judge noted that the word “isolated” in paragraph 55 is not defined in the NPPF. In her view, however, it was to be given its “ordinary objective meaning of “far away from other places, buildings or people; remote” ...” (paragraph 24 of the judgment). As for the “immediate context” of the policy, she said “[this] suggests that “isolated homes in the countryside” are not in communities and settlements and so the distinction between the two is primarily spatial/physical” (paragraph 25). In its “broader context” the policy was, in her view, seeking to “promote the economic, social and environmental dimensions of sustainable development, and to strike a balance between the core planning principles [in paragraph 17 of the NPPF] of “recognising the intrinsic character and beauty of the countryside” and “supporting thriving rural communities within it” ...”. Thus the council’s “analysis of the policy context [was] far too narrow in scope” (paragraph 26). The policy in favour of locating housing “where it will “enhance or maintain the vitality of rural communities”” was “not limited to economic benefits”. The word “vitality” was “broad in scope and includes the social role of sustainable development ...”. The council’s restriction of “isolated” homes to those that were “isolated from services and facilities” would “deny policy support to a rural home that could contribute to social sustainability because of its proximity to other homes” (paragraph 27). Paragraph 55 of the NPPF “cannot be read as a policy against development in settlements without facilities and services since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them” (paragraph 28). She concluded that the council was “seeking to add an impermissible gloss to [paragraph 55 of the NPPF] in order to give it a meaning not found in its wording and not justified by its context” (paragraph 29). She saw support for her interpretation of the policy in what Lewison L.J. had said about it in his judgment in *Dartford Borough Council* (paragraphs 30 and 31).
21. It followed, in the judge’s view, that the inspector’s understanding of the policy, in paragraph 9 of his decision letter, was correct (paragraph 32). She saw nothing unlawful in the remainder of his assessment of the proposal on its planning merits (paragraphs 33 to 37). She was satisfied, therefore, that the inspector had “correctly interpreted [paragraph 55 of the NPPF], and applied it properly to the facts and matters which arose in this appeal” (paragraph 38).

22. For the council, Dr Ashley Bowes submitted that the policy in paragraph 55 of the NPPF establishes a presumption against “new isolated homes in the countryside”, which competes with the “presumption in favour of sustainable development” in paragraph 14. It is capable of disengaging the so-called “tilted balance” in that paragraph, because it is one of the “specific policies” in the NPPF that “[indicates] development should be restricted” (see my judgment in *Barwood v East Staffordshire Borough Council*, at paragraph 22). If a proposal offends the policy in paragraph 55, its prospects of gaining planning permission may therefore be much reduced. Dr Bowes submitted that the inspector, having failed to grasp the true meaning of the policy in paragraph 55, also failed to apply the policy for the “presumption in favour of sustainable development” in paragraph 14 of the NPPF, and that his decision was therefore unlawful.
23. Dr Bowes’ main submission was that Lang J.’s construction of the policy in paragraph 55 was incorrect, that the word “isolated” in the third sentence of paragraph 55 can mean either physical or functional isolation, and that, in the application of the policy, both of these two concepts are relevant and significant. The judge’s focus on physical isolation, as opposed to functional, was in error. A decision-maker must always consider two questions: first, “whether the site is physically isolated relative to settlements and other development”, and secondly, of equal importance, “whether the site is functionally isolated relative to services and facilities”. Only if both of those questions are answered in the negative will the proposal comply with the policy – unless “special circumstances” are demonstrated. To consider only the first question would be to ignore, and fail to give effect to, the basic purpose of the policy, which is to sustain the rural economy by supporting local services and facilities. The Government’s intention here, Dr Bowes submitted, was that new housing in rural areas should be located so as to support those services and facilities, and thus maintain and enhance the vitality of rural communities. As the guidance in paragraph 50-001-20160519 of the PPG makes plain, housing has an “essential” role to play in ensuring the viability of those services and facilities. Therefore, Dr Bowes contended, under the policy in paragraph 55 of the NPPF, housing that would be “isolated” from services and facilities should be avoided unless there are “special circumstances”.
24. This argument seems somewhat different from that presented to the judge. The contention before her, as I understand it, was that the fact of a site’s presence within a rural settlement, close to other dwellings, was irrelevant under the policy in paragraph 55, at least if the settlement lacked services and facilities of its own.
25. Lang J.’s analysis was supported by Mr Stephen Whale for the Secretary of State and Mr Paul Shadarevian Q.C. for Greyread and Granville.
26. In my view the judge’s conclusions were sound, and her understanding of the policy in paragraph 55 correct.
27. Our task, as Mr Whale and Mr Shadarevian submitted, is to construe the words of the policy itself, reading them sensibly in their context. This is not a sophisticated exercise, and it need not be difficult. It is, in fact, quite straightforward. Planning policies, whether in the development plan or in the NPPF, ought never to be over-interpreted. As this case shows, over-interpretation of a policy can distort its true meaning – which is misinterpretation.
28. The first thing to be said about the policy in paragraph 55 is that it is expressed in general and unprescriptive terms. It does not dictate a particular outcome for an application for

planning permission. It identifies broad principles and indicates a broad approach. Local planning authorities are advised what “should” be done. The policy is not expressed as containing a “presumption”, and I would not read it as creating one. Rather, it indicates to authorities, in very broad terms, how they ought to go about achieving the aim stated at the beginning of paragraph 55: “[to] promote sustainable development in rural areas”. It does not set specific tests or criteria by which to judge the acceptability of particular proposals. It does not identify particular questions for a local planning authority to ask itself when determining an application for planning permission. Its tenor is quite different, for example, from the policies governing the protection of the Green Belt, in paragraphs 87 to 92 of the NPPF. The use of the verb “avoid” in the third sentence of paragraph 55 indicates a general principle, not a hard-edged presumption.

29. Secondly, the policy explicitly concerns the location of new housing development. The first sentence of paragraph 55 tells authorities where housing should be “located”. The location is “where it will enhance or maintain the vitality of rural communities”. The concept of the “vitality” of such a community is wide, and undefined. The example given in the second sentence of paragraph 55 – “development in one village” that “may support services in a village nearby” – does not limit the notion of “vitality” to a consideration of “services” alone. But it does show that the policy sees a possible benefit of developing housing in a rural settlement with no, or relatively few, services of its own. The third sentence of the paragraph enjoins authorities to avoid “new isolated homes in the countryside”. This is a distinction between places. The contrast is explicitly and simply a geographical one. Taken in the context of the preceding two sentences, it simply differentiates between the development of housing within a settlement – or “village” – and new dwellings that would be “isolated” in the sense of being separate or remote from a settlement. Under the policy, as a general principle, the aim of promoting “sustainable development in rural areas” will be achieved by locating new dwellings within settlements and by avoiding “new isolated homes in the countryside”. The examples of “special circumstances” given in the policy illustrate particular circumstances in which granting planning permission for an isolated dwelling in the countryside may be desirable or acceptable. But what is perfectly plain is that, under this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of “sustainable development in rural areas” than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.
30. Thirdly, the adjective “isolated”, which was the focus of argument before us, is itself generally used to describe a location. It is not an unfamiliar word. It is commonly used in everyday English. Derived originally from the Latin word “insula”, meaning an “island”, it carries the ordinary sense of something that is “... [placed] or standing apart or alone; detached or separate from other things or persons; unconnected with anything else; solitary” (The Oxford English Dictionary, second edition). This was the meaning favoured by the judge (in paragraph 24 of her judgment), and there is no dispute that in this respect she was right.
31. In my view, in its particular context in paragraph 55 of the NPPF, the word “isolated” in the phrase “isolated homes in the countryside” simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, “isolated” in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definitions of a “community”, a “settlement”, or a “village”. There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in a particular case, a group of dwellings constitutes a settlement, or a “village”, for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. In the second sentence of paragraph 55 the policy acknowledges that development in one village may “support services” in another. It does not stipulate that, to be a “village”, a settlement must have any “services” of its own, let alone “services” of any specified kind.
33. Does this reading of the policy in paragraph 55 fit the broader context of the policies for sustainable development in the NPPF and guidance in the PPG? I think it does.
34. Paragraph 7 of the NPPF refers to the “three dimensions to sustainable development: economic, social and environmental”, in which the “social role” involves “supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being ...”. Of the 12 “core land-use planning principles” in paragraph 17, the fifth is to “take account of the different roles and character of different areas ... recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it”. The eleventh is “actively [to] manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable”. And the twelfth is to “take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs”. Paragraph 28 states that local and neighbourhood plans should “promote the retention and development of local services and community facilities in villages, such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship”. The policy in paragraph 29 recognizes that “different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas”. And the policy in paragraph 34 says that “[plans] and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised”, but that “this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas”.
35. None of those policies suggests a different understanding of the policy in paragraph 55 from mine. Indeed, if anything, I think they tend to confirm it.
36. In my opinion the language of paragraph 55 is entirely unambiguous, and there is therefore no need to resort to other statements of policy, either in the NPPF itself or elsewhere, that might shed light on its meaning. Mr Whale suggested that the use of the PPG to assist in construing policies in the NPPF would be inappropriate in principle. This is not something we have to decide, because the meaning of the policy we are dealing with here is plain on its

face and requires no illumination from the PPG or any other statement of national policy or guidance. But I doubt that it would be right to exclude the guidance in the PPG as a possible aid to understanding the policy or policies to which it corresponds in the NPPF. There may be occasions when that is necessary. But this, in my view, is not such a case.

37. In any event, the interpretation of the policy that I consider to be right seems entirely consistent with the guidance on plan-making in paragraph 50-001-20160519 of the PPG, including the proposition that “settlements can play a role in delivering sustainable development in rural areas – and so blanket policies restricting housing development in some settlements and preventing other settlements from expanding should be avoided unless their use can be supported by robust evidence”.
38. This all seems at one with Lewison L.J.’s observation about the policy – brief as it was – in paragraph 15 of his judgment in *Dartford Borough Council*.
39. I do not accept Dr Bowes’ argument that the word “isolated” in paragraph 55 must be understood as meaning either (a) “physically isolated” or (b) “functionally isolated” or “isolated from services and facilities”; that the decision-maker must therefore address two questions – first, whether the proposed new dwelling would be physically separate or remote from any other dwelling, and secondly, whether it would be isolated from services and facilities; and that if the proposed development would be either separate or remote from other dwellings or separate or remote from services and facilities, it offends the policy. This would be a strained and unnatural reading of the policy. In my view it is neither necessary nor appropriate to gloss the word “isolated” by reading an additional phrase into paragraph 55 whose effect would be to make the policy more onerous than the plain meaning of the words it actually contains. No such restriction is apparent in the policy, or, in my view, implicit in it.
40. On the interpretation suggested by Dr Bowes, the question of whether a proposed new dwelling on a site within a rural settlement would be an “isolated” new home under the policy would depend, or at least potentially depend, on the presence or absence of services in that particular settlement, rather than, say, in a neighbouring village. This could have the surprising consequence that a proposed dwelling on a site within a settlement, perhaps with several existing dwellings either side of it or surrounding it, would have to be regarded as a “new isolated [home] in the countryside”, simply because that settlement did not have any “services” of its own, whereas a similarly located dwelling in a smaller settlement that happened to have “services” of some kind within it – perhaps a shop or a public house – would not be “isolated”. Dr Bowes did not seek to deny this. And it would also follow that each and all of the existing dwellings in a settlement without “services” of its own would then have to be regarded as “isolated” too. It seems to me that this would be not merely an artificial construction of the policy, but also wholly unrealistic. I cannot accept that the Government intended the policy to have such an effect, or, if it did, that it would have failed to spell this out in paragraph 55.
41. Reading the policy as I would read it, as we were urged to do by the Secretary of State through Mr Whale, and as I think the Government plainly did intend, reflects common sense – as well as being the literal and natural construction. As the judge acknowledged (in paragraph 27 of her judgment), a policy directed to enhancing and maintaining the “vitality” of rural communities is a policy that embraces the “social” dimension of sustainable development. And as she said, to restrict the concept of an “isolated home” to one that is

“isolated from services and facilities” would be to deny the policy’s support – indeed, would turn it against – proposed dwellings that “could contribute to social sustainability because of [their] proximity to other homes”. This would seem contrary to the aim of the policy to maintain and enhance “the vitality of rural communities”, and would diminish the acknowledged benefit of development in one settlement supporting “services” in another.

42. I therefore reject Dr Bowes’ submission that the inspector took too narrow a view of the expression “new isolated homes in the countryside”. To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be “functionally” isolated as well as “physically”. He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement. And he did that.
43. None of the descriptive parts of paragraphs 8 and 9 of the decision letter is said to be wrong in fact. There is no dispute that the inspector was right to describe Blackmore End as he did in paragraph 8 of his decision letter: “a recognisable village”. As he said in paragraph 9, there were “a number of dwellings nearby”. It is also undisputed that Blackmore End is not a settlement without any services and facilities. The inspector found, in paragraph 14 of the decision letter, that the settlement “has a very limited range of services and facilities”. That Blackmore End is indeed a settlement, and that there are dwellings a short distance to the north of the appeal site, others a short distance to the south, and another on the other side of the road, to the west, is obvious when one looks at a map. And it is not contested, or contestable, that if the word “isolated” in paragraph 55 of the NPPF means physically isolated in the sense of being isolated from a settlement, the inspector was entitled – as a matter of fact and planning judgment, if not simply as a matter of fact – to conclude at the end of paragraph 9 that “the development would not result in the new isolated homes in the countryside to which Framework paragraph 55 refers”.
44. In the circumstances, there was no need for “special circumstances” to be identified to justify a development of “new isolated homes in the countryside”. This was not such a development.
45. In my view therefore, the inspector did not misinterpret or misapply the policy in paragraph 55 of the NPPF. His understanding of the policy was accurate, and his application of it impeccable.
46. Nor did he fail to apply the policy for the “presumption in favour of sustainable development” in paragraph 14, given the agreed absence of a five-year supply of housing land (see paragraph 22(2) of my judgment in *Barwood v East Staffordshire Borough Council*). Even if one were to assume that the policy in paragraph 55 fell within the ambit of the exception in paragraph 14 for “specific policies” in the NPPF that “indicate development should be restricted” – which may or may not be so – the inspector, having understood the policy correctly and applied it lawfully, concluded in paragraph 9 of his decision letter that the proposal did not offend it. And he went on, in paragraph 16, to conclude not only that there were no “adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits, when assessed against Framework policies as a whole” – the first exception, or the first limb of the exception, in paragraph 14 – but also, expressly, that there were no “specific policies in the Framework which indicate that the development should be restricted” – the second exception, or the second limb. He was satisfied that the proposal amounted to “sustainable development”. And he was also satisfied that it earned the

“presumption in favour of sustainable development”. This conclusion demonstrates a true understanding and proper application of the policy in paragraph 14 of the NPPF.

47. As Mr Shadarevian pointed out, when one reads the decision letter fairly as a whole, it is clear that in assessing the proposal on its planning merits the inspector considered all three dimensions of “sustainable development”: the “economic” role, the “social”, and the “environmental”. He did not neglect the fact that Blackmore End “has a very limited range of services and facilities”. He found it was “likely that those occupying the dwellings would rely heavily on the private car to access everyday services, community facilities and employment”. He acknowledged that “this weighs against the development”. But he also recognized that it was “consistent with the Framework that sustainable transport opportunities are likely to be more limited in rural areas” (paragraph 14 of the decision letter). And in drawing together his conclusions on the main issues when he came to consider “The Overall Balance and Sustainable Development”, he took into account his finding that “[accessibility] to services, facilities and employment from the site other than by car would be poor” (paragraph 16). Those conclusions did not, however, lead him to the view that any policy of the NPPF was breached. This was a matter of planning judgment for him. I do not think his approach can be faulted. His conclusions are not vitiated by any misinterpretation or misapplication of NPPF policy. They are unassailable in a legal challenge.
48. In my view therefore, the inspector made no error of law, and the judge was right to uphold his decision.

Conclusion

49. For the reasons I have given, I would dismiss this appeal.

Lord Justice McCombe

50. I agree.



Neutral Citation Number: [2021] EWCA Civ 320

Case No: C1/2020/0160

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
(PLANNING COURT)
THE HONOURABLE MR JUSTICE WAKSMAN
[2019] EWHC 3437 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/03/2021

Before:

SIR KEITH LINDBLOM, SENIOR PRESIDENT OF TRIBUNALS
LORD JUSTICE PHILLIPS
and
LORD JUSTICE ARNOLD

Between:

City & Country Bramshill Limited

Appellant

- and -

**(1) Secretary of State for Housing, Communities and
Local Government**

Respondents

- and -

(2) Hart District Council

- and -

(3) Historic England

- and -

**(4) The National Trust for Places of Historic Interest or
Natural Beauty**

James Strachan Q.C. and Ned Helme (instructed by **Pinsent Masons LLP**) for the **Appellant**
Guy Williams and **Alistair Mills** (instructed by the **Government Legal Department**)
for the **First Respondent**
Ben Du Feu (instructed by **Historic England Governance and Legal**)
for the **Third Respondent**
Melissa Murphy (instructed by **Sharpe Pritchard LLP**) for the **Fourth Respondent**

Hearing dates: 1 and 2 December 2020

**Judgment Approved by the court
for handing down**

The Senior President of Tribunals:

Introduction

1. This appeal raises questions on the interpretation and application of policies in the National Planning Policy Framework (“NPPF”) against the development of “isolated homes in the countryside” and on the assessment of harm and benefit to “heritage assets”.
2. The appellant, City & Country Bramshill Ltd., appeals against the order of Waksman J., dated 20 December 2019, partly allowing and partly dismissing applications and appeals under sections 288 and 289 of the Town and Country Planning Act 1990 (“the 1990 Act”) and section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”), which challenged the decisions of an inspector appointed by the first respondent, the Secretary of State for Housing, Communities and Local Government, on 33 statutory appeals, under sections 78 and 174 of the 1990 Act, against refusals of planning permission and enforcement notices issued by the second respondent, Hart District Council, relating to development at Bramshill Park in Hampshire. The third and fourth respondents, Historic England and the National Trust, were objectors.
3. The site, which extends to about 106 hectares, lies between the villages of Hazeley and Eversley. It was previously used as a national and international police training college. On it stands a grade I listed Jacobean mansion and various other buildings. It also contains a grade I registered park and garden. The proposed development included the conversion of the mansion to 16 apartments and the adjoining stable block to five (appeal 1), or its conversion to a single dwelling (appeal 2), or to class B1 office space (appeal 3); the construction of 235 houses in place of some of the existing buildings (appeal 4), 14 more to the south-west (appeal 5), and nine to the north of an existing lake (appeal 6); the use of 51 residential units – once occupied by staff employed at the training college – as separate dwellings (appeal 7), retaining those against which the council had taken enforcement action alleging a material change of use without planning permission (appeals 8 to 33).
4. The inspector held a long inquiry into the appeals, which ended in February 2018. In her decision letter, dated 31 January 2019, she allowed appeals 2 and 3, granting planning permission for those proposals. She also allowed appeals 15 and 17 to 33, quashing the enforcement notices in those appeals. She dismissed appeals 1, 4 to 14 and 16. In a separate decision letter dated 14 March 2019 she dismissed City & Country Bramshill’s application for costs against the council. City & Country Bramshill challenged her decisions on appeals 4 to 14 and 16, and on the application for costs. Waksman J. upheld the challenges to the decisions on appeals 7 to 14 and 16. He rejected those to the decisions on appeals 4 to 6 and on costs. The appeal before us is against that part of his order. Permission to appeal was granted by Lewison L.J. on 28 February 2020.

The issues in the appeal

5. The grounds of appeal raise four principal issues: first, whether the inspector erred in law in her interpretation and application of the policy against “isolated homes in the countryside” in paragraph 79 of the version of the NPPF published in July 2018 (ground 1); second, whether she erred in her approach to “sustainability” (ground 4); third, whether,

in performing the duty in section 66 of the Listed Buildings Act and applying the corresponding policies in the NPPF, she failed to comply with a “principle” identified by this court in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061, [2017] 1 W.L.R. 411 (ground 2); and fourth, whether she erred in her approach to applying development plan policies for the protection of the historic environment, in particular policies CON11, CON12, CON17 and CON18 of the adopted local plan for Hart district (ground 3). It is also contended that the decision on the application for costs was unlawful.

The inspector’s “Overall Conclusions” on appeals 4, 5 and 6

6. The inspector’s decision letter runs to 433 paragraphs. Her “Overall Conclusions” on appeals 4, 5 and 6 were these (in paragraph 417):

“417. Appeals 4, 5 and 6 would not provide appropriate sites for development being in an unsustainable location and resulting in isolated housing in the countryside. They would be harmful to the character and appearance of the area and would not preserve the special qualities of the listed buildings, their settings or the [registered park and garden (“RPG”)]. These matters are not outweighed by public benefits. They would not be in accord with [local plan] policies GEN1, GEN3, GEN4, T14, CON12, CON17 and national planning policy.”

The policy in paragraph 79 of the NPPF

7. Under the heading “Identifying land for homes”, paragraph 72 of the July 2018 version of the NPPF stated:

“72. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities. Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way.
... .”

8. In a passage headed “Rural housing”, paragraphs 78 and 79 stated:

“78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

79. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
a) there is an essential need for a rural worker ... to live permanently at or near their place of work in the countryside;

- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future use of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality ...”.

Those two paragraphs re-appeared in the version of the NPPF published in February 2019.

9. The previous policy, in paragraph 55 of the original version of the NPPF published in March 2012, was in slightly different terms. It stated:

“55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: ...”.

10. The interpretation of the policy in paragraph 55 of the original version of the NPPF was considered by this court in *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, [2018] 2 P. & C.R. 9. In that case I said (in paragraphs 29 to 32):

“29. ... [Under] this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of “sustainable development in rural areas” than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.

...

31. In my view, in its particular context in paragraph 55 of the NPPF, the word “isolated” in the phrase “isolated homes in the countryside” simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is or is not “isolated” in this sense is a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definition of a “community”, a “settlement”, or a “village”. There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in

a particular case, a group of dwellings constitutes a settlement or a “village” for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. ...”

and (in paragraph 38):

“38. This all seems at one with Lewison L.J.’s observation about the policy – brief as it was – in paragraph 15 of his judgment in [*Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, [2017] P.T.S.R. 737].”

and (in paragraph 42):

“42. ... To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be “functionally” isolated as well as “physically”. He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement.”

11. Though it was not referred to either in evidence or in argument before the inspector, the decision of this court in *Dartford Borough Council* has been relied upon by City & Country Bramshill in these proceedings. The “sole issue” in that case, as Lewison L.J. said (in paragraph 1 of his judgment), was “the meaning of “previously developed land” ... as defined by the glossary” in the NPPF. In his view, the expression “[land] in built-up areas” in the definition could not mean “land *not* in built-up areas” (paragraph 9). And he saw no conflict between that definition and the policy in paragraph 55 of the NPPF (paragraph 14). He said (in paragraph 15):

“15. ... [The] definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that the new dwelling within that curtilage will not be an “isolated” home. There will already be a permanent structure on the site. ...”.

The inspector’s conclusions on the location of the proposed development

12. The first of the “main issues” identified by the inspector was “[whether] the proposals would provide appropriate sites for development having regard to planning policies that seek to control the location of new development and their sustainability credentials” (paragraph 23 of the decision letter).
13. She described the site and the buildings on it, noting that it “contains an extensive range of modern buildings ... the lawful use ... [being] a Residential Institution under Class C2” (paragraph 27). She also described the proposals in each of the appeals, and the relationships between one proposal and another. For example, she noted that the proposal in appeal 4 would provide 235 houses to the north-west of the mansion “utilising some of the existing buildings ...” (paragraph 31), that the proposal in appeal 7 sought permission for “the use of 51 residential units on the site as C3 dwelling houses”, 26 of which were the subject of the enforcement notices in appeals 8 to 33, and that “[the] buildings concerned are also included in appeal 4 for adaptation/demolition” (paragraph 35).

14. She said the council's reasons for refusal of planning permission for the development in appeals 1, 4, 5 and 6 "[related] to the alleged unsustainable location of the site by virtue of its remote position away from nearby settlements with services and facilities", and in appeal 7 "the provision of new isolated dwellings in the open countryside" (paragraph 54). She referred to the policy in paragraph 103 of the July 2018 version of the NPPF, which, she said, "seeks to focus significant development on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of sustainable transport modes", and the policy in paragraph 110, that "[encouragement] should be given to the effective re-use of land that has been previously developed ..." (paragraph 57).
15. On the policy in paragraphs 78 and 79 of the NPPF she concluded (in paragraphs 58 to 61):
- "58. In rural areas, to promote sustainable development housing should be located where it will enhance or maintain the vitality of rural communities. Isolated homes in the countryside should be avoided unless they are to serve one of [the] identified special circumstances including where such development would represent the optimum viable use of a heritage asset or would be appropriate enabling development to secure the future of the heritage assets; or where the development would re-use redundant or disused buildings and enhance its immediate setting. [Here a footnote refers to paragraph 79 of the NPPF.]
59. Although the development plan policies relating to settlement boundaries are out of date, there is no dispute between the parties that the site is located outside any settlement area and is not in the vicinity of the boundary of any settlement. It is in the countryside.
60. Nonetheless the appellant considers that the proposals would not result in isolated homes in the countryside under the meaning given in paragraph 79 of the [NPPF]. I have taken into account the findings of *Braintree* [Here a footnote refers to the first instance judgment in *Braintree District Council*] which remain relevant to the revised [NPPF] as the text in the revision remains essentially the same. It was held in the judgement that the word isolated should be given its ordinary objective meaning of "far away from other places, buildings or people; remote". A distinction was also made in the judgement between "rural communities", "settlements" and "villages" on the one hand and "countryside" on the other. At the Court of Appeal it was agreed that the [NPPF] does not define a community, settlement or village or that a settlement or development boundary must have been fixed in an adopted or emerging local plan. It was held that it should not necessarily have any services or public transport within easy reach. Whether in any particular case a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker. [Here there is a footnote referring to this court's decision in *Braintree District Council*.]
61. In the cases before me, whilst I acknowledge that the site contains existing buildings, it is evidently not a rural community, settlement or village but rather a discrete group of buildings used in the past for a specific purpose as a residential institution centred on a historic house. It is remote from other settlements and villages and surrounded by open countryside. In my assessment residential

development in this location would result in new isolated housing in the countryside.”

16. She acknowledged that paragraph 79 of the NPPF “allows for certain exceptions” (paragraph 62). But in the light of her conclusion that the proposals in appeals 4, 5 and 6 did not “represent the optimal viable use of a heritage asset or provide appropriate enabling development to secure the future of the heritage asset”, she concluded that “these proposals do not fall under the special circumstances allowed by paragraph 79” (paragraph 63).
17. The development in appeal 4, the inspector said, “would extend beyond what can be considered as the curtilage of previously developed land”, and this weighed against its “sustainability credentials” (paragraph 67). The proposals in appeals 5 and 6 did “not comprise the use of previously developed land” (paragraph 68).
18. On “sustainable transport”, having considered the distance of the site from services and facilities (paragraphs 69 to 80), the inspector said the section 106 agreement showed “a commitment to measures that would assist in providing alternative transport modes for some of the appeals” (paragraph 81). But there was “no evidence as to how likely these particular measures would be to reduce the use of the private car”. They “would provide some choice”, but “this would be limited”. The proposals did not “offer a genuine choice of transport modes as required by national and local policies” (paragraph 82).
19. Turning to City & Country Bramshill’s contention that the development “would represent an improvement in greenhouse gas emissions in comparison to the site’s previous use” (paragraph 83), the inspector said (in paragraphs 84 to 87):

“84. The appellant contends that due to the nature of the trips that were undertaken in association with the previous use (and that could still be undertaken) it is relevant to sustainability to consider how the proposals would result in a reduction in greenhouse gas emissions due to the nature of the trips in the extant and proposed uses. I was not provided with evidence of the comparative greenhouse gas emissions of the previous and proposed uses. I was provided with information on trip rates by both main parties although the appellant acknowledges that it is not possible to define the ultimate origin and destination of trips from the former use. [Here a footnote refers to paragraph 337 of the closing submissions for City & Country Bramshill.] The appellant instead relies on the national and international nature of the former use that is alleged to have resulted in far greater emissions arising from trip lengths and international flights.

85. The Council claims that the proposals would result in more trips than the former use. This is largely due to the residential nature of the police college which did not generate regular trips off site. The Council did not provide information on trip lengths. I reach no conclusion on whether the existing or proposed uses would generate greater trip numbers as these do not assist in concluding on the relative greenhouse gas emissions arising from each as this would depend on distance and type. In addition it is likely that residents would travel abroad for holidays.

86. The offer of electric charging points to facilitate the use of electric cars would have the potential to assist in reducing greenhouse gas emissions. However, this would be reliant on individual occupants purchasing such cars and I have no evidence before me as to the likelihood or extent of this and the associated effect on greenhouse gas emissions.
87. As such I am unable to conclude that greenhouse gas emissions would be less with the appeal schemes before me as I do not have sufficient information before me. However, even if I did reach such a conclusion, this one factor would not lead me to a conclusion that the schemes would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes.”
20. The inspector then returned (in paragraph 88) to the policies of the NPPF bearing on the sustainability of the site’s location:
- “88. The [NPPF] should be read as a whole and seeks to direct development to locations which are or can be made sustainable, where services are accessible and where the natural environment is protected. I do not consider that the various measures proposed are of such weight to outweigh the conclusion that the site is in an inappropriate location in the countryside for new residential development, divorced from services and facilities. Appeals 4, 5, 6 and 7 would result in isolated homes in the countryside. Whilst the travel plan and proposals for electric charging points would potentially provide some choice of travel, given the lack of facilities within walking distance of the site, the distance to the bus stops and the unattractive nature of the road network to walk and cycle, the site’s location is not one that is or can be made sustainable. The developments would not enhance or maintain the vitality of the local communities or result in strong and vibrant rural communities. I conclude that the site would not be an appropriate and sustainable location for housing development in Appeals 1, 4, 5, 6, and 7-33.”
21. In her conclusions on the first “main issue”, therefore, the inspector said the proposals in appeals 1, 4, 5, 6 and 7 to 33 “would not provide appropriate sites for housing development in respect of their location and sustainability credentials”, and “would not be in accord with ... the objectives of national planning policy” (paragraph 91). However, the site in appeal 2 “would be an appropriate site for a single dwelling”, and that in appeal 3 “an appropriate site for offices given the fallback position”. Both of those proposals were “in accord with local and national policies in this regard” (paragraph 92).
22. Later, when dealing with the ground (c) appeals against the enforcement notices, she considered the lawfulness of the uses to which the notices related (paragraphs 363 to 376).

Did the inspector misinterpret and misapply the policy for “isolated homes in the countryside” in paragraph 79 of the NPPF?

23. For City & Country Bramshill, Mr James Strachan Q.C. argued – as he did before Waksman J. – that in concluding the proposals would create “isolated homes in the countryside” the inspector misinterpreted the policy in paragraph 79 of the NPPF.

24. Mr Strachan made three main submissions. First, the inspector failed to comply with the “principle” stated by Lewison L.J. in paragraph 15 of his judgment in *Dartford Borough Council*, which was binding on her even though that case had not been mentioned at the inquiry. She did not grapple with the fact that the proposed housing would be on “previously developed land” within the curtilage of existing permanent structures, and so would not be “isolated homes in the countryside”. As she was reminded in *City & Country Bramshill*’s closing submissions, this was conceded in cross-examination by the council’s witness Mr Archibald, and, for the development in appeals 4, 5 and 6, by its witness Mr Stevenson. Secondly, she failed to consider whether there was a “cluster” of dwellings forming a “settlement” on the site, as envisaged in *Braintree District Council*. There were already at least 18 residential units in lawful use as independent dwellings (those in appeals 15 and 17 to 33), and at least 17 more containing staff accommodation, which could also be used as new dwellings. So to describe the proposed new housing as “isolated homes” was not rational. The judge’s analysis here (in paragraphs 40 to 42 of his judgment) was incorrect. And thirdly, the inspector also failed to consider how the housing proposed in appeal 4, with or without the additional housing in appeals 5 and 6, could rationally be regarded as the creation of “isolated homes in the countryside”. The judge was wrong to suggest (in paragraphs 32 and 44 of his judgment) that the number of houses proposed was irrelevant to the question of whether the proposal was for “isolated homes”. It is implicit in this court’s reasoning in *Braintree District Council* that a decision-maker should consider whether the number of dwellings proposed would be sufficient to avoid “isolation”.
25. Mr Strachan contended therefore that the inspector’s conclusion in applying the policy in paragraph 79 of the NPPF was irrational. No reasonable decision-maker could have regarded the proposed housing as “isolated homes in the countryside”. But in any event, the inspector’s reasons on this “principal important controversial issue”, were deficient.
26. Finally, Mr Strachan submitted that having upheld the challenge to the inspector’s decision on appeal 7 and having also remitted the decisions on appeals 8 to 14 and 16 for redetermination, the judge should also have quashed the decisions on appeals 4, 5 and 6. Those other decisions had implications for the “isolated homes” issue in appeals 4, 5 and 6. If the inspector had allowed appeal 7, the use of the buildings on the site for 51 dwellings would have been lawful, as well as the residential use of the mansion itself.
27. I cannot accept those submissions. In my view, as Mr Guy Williams submitted for the Secretary of State, there is nothing in the inspector’s conclusions to suggest that she misinterpreted the policy in paragraphs 78 and 79 of the NPPF, nor did she misapply it. She clearly adopted the interpretation given by this court in *Braintree District Council*. And she applied the policy reasonably and lawfully to the proposals before her. She made no error of law in either respect, and there is no reason here for the court to intervene.
28. The principles on which the court will act in a challenge to an inspector’s decision on a planning appeal are well established (see *St Modwen Developments v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] P.T.S.R. 746, at paragraph 6). The court will not be drawn into an unduly legalistic approach (see *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, [2018] P.T.S.R. 88, at paragraph 50). It will never trespass into areas of planning judgment, except to consider whether such judgment has been exercised lawfully, and it will keep in mind that the inspector appointed by the Secretary of State to make the decision will have

brought his or her own expertise to the task (see *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 W.L.R. 1865, at paragraph 25). Where national or development plan policy is the focus of argument, it must tell apart grounds that genuinely allege a misinterpretation of policy and those presented in that guise, which are, in truth, only a complaint about the way in which the policy has been applied (see *Hopkins Homes Ltd.*, at paragraph 26). It will read the decision letter fairly, with due tolerance for minor imperfections or infelicity. It will not expect elaborate or lengthy reasons for every conclusion, but consider “whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given” (see the speech of Lord Bridge of Harwich in *Save Britain’s Heritage v Number 1 Poultry Ltd.* [1991] 1 W.L.R. 153, at p. 167). It will keep in mind that the decision letter is directed to parties familiar with the evidence and submissions in the case (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33, [2004] 1 W.L.R. 1953, at paragraph 36). It will not expect every piece of evidence, every concession made in cross-examination, and every submission of counsel to be mentioned. That would be wholly unreal.

29. I would reject the suggestion that the inspector was not entitled to apply the paragraph 79 policy to all the housing proposals before her, and not merely those to which the council was opposed on the grounds of alleged conflict with that policy. She was considering each appeal on its merits, without being confined by the council’s reasons for refusal or the reasons it had given for taking enforcement action (sections 78, 79(1) and 174(2)(a) of the 1990 Act). She was entitled to apply the policy in paragraph 79 to each of the housing proposals before her. And it was appropriate to do so when she was considering, as part of her first “main issue”, the sustainability of the site’s location for housing. Her formulation of that issue put squarely in play, for all of the proposed housing, the policies of the NPPF bearing on the sustainability of the site’s location, including the policy in paragraph 79. No unfairness or other illegality arose from proceeding as she did.
30. One must remember that the concept of “isolated homes in the countryside” is not a concept of law. It is a concept of national planning policy. It is not defined in the NPPF. It does not lend itself to rigorous judicial analysis (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at paragraph 26). As with many other broadly framed policies in the NPPF, its application will depend on the facts of the case, and decision-makers will have to exercise their planning judgment in a wide variety of circumstances (see the judgment of Lord Carnwath in *R. (on the application of Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3, [2020] P.T.S.R. 221, at paragraph 39). The court’s role, therefore, both in interpreting the policy and in reviewing its application, is limited (see *Hopkins Homes Ltd.*, at paragraphs 24 to 26). As Lord Reed said in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983 (in paragraph 18), where decision-makers are required to exercise judgment in applying a policy to a given set of facts, “their exercise of their judgment can only be challenged on the ground that it is irrational or perverse”.
31. Fortunately, we are not faced with having to interpret the paragraph 79 policy. That has already been done by this court in *Braintree District Council* – though for the predecessor policy in paragraph 55 of the 2012 version of the NPPF. In *Braintree District Council* the central issue in the appeal was the meaning of the expression “new isolated homes in the countryside”. In this case, the contentious phrase – now in paragraph 79 – is simply “isolated homes in the countryside”. In substance, however, the policy is unchanged.

32. There is, therefore, no need for any further discussion of what is meant by the concept of “isolated homes in the countryside” in this policy. The essential conclusion of this court in *Braintree District Council*, in paragraph 42 of the judgment, is that in determining whether a particular proposal is for “isolated homes in the countryside”, the decision-maker must consider “whether [the development] would be physically isolated, in the sense of being isolated from a settlement”. What is a “settlement” and whether the development would be “isolated” from a settlement are both matters of planning judgment for the decision-maker on the facts of the particular case. This understanding of the policy, in its context, is not disturbed by what Lewison L.J. had earlier said in *Dartford Borough Council* (at paragraph 15). His observation was obiter, as was my comment about it in *Braintree District Council* (at paragraph 38). No conflict of authority exists between the decisions in those two cases.
33. To adopt remoteness from other dwellings, instead of remoteness from a settlement, as the test for “isolated homes in the countryside” would seem inconsistent with the Government’s evident intention in producing the policy in paragraph 79. It would mean, presumably, that the policy would not apply to a development of housing in the countryside – large or small – on land next to an individual dwelling remote from the nearest settlement, because although the new homes might be “isolated” from the settlement, they would not be “isolated” from existing development. It would prevent the policy from applying to the development of additional dwellings, one or two at a time, on sites next to other sporadic rural housing, again on the basis that they would not then be “isolated”. It might even prevent the policy from applying to a proposal for two or more dwellings on a single, undeveloped site in the countryside, because none of them would itself be “isolated” from another dwelling, and the development as a whole would therefore not be “isolated”. If this were so, only the development of a single dwelling, on its own, separate from any other dwelling already built or proposed nearby, would engage the policy. This would be hard to reconcile with the Government’s aim, as policy-maker, to “promote sustainable development in rural areas”.
34. The policy in paragraphs 78 and 79 of the NPPF aligns with that in paragraph 72. Their common theme is the need for the planning system to promote sustainably located housing development. Neither policy favours the unplanned and unsustainable development of housing in the countryside, away from existing settlements. As paragraph 72 indicates, it is for plan-making to achieve the “supply of large numbers of new homes” by “planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities”. This is within the remit of “strategic policy-making authorities”. It is their job to “identify suitable locations for such development where this can help to meet identified needs in a sustainable way”.
35. In this case the inspector’s application of the policy in paragraphs 78 and 79 was, in my view, impeccable. It shows that she understood those policies correctly. Her relevant conclusions sit within her assessment of the appropriateness and sustainability of the proposed development in this location. To get the full sense of those conclusions, one must read her assessment on this first “main issue” in its entirety. When this is done, no error of law emerges in her handling of the policy in paragraphs 78 and 79.
36. In dealing with appeals 1, 4, 5 and 6, she began by identifying the basic objection underlying the relevant reasons for refusal in the council’s decision notices, namely that the

proposed development was in an “unsustainable location ... by virtue of [the site’s] remote position away from nearby settlements with services and facilities” (paragraph 54 of the decision letter). She then referred to the general policy background for sustainable development, including paragraphs 103 and 110 of the NPPF, which emphasise, respectively, the importance of “[focusing] development on locations which are or can be made sustainable ...” and “[encouraging] ... the effective re-use of land that has been previously developed ...” (paragraph 57). It was with these principles in mind that she went on to apply the policy in paragraphs 78 and 79.

37. She summarised the policy accurately (paragraph 58). She recorded, as the parties had agreed, that the site was “located outside any settlement [,] ... not in the vicinity of the boundary of any settlement [, and] in the countryside” (paragraph 59). She then dealt with the assertion that “the proposals would not result in isolated homes in the countryside”. She confirmed that she had taken into account both the first instance judgment and the decision of the Court of Appeal in *Braintree District Council*, setting out the court’s basic conclusions on the interpretation of the policy. In the light of the Court of Appeal’s decision, she directed herself, rightly, that the question of “[whether], in a particular case, a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker” – a reference to paragraph 32 of the judgment (paragraph 60). It is clear, therefore, that she had in mind what had been said about the possibility of a “cluster of dwellings” being a settlement, which appears in the same paragraph of the judgment. She understood that it was for her to determine whether the group of buildings on the site was or was not a settlement.
38. She stated her findings of fact on the relevant questions, and the conclusion she had come to in the exercise of her planning judgment. The salient facts were that the site “contains existing buildings”; that it was “evidently not a rural community, settlement or village”, but “a discrete group of buildings used in the past ... as a residential institution centred on a historic house”; and that it was “remote from other settlements and villages and surrounded by open countryside”. None of these findings are attacked in these proceedings. The conclusion based on them, as a matter of planning judgment, was equally clear: that “residential development in this location would result in new isolated housing in the countryside” (paragraph 61). And it was later repeated (in paragraphs 87 and 88). It is invulnerable in a legal challenge. Mere disagreement is not enough to unseat it.
39. Rightly, the inspector went on to consider, for each appeal, whether the proposal fell within any of the specified exceptions in the policy. Once again, she exercised her own planning judgment, concluding that no valid exception was demonstrated for the proposals in appeals 4, 5 and 6 (paragraph 63). There is no error of law in those conclusions.
40. The inspector’s reasons are clear and complete. They express and explain the findings and conclusions required of her under the policy. She did not have to record all the evidence and submissions she had heard, or set out the concessions made by particular witnesses and the submissions of counsel in the light of those concessions. She had to set out her main findings of fact on the evidence before her, and state her conclusions. That is what she did.
41. It is not a valid criticism of her that she made no mention of *Dartford Borough Council*. City & Country Bramshill did not rely on that case at the inquiry, and no one else seems to have referred to it. She was aware of it – because it is touched upon in the judgment in

Braintree District Council, which she had obviously read. But she did not have to say anything about it, for it established no “principle” relevant to her assessment.

42. In summary, therefore, the findings of fact and conclusion in paragraph 61 of the decision letter were lawful findings and a lawful conclusion in the application of the paragraph 79 policy, on its true interpretation. So too were the inspector’s findings and conclusions on the possible exceptions to the policy.
43. Her conclusion in paragraph 61 of the decision letter was clearly intended to apply to each of the proposals for housing, and to each dwelling proposed. It does not depend on the number of dwellings in any single part of the total scheme, or any of the permutations possible within that scheme, or the total number of dwellings capable of being provided if all the appeals were allowed. It goes for all of them, individually and together. It relates simply to “residential development in this location”. Such development would, as the inspector put it, “result in new isolated housing in the countryside” – because each and all of the dwellings proposed were, as she had found, “isolated” from any settlement.
44. Each of the proposals for housing was, in her planning judgment, objectionable for that reason. From this it follows that a successful challenge against one or more of her decisions in the relevant appeals on some other ground does not invalidate her conclusion on this issue, or her decision, in any of the others. It is therefore wrong to contend, as Mr Strachan did, that the judge, having decided to quash some of the decisions, ought therefore to have quashed others as well on the basis that the outcome on this issue might have been different if the inspector had allowed those other appeals. That is a misconception.
45. Implicit in the inspector’s conclusion in paragraph 61 of the decision letter is that the proposed new housing, when added to the remaining buildings on the site, would not form a settlement. This is put beyond doubt in her conclusions on the site’s lack of sustainability. Despite the various measures proposed, she did not accept that the scheme would “overall comprise sustainable development” – because of the site’s “isolated location ... and the lack of alternative transport modes” (paragraph 87). She found that “[appeals] 4, 5, [and] 6 ... would result in isolated homes in the countryside”, that “the site’s location is not one that is or can be made sustainable” and that “[the] developments would not ... result in strong and vibrant local communities”. And she concluded that “the site would not be an appropriate and sustainable location for housing development in Appeals ... 4, 5 [and] 6 ...” (paragraph 88) and that those proposals did not accord with “the objectives of national planning policy” (paragraph 91). It would be difficult to imagine any firmer conclusion that those proposals were in conflict with the policies of the NPPF for the location of housing development, including the policy in paragraph 79.
46. It cannot be said that in applying the paragraph 79 policy the inspector neglected the presence of the existing buildings on the site and the existing residential uses, or did not have in mind what the different consequences would be if some of the appeals succeeded and others failed. When describing the site, she referred to the “extensive range of modern buildings [,] ... the lawful use ... [being] a Residential Institution under Class C2” (paragraph 27). She acknowledged that it contained a “discrete group of buildings” once used as a “residential institution” and “centred on a historic house” (paragraph 61). It was on this basis that she considered whether, in its present state, the site was a settlement. She was also aware of the extent of “previously developed land” on the site, the existing residential uses, the status of those uses, and the “fall-back” on which City & Country

Bramshill relied. She referred several times to the areas of “previously developed land” (paragraphs 65, 66, 67, 68 and 89). She had regard to “the site’s previous use” (paragraphs 83 and 84), and to the “extant” or “previous” or “former” uses, in contradistinction to the uses “proposed” (paragraphs 83 and 84). She referred to the “fallback position” of the extant class C2 use (paragraph 92). And when dealing with the ground (c) appeals against the enforcement notices, she had to consider the lawfulness of the uses enforced against (paragraphs 363 to 376). That she had the “fall-back” well in mind is indisputable.

47. In these circumstances it is, I think, impossible to suggest that her findings and conclusions in the application of the policy in paragraphs 78 and 79 of the NPPF were flawed because she had somehow overlooked the relationship between various proposals, or, in particular, the relationship between appeals 4 and 7 and the potential consequences of either or both of those appeals, or any others, succeeding.
48. Nor can it be suggested that if she had not gone wrong when determining appeal 7 – as the judge held she did – and had allowed that appeal, her conclusions in applying that policy might have been different. In considering the effect of the policy on the proposals, she explicitly took account of the buildings already on the site, regardless of whether they were still in active use, and this necessarily included the buildings in appeal 7 (paragraph 61). She assumed that the buildings on the site remained in place, not that any of them had been removed or replaced by new development. And when considering whether any of the proposals qualified as an exception to the policy, she referred to individual buildings on the site, including buildings that were now “disused”, such as those in appeal 7 (paragraph 64). Her approach was consistent, and in my view perfectly sound.

Was the inspector’s approach to sustainability unlawful?

49. Mr Strachan argued that the inspector erred in her approach to the sustainability of the development in the appeals she dismissed – in particular, by failing to take proper account of the accepted “fall-back” use of the site as a residential institution. The judge was wrong to reject this argument (in paragraphs 152 to 155 of his judgment).
50. Mr Strachan submitted that the inspector failed to see the significance of the “fall-back” for her consideration of sustainability, traffic movements and the reduction in greenhouse gas emissions (in paragraphs 82 to 87 of the decision letter). Even if she was unable to find the proposed development superior to the “fall-back” in terms of traffic congestion and greenhouse gas emissions, she should have had regard to the “fall-back” when considering whether it was “locationally unsustainable”. To ignore the “fall-back” was irrational. To say she was “unable to conclude that greenhouse gas emissions would be less with the appeal schemes” because she did not have “sufficient information” was wrong. There was, in fact, a good deal of evidence on this issue, which was referred to in City & Country Bramshill’s closing submissions, including Mr Archibald’s concession that both the police college use and an alternative Class C2 use would be less sustainable in its generation of greenhouse gas emissions than the proposed development. The inspector gave no adequate reasons for disagreeing with relevant expert evidence. Her reference (in paragraph 87) to the “isolated location of the site” was based on her misunderstanding of NPPF policy on “isolated homes”. She ought to have considered whether the perceived “lack of genuine alternative transport modes” could properly be an objection here – not only because this could also be said of the “fall-back” but also because the policy for “sustainable transport”

in paragraph 103 of the NPPF was directed to reducing congestion, which was not in issue, and greenhouse gas emissions, on which she came to no firm conclusion.

51. That argument is not cogent. I need not repeat what I have said on the previous issue, though it is also relevant here. The inspector was not legally at fault in her understanding and application of national planning policy for the location of housing development. Nor did she err when considering whether the site was “locationally sustainable”.
52. Her assessment on “sustainable transport”, which resulted in her conclusion (in paragraph 82 of the decision letter) that the proposed development would not provide a “genuine choice of transport modes as required by national and local policies”, betrays no legal error. As the judge concluded (in paragraph 155 of his judgment), she was entitled to take the view – as she plainly did – that the reliance placed by City & Country Bramshill on its commitment to providing “alternative transport modes” did not support a different conclusion (paragraphs 81 and 82 of the decision letter). This was a reasonable and lawful exercise of planning judgment.
53. As I have said, it is clear that the inspector took account of the “fall-back” when assessing the locational sustainability of the proposed development. One sees this in her conclusion on the assertion that the development would reduce greenhouse gas emissions “in comparison to the site’s previous use”. She dealt with this issue even though she had concluded, applying the policy in paragraph 103 of the NPPF, that the development would not provide a choice of transport modes to reduce congestion and emissions (paragraph 83 of the decision letter). She referred to the “trips ... undertaken in association with the previous use (and that could still be undertaken) ...”. And in assessing “sustainability”, she compared greenhouse gas emissions generated by the “extant and proposed uses”. But this exercise was impeded by the lack of evidence on the “former use”, largely because, in spite of the “national and international nature” of that use (paragraph 84), it was not possible to ascertain the origins and destinations of trips to and from the site and calculate “relative greenhouse gas emissions” (paragraph 85), or to conclude that they would now be “less” (paragraph 87) (my emphasis). That she had the “fall-back” well in mind is also confirmed by her conclusions on the office use proposed in appeal 3. Here she twice referred to the “fall-back”, comparing it with the appeal proposal. She concluded that “given the fallback position of the extant C2 use of the site ... which includes B1 uses that would be comparable to the proposed use”, the latter “would not be unacceptable on the grounds of its location or sustainability credentials” (paragraph 90). The site was “appropriate ... for offices given the fallback position” (paragraph 92).
54. Nor can it be said that she neglected the evidence given by the council’s witness Mr Archibald on which Mr Strachan relied in his closing submissions. She attached a footnote to paragraph 84 of her decision letter, referring to paragraph 337 of those submissions, which is in a passage where Mr Strachan emphasised concessions made by the council’s witnesses in response to his questioning. To suggest she did not have in mind all the relevant evidence, including that given in cross-examination, and the submissions based upon it, simply because she did not refer to it all, is, I think, impossible.
55. It is quite clear, therefore, that the inspector did not ignore the existence of the “fall-back”, nor did she overlook relevant evidence and submissions. She considered the “fall-back”, with as much help as the parties could give her. Her references to the “previous use ... that could still be undertaken” and to the “extant” and “former” use are obviously to the “fall-

back” use of the site as a residential institution. On the evidence before her, she sought to compare that use with the proposals for residential development in the appeals. Doing the best she could, she was unable to come to a reliable view on the relative effects on greenhouse gas emissions. This was a conclusion reasonably open to her, as a matter of planning judgment. It is nowhere close to irrational.

56. And anyway it was not decisive. The inspector’s critical conclusion on the first “main issue” was that the site was inherently unsustainable as a location for housing. As she said, even if it had been shown that the proposed development would generate lower levels of greenhouse gas emissions than the “fall-back”, this would not have led her to conclude that it “would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes” (paragraph 87 of the decision letter). This too, as a matter of planning judgment, was a wholly reasonable conclusion.

The section 66(1) duty and relevant policy for “heritage assets”

57. Section 66(1) of the Listed Buildings Act provides:

“66. (1) In considering whether to grant planning permission ... for development which affects a listed building or its setting, the local planning authority or ... the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

58. In chapter 16 of the NPPF, “Conserving and enhancing the historic environment”, paragraph 190, under the heading “Proposals affecting heritage assets”, urged local planning authorities to “identify and assess the particular significance of any heritage asset that may be affected by a proposal ...”, and to “take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal”. The “Glossary” defined “Conservation (for heritage policy)” as “[the] process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance”. Paragraphs 193 to 196 stated:

“193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

...

b) assets of the highest significance, notably ... grade I and II* listed buildings, grade I and grade II* registered parks and gardens ... should be wholly exceptional.

195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

[Four considerations were then set out, which are not relevant in this case.]

196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

59. Policy CON11 of the local plan states that “[development] that would adversely affect a Scheduled Ancient Monument, other site of archaeological importance or its setting will not be permitted”. Policy CON12, “Historic Parks and Gardens”, states:

“... DEVELOPMENT THAT WOULD ADVERSELY AFFECT HISTORIC PARKS AND GARDENS OR THEIR SETTINGS ... WILL NOT BE PERMITTED.”

Policy CON17, “Listed Buildings and Buildings of Local Interest – extension or alteration”, states:

“... PROPOSALS FOR THE EXTENSION OR ALTERATION OF LISTED BUILDINGS OR BUILDINGS OF LOCAL INTEREST, WILL NOT BE PERMITTED UNLESS:

- (i) The scale of the building is not materially changed;
- (ii) Design is appropriate to the character and setting of the building.”

Policy CON18, “Listed Buildings or Buildings of Local Interest – Change of Use”, states:

“IN ORDER TO ENSURE THE PRESERVATION OF THE BUILT STRUCTURE, THE CHANGE OF USE OF A LISTED BUILDING ... WILL ONLY BE PERMITTED IF IT IS IN KEEPING WITH THE BUILDING AND WILL NOT MATERIALLY AFFECT FEATURES OF HISTORIC OR ARCHITECTURAL IMPORTANCE.”

60. There is ample case law on the section 66 duty. In *Barnwell Manor Wind Energy Ltd. v East Northamptonshire District Council* [2014] EWCA Civ 137, [2015] 1 W.L.R. 45 Sullivan L.J. said (at paragraph 22) that the judgment of Glidewell L.J. in *The Bath Society v Secretary of State for the Environment* [1991] 1 W.L.R. 1303 was “authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give “considerable importance and weight””. This conclusion was, he said (in paragraph 23), “reinforced” by a passage in the speech of Lord Bridge of Harwich in *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 A.C. 141 (at p.146E-G). He added (in paragraph 28) that the “general duty” in section 66(1) “applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance”. *South Lakeland District Council* was a case concerning the statutory requirement – now in section 72(1) of the Listed Buildings Act – that “special attention

shall be paid to the desirability of preserving or enhancing [the] character or appearance [of a conservation area]”. Lord Bridge (at p.150B-E) endorsed the observation of Mann L.J., in this court, that “[the] statutorily desirable object of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say, preserved”.

61. In *Jones v Mordue* [2015] EWCA Civ 1243, [2016] 1 W.L.R. 2682, Sales L.J. said (at paragraph 28):

“28. ... [The] express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF [as originally issued in 2012] are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. ... Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs ... which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions ... then – absent some positive contrary indication in other parts of the text of his reasons – the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned.”

62. In *Palmer* it was argued that the local planning authority had failed to consider likely harm to the setting of a listed building by noise and smell from the proposed poultry sheds. Lewison L.J. said (in paragraph 5 of his judgment) that giving “considerable weight” to harm to the setting of a listed building “does not mean that the weight that the decision-maker must give to the desirability of preserving the building or its setting is uniform”. It “will depend on, among other things, the extent of the assessed harm and the heritage value of the asset in question: [*Barnwell Manor*, paragraph 28; *R. (on the application of Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), [2015] J.P.L. 22, paragraph 49]”. He went on to say (in paragraph 29) that the “clear thrust” of the officers’ relevant advice to the planning committee had been that “if the [proposed] mitigation measures were put in place there would be no adverse effect on the setting of the listed building”. He continued:

“29. ... I would accept ... that where proposed development would affect a listed building or its setting in different ways, some positive and some negative, the decision maker may legitimately conclude that although each of the effects has an impact, taken together there is no overall adverse effect on the listed building or its setting. That is what the officers concluded in this case.”

The inspector’s conclusions on the likely effects of the development on “heritage assets”

63. The inspector’s third “main issue” was “[whether] the works and development would preserve the listed buildings and registered park and garden or their settings, or any features of historic interest which they possess” (paragraph 23 of the decision letter). In a footnote she recited section 66(1) of the Listed Buildings Act, and paraphrased paragraphs 193 and 194 of the NPPF.

64. At the inquiry, the council accepted that the local plan policies for protecting the historic environment were not wholly consistent with the corresponding policies in the NPPF. The inspector noted that there was “disagreement on the weight to be applied to policies CON11, CON12, CON17 and CON18”; that the council agreed with City & Country Bramshill that these policies were “inconsistent with the [NPPF] due to the absence of consideration of the public benefit balance where harm is identified”; but that the council, the National Trust and Historic England said they “should be given moderate weight given that their primary objective is the preservation of designated assets which is in accordance with the [NPPF] and [the Listed Buildings Act]” (paragraph 45). She continued:

“46. Whilst the [NPPF] sets out a clear balancing exercise to be undertaken and which is absent in the relevant development plan policies, the statutory requirement ... relates to the special regard the decision maker should have to the desirability of preserving the building, its setting or its special features. Whilst I find policies CON11-CON18 to lack the balancing requirement of the [NPPF], they contain the statutory requirement. Given this, I find that the policies should be given significant weight.”

65. She confirmed that in considering the effects of the development on the listed buildings she had had regard to section 66(1) of the Listed Buildings Act, which, she said, “requires special regard to be had to the desirability of preserving buildings or their settings or any features of special architectural or historic interest which they possess” (paragraph 121). Although the registered park and garden did not have the same statutory protection, it was, she said, “recognised as a heritage asset” in the NPPF (paragraph 122). She described the relevant policies of the NPPF, including those in paragraphs 193 to 196:

“122. ... The [NPPF] recognises such assets as an irreplaceable resource, and states that they should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Chapter 16 of the [NPPF] sets out the approach in determining applications (or appeals) in respect of such assets. It states that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset’s conservation with the more important the asset the greater the weight [should] be. Any harm or loss should require clear and convincing justification. The [NPPF] sets out the criteria to be considered where either substantial or less than substantial harm are identified.”

She referred (in paragraph 123) to a difference of approach in the relevant evidence:

“123. Historic England and the National Trust provided their evidence on the basis that paragraphs 195 and 196 of the [NPPF] would always be engaged where any element of harm was identified. The appellant held that this was not the correct approach based on the findings of *Palmer*. The appellant’s case is that an “internal heritage balance” should be carried out where elements of heritage harm and heritage benefit are first weighed to establish whether there is any overall heritage harm to the proposal. Paragraphs 195 and 196 would only be engaged where there is residual heritage harm. This should then be weighed against the public benefits of the scheme.”

She then (in paragraph 124) quoted the passage I have mentioned in paragraph 29 of Lewison L.J.'s judgment in *Palmer*, and went on to say (in paragraphs 125 to 127):

- “125. In my assessment the judgement does not necessarily bring me to a conclusion that an internal heritage balance should be carried out in the manner that the appellant advocates. The case clearly involved a wholly different context and set of circumstances and the conclusions relating to harm were based on avoidance through mitigation measures rather than any assessment of whether the benefits of the development outweighed any harm. However, the judgement clearly does reinforce that a balancing exercise needs to be carried out but it does not direct the decision maker to only one method by which that should be done.
126. I note the cases that have been drawn to my attention, some of which do follow the approach advocated by the appellant and some do not. These are clearly cases where alternative approaches have been taken based on the particular circumstances of each case. Nonetheless, irrespective of these decisions, the statutory duty to preserve the building should be given considerable importance and weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*].
127. The cases before me are complex with multiple works involved. Some of the benefits to the assets are not proposed with the individual developments themselves but are put forward as a part of other developments subject to separate decisions. In this context, I have adopted a straightforward application of paragraphs 190 and 193-196 of the [NPPF]. I have firstly identified the significance of the assets. I have then assessed whether each development proposal would, of its own doing, lead to substantial or less than substantial harm to that significance. Subsequent to making this assessment of harm, I have then considered whether this harm is outweighed by the public benefits of the individual proposal and provided in other proposals subject to other decisions. Paragraph 20 of the Planning Practice Guidance “Conserving and enhancing the historic environment” (the PPG) explains what is meant by public benefits (which may include heritage benefits) and that all types of public benefits can be taken together and weighed against harm.”
66. In her conclusions on appeal 4 the inspector considered the likely effects of the development on the registered park and garden and on “the setting of the various listed buildings” (paragraph 199). She concluded that it would be “harmful” both to “the visual appearance, planned design and function of the RPG” (paragraph 211) and to “the setting of all the listed buildings within the ensemble by virtue of the harm that would arise to the RPG” (paragraph 214). She considered “the harm to the significance of the setting of the listed buildings ... less than substantial”, and “weighed that harm against the public benefits of the proposal” (paragraph 215). There was “no dispute between the parties that the removal of modern buildings and parking areas and the re-instatement of the original link between the house and garden by re-aligning Reading Avenue would be of benefit to the RPG and the setting of the listed buildings” (paragraph 217). The college buildings were “clearly harmful to the RPG’s form, layout and characteristics and to the setting of the listed buildings”. The “removal of the buildings and the restoration of the park and garden would clearly be in the public interest”. She gave these matters “considerable

weight". But the "dispute" lay in "the weight to be attributed to that benefit given the alternative development proposed" (paragraph 218). She judged "[the] benefits in removing buildings and re-aligning Reading Avenue ... not ... sufficient to outweigh the alternative and greater harm caused by developing this unspoilt part of the RPG". The "permissive path" would be "of benefit in providing access into the Bramshill estate ..." (paragraph 221). The proposed "site wide management plan would be in the public interest" (paragraph 222). An appropriate "landscape and habitats management plan" would be "of clear benefit to the overall restoration of the RPG and wider ecological interests". But she did "not find that this would outweigh the harm that ... would arise from the proposed development" (paragraph 223). She concluded (in paragraph 226):

"226. I find that appeal 4 would be harmful to the RPG and the setting of the listed buildings and would not preserve their special qualities. This harm would not be outweighed by public benefits. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy."

67. A similar exercise followed for appeal 5. The inspector referred to the harm that would be caused by extending development into "open parkland", which "would result in most of the parkland being developed" (paragraph 228). The development would "intensify and extend the harms" she had identified in appeal 4. It would be "an inappropriate development ... harmful to the RPG and the setting of the listed buildings". This would be "less than substantial" harm, but "at the higher end of the scale" (paragraph 229). She considered the "public benefits" in the funding of repair works to the mansion and other listed buildings and curtilage buildings. But she concluded (in paragraph 235):

"235. ... [The] public benefits of appeal 5 do not outweigh the harm that I have identified. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy."

68. In appeal 6, her approach was the same. The development would be located to the north-west of the lake, which was, she said, "one of the major features of the RPG", had "largely [survived] in its original form" and was "of historic aesthetic and architectural significance" (paragraph 236). Though it would "not destroy or remove the presence of the lake and island ...", and would "not interfere with the ability of those using the RPG to continue to go on a journey along the embankment and walks that were part of the Jacobean layout of the garden" (paragraph 240), the development would "reduce the aesthetic significance of the feature and wider RPG ...", and "result in the engineered embankment being less legible and thus reduce its significance". The harm would be "less [than] substantial but of the highest order" (paragraph 241). The "public benefit" would be the funding of £2 million for repairs to the mansion. As there was "an acceptable use for the mansion ... which would not require cross-subsidy", the inspector saw "no justification for allowing appeal 6 with its associated harm" (paragraph 243). She concluded:

"243. ... [The] public benefits arising from appeal 6 would be clearly outweighed by its resulting harm. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy."

Did the inspector err in performing the duty in section 66(1) of the Listed Building Act and applying the policies for “heritage assets” in the NPPF?

69. Before the judge, City & Country Bramshill argued that the inspector had erred in failing to carry out a “net” or “internal” heritage balance. Only if “overall harm” emerges from the weighing of “heritage harms” against “heritage benefits” must the “other public benefits” of the development be weighed against that “overall harm” under the policy in paragraph 196 of the NPPF. Support for this submission was to be found in paragraph 29 of the judgment of Lewison L.J. in *Palmer*. The inspector should have given “great weight” to the “heritage benefits”, to reflect the “great weight” that paragraph 193 of the NPPF requires to be given to the “conservation” of a designated heritage asset. This argument, however, did not impress Waksman J.. In his view, the decision in *Palmer* “did not impel [the inspector] to undertake an internal initial balancing exercise under paragraph 193”. Indeed, he “would have regarded that as an error of law” (paragraph 120 of the judgment). The balancing exercise itself was “a classic application of planning judgment” (paragraph 121).
70. Mr Strachan repeated the same argument before us. Relying on the first instance decision in *Safe Rottingdean v Brighton and Hove City Council* [2019] EWHC 2632 (Admin), he submitted that the *Palmer* “principle” applies both to the statutory obligation in section 66(1) and to relevant policies in the NPPF and the development plan. The inspector failed to see this. Paragraph 193 of the NPPF required “great weight” to be given to the “conservation” of a heritage asset, including enhancement of its significance. Paragraph 196 required the likely effect on the significance of the heritage asset to be assessed, which could only be done by weighing any harm to that significance against any benefits to it. If there was no “net harm”, the policy in paragraph 196 was not engaged. The definition of “Conservation (for heritage policy)” in the NPPF did not exclude “countervailing benefits”. It implied that “great weight” must attach both to any harm to the significance of the heritage asset and to any enhancement of it – such as the appeal proposals would achieve. The judge was wrong (in paragraph 112 of his judgment) to distinguish *Palmer* on the basis that the “principle” relates not to “separate benefits” but only to “mitigation measures to negate the adverse effects which would otherwise arise”. The “principle” in *Palmer* extends to cases in which there are separate elements of harm and benefit to the significance of a heritage asset.
71. Like the judge, I cannot accept those submissions. It is not stipulated, or implied, in section 66(1), or suggested in the relevant case law, that a decision-maker must undertake a “net” or “internal” balance of heritage-related benefits and harm as a self-contained exercise preceding a wider assessment of the kind envisaged in paragraph 196 of the NPPF. Nor is there any justification for reading such a requirement into NPPF policy. The separate balancing exercise for which Mr Strachan contended may have been an exercise the inspector could have chosen to undertake when performing the section 66(1) duty and complying with the corresponding policies of the NPPF, but it was not required as a matter of law. And I cannot see how this approach could ever make a difference to the ultimate outcome of an application or appeal.
72. Section 66 does not state how the decision-maker must go about discharging the duty to “have special regard to the desirability of preserving the building or its setting ...”. The courts have considered the nature of that duty and the parallel duty for conservation areas in section 72 of the Listed Buildings Act, and the concept of giving “considerable importance and weight” to any finding of likely harm to a listed building and its setting.

They have not prescribed any single, correct approach to the balancing of such harm against any likely benefits – or other material considerations weighing in favour of a proposal. But in *Jones v Mordue* this court accepted that if the approach in paragraphs 193 to 196 of the NPPF (as published in 2018 and 2019) is followed, the section 66(1) duty is likely to be properly performed.

73. As was submitted by Mr Williams, and by Mr Ben Du Feu for Historic England and Ms Melissa Murphy for the National Trust, one does not find any support for Mr Strachan’s argument in those paragraphs of the NPPF. The concept in paragraph 193 – that “great weight” should be given to the “conservation” of the “designated heritage asset”, and that “the more important the asset the greater the weight should be” – does not predetermine the appropriate amount of weight to be given to the “conservation” of the heritage asset in a particular case. Resolving that question is left to the decision-maker as a matter of planning judgment on the facts of the case, bearing in mind the relevant case law, including Sullivan L.J.’s observations about “considerable importance and weight” in *Barnwell Manor*.
74. The same can be said of the policies in paragraphs 195 and 196 of the NPPF, which refer to the concepts of “substantial harm” and “less than substantial harm” to a “designated heritage asset”. What amounts to “substantial harm” or “less than substantial harm” in a particular case will always depend on the circumstances. Whether there will be such “harm”, and, if so, whether it will be “substantial”, are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific approach to identifying “harm” or gauging its extent. It distinguishes the approach required in cases of “substantial harm ... (or total loss of significance ...)” (paragraph 195) from that required in cases of “less than substantial harm” (paragraph 196). But the decision-maker is not told how to assess what the “harm” to the heritage asset will be, or what should be taken into account in that exercise or excluded. The policy is in general terms. There is no one approach, suitable for every proposal affecting a “designated heritage asset” or its setting.
75. This understanding of the policies in paragraphs 193, 195 and 196 reflects what Lewison L.J. said in *Palmer* (at paragraph 5) – that the imperative of giving “considerable weight” to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is “uniform”. That will depend on the “extent of the assessed harm and the heritage value of the asset in question”. These are questions for the decision-maker, heeding the basic principles in the case law.
76. Identifying and assessing any “benefits” to weigh against harm to a heritage asset are also matters for the decision-maker. Paragraph 195 refers to the concept of “substantial public benefits” outweighing “substantial harm” or “total loss of significance”; paragraph 196 to “less than substantial harm” being weighed against “the public benefits of the proposal”. What amounts to a relevant “public benefit” in a particular case is, again, a matter for the decision-maker. So is the weight to be given to such benefits as material considerations. The Government did not enlarge on this concept in the NPPF, though in paragraph 196 it gave the example of a proposal “securing [the heritage asset’s] optimum viable use”.
77. Plainly, however, a potentially relevant “public benefit”, which either on its own or with others might be decisive in the balance, can include a heritage-related benefit as well as one that has nothing to do with heritage. As the inspector said (in paragraph 127 of the decision letter), the relevant guidance in the PPG applies a broad meaning to the concept of

“public benefits”. While these “may include heritage benefits”, the guidance confirms that “all types of public benefits can be taken together and weighed against harm”.

78. Cases will vary. There might, for example, be benefits to the heritage asset itself exceeding any adverse effects to it, so that there would be no “harm” of the kind envisaged in paragraph 196. There might be benefits to other heritage assets that would not prevent “harm” being sustained by the heritage asset in question but are enough to outweigh that “harm” when the balance is struck. And there might be planning benefits of a quite different kind, which have no implications for any heritage asset but are weighty enough to outbalance the harm to the heritage asset the decision-maker is dealing with.
79. One must not forget that the balancing exercise under the policies in paragraphs 195 and 196 of the NPPF is not the whole decision-making process on an application for planning permission, only part of it. The whole process must be carried out within the parameters set by the statutory scheme, including those under section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) and section 70(2) of the 1990 Act, as well as the duty under section 66(1) of the Listed Buildings Act. In that broader balancing exercise, every element of harm and benefit must be given due weight by the decision-maker as material considerations, and the decision made in accordance with the development plan unless material considerations indicate otherwise (see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447).
80. Within that statutory process, and under NPPF policy, the decision-maker must adopt a sensible approach to assessing likely harm to a listed building and weighing that harm against benefits. Lewison L.J. was not suggesting anything else in *Palmer*. He was not seeking to establish any principle. He was saying that, in circumstances such as he was considering, a decision-maker, having considered both “positive” and “negative” effects on a listed building and its setting, “may legitimately” find there would actually be no harm. He was not saying that a decision-maker must go about the balancing of harm, if harm is found, against benefits in any particular way. There is no “*Palmer* principle” of the kind suggested by Mr Strachan. The court was simply endorsing the pragmatic and lawful approach taken by the local planning authority in the circumstances of that case. An “internal” balancing exercise was appropriate because the apprehended “harm” could be avoided through the mitigation measures proposed, and there would be “no overall adverse effect on the listed building or its setting” (paragraph 29 of Lewison L.J.’s judgment).
81. But as Waksman J. recognised here (at paragraph 111 of his judgment), “[this] is quite different from balancing an admitted or found adverse impact . . . against separate beneficial effects . . .”. The inspector grasped this. Having correctly identified the statutory duty in section 66(1) (in paragraph 121 of the decision letter) and the relevant provisions of national policy in the NPPF (in paragraph 122), she described the parties’ dispute on the correct approach (in paragraph 123). She referred (in paragraph 124) to Lewison L.J.’s judgment in *Palmer*. As she said, that case involved “a wholly different context and set of circumstances”. It was a case of “avoidance [of harm] through mitigation measures”. She acknowledged that “a balancing exercise [needed] to be carried out”, but she also recognised that there was not “only one method by which that should be done” (paragraph 125), and there were cases “where alternative approaches have been taken based on the particular circumstances of each case”. She then reminded herself that in any event “the statutory duty to preserve [a listed building] should be given considerable importance and

weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*]" (paragraph 126). All of that was correct.

82. The inspector adopted a methodical approach to the proposals before her, which, as she said, were "complex with multiple works involved", and with "benefits" to heritage assets "not proposed with the individual developments themselves but ... put forward as a part of other developments subject to separate decisions". She conscientiously applied the policies in paragraphs 190 and 193 to 196 of the NPPF, first identifying "significance"; then assessing whether each proposed development would, "of its own doing", lead to "substantial" or "less than substantial harm" to that significance; then considering whether that harm was "outweighed by the public benefits", not only of the "individual proposal" itself but also "provided in other proposals subject to other decisions", bearing in mind the broad scope of "public benefits" in the relevant guidance (paragraph 127).
83. That approach cannot be faulted. In the circumstances of this case, it was the most realistic. It gave full credit to benefits that might potentially outweigh any harm likely to be caused to the heritage assets affected by the proposals. The inspector recorded her relevant findings and conclusions for each of those heritage assets. Her conclusions were based on a sequence of legally impeccable planning judgments. They reflected both a correct understanding and a lawful application of the NPPF policies, including the policy in paragraph 196. She plainly had those policies in mind, properly directed herself on them, worked through the requirements in them, and in this way – as Sales L.J. envisaged in *Jones v Mordue* (at paragraph 28) – succeeded in discharging the duty in section 66(1). Whether she could have taken another approach to performing that duty, or to applying the corresponding policies in the NPPF, is not the issue here. We need only be satisfied that the approach she did take was lawful. In my view, it clearly was.
84. I also reject the submission that the inspector failed to attach lawful weight to the benefits for heritage assets, contrary to the concept of "conservation" in the NPPF. Her approach to the question of weight, in paragraph 122 of the decision letter, was faithful to NPPF policy, and consistent with the principles in the case law. She expressly directed herself, as a general principle applicable to all the heritage assets she was dealing with, that she had to give "great weight ... to the [designated heritage] asset's conservation". It was with this general self-direction in mind that she went on to undertake a proper weighting of both harm and benefits to each of the heritage assets she had to consider.
85. Having directed herself impeccably on the law and on the relevant policies, she was entitled to exercise her own planning judgment in attributing appropriate weight to the particular benefits of the proposals before her, including their benefits for heritage assets. And she did so. In paragraph 218 of the decision letter, for example, when considering appeal 4, she said she gave "considerable weight" to the removal of existing buildings and the restoration of the park and garden. She was not constrained – by statute, authority or policy, including the definition of "Conservation (for heritage policy)" in the NPPF – to give more weight than she did to any of the heritage-related benefits of the proposals, or to any other benefit. None of the conclusions she reached on heritage-related benefits was unlawful. None of them was inconsistent with the lawful performance of the section 66(1) duty, or with the reasonable and lawful application of the relevant policies in the NPPF, including the definition of "Conservation ...".

Did the inspector misapply development plan policies for the historic environment?

86. The argument on this issue was that the inspector erred in giving “significant weight” to policies CON11, CON12, CON17 and CON18 of the local plan, despite it being agreed at the inquiry that they were inconsistent with NPPF policy on heritage assets because they did not provide for “public benefits” to be balanced against harm. City & Country Bramshill had said they should carry “little” weight; the council, Historic England and the National Trust, “moderate weight”. No one suggested “significant weight”. Mr Strachan submitted that it was unfair for the inspector to depart without warning from the parties’ understanding of the issue between them. They should have had the opportunity to deal with this question knowing that she disagreed with both sides. She also misapplied the local plan policies. Those policies do not match the section 66(1) duty, or national policy. The words “will not be permitted” in policy CON12 and “will not be permitted unless ...” in policy CON17 do not reflect the statutory language or the policies in the NPPF. The judge was wrong (in paragraph 129 of his judgment) to conclude that the inspector was “essentially ... applying” NPPF policy when she found conflict with policies CON12 and CON17. She acknowledged (in paragraph 46 of the decision letter) that the “balancing requirement” in the NPPF was absent from those policies. But she failed to carry out any balancing exercise when considering whether the proposals were contrary to them.
87. I do not find those submissions persuasive. The absence of an explicit reference to striking a balance between “harm” and “public benefits” in the local plan policies does not put them into conflict with the NPPF, or with the duty in section 66(1). Both local and national policies are congruent with the statutory duty. The local plan policies are not in the same form as those for “designated heritage assets” in the NPPF. They do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which “public benefits” are set against “harm”. But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.
88. In performing the duty under section 66(1), the inspector was free to give such weight to the local plan policies as she reasonably judged appropriate. Indeed, she was obliged to do so. She was not bound to a particular conclusion by the evidence and submissions she had heard. The parties had a reasonable opportunity to deal with the matter at the inquiry, and they took that opportunity. No unfairness arose. The inspector acknowledged the disagreement between them on weight (in paragraph 45 of the decision letter), and she clearly had regard to their competing views when forming her own conclusion. She did not have to declare her view – or provisional view – on weight and give the parties a chance to address it, simply because she disagreed with both sides. Fairness did not compel that (see *Secretary of State for Communities and Local Government v Hopkins Developments Ltd.* [2014] EWCA Civ 470, [2014] P.T.S.R. 1145, in particular the judgment of Jackson L.J. at paragraphs 62(iv) and 75, and the judgment of Beatson L.J. at paragraphs 88 and 97).
89. The inspector’s conclusion on weight, though it was not urged on her by either side at the inquiry, was nonetheless a lawful conclusion. This was a matter of planning judgment for her as decision-maker. Her conclusion was rational, and adequately reasoned. To attach “significant” weight to the local plan policies, as she did (in paragraph 46 of the decision letter), was not unreasonable. She acknowledged that those policies lacked the “balancing requirement” of the NPPF, but added that “they contain the statutory requirement”. By this

she clearly meant that they embodied the objective of preserving listed buildings and their settings, in accordance with the duty in section 66(1). She was not saying she interpreted them as shutting out the balancing exercise under paragraphs 195 and 196 of the NPPF. She went on to apply that balancing exercise in the assessment that followed, and she did so meticulously. Her assessment culminated in paragraph 417 of the decision letter, with the conclusion that the harm to the listed buildings and their settings and the registered park and garden were “not outweighed by public benefits.”

90. In short, the inspector did not fall into error in discharging the decision-maker’s duties under section 38(6) of the 2004 Act, section 70 of the 1990 Act, and section 66(1) of the Listed Buildings Act. Her approach was not contrary to any relevant case law, including this court’s decision in *Palmer*. She did not misinterpret or misapply either the local plan policies or the policies in paragraphs 193 to 196 of the NPPF. Her conclusions in applying both development plan and national planning policy for heritage assets – that the proposals in appeals 4, 5 and 6, did not accord with either – are unimpeachable.

The inspector’s decision on the application for costs

91. On the application for costs made by City & Country Bramshill against the council, the inspector said (in paragraph 14 of her decision letter of 14 March 2019):

“14. A large part of this ... application is concerned with the case put to the Inquiry in respect of the merits of the proposals and the view that the position taken by the Council was unreasonable with reference to various events. I have not considered the respective positions on merits again here as a difference of view on compliance with policy or the weight to be given to material considerations are not for the costs regime. The substantive issue is whether the Council acted unreasonably at appeal, and in particular whether it defended its position on each reason for refusal with evidence, whether it acted contrary to well-established case law, and reviewed its case following the lodging of the appeals.”

She went on to reject every contention of unreasonable conduct (paragraphs 15 to 21).

Should the inspector’s decision on the application for costs be quashed?

92. Mr Strachan submitted that in making her costs decision the inspector relied on her decisions in the appeals. Though she did not address the merits again, her consideration of the reasonableness of the council’s stance at the inquiry inevitably depended on her conclusions in the appeals themselves. Some of her decisions were quashed by the judge; others are now the subject of appeal to this court. Her errors of law in those decisions undermine her decision not to award costs to City & Country Bramshill.
93. I cannot accept those submissions. I see no reason to upset the inspector’s decision on costs. She approached the application in the conventional way. Her decision did not depend on the grounds the council had relied upon in opposing the appeals having succeeded or failed when considered on their merits, but on whether they could reasonably be advanced. The decision is unsurprising. And it is also legally sound. It is not invalidated by the

outcome of these proceedings in the court below, nor cast into doubt by any of the issues raised in the appeal to this court. It was, and remains, a perfectly lawful decision.

Conclusion

94. For the reasons I have given, I would dismiss this appeal.

Lord Justice Phillips

95. I agree.

Lord Justice Arnold

96. I also agree.



Appeal Decision

Hearing held on 9 June 2026

Site visit made on 10 June 2026

by A McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06/08/2026

Appeal Ref: APP/X0360/W/26/6005646

**Land West of Edney's Hill, Barkham Road, Barkham Hill,
Wokingham, Berkshire RG41 4TG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Abbeymill Homes Limited against the decision of Wokingham Borough Council.
 - The application Ref is 251486.
 - The development proposed is erection of 16 flats and houses with new access off Edney's Hill, together with car ports, parking, footpaths, landscaping and all enabling works.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for full costs was made by Abbeymill Homes Limited against Wokingham Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of the proposed development varies slightly in a range of documents relating to the planning application and the subsequent appeal. I have taken the description set out in the banner heading above from the application form as this is the original description and accurately describes the appeal proposal.
4. The relevant version of the National Planning Policy Framework (the Framework) in relation to this appeal was published in December 2024 and updated in 2025. Accordingly, the decision has been made in that context and against that version of the Framework.
5. The parties agree that the Council cannot currently demonstrate a five-year housing land supply (5YHLS) and that in these circumstances the Framework directs that the policies that are most important for determining the application are out of date and the "tilted balance" applies. It is acknowledged that the absence of a 5YHLS reduces the weight to policies most important for housing supply. However, Paragraph 232 of the Framework is also clear that due weight should be given to development plan policies according to their consistency with the Framework.

6. A signed legal document, dated 16 June 2026, has been submitted and it is indicated that it would secure the following:
 - an appropriate, policy compliant affordable housing contribution (40%) including on-site provision and an off-site financial contribution with a policy compliant tenure mix;
 - a Strategic Access Management and Monitoring (SAMM) contribution;
 - a Suitable Alternative Natural Green Space (SANG) Allocation Agreement, including a SANG Allocation Fee; and
 - appropriate financial contributions towards primary medical care, on-site highway maintenance and local employability skills.
7. I am satisfied that the provisions of the submitted signed legal document that relate to on-site and off-site infrastructure would meet the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2012 and Paragraph 58 of the Framework. Some provisions of the agreement will be discussed further in this Decision as and where relevant. Some elements of mitigation and financial contribution have not been fully agreed between the parties. As a result, the submitted legal document identifies that provision for certain elements can be made, where appropriate, and it is noted that this reflects the Appellant's position on those particular matters.
8. Reasons for Refusal 5 and 6 of the Decision have been resolved between the parties prior to the hearing and are therefore no longer in dispute. Regarding Reason 5, the Appellant submitted amended plans relating to the privacy of future occupiers of plots 6 and 7 of the proposed scheme and detailing the installation of a screen to prevent overlooking of those plots from proposed plot 11. The amended plans were accepted by the Council and submitted to the appeal.
9. Reason 6 relates to the lack of evidence on noise impact to appropriately assess the proposal. Since the application was determined, the Appellant has provided a noise assessment indicating that the proposal would not be subject to an undue level of noise, particularly from the farm to the south and highways to the north and east. Having reviewed this assessment, the Council is satisfied that this supporting evidence is sufficient to overcome the concerns identified in Reason 6. In my own assessment, I have not seen or read anything to indicate that this would not be the case.
10. I have given due consideration to the matters set out above. As a result, I am satisfied that Reasons for Refusal 5 and 6 are now overcome, subject to the amended plans and relevant suggested conditions, as submitted within the Statement of Common Ground between the Council and the Appellant. Therefore, I consider these matters to be addressed and therefore no further discussion about them in this Decision is necessary.
11. Reasons 8, 10, 11, 12 and 13 in the Council's Decision Notice relate to the lack of a legal agreement being in place at the time of the Council's decision to secure planning obligations and financial contributions relating to on-site highways, primary medical care, affordable housing and local employability skills. With a legal document now provided, I am satisfied that the harmful matters relating to these reasons could now, largely, be overcome. Therefore, I

have given no further substantive consideration to those reasons for refusal in this Decision except where relevant to the main issues as I have identified them.

Main Issues

12. In my assessment, the main issues are:

- whether the proposal is inappropriate, unplanned development outside settlement limits within the countryside;
- the effect of the proposal on the landscape, character and appearance of the area;
- whether the proposal is in a sustainable location in transport terms regarding distance and access to local facilities and amenities;
- the impact of the proposal on highway and pedestrian safety;
- the impact of the proposal on important trees; and
- whether the proposal would achieve 10% Biodiversity Net Gain (BNG).

Reasons

13. The appeal site consists of an open field and covers an area of approximately 0.7 hectares (ha) of currently unused grazing land and is free from any built form. The topography of the site and surrounding roads broadly falls away in a mostly south-easterly direction, the lowest part of the site being at its south-east corner. The variance in ground level across the site is approximately 10 metres from north-west down to south-east. The site is located at the junction of Edney's Hill and Barkham Road and has a substantial amount of vegetation along its northern and eastern boundaries. The surrounding area is predominantly residential with dwellings to the north, east and west. There is a cluster of farm buildings at Mortimer Lodge Farm close to the south-east corner of the site. The residential built form in the area is mostly ribbon development along road frontages with open agricultural land south of the site.

Whether inappropriate development

14. The statutory starting point for determining the proposal is the development plan. Policy CP11 of the Wokingham Core Strategy (CS) seeks to resist development outside development limits, including in the countryside, unless specific exceptions apply. It is a fact that the appeal site is outside development limits. Furthermore, it is the case, as the Appellant accepts, that the proposal is within the countryside and does not fall within the development exceptions specified within the policy. As a result, a degree of conflict arises with Policy CP11 of the CS and Policy IRS1 of the Arborfield and Barkham Neighbourhood Plan (NP).
15. The Appellant argues that as the site is located adjacent to Barkham Hill, a limited development location under Policy CP9 of the CS, and that the proposed scheme is of an appropriate scale that is supported by Policy CP17, some housing growth, as proposed by the scheme, is acceptable, policy compliant and should be allowed. However, both these policies clearly relate to development sites within settlement limits. As the proposed scheme lies outside of those limits, as agreed by the Appellant, it is in direct conflict with Policies CP9 and CP17 of the CS. These policies do not negate the defined settlement boundary. Nor do they support unrestricted residential development outside development limits.

16. Furthermore, Policy CP17 is not a freestanding permission for housing in the countryside. It is clear to me, and confirmed the Council, that the policy requirement within CP17 for at least 100 dwellings to be built within defined limited development locations during the plan period has more than been met without the inclusion and contribution of this proposal.
17. From the evidence, the Appellant relies on the Council's recent resolution to grant outline permission for up to 70 dwellings at Arborfield Cross. I have only limited information about that case. In any event, another decision elsewhere does not establish that the appeal site is suitable or that the development plan conflict should be set aside. I have therefore given limited weight to this and other cases, as material considerations as each proposal must be assessed on its own facts. Having regard to the referenced application (Ref: 250735), the wording of Policy CP17 states clearly that proposals should generally not exceed 25 dwellings. Accordingly, insofar as that point is concerned, the granting of planning permission for up to 70 dwellings is not, in and of itself, a breach of policy. Moreover, as the proposed site is outside settlement limits, albeit adjacent to Barkham Hill, it therefore cannot be within Barkham Hill. Nor can it be within a limited development location.
18. The principle of development in this location is unacceptable and conflicts with the development plan and its spatial strategy. Specifically, the proposal conflicts with policies CP1, CP9 and CP11 of the CS as it undermines the aims and purposes of these policies which are designed to maintain the separate identity of settlements and the quality of the environment. Furthermore, these policies seek to provide certainty as to how the Borough will be developed and prevent development in areas that are not well positioned for services and facilities.
19. The absence of a 5YHLS reduces the weight to be given to policies most important for housing supply. Nonetheless, Policies CP9 and CP11 serve broader planning purposes as they direct growth to appropriate locations, protect countryside character, maintain settlement identity and provide certainty and clarity through a plan-led strategy. These objectives remain consistent with the Framework and for that reason, I find that the conflict between relevant policies and the proposal remains relevant in this appeal and has been assessed accordingly.

Conclusion

20. In conclusion, having regard to the above, the proposal would amount to unplanned residential development in the countryside, located outside the defined settlement limits of Barkham Hill. Furthermore, it would not comprise a form of development within identified exceptions as set out in policy. Therefore, I conclude that the proposal would conflict with Policies CP1, CP9 and CP11 of the Wokingham Core Strategy, Policy CC01 of the Managing Development Delivery Local Plan (MDD), Policy IRS1 of the Arborfield and Barkham Neighbourhood Plan and would not be consistent with national policy.

Landscape, character and appearance

21. It is accepted that there is an inevitability in that most, if not all, new development will impact on its surrounding area and landscape. Nonetheless, it

is the level and extent of the resultant harm, and its wider impacts, which are determining factors in whether the proposed development would adversely affect these to an unacceptable degree and result in substantive harm and policy conflict.

22. The proposed scheme is supported by a Landscape and Visual Assessment (LVA) which concludes that the resulting landscape character impacts would be highly localised to the site and its immediate setting. In the Appellant's view, such effects are not considered as significant as the proposal would sit within the established build line south of Barkham Road, following a linear-like structure and not extending further into the countryside beyond.
23. From the Council's landscape evidence, the site is recognised as being one of the valued landscape attributes of the J2 Landscape Character Area (LCA). The topography found on-site and in its immediate vicinity is identified as a typical example of the undulating landscape associated with the J2 LCA, consisting of small fields and wooded coombes. This assessment forms a significant factor in determining the landscape value of the site. Although the site is not publicly open, it remains classified as countryside and is identified as such in the development plan. As such, it is afforded protection under the adopted plan.
24. From my observations, both in evidence and on site, the appeal site provides a landscape pause or break amongst the existing built development form within the local area. By doing so, it is an integral and important element of the existing character and appearance of the area and the local landscape. Therefore, the loss of the site to development would have wider detrimental implications regarding the context of the surrounding area and the relationship of the site to the wider, open countryside to the south. It is also evident that the settlement boundary of Barkham Hill has been drawn specifically around the site, as identified in the development plan. To my mind, this indicates an intentional approach to resist development of the site and provides significant evidence and a firm recognition of its value as an open field in its surrounding context.
25. It is stated that the development of the site would result in a logical infilling of the settlement. However, for the reasons given above, an extension of the Barkham Hill settlement limits in this case would not be appropriate in terms of the proposals' adverse impact on the visual context of the site and the semi-rural character and open countryside landscape of the local area.
26. Moreover, I find that the landscape and character value of the site does not depend solely on formal or informal designation or public access. It is an open field on the edge of the settlement which contributes to the semi-rural setting of this part of Barkham Hill. It also provides an important visual break within the existing pattern of built development, significantly contributing to the transition between the settlement edge and the open countryside to the south.
27. From what I have seen on-site and in the surrounding area and having considered the evidence, I find myself of the view that the loss of the field would not only result in the loss of a parcel of land, described by the Appellant as ordinary, but also result in the removal of an open rural feature that contributes positively to local landscape character.

28. The Appellant makes the point that the proposal is landscape-led and would not result in a wholesale loss of openness with a substantial portion of the site retained as landscaped open space. In my assessment, this is not the case. The landscape proposed around the edges of the site is more incidental rather than being at the forefront of the design of the scheme. Furthermore, it is proposed to retain existing boundary vegetation with additional planting and open space along the southern boundary. Whilst those features may have some softening effect on the visual impact of the development to a minor extent, they would not alter the substantial, fundamental change from an open semi-rural field to a built residential estate with dwellings, access roads, parking areas, car ports and other associated paraphernalia.
29. I have had regard to the Appellant's view that the layout of the proposed scheme would follow the prevailing linear, ribbon character of development along Barkham Road and sit within established building parameters. I am not persuaded. Neither the proposal nor the adjacent tandem development to the west of the site strictly define the historic pattern of single dwellings facing Barkham Road. Whilst the existing form of ribbon development and, to a lesser extent, the tandem development identified form a linear pattern of development, the proposal and in particular plots 14-16, would be arranged in a way that does not reflect the existing linear surroundings.
30. The proposal would introduce a form of development accessed from Edney's Hill, with internal roads, cul-de-sacs and grouped development extending into the field. This estate-like layout would be materially different in its appearance, its function and would be generally at odds with the established grain and pattern of the surrounding area and the prevailing linear pattern of development observed along highways in the local area.
31. The tandem form of development to the west of the site is acknowledged as not being completely ribbon development. However, whilst this does present development situated behind the principal frontage and building line along Barkham Road, the dwellings behind the frontage properties follow the building line and the prevailing form of development seen elsewhere in the locality. Furthermore, the vehicular access point on Edney's Hill, a narrow lane with no substantive proposal to be widened, would also diminish the environmental quality, rural character and appearance of this lane and how it is experienced visually as it passes the appeal site,
32. The comparison of densities between the site proposal and the surrounding area is also relevant. Figure CJ5.3 of the Appellant's LVA aims to illustrate that development on the appeal site will not extend further than the existing prevailing building line adjacent to the site. However, development would go beyond it in the form of the internal access road. In general, the proposed scheme would be relatively dense. It would appreciably appear to be of a higher density than nearby tandem and linear forms of development. Furthermore, with the dwellings, the block of flats and the hardstanding proposed, the volume of the built form within the scheme would produce an unacceptable suburbanising effect which would appear to be visually at odds with the surrounding built form, the semi-rural character and appearance of Edney's Hill and the countryside edge.

33. The scale and form of the proposed buildings would not respond satisfactorily to the local context. The proposed buildings would be around 11 metres high with bulky roof forms. In contrast, the Barkham Village Design Statement (VDS) encourages schemes of one-and-a-half storey properties with dormer-style upper windows and discourages high ridgelines that dominate their surroundings. Moreover, the proposed dwellings would provide very limited visual relief or break up either at roof height or within the facades. It is noted that there would be some minor architectural detailing within the brickwork of the proposed dwellings. However, having regard to the context of the scale of the buildings, greater physical breaks in the composition of the dwellings would be more in line with the local architectural context of Barkham Hill. Furthermore, proposed windows are of a size that appear disproportionately small to the scale of the proposed buildings.
34. The Appellant refers to the four townhouses on the north side of Barkham Road, north-west of the site. These are 2.5 storeys in height, larger than average in the local area and appear to be the only dwellings of that stature in the locality. This is not sufficient to justify unnecessarily high two-storey dwellings when looking at the wider context of development. To the east of the site, there are 1.5 storey dwellings. Given the quantum of development proposed on the site at such an elevated height, as well as its arrangement in an estate-like layout, the proposal would contribute to, and exacerbate, a dense urban environment that is out of keeping with the surrounding character and appearance of the area.
35. I have had regard to the fact that the proposed scheme would result in a density of around 23 dwellings per hectare. In comparison, the density of surrounding residential development, such as the tandem development to the west, equates to around 11 dwellings per hectare. Although, the proposal presents a density that is relatively low, given the context of the site and its relationship to the open countryside to the south, a scheme in such a location may be expected to be transitional in nature and reflective in its scale and layout. This is not the case here as the proposal does not achieve this.
36. Overall, the amount and density of development proposed and the height and scale of the proposed buildings would result in a very urbanised addition to what is currently a rural lane – Edney’s Hill – and a surrounding area that is laid out in a predominantly linear development form. In this form, the proposal would lead to the loss of a valuable open field in the local landscape that forms a valuable feature in the J2 LCA. The presence of the built form, as proposed, would also have wider implications regarding the limitation of views over the landscape.
37. Whilst the proposed development could be screened partially when viewed from certain viewpoints, such as along Barkham Road, the proposal would result in a significant impact on the view towards the site from the south-east taken from Edney’s Hill, at Edney’s House. The existing open aspect of the land at the site rising behind the buildings at Mortimer’s Lodge Farm would be lost, resulting in an increased urban backdrop to the farm buildings, as seen from the rural lane.
38. Furthermore, from my site visit I note that the view southwards across the site and open countryside towards the ‘saw-tooth horizon’ of trees at Waterloo Avenue taken from points along Barkham Road adjacent to the site on its northern boundary would be lost as a result of the proposed scheme. This would be detrimental not only to the ability to view the local landscape, but also

to the character and appearance of the area as experienced from within the built area of Barkham Hill, along Barkham Road, adjacent to the site.

39. The proposal would contribute to the key issues and challenges facing the J2 LCA and fails to comply with this LCA strategy. It therefore conflicts with Policy TB21 of the MDD which seeks to at least retain features that contribute to the quality of the landscape. In addition to Policy TB21, the proposal fails to comply with Policies CP1 and CP11 of the CS which seek to maintain the quality of the environment. The proposal also fails to comply with Policy CP3 of the CS which seeks schemes that are appropriate to the character of the area, scale, layout, height and overall are of a high-quality design. Furthermore, the scheme also fails to comply with Policy CC03 which has the aims of promoting the integration of schemes into the countryside and incorporating landscaping as an integral part of the scheme. There is also conflict with Policies AD3 and IRS2 of the NP which seek good quality design and refer to an adherence to the VDS.
40. These considerations are within the Framework in terms of setting out how well-designed places are fundamental to sustainable development. Paragraph 135 states that development should be visually attractive and sympathetic to local character. Paragraph 139 is also clear that development that is not well-designed should be refused, especially where it fails to reflect local design policies and guidance.
41. Some appeal decisions have been referenced in the evidence before me in relation to matters concerning impacts on landscape character and appearance. The Appellant argues that very limited weight should be given to these other appeal conclusions in relation to this appeal. To be clear, in my assessment, the outcome of these historic conclusions has a limited bearing on the outcome of this appeal. Previous appeal decisions on the site are not determinative. Nonetheless, the conclusions presented are material to the consideration of the principle of development, the built form on the site, the consequential impacts on the landscape and countryside and insofar as they identify and highlight the sensitivity of this open parcel of land to residential development.
42. The site is now - as it was at the time of those previous appeals – an open field. From what is before me, the context and function of the site also remain the same. Whilst development has been constructed in the local area, such as the four townhouses on the opposite side of Barkham Road, it is my view that this simply reinforces the importance of this remaining parcel of land in the local streetscape and landscape. The proposal is therefore unable to successfully integrate into its surroundings as the loss of the site as a visual break would be a permanent and irreversible and have a significant impact.
43. Whilst it may be argued that those earlier schemes were materially different to the appeal proposal for such reasons as they were outline proposals with poor layouts and boundary treatments, the essential concern remains that the built development proposed on this site would substantially and unacceptably erode the quality of its open, semi-rural character and the surrounding landscape.

Conclusion

44. Consequently, for the above reasons, I conclude that the proposed development would cause significant harm to the landscape, character and appearance of the area. It would therefore conflict with Policies CP1, CP3 and CP11 of the

Wokingham Core Strategy, Policies CC03 and TB21 of the Managing Development Delivery Local Plan, Policies AD3, IRS1 and IRS2 of the Arborfield and Barkham Neighbourhood Plan, the Barkham Village Design Statement and the Wokingham Borough Design Guide. Furthermore, the proposed development would not be consistent with national policy.

Sustainable location / Access to services and facilities

45. Policy CP6 states that development proposals should provide for sustainable forms of transport to allow choice and be located where there are, or will be at the time of development, choices in the mode of transport available which minimise the distance people need to travel.
46. The Appellant argues that Barkham Hill's status as a limited development location demonstrates that it is not inherently unsuitable for housing. However, whilst the development plan does contemplate some growth at Barkham Hill, this does not mean that every site adjoining Barkham Hill is sustainable or that accessibility concerns are removed. The evidence presented in the Appellant's Transport Appeal Technical Note shows that although some facilities are within reasonable walking distance from the appeal site, the range of services and facilities is limited and many routes are unattractive or of poor quality.
47. Identified facilities in the local area include Toad Hall Nursery, Barkham Village Store and Post Office, and Barkham Grange employment area. These facilities are all within an acceptable walking distance of the appeal site (i.e. within 1km). However, the walking environments to these facilities are not, in my assessment, sufficiently safe, attractive or convenient to encourage everyday walking, particularly for families with young children, during hours of darkness or in poor weather.
48. Toad Hall Nursery is located on Edney's Hill, a narrow lane with blind bends and concealed access points along its route. It lacks pedestrian and cycle infrastructure and covers a stretch of highway that is subject to national speed limits. It is an unlit route, having a number of pinch points for passing vehicles and great potential for conflict between pedestrians, cyclists and vehicles. With no footpath provision at any point between the nursery and the site and a national speed limit in force, I find this to be an undesirable and indeed unsafe route to walk along, particularly for families with young children. This is borne out by my experience of walking the route between the site and the Nursery.
49. The combination of the above conditions would likely discourage pedestrians, including families from walking and instead rely on the private car for the relatively short distance between the site and nursery. There is nothing presented as part of the proposed scheme that seek to adequately address these concerns.
50. Barkham Village Store has a limited range of provisions, providing only for convenience shopping needs. As such, it would only likely be used by future residents of the proposed scheme for 'top up' shopping rather than for a standard weekly shop. Such shopping would need to be undertaken at a larger supermarket which, I note, necessitate a journey either by public transport or private car.

51. In addition to the limited range for convenience shopping, the most direct route to the village store follows Aggisters Lane, an uneven gravel path that is unlit and a relatively narrow route between Barkham Road and Bearwood Road. Although it passes residential properties, many of these are set back behind large hedges or fencing, resulting in a pathway that is relatively concealed, uneven and not particularly overlooked. As a result, it would be an unattractive, unlit route to walk particularly, but not exclusively, during hours of darkness.
52. Barkham Grange employment area is a small-scale commercial estate located on Barkham Street, south-west of the site. However, the walking route to reach it from the site, along Barkham Road and Barkham Street, has no streetlighting and many pinch points along the footway provided. The footway is also only about one metre wide and located immediately adjacent to the highway which undulates and bends, particularly along Barkham Road. Indeed, at some points, there is no footway at all. As a result, I also find this route to be particularly unattractive and unsafe for pedestrians. Again, I have seen nothing presented in relation to the proposal that seeks to address the concerns.
53. There is no dedicated cycle infrastructure in the local area and no direct, continuous cycling routes to local facilities. It is evident from what I have seen and read that the best cycling routes in most cases will be equivalent to the pedestrian routes to local facilities. Accordingly, I find that cycling routes are also unattractive as they are unsegregated from pedestrians and, in some cases, road traffic and unlit.
54. The availability of a bus service is positive and it is acknowledged that the site has access to a 'good' bus service, as defined in Policy CP6 of the CS. Notwithstanding this, although the bus service will provide residents with a choice of alternative transport mode, Paragraph 117a of the Framework identifies that priority should be given first to pedestrian and cycle movements both within the proposed scheme and within neighbouring areas. Pedestrians and cyclists are at the hierarchical summit in terms of sustainable transport modes. Based on the evidence before me and my observations in the area, I find that the proposal has not sufficiently or effectively accounted for this.
55. Access to public transport does not overcome the limited and unattractive pedestrian and cycle connections to day-to-day facilities. The Framework clearly gives priority to pedestrian and cycle movements, and the proposal would not achieve a development where those modes are likely to be realistic first choices for many daily trips to key local services and facilities. Public transport may provide a sustainable alternative transport mode to walking and cycling to local facilities. However, given the unattractive nature of the walking and cycling routes and location of some of the local facilities, it is highly likely that potential future residents would use a private car instead to access those facilities.
56. The Appellant relies on previous applications where sustainability was not raised as a reason for refusal. However, I note that this appeal proposal is materially larger than some earlier schemes, including previous schemes identified for the appeal site. Moreover, current national policy and guidance now place a stronger emphasis on sustainable travel, active travel and reducing car dependency than previous versions. As such, there have been substantive material changes in circumstance since the previous applications referenced were determined under previous national policy and guidance.

57. Overall, it is my view that previous omissions or conclusions should not, and do not, prevent a proper assessment of this proposal on the relevant evidence before me and each case must be assessed on its own merits.
58. As a result, the proposal is determined to be inconsistent with the Framework which places great emphasis on sustainable environments and travel. Core Strategy policies CP1 and CP3 emphasise the requirement to provide functional schemes with CP1 stating that proposals should demonstrate opportunities to reduce the need to travel, particularly by private car. Policy CP6 of the CS sets out that residents should have choice in selecting transport modes. However, the realistic options for future residents of the appeal site have been limited to the private car, which is the most likely and unsustainable, and a bus service which, although considered to be 'good', utilises waiting environments at the adjacent bus stops that are not desirable to use.
59. Regarding access to public open space, although disputing the need for mitigation, the Appellant has sought to provide for it through the submitted legal document. Whilst I note the Council's concerns regarding the effectiveness of such mitigation and the legal document which seeks to achieve it, as I have found that the scheme would conflict with local and national policy by failing to provide sustainable access to a range of other services, the matter of public open space is not in itself determinative.

Conclusion

60. In conclusion, the proposed scheme would not be in a sustainable location in transport terms having regard to distance and access to local facilities and services. Whilst some facilities are within reasonable walking distance of the site and a 'good' bus service exists, future residents of the proposed scheme would likely rely heavily on private cars for many short day-to-day journeys to local facilities and services. This is due to unattractive walking and cycling routes, lack of streetlighting, a lack of dedicated footpaths and cycleways and a lack of, and distance to, different types of open space.
61. Consequently, I conclude that the proposal would not be in a sufficiently sustainable location in transport terms and would conflict with Policies CP1, CP2, CP3 and CP6 of the Wokingham Core Strategy and Policy TB08 of the Managing Development Delivery Local Plan. Furthermore, it would not be consistent with the Framework which identifies and gives priority to walking and cycling with regard to the hierarchy for sustainable transport modes.

Highway and pedestrian safety

62. The proposed access to the site would be from Edney's Hill. The Appellant has provided speed survey evidence, revised visibility splays and further swept path analysis. The Appellant also states that the observed speeds justify visibility splays of 36.6 metres southbound and 35.7 metres northbound and that these are achievable.
63. The Appellant also says that the Council's original assessment underestimated the existing use of Edney's Hill, with surveys showing 1,155 two-way vehicle movements over 12 hours and an estimated 78 additional daily movements resulting from the proposed scheme.

64. The local highway authority considered this additional information and revised plans, which were submitted by the Appellant during the appeal as the Council had raised no relevant concerns on such matters during the planning application, prior to issuing its decision notice.
65. This additional work does not, however, result in the concerns raised in Reason for Refusal 4 of the Council's decision notice being fully addressed. The issue of concern is not simply the percentage increase in traffic that would be generated by the proposed scheme. It is whether safe and suitable access can be achieved for all users having regard to the physical constraints of Edney's Hill, the proximity of the access point to the nearby bend in the highway, the relationship with Barkham Road and the need for refuse and emergency vehicles to manoeuvre safely in to, around and out of the site.
66. Edney's Hill is of insufficient width to easily accommodate two-way traffic movements safely and I find that the additional traffic generated by the proposed scheme would only intensify use of a substandard road and junction for the proposed purpose. There are other concerns raised that larger vehicles have not been shown to be able to enter, turn and leave the site satisfactorily in forward gear within acceptable reversing distances.
67. It is noted that as the proposed site access on Edney's Hill is in proximity to a bend in the road approximately 50 metres south. That bend is also close to the access to Mortimer Lodge Farm. Given this proximity, tangential and forward visibility at the bend would be expected to be assessed.
68. From what has been presented, I am not satisfied that the submitted information provided by the Appellant sufficiently demonstrates that the development would be safely and conveniently served in this regard, particularly by refuse and emergency vehicles. Nor am I satisfied that the potential for vehicular conflict, waiting or reversing on Edney's Hill and near its junction with Barkham Road has been adequately addressed.
69. Moreover, due to relatively high traffic flows experienced along Barkham Road during peak hours, it is my assessment that any potential delay at the junction of Barkham Road and Edney's Hill, from vehicles waiting or reversing back on Edney's Hill, could result in the queue stacking of traffic along Barkham Road. Consequently, this would lead to potential congestion issues and increase risks to highway and pedestrian safety.
70. It is acknowledged that revised swept path analysis of larger vehicle movements was provided by the Appellant during the appeal and these appear to address some of the issues relating to the turning and reversing of refuse and emergency vehicles. However, these do not fully address the potential risk for congestion at the access point to the site on Edney's Hill due to large vehicles passing each other and trying to turn into and out of the site. As such, I find that the proposal would remain in conflict with Policy CP6 of the CS. Part g of the policy states that permission will only be granted for schemes that do not cause highway problems or lead to traffic related environmental problems. Based on the evidence, and notwithstanding the additional details provided by the Appellant during the appeal, I find that the proposal still presents a substantive risk for vehicular conflict and associated highway and traffic problems.

71. In relation to issues concerning waste collection and removal specifically, Policy CC04 of the MDD states that all development shall incorporate suitable waste management facilities, including on-site recycling. Given the concerns raised relating to the provision of the suitable access, egress and manoeuvring of large vehicles around the proposed site, including waste management vehicles, and notwithstanding that elements of waste management could be addressed by conditions, the proposal has not fully demonstrated its ability to provide suitable and safe overall waste management arrangements. Therefore, it does not fully comply with Policy CC04.
72. Paragraph 116 of the Framework says that development should only be prevented where it is refused on highways rounds if there would be an unacceptable impact on highway safety or cumulative impacts on the road network, following mitigation, which would be severe, taking account of all reasonable future scenarios. I find this to be the case here as, for the above reasons, the proposal would result in an increased risk to highway safety and have an unacceptable impact on it.

Conclusion

73. Accordingly, I conclude that the proposal would have an unacceptable impact on highway and pedestrian safety, particularly regarding the access arrangements for the site and the manoeuvring of large vehicles around it. It therefore fails to demonstrate adequate servicing arrangements, including waste collection. Therefore, I conclude that the proposal conflicts with Policies CP1, CP3 and CP6 of the Wokingham Core Strategy, Policy CC04 of the Managing Development Delivery Local Plan and is not consistent with national policy.

Trees

74. The proposal would particularly affect the trees identified as T16, T17 and T20 at the appeal site. The Council identifies T16 and T17 as category B trees and T20 as an A category tree which it also considers to be at least veteran and potentially ancient. All the identified trees are assessed to be of good quality.
75. The Appellant's arboricultural evidence says that any root protection area (RPA) encroachment in relation to T16 and T17 would be minor, within acceptable limits and capable of mitigation through best practice. It also states that the required visibility splays identified for access to the site would not conflict with any existing trees.
76. However, the Council's tree evidence raises substantive concerns that the proposal has not followed the default approach in BS 5837 which is that structures are located outside the RPA of trees to be retained.
77. Considering the requirements of 5.3 of British Standard BS 5837, it is evident that these aspects have not been met. Specifically, points (a) to (d) of 5.3 have not been demonstrated to show that the proposal would be acceptable in relation to T16 and T17. Furthermore, the proposal has not provided an explanation as to why there is an overriding justification for construction to take place within the RPAs. There is no demonstration before me to show that the trees can remain viable with the proposed development in place, notwithstanding whether any encroachment into the RPA would be minor, within acceptable limits or capable of mitigation through best practice. There is also no

indication provided to show where the area lost to encroachment can be compensated for elsewhere, contiguous with its RPA. Nor is there a proposal for any suitable mitigation measures to improve the soil environment that is used by the trees for growth.

78. In addition to T16 and T17, tree T20 is noted as being a key tree of particular importance by the Council. The Appellant argues that the tree is off-site and that the red line shown passing through the trunk reflects Ordnance Survey Mapping plotting tolerance of up to 2 metres. However, submitted plans and application material indicate, initially at least, that the tree is on-site. Notwithstanding whether tree T20 is on-site or not, the buffer and RPA for the tree undoubtedly extends onto the appeal site. As such, T20 is clearly impacted by the proposed development as the development's effect on its RPA and immediate surrounding environment is material.
79. Taking account of the Council's supporting evidence, and as highlighted by a previous tree officer at the time of the original application, T20 is considered a veteran tree. Its listing on the Ancient Tree Inventory is noted, as is its ecological value due to providing a deadwood habitat for stag beetles and records of stag beetles being identified nearby. Stag beetles are a national priority species under Section 41 of the Natural Environment and Rural Communities Act and protected under the Wildlife and Countryside Act 1981. As such, they are a species of principle importance as set out in Policy CP7.
80. The Appellant had stated that T20 is not a veteran and that the principal trees in relation to the Council's Reason for Refusal 7 did not include T20 when it was drafted. However, I note that a further review of the proposal's impact on trees was undertaken by the Council's current tree officer, in light of an updated proposed site layout submitted by the Appellant. As a result of this review, the tree officer identified T20 as a veteran and that the proposed scheme would extend into the 24.1 metre buffer area and RPA required for tree T20. It therefore became evident that the surrounding environment of the tree would also be impacted by the proposed scheme and that the proposal would result in unjustified harm to a veteran tree. Accordingly, this impact cannot be ignored and this matter is considered relevant in determining this appeal.
81. Paragraph 193c of the Framework applies in relation to veteran trees. It states that veteran trees are irreplaceable habitats. Development resulting in their loss or deterioration should be refused unless wholly exceptional reasons and a suitable compensation strategy exist.
82. In my assessment, no such wholly exceptional reasons have been demonstrated here. Notwithstanding the Appellant's view as to whether T20 is a veteran tree or not, as I find T20 to be a veteran tree based on the evidence, the Appellant has not provided any exceptional reasoning and justification for the impact of the proposed scheme on the RPA of T20 as a veteran tree. In this regard, the proposal is not consistent with Paragraph 193c of the Framework. The proposal also fails to comply with Policy CP7 of the CS as, due to the veteran tree not being adequately protected, neither is the deadwood which would have an impact on the habitat of a national priority species and harm the ecological value of the tree. Therefore, the proposal should be refused.

83. Overall, the proposed scheme would result in unjustified harm to T16 and T17. Furthermore, as has now been identified, unjustified harm to T20, a veteran tree, would also occur based on the present site layout of the proposed scheme. Therefore, the proposal fails to comply with Policy CP7 of the CS because the veteran tree is not adequately protected, neither is the deadwood habitat it provides which would consequently impact on stag beetles, a national priority species, causing harm the ecological value of tree T20.

Conclusion

84. Consequently, with due regard to the above points, I conclude that the proposed scheme would fail to adequately protect important trees and would risk the deterioration of a veteran tree and associated ecological habitat. The proposal conflicts with Policy CP7 of the Wokingham Core Strategy and Policy CC03 of the Managing Development Delivery Local Plan. The proposal is also inconsistent with national policy concerning the protection of irreplaceable habitats and national priority species.

Biodiversity Net Gain

85. This issue centres on the statutory Biodiversity Net Gain (BNG) baseline being in dispute between the Council and the Appellant. The dispute set out above regarding tree T20 also has an impact on the assessment of BNG values and whether the proposed development would meet its 10% BNG requirement.
86. The Appellant maintains that the tree is off-site and that the submitted biodiversity information demonstrates that a 10% biodiversity net gain (BNG) can be achieved through a combination of on-site measures and off-site habitat units. The Council does not accept that this is the case because T20 was not included in that baseline assessment despite the red line application site boundary on the site location plan submitted with the planning application passing through the trunk of tree T20. Moreover, the Appellant has referred to the tree being on-site in their own application documentation.
87. The original site location plan has been superseded by the submission of an updated plan and whilst allowing for an indicated tolerance in the accuracy of Ordnance Survey Mapping, tree T20 now appears to be depicted off-site.
88. In any event, and notwithstanding whether the tree is on site or off site, given the Council's review and assessment of the amended planning layout submitted by the Appellant, it is my assessment that T20 is identified as a veteran tree and an irreplaceable habitat that is on-site.
89. In my view, as tree T20 was identified to be on-site in the original site location plan submitted with the planning application, this should be the reference plan on this issue. Moreover, in light of the proximity of T20 to the site boundary, whether within the site or adjacent to it, its presence and its potential impact and influence on biodiversity at and near to the site should have been clearly considered and assessed when undertaking the baseline assessment for BNG and in determining the pre-development biodiversity value for the appeal site.
90. As such, the baseline assessment of the pre-development biodiversity value of the site did not include and take account of the influence and impact of T20 not only as a veteran tree but also as an irreplaceable habitat for the stag beetle, a

national priority species. Accordingly, having not done so results in the submitted baseline assessment not providing an appropriate biodiversity assessment for the appeal site. Furthermore, an appropriate assessment of the level of BNG that the proposed scheme would provide over and above an identified baseline value cannot, and has not, been provided in the evidence.

Conclusion

91. Consequently, I conclude that the proposed scheme does not accord with the requirements of the Environment Act 2021, Schedule 7A of the Town and Country Planning Act 1990 or the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024. Accordingly, I conclude that with regard to BNG, the proposed scheme conflicts with Policy CP7 of the Wokingham Core Strategy and is not consistent with national policy.

Planning obligations

92. The Council's Decision Notice contains five separate reasons for refusal which relate to planning obligations that the Council says should be secured from the proposed scheme. These reasons relate to securing appropriate affordable housing in terms of quantum, type and tenure on-site and a financial contribution for off-site provision; appropriate mitigation and contributions to SANG capacity and SAMM relating to the Thames Basin Heaths SPA as a result of the proposed scheme; the provision and appropriate maintenance of suitable on-site highway infrastructure; a financial contribution to primary health care for additional clinical capacity to serve the development and a financial contribution towards local employability skills and training opportunities.
93. In response, the Appellant prepared a signed legal document to secure those obligations. The Council had also raised concerns about the proposed affordable housing tenure split, noting that the submitted mix did not accord with the policy approach requiring 70% Social Rent and 30% Shared Ownership and that Affordable Rent should not typically account for more than 12% of affordable housing under the Affordable Housing SPD. The submitted legal document resolves that disagreement, and it is now policy compliant.
94. Notwithstanding the above, there remains uncertainty and disagreement between the Council and the Appellant in relation to some matters within the legal document, including the suitable provision of SANG capacity and the compliance of some obligations with the CIL Regulations. Whilst these are acknowledged as remaining in dispute, as I am dismissing the appeal on a number of substantive issues, these matters are not determinative in my decision. Therefore, it is not necessary to consider these in any further detail.

Other matters

95. In addition to the main issues identified, I confirm that I have had regard to all other matters raised concerning the proposed development. These have been submitted by statutory organisations, interested third parties and residents. Having done so, I find none of these other matters determinative in this case and in relation to my overall decision to dismiss the appeal. Accordingly, it is not

necessary to deal with these other matters in any further detail.

Planning balance

96. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. Therefore, in accordance with Paragraph 11(d) of the Framework, the 'tilted balance' is engaged. As such, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, taken as a whole. In considering this, particular regard is to be had to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, whether individually or in combination.
97. In addition to the Council's inability to demonstrate a 5YHLS and the resultant status of relevant housing supply policies, including CP9 and CP11 of the CS as being out-of-date, I have also considered Paragraph 232 of the Framework. Paragraph 232 is clear that despite being considered out of date, due weight should be given to policies according to their consistency with the Framework. In my assessment, the objectives of policies CP9 and CP11 are consistent with the Framework, providing certainty and clarity about where development should be located. Accordingly, I conclude that the proposed scheme's conflict with the policies identified remains and should be afforded due weight in the overall planning balance.
98. To undertake the balancing exercise, I have assessed the benefits and harms of the proposal and determined what level of weight is to be afforded to each aspect to reach my overall conclusion, having due regard to the tilted balance.

Benefits

99. The proposal would deliver 16 dwellings, including a policy compliant affordable housing contribution on a small site which could be delivered quickly by a SME (small or medium sized enterprise) developer. In the context of a 2.5-year housing land supply and a significant housing shortfall, the provision of market housing carries substantial weight. The provision of affordable housing also carries significant weight, in terms of its form, tenure and delivery being secured by obligation.
100. The proposal would bring some limited economic benefits in terms of construction activity, local expenditure by future residents and support for local services. These benefits attract moderate weight. It would also bring some benefit through its contribution towards employability skills and training and contributions towards primary health care. These benefits attract limited weight.
101. I have considered that the scheme would deliver energy-efficient homes, electric vehicle charging, e-bike charging and biodiversity enhancements. These are benefits to which I give limited weight. Suitable mitigation for the Thames Basin Heaths SPA and related planning obligations has been demonstrated to be secured through a legal document which is considered would be achievable.

This also attracts limited weight. These elements attract limited weight in favour of the proposal as it is expected that such benefits would be required of any development proposal for compliance with the development plan.

Harms

102. The adverse impacts of the proposed scheme are extensive. The proposal would conflict with the spatial strategy of the development plan by introducing unplanned housing outside settlement limits within the countryside. This conflict with policy attracts substantial weight. The proposal would also cause significant harm to landscape character and appearance through the loss of an open rural field and the introduction of dense, estate-like development. This also attracts substantial weight.
103. Furthermore, the proposal would be poorly located for walking and cycling to many day-to-day facilities. As such, this would likely increase reliance on private cars, even for relatively short trips and therefore have a significant adverse impact on the overall sustainability of the proposal. This attracts significant weight.
104. The proposal has not demonstrated safe and suitable access into and out of the site for all road users. Moreover, the proposal would be likely to give rise to unresolved highway safety and servicing concerns for both vehicles and pedestrians. As such, this harm attracts significant weight against the proposal.
105. The proposed development fails to adequately protect important trees, including a veteran tree, and it has not satisfactorily demonstrated that the necessary BNG and statutory duty could be fulfilled and BNG achieved through the development. This harm attracts substantial weight against the scheme.

Planning Balance Conclusion

106. In applying paragraph 11(d) of the Framework and the tilted balance, I find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole. Consequently, with the above considerations and having undertaken and assessed the overall planning balance, I conclude that the proposal would not be sustainable development.

Overall Conclusion

107. For all the above reasons, and having regard to all matters raised, I conclude that the appeal is dismissed.

A McCormack

INSPECTOR

APPEARANCES

For the Appellant:

Tim Northey	Planning Director, Abbeymill Homes Ltd (the Appellant)
Dr Richard Curtis	Director, Aspect Arboriculture Ltd
Chris Callaway	Transport Planner, Associate - Paul Basham Associates
Chris Jenkinson	Director, Jenk Landscape Design and Planning Ltd
Megan Jewson	Director, Essential Ecology
Marco Mauro*	Partner, Howes Percival – Planning Legal

For the Local Planning Authority:

Connie Davis	Principal Planning Officer
Louise Aparo	Ecology Officer
Benjamin Amey	Principal Highways Development Management Officer
Finn Rothery	Green Infrastructure Officer
Chris Hannington	Trees and Landscape Manager
Chris Beasty*	Planning Solicitor

Interested Parties:

Chris Heylinger	Local resident
Steve Ollerhead	Local resident

(*Appeared via video call)

Appeal Decisions

Inquiry held on 15 & 16 November 2016; 2 May, 16 June , 17 to 20 October & 14 December 2017

Site visits made on 15 November 2016 and 14 December 2017

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 4 December 2018

Appeal A Ref: APP/X0360/C/16/3142135

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Roy Maslin against an enforcement notice issued by Wokingham Borough Council.
- The Council's reference is ENF 160207.
- The notice was issued on 10 December 2015.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land and buildings to a mixed use for the purposes of a residential dwelling house (under construction), agriculture, event venue and hog roast/catering businesses.
- The requirements of the notice are:
 1. Cease the unauthorised use of the Land for event venue and hog roast/catering purposes
 2. Remove from the Land all equipment associated with the event venue and hog roast/catering use
 3. Remove the internal walls, ceiling and tiled floor from within the barn (annotated as Building A on plan 2)
 4. Remove the shingle and excavate the slab from the hard surfaced areas shown in the approximate location annotated on plan 2
 5. Demolish the pergolas shown in the approximate locations annotated on plan 2
 6. Demolish the two corner infill extensions shown in the approximate locations on plan 2
 7. Excavate the concrete slabs in the locations of the corner infill extensions
 8. Remove all materials resulting from steps 3,4,5,6 and 7 from the Land
 9. Spread topsoil to a depth of 20cms over the areas where the three concrete slabs have been removed and sow with amenity grass seed mix at 50 grammes per square metre.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/X0360/C/16/3142138

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Roy Maslin against an enforcement notice issued by Wokingham Borough Council.
- The Council's reference is ENF 160208.

- The notice was issued on 10 December 2015.
- The breach of planning control as alleged in the notice is without planning permission the excavation of a pond and the formation of a bund.
- The requirements of the notice are:
 1. Infill the pond using the material which forms the bund. Level any remaining piles of material. The approximate locations of the pond and bund are shown on the plan.
 2. Spread top soil to a depth of 20cms over the area formerly covered by the pond and bund and sow with an amenity grass seed mix at 50 grammes per square metre.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal C Ref: APP/X0360/W/16/3141924

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Roy Maslin against the decision of Wokingham Borough Council.
- The application Ref F/2015/0502, dated 3 March 2015, was refused by notice dated 1 October 2015.
- The development proposed is the erection of an agricultural livestock building and rainwater storage pond.

Summary of Decision: The appeal is dismissed

Appeal D Ref: APP/X0360/W/16/3141922

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Roy Maslin against the decision of Wokingham Borough Council.
- The application Ref F/2015/0508, dated 3 March 2015, was refused by notice dated 28 September 2015.
- The development proposed is the erection of an agricultural livestock building.

Summary of Decision: The appeal is dismissed

Preliminary matters

1. Evidence was given on oath or by sworn affirmation. A Statement of Common Ground has been submitted which sets out the site description, relevant planning policy, agreed planning conditions and matters of disagreement.
2. The Inquiry was adjourned and resumed on a number of occasions because of the introduction of new evidence concerning the existence or not of a medieval deer park, along with sickness of Counsel and bereavement.
3. In light of the appellant calling his own agricultural witness it was agreed that the appellant would no longer rely on paragraphs 1.27 to 1.48 (save for paragraph 1.40) of his Planning Witness statement with regard to the agricultural use.

4. The revised National Planning Policy Framework ('the Framework') came into force on 24 July 2018. The appellant and the Council have been given the opportunity to comment on the relevance of the Framework to their cases and I have had regard to those responses and the Framework in determining the appeal.

Applications for costs

5. At the Inquiry application for costs were made by both parties against each other. These applications are the subject of separate Decisions.

Background and the arguments concerning the Jacobean Deer Park

Site description

6. The appeal site lies within the countryside to the west of the village of Barkham and to the north of Barkham Manor. Accessed and bounded by a track to the east (a Public Right of Way - Bridleway) from Barkham Road, the site has woodland and agricultural land to the north and west. To the south is bounded by the boundary with Barkham Manor and further agricultural land. Public Bridleways can also be found to the south and running alongside the northern and western most boundaries.
7. The existing farm buildings are laid out in a rectangle with an area laid to lawn in the centre and accessed from the east or through the building labelled 'Building A' on the enforcement notice and from hereon in referred to as 'The Barn'. The northernmost building is split into three distinct areas; at the time of my first visit the largest contained approximately 19 spit or hog roasting ovens and six or seven freezers some of which had whole pig carcasses in them. The next smaller area contained a butcher's block and kitchen racking with various items including cooks overalls, aprons and utensils and serving equipment. That room leads into a small kitchen area with sinks, cooker, dishwasher and preparation surfaces typical of that found in a commercial kitchen. A door led into the westernmost corner where there was an area of hardstanding with a freestanding walk-in freezer/chiller.
8. The barn with tiled floors, plastered walls, mezzanine and domestic light fittings and patio style doors was mainly empty save for some hay bales. The southernmost corner of the buildings housed a workshop with various tools and equipment, along with two separate toilets and a covered area housing gazebos amongst other things. The building to the south was split into three parts one containing various items of equipment and supplies including trailers and heat lamps. The centre section was full of domestic items including a large amount of china and general bric-a-brac. The last section was predominantly clear and set up for initial turkey preparation.
9. The building to the east contained an office with three desks and associated office equipment and a restroom with tables, chairs toilet and washroom. On site, during my first visit, there were a large number of live turkeys and 19 pigs. The foodstore was stocked with pig feed. On my second visit there were a larger number of pigs predominantly 'store pigs'¹ in the fields towards the top of the site along with 7 horses in the fields.

¹ 10-12 weeks old

Deer Park

10. At the opening of the Inquiry it was established that the Council's evidence concerning the proposition that the appeal site formed part of what was once a Jacobean deer park (Arrowsmith's Park) was fresh evidence that the appellant had not had the opportunity to comment upon. The appellant was given time to consider the arguments put forward and produced a rebuttal statement. I also heard from both expert witnesses at the Inquiry.
11. The evidence as to the existence of a Jacobean deer park was examined in some detail. The Council argued that references to an area of some 60-80 acres in a petition dated 1630 indicate that an enclosure had been made and that the petition was from some of the inhabitants of Barkham. Historic documents referencing common grazing land and woodland along with names of Newland Coppice in Windsor Forest and Bear Wood Walk set out in records of court proceedings, amongst other things, were not without merit. The appellant's arguments concerning the 'Liberty of Newlands' were also based on historic documentation and the argument that the park would have been in the Parish of Hurst can be also be found in an extract from the Star Chamber proceedings.
12. Nevertheless, the Council recognise that to come to the conclusion that the appeal site formed part of Arrowsmith's Park, because it was south of Bearwood and south-east of Newland, that "more ambiguous evidence" would need to be taken into account to come to the view that it was in fact a deer park. Whilst I accept the appellant could not identify any other area of 60-80 acres nearby and the documentation identifying up to 60 people coming from Barkham could point to a location in Barkham Parish, such evidence is not compelling. In the same way part of the appellant's argument is based upon an assumption that Newland Coppice was in the locale of Newlands but without any clear documentary evidence to reinforce that view.
13. Moreover, during the adjournment, an application was submitted to Historic England for Barkham Manor Park to be added to the Register of Park and Gardens of Special Historic Interest in England. On 26 July 2017 the appellant was informed by Historic England that following an initial assessment the application was not being taken forward. To that end the lack of concrete evidence is cited along with the fact that little of the surviving stretch of bank and ditch remain and that the date of the park would be late for a deer park. Furthermore there is no evidence that Barkham Manor has been a lodge historically.
14. It seems to me that in light of the findings of Historic England and the Council's own acceptance that the appeal site is the 'best contender' for Arrowsmith's Park that there is some inevitability that no weight can be given to the argument that the appeal site was part of a Jacobean Deer park and it will form no further part of my deliberations. For the purposes of these appeals the site is within the open countryside and adjacent to Barkham Manor a Grade II listed Manor house and stables, with Grade II listed wall, built over what was once a moated site.

Planning History

15. The site has an extensive planning history as set out in the Statement of Common Ground and includes previous appeals (ref 2126821 and 2126829) dated 17 September 2010 for the retrospective erection of 2 farm buildings (units 2 and 4) and the erection of 2 agricultural buildings (part retrospective). Whilst national planning policy has moved on since that time the Inspector found that the proposed buildings, larger than those found today and which form the courtyard, would have resulted in unacceptable harm to the character and appearance of the surrounding countryside. In addition the buildings were not reasonably related to the agricultural activities on the surrounding farmland.
16. Whilst activities at the site have moved on the previous Inspector's findings, including the reasoning which states the appeal site is clearly visible from Barkham Manor should not be ignored.

Appeal A the appeal on grounds (b) and (c)

17. The evidence and submissions made by both parties on these grounds overlap to some extent and I shall deal with them together. It is more logical to consider them in this way. The appellant's case is, in simple terms, based on the submission that no event venue business is taking place as the level of use is not enough for it to constitute a material change of use. Furthermore the hog roasting business is ancillary to the agricultural use of the land and does not amount to a material change of use.
18. Dealing with the event venue matter first I must consider the activities that were taking place when the enforcement notice was served. To that end there is no doubt that the barn was completed in 2011. I accept that just because the venue was marketed and advertised does not mean that an events venue has been operating on the land. Indeed there is no dispute that the nub of matter to be considered is the number of events which have taken place. That is as set out in *Westminster*² where one of the relevant considerations is off-site impacts such as noise and disturbance on residential amenities.
19. In cross examination, the appellant accepted that there had been a number of wedding receptions and in 2014 the land and toilets were being used for archery events. It is suggested that this amounted to no more than 18 isolated events or public gatherings of short duration which would not be sufficient to amount to a material change of use. However, it is clear from the evidence submitted by numerous local residents, both in writing and verbally, that the impacts of the use of the land for events has had a deleterious effect on the living conditions of those who live nearby by way of noise and disturbance.
20. Indeed that was borne out of evidence under oath and the video evidence of vehicles using the access track. I accept the latter could be open to interpretation; it did not specifically show traffic emerging from the appeal site. However, given there were marquees on the land at the same time, the sheer volume of traffic and there was no dispute that other sites along the

² *Westminster City Council v Secretary of State for Communities And Local Government & Anor* [2015] EWCA Civ 482

track could not accommodate so many vehicles, it is evidence that should not be ignored. Indeed I found local residents to be well-informed and credible witnesses and their evidence on oath compelling. The combination of these factors leads me to find that the event activities have had an unacceptable impact on the living conditions of those living nearby.

21. For these reasons, I find, on the evidence currently before me and as a matter of fact and degree, that the activities associated with the event business, had amounted to a material change of use of the land.
22. Turning to the hog roasting business. I accept that the sale of agricultural produce from an agricultural holding could be ancillary; there is no dispute in this case that the sale of turkeys from the land is a good example of that. The case of *Millington*³ sets out that where wine was being produced on the land from grapes grown on it and then bottled, sampled and sold on the land was, having regard to ordinary and reasonable practice, to be regarded as ordinarily incidental to the growing of grapes for wine, included in the general term for agriculture, ancillary to normal farming activities.
23. The court's view was that making of wine, cider or apple juice on the scale with which they were concerned in that case was a perfectly normal activity for a farmer engaged in growing grapes or apples and did not involve development of the land.
24. With regards to the hog roasting business the Inquiry heard that it is indeed, on its face, a successful business. A number of staff are employed to work on the agricultural holding; the appellant, his son and another full-time worker and one part-time worker. That is at odds with the labour requirement for one full-time worker, as set out in the 2011 agricultural appraisal⁴, identified to run an established turkey and pig rearing business on the land.
25. That was also reflected by what I saw during my site visit. There is no dispute that the appellant's son and the part-time worker are mainly office bound and they spend much of their time in the ample office with three desks, associated office paperwork, telephone lines, computers and office paraphernalia which is situated within the agricultural buildings. Under normal circumstances, for a holding of this size, one would question the requirement for such a generous amount of office support and space. Although when set against the hog roasting business and the need to manage bookings, hog roasting events, vehicles, trailers and up to 30 part-time staff, the level of office provision can be understood.
26. I also saw, as set out above, that the majority of the farm buildings were being used for the hog roasting business, be that the storage of equipment for catering at hog roasting events along with hog roasting trailers or the provision of numerous freezers and roasting units. The hardstanding around the buildings is also used to park associated vehicles and trailers. The use of the buildings for activities not related to the hog roasting business, such as the preparation of turkeys were, on any reasonable viewing of the premises, minimal.

³ *Millington v SSETR, Shrewsbury and Atcham Borough Council* [1999] 3 P.L.R 118

⁴ Reading Agricultural Consultants Appraisal 2011

27. In addition to this there is no dispute that the hog roasting business generates its own vehicular traffic through administrative staff and vehicular movements to and from the site to venues and events along with hog roasting/catering equipment. It is also evident that the hog roasting business is the main revenue source. If necessary the appellant stated that the hog roasting business could rely on buying in carcasses and remain profitable. The appellant also accepted that he had not demonstrated that the pig rearing would be viable without the hog roasting business. In that light the Council's view that the agricultural use is ancillary to the hog roasting business and not vice versa is not without merit.
28. I say that accepting that the storage of pork and the selling of that pork on the premises would not be unusual on a farm, indeed is commonplace in some areas. However, in this case there is a not so subtle difference to which I will return shortly. There is also some merit in the argument that the preparation of pigs reared on the land for sale following slaughter elsewhere is ordinarily incidental to the rearing of those pigs. In the same way the crushing, fermentation, washing, settling, mixing and bottling of wine on land where the grapes are produced is not an industrial process.
29. In addition I take no issue with the fermentation process involved in wine production being akin to the cooking of pigs. However, it seems to me that when examined in the round the hog roasting business is not ancillary to the breeding of pigs on the land. It is not comparable to wine being bottled on a vineyard. In that case the bottling and selling of wine on the holding is the end of the agricultural 'activity'; vines are planted, grapes are grown wine is produced, bottled and sold on. I would have some sympathy with the appellant's arguments if pigs were reared on the land, slaughtered, prepared and sold cooked or uncooked, whole or in part on the holding.
30. However, the whole unique selling point of a hog roast is that the hog is taken to a venue on a spit and cooked on site, or the cooking completed on site, and then carved and served. Indeed in a letter to the Planning Inspectorate in June 2013 the appellant sets out that he provides teams which consist of a chef and a server who go out to events. In my experience that also includes everything else required to serve the hog roast such as associated food and/or condiments and I have no reason to doubt, from the evidence submitted, and from what I saw on site, that the same is the case here.
31. When a customer of the hog roasting business pays, a not inconsiderable amount of money, the customer is not just paying for pork bred and slaughtered on the holding; they are paying for an experience akin to any other catering experience. That involves transport, specialist equipment and staff not associated in any way with the agricultural holding. Alongside that the hog roasting business hires its hog roasting machines out for use off-site and unrelated to production of pork on the holding. It is plain to see that customers do not simply turn up at the holding and buy the pork at the place of production.
32. Moreover, it is clear that the appellant has supplemented his own pigs with carcasses bought from elsewhere purely to aid the hog roasting business. That goes against the appellant's assertion that without the pig rearing business the hog roast business would not exist. It is clear that it could and has existed by supplementing the appellant's own pigs with carcasses bought

in from elsewhere. That is regardless of the appellant's concerns over the safety of pig rearing practices on his land and is at odds with the case of *Williams*⁵ referred to in *Millington*, which held that the use for agriculture necessarily includes the selling of products grown on the land but that the selling of products grown elsewhere was not included.

33. The combination of these factors leads me to conclude that the hog roasting business is quite a distance away from selling produce grown or raised on an agricultural holding from the same agricultural holding. In that light I fail to see how it bears any resemblance to the wine production discussed in the case of *Millington*. Thus I find, as a matter of fact and degree, that the hog roasting business is not ancillary or incidental to the agricultural use of the land.
34. The appeal on grounds (b) and (c) must therefore fail.

Appeal A the appeal on ground (d)

35. To succeed on this ground, the onus is upon the appellant to demonstrate, on the balance of probabilities, that the operational development which is the subject of the notice was substantially completed more than 4 years before the date of the notice i.e. on or before 10 December 2011. Under this ground the appellant only seeks to demonstrate that the hardstanding embraced by the notice has been in existence for four years.
36. I am referred to a Google earth image dated 1 January 2010 and a drawing (No. 10_390A_003) purporting to show the extent of 'lawful hardstanding' which the appellant considers was laid and substantially completed in 2007/2008 becoming lawful in 2011/2012.
37. I accept that the aerial photograph appears to show an area of hardstanding commensurate with the plan. However it is only a snapshot in time and the *Google Earth* photograph dated 2014 submitted by the Council shows the hardstanding on the track running to the west to be overgrown. That reflects an image submitted by a local resident dated 2013 also showing that area seemingly laid to grass. In addition the current hardstanding has a large area of block pavements to the front of the barn which do not appear on any of the aerial photographs.
38. The Planning Practice Guidance (the Guidance) sets out an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate, which is also the equivalent of ground (d) in an enforcement appeal. The Guidance says: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability". Those sentiments apply equally to an Inspector at appeal stage.
39. It seems to me that the limited amount of evidence before me is simply not precise or unambiguous enough for me to come to the conclusion that the hardstanding, as depicted on the appellant's drawing, even if it were

⁵ *Williams v Minister of Housing and Local Government* [1967] 18 PCR 514 DC

completed in 2007/8, that it remained in situ for the requisite four years and the operations carried out in 2014/15, as submitted by the Council, were not a further act of development.

40. Thus, on the limited evidence before me, I must find on the balance of probability that the hardstanding embraced by the notice had not been in existence for four years at the time the notice was served.
41. The appeal on ground (d) fails.

Appeal A the appeal on ground (a)

42. Section 177(1)(a) gives power to grant planning permission in respect of the matters alleged in the enforcement notice or in respect of any part of those matters alleged. Under this ground the appellant has chosen to pursue planning permission for the matters alleged save for the events venue. Thus the development for which planning permission is being sought is *the material change of use of the land and buildings to a mixed use for the purposes of a residential dwelling house (under construction), agriculture, and hog roast/catering businesses*. My deliberations therefore focus on the use of the land for a residential dwelling house, agriculture and hog roast/catering business.

Main Issues

43. The main issues are therefore whether the development is appropriate in this location, having regard to the development plan and the Framework in relation to five principal matters: the effect on the character and appearance of the surrounding area; the effect on the setting of the adjacent listed building and wall, the effect upon the living conditions of occupiers of nearby properties with particular regard to noise and disturbance, the effect on highway safety, and the sustainability of the location with particular regard to access to public transport.

Planning Policy

44. The Development Plan for the area includes the Wokingham Borough Local Development Framework Core Strategy adopted 2010 (CS) and the Wokingham Borough Managing Development Delivery Development Plan Document (MDD) adopted 2014. The Council has also published the Wokingham Borough Design Guide in 2012 as supplementary design guidance.
45. As set above the National Planning Policy Framework (the Framework) was revised in July 2018. The Framework sets out that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 213 of the Framework advises that, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). Where necessary the degree of consistency of individual

policies with the Framework will be considered in my reasoning where this is a matter of dispute.

Character and appearance

46. The site lies within the countryside and is as described above; there is no dispute that the four existing agricultural buildings sit well within the landscape setting. That setting is within the Thames Basin Heaths Area as described in the National Character Area Profile No 129 (February 2014) produced by Natural England.
47. The Berkshire Landscape Character Assessment 2003 defines the area as *K3 – Wokingham Settled Farmlands* which is influenced by the presence of Wokingham a large urban settlement which has led to fragmentation and little evidence of the traditional field pattern. Barkham Manor is identified as being important and to the south and west the landscape is more intact with remnants of a more traditional and rural character.
48. The Wokingham Borough Landscape Character Assessment 2004 (the "LCA") identifies the site as falling within Landscape Character area *L1 Bearwood Wooded Sand and Gravel Hills*. The assessment describes the key characteristics which include undulating upland hills, heavily wooded, a vast artificial lake, smaller scale intimate rural patchwork of deciduous woodland and sheep pasture, recreational use including horse riding, a relatively secretive landscape and the red brick Georgian building of Barkham Manor.
49. The landscape quality is described as high with a strong character and of good condition and the strategy is to conserve and strengthen the existing character. The landscape overall is of moderate sensitivity which means that some changes may be accommodated without being visually apparent albeit that is within the wooded context and 'private' secluded character.
50. The Barkham Village Design Statement refers to the parish of Barkham lying principally in open farmland rising gently toward the ridge known as Barkham Hill with Barkham boasting a number of significant landscape features and views. Policies CP1 and CP3 of the CS seek to maintain or enhance the high quality of the environment and, amongst other things, ensure that there is no detrimental impact upon the landscape. Policy TB21 of the MDD refers to the Council's Landscape Character Assessment and requires proposals to, "retain or enhance the condition, character and features that contribute to the landscape.
51. In that context I accept that the development should be viewed against nearby land uses. The appellant suggest that these include furniture restoration, an antique centre, tea rooms, joinery supplies, bicycle repairs and kitchen supplies. Taken on its face I accept that would indicate commercial diversification being a component of the character of the area. However that was based on a desktop study of *Google Maps* and *Street View* and I do not have details of the uses referred to or if they currently exist. My deliberations in that regard are therefore based on what I was able to see from my site visits and the impact of the current activities.
52. To that end it is clear there are several public vantage points from which to view the site. The site is screened in part with trees, hedgerows and fencing

and the undulating lie of the land has an impact on some views. Nevertheless views into the appeal site are readily available from the surrounding Rights of Way and Barkham Manor. As found by the previous Inspector. I'm also in no doubt that those views are clearer when taken from horseback by users of the bridleways. Whilst I accept the change of use of the existing buildings themselves would not be evident and that views would be more restricted when trees are in leaf; it was clear that the land surrounding the buildings could be seen from the footpath to the north.

53. Whilst there is no signage concerning the hog roasting business and the gates are generally kept shut the existing use has nevertheless led to vehicles, trailers and hog roasting machines being parked and stored on the hardstanding and next to the existing buildings. From what I saw such storage is commercial in appearance and unlike that which one would reasonably expect from an agricultural holding; it leads the viewer to question how it came to be. There is nothing before me to suggest that it is comparable to any other use nearby and the storage of commercial vehicles, trailers and machines, along with the hardstanding necessary to store such items upon, has had an urbanising effect encroaching excessively away from the buildings.
54. Furthermore the landscape character is distinguished by its tranquillity and undeveloped nature. The movement of vehicles and equipment in association with the hog roast business, and as evidenced below, does not conserve or strengthen the high quality (as set out in the LCA) character of the landscape. Moreover, given the appellant's desire to expand the hog roasting business there seems to be some inevitability that if permission were granted such impacts would increase and further paraphernalia associated with the hog roasting business would require further storage exacerbating the harm.
55. Whilst I accept that landscaping measures could be carried out to alleviate any harm I am not convinced that a landscaping scheme, which took into account the local context, would either be effective or not look out of place in the open agricultural setting. In any event the adverse impact upon the landscape character identified above should not be ignored; the argument that the development could be screened is not a good one in principle; it could be repeated too often to the overall detriment of the local landscape.
56. The combination of these factors leads me to conclude that the development has resulted in unacceptable harm to the character and appearance of the countryside and is at odds with the aforementioned planning policies and the Framework which seeks development that is sympathetic to local character and landscape setting. The appellant considers that Policy CP1(1) requires a level of protection beyond that required by the Framework in that it is too vague because of the term 'high quality environment'. I disagree, the broad aim of Policy CP1 is to seek to deliver sustainable development which is consistent with the Framework and its weight should not be reduced. The harm to the character and appearance of the countryside is at odds therefore with the aims, as set out above, of Policies CP1 and CP3.

Setting of listed building and wall

57. The setting of a heritage asset is not a fixed concept; it is concerned with the way the heritage asset is experienced. The Planning Practice Guidance sets out that "*a thorough assessment of the impact on setting needs to take into*

account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it. Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage”.

58. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The setting of Barkham Manor and the wall has inevitably been altered by the conversion of the main house into a number of dwellings. Nevertheless the architectural quality of the exterior and, as I saw from my site visit, interior reflect that of the listing notice. Namely a Manor house and stables; C17 enlarged C18 and C19, altered C20.
59. There is no dispute that the fields which form part of the appeal site, now laid to agriculture, to the immediate north and west of the Manor were used historically as parkland. I accept the land was sold separately in the C20 and has been in agricultural use for many years, but despite the inroads of later C20 infill, including the appeal buildings, the historic association cannot be ignored, even if that is to be considered a ‘borrowed landscape’ as suggested by the appellant. Indeed the land forges a strong and distinctive relationship between Manor house and the surrounding countryside, thus forming part of the wider setting of the listed buildings and therefore their significance.
60. In addition there is a direct degree of inter-visibility between the appeal site and the Manor house. Views of the appeal site and buildings are readily available from first floor windows of the Manor house and from the gardens. To that end there is nothing before me to suggest that the Council’s view, given the arrangement and design of windows, that the northern elevation of the building was specifically designed to be seen and to provide views to the landscape beyond which includes the appeal site.
61. Views are also available from the Right of Way that dissects the two properties. Those views include the Manor to the south, and farm buildings and appeal site to the north. Whilst I accept that views are screened in part by vegetation there remains a degree of inter-visibility that cannot be ignored and is within the immediate context of the listed buildings. That is more so in the winter months when the trees are not in leaf. Further views are available across the appeal site to the Manor House from the northernmost Right of Way. It is inevitable therefore that the impact of the hog roasting catering business, as set out above in landscape terms, will impact upon the setting of the heritage assets. That setting is not a concept that lends itself to an exact definition as laid out in *Williams*⁶.
62. Furthermore the deliveries to and from the appeal site, the level of current vehicular activity and that predicted would be experienced from the Manor and its setting. That would be, as discussed elsewhere in this decision, beyond what would be reasonably expected for the site and its surrounds and compounds the harm to the setting. Consequently, in accordance with the clear expectations of the Planning (Listed Buildings & Conservation Areas) Act 1990, I find that the use for hog roasting/catering business has resulted in unacceptable harm to the setting of the listed buildings which would not be

⁶ *R (Williams) v Powys County Council* [2017] EWCA Civ 427

preserved. It would therefore be at odds with Policy TB24 of the MDD which seeks to conserve and seek the enhancement of designated heritage assets.

63. Although the use causes harm to the significance of the heritage assets, given the level of inter-visibility and the distance between the Manor house and the appeal buildings I consider that the harm, whilst material, is less than substantial. Paragraph 193 and 194 of the Framework advise that great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance and any harm to, or loss of, the significance of a designated heritage asset from development within its setting, should require clear and convincing justification.
64. Paragraph 196 sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
65. As explained in greater depth below, the hog roasting business and the contribution it makes to employment and the local economy may reasonably be accepted as public benefit. However, in the wider context these benefits would be limited and as such only carry limited weight in the heritage planning balance. Moreover, whilst the identified harm may be less than substantial, this does not mean this should amount to less than substantial planning objection, especially where the statutory duty to preserve the setting of the listed building (a consideration the Courts have determined is a matter of considerable importance and weight) has not been met.
66. So considered, the harm to the setting of the listed building is clearly not outweighed by the benefits of the scheme. There is therefore, no clear or convincing justification for the development.

Living Conditions

67. I accept that the holding of events would have contributed to the toing and froing from the site and the removal of that element from the mixed use inevitably reduces the impact upon the living conditions of those living nearby. However, as set out above under the appeal on grounds (b) and (c), the current activities at the site are unlike that which could be reasonably expected from an agricultural use selling produce grown or raised on the holding. The commercial use inevitably generates more vehicle movements and it is likely given the nature of the business that activity will peak at weekends and summer evenings when demand is highest.
68. Whilst the appellant suggests the current activities result in an additional three vehicle movements per day I am not convinced that is so. There can be no dispute that the hog roasting business accounts for the majority of vehicle movements to and from the site. That is a vastly different proposition to that which could be reasonably expected for an agricultural unit of a size requiring one agricultural worker who would be expected to live in the agricultural dwelling on site as would be the case here without the hog roasting activities.
69. Thus the hog roasting business in its current form has led to an unacceptable increase in traffic along the rural land and adjacent to residential properties.

Moreover the appellant is seeking to increase the production of pigs which will inevitably increase the harm. I do not accept that moving the business to commercial premises elsewhere would simply move that harm elsewhere as that would be entirely dependent on the site circumstances. Again I am in no doubt that the activities, as evidenced by interested parties at the Inquiry, are having a detrimental effect on the living condition of those living nearby. That could not be overcome by any enforceable conditions restricting sales or hours of operation. That is at odds with Policy CP3 of the CS insofar as it requires development to respect the amenities of adjoining land users and their quality of life.

Highway safety

70. The site is accessed by a bridleway which serves a number of private access points. There can be no dispute that there are few, if any, realistic passing points for vehicles. Given the width of the access, conflict between vehicles and horses is not unlikely as evidenced by the Council's Rights of Way Officer. In particular given the bridleway is well used and forms part of the only circular bridleway route in the Borough, which I accept is more likely to be used at weekends when activities from the hog roasting business would be at their peak.
71. The events business would have contributed to the traffic on the bridleway and would have led to the Highway engineer recommendation to refuse the application because of insufficient information. However, I do not accept the argument stops there as evidenced at the Inquiry. The use without the events business still generates a significant amount of traffic, much of it at the weekend. I heard from the appellant that he may cook 30 pigs at weekends during peak times. That is a considerable number of vehicle and trailer movements along this quiet lane and, as set out, the ambition is to increase that number further.
72. It seems to me some conflict with bridleway users is inevitable. Although I accept that is the case in any event from other users of the lane. Nevertheless the figures used by the appellant for the amount of traffic generated by other users was not corroborated. Furthermore from what I saw during my site visits at varying times, on different occasions, the other uses appeared to be low key and do not mirror the commercial activities being pursued by the appellant.
73. The combination of these factors leads me to find that the hog roasting business has led to an unacceptable impact upon the safe use of the bridleway and thus highway safety contrary to Policy CP6 of the CS which, amongst other things, seeks developments that do not cause highway problems. That is consistent with the Framework which sets out at paragraph 109 that development should be refused if there would be an unacceptable impact on highway safety.

Sustainability of the location

74. The appeal site is rural. There is an hourly bus service nearby but there is no evidence that it is used by any of the workers involved in the hog roasting business. Furthermore, the argument that moving the hog roasting activities off the land would have a greater impact because of extra movement of

produce grown on the land carries little weight. I say that given produce is currently bought in. In addition I do not accept that further trips would be required by the appellant to an off-site cooking location to supervise preparation.

75. In any event such trips would be off-set by the reduction in staff involved in the hog roasting business attending the farm to collect trailers and or catering equipment. Whilst I recognise that the appellant does much of the delivery of hog roast and equipment picking up staff on the way or meeting them at events, it seems to me at peak times the appellant would simply be unable to do all of the deliveries and jobs required. There is some inevitability that other staff would need to travel to and from the farm.
76. As I have found earlier this is not a simple operation involving preparing of produce grown on the land. The appellant is providing an experience akin to any other catering experience and much of that could be done successfully off-site. Consequently I find the appeal site does not have sufficient access to public transport and the site is an unsuitable location for a commercial operation of this nature. That is at odds with Policies CP1 and CP6 of the CS which seek to manage travel demand.

Planning Balance

77. I accept that the hog roasting business has contributed to the local economy; the appellant has grown a profitable enterprise and profitability has increased year-on-year. There can be no dispute that is founded upon the hog roasting activities of the use. The enterprise as a whole employs a number of people, the appellant, his son, agricultural and administrative support, along with a number of workers involved in the catering side of the hog roasting activities. Although the case made by the Council's agricultural witness, that the pig rearing-enterprise would not generate enough income to pay for one full time worker, went unchallenged.
78. Nevertheless given the current activities on the site, and the demand for pigs for hog roasting, I accept that the use as a whole contributes to employment and the local economy and this carries moderate weight in the planning balance. In addition I recognise the Framework at paragraph 84 sets out that decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.
79. Nevertheless the development has clear and obvious shortcomings in terms of the environmental and social dimensions of sustainability given the conflict with relevant Development Plan policies identified above. Furthermore paragraph 84 of the Framework also sets out that it is important to ensure that development is sensitive to its surroundings and does not have an unacceptable impact on local roads; the development is at odds with both of those requirements.
80. Overall, therefore in the light of the Framework policies taken as a whole, the development is not sustainable. Having weighed the various factors in support of the development in the balance of planning considerations, there are no other material considerations that would outweigh the identified

conflict with the Development Plan. The grant of planning permission would not be appropriate.

Other matter

81. Finally, the Council at the outset of this ground of appeal set out that it was beyond the remit of S177(1)(a) for me to consider the development as I have; without the event venue use. To that end I recognise the nature of a mixed use and that a change in the components and activities therein may involve a change in the mixed use. That is well-rehearsed in *Belmont Riding Centre*⁷ and *Thanet*⁸. However, those judgments do not go to the consideration of s177(1)(a) and whilst I recognise that the removal of the event venue could result in a greater level of activity around the hog roasting operations, that could happen in any event.
82. It seems to me that consideration of the development without the event venue business has not led to any prejudice as it would be a reduction in those activities which parties have had the opportunity to comment upon. Indeed it would be open for me to consider such an option under the auspices of a ground (f) appeal if that were argued. Furthermore there is nothing before me to corroborate the view that s177(1)(a) embraces only operational development and that consideration of the matters put forward by the appellant is not an obvious alternative that is outside of my powers to consider. Moreover, I am dismissing the ground (a) appeal in any event.
83. For all these reasons and having considered all matters the appeal on ground (a) will fail.

Appeal A the appeal on ground (f)

84. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. The requirements of the notice in this case seek the cessation of the use and removal of equipment associated with the use along with internal walls, ceilings, tiled floor, shingle, pergolas, infill extensions, concrete slabs and all resultant materials from the land. That covers everything in the alleged breach of planning control.
85. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. Given the purpose of the notice is to remedy the breach of planning control, it falls within s173(4)(a). Therefore, any lesser requirements, save for requirement 9 to which I will return, would simply not meet the requirements of the notice and thus would not remedy the breach of planning control.
86. In addition a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use. Even if such works on their own might not constitute development, or be permitted development. To that end the internal walls,

⁷ Belmont Riding Centre v FSS & Barnet LBC [2003] EWHC 1895

⁸ R v Thanet District Council and Kent International Airport Plc [2001] PLCR 2

ceiling and tiled floor in the barn were installed to facilitate the unauthorised use as an event venue and hog roasting business. There is therefore no agricultural justification for their retention in any event.

87. In the same way the hard surfacing, pergolas and corner infill extensions facilitated the use as an events venue. There is no dispute that the pergolas with hanging baskets surrounding the lawned area were advertised as a "beautiful enclosed courtyard" for event venue purposes. They were not necessitated by any proven agricultural need and certainly not constructed for rain shelter, as opined by the appellant, given they have no roof.
88. The corner infill extensions, from what I saw on site and heard at the Inquiry, were introduced to make more space available for the hog/roast catering and event business, introducing more toilets and providing space for refrigeration of carcasses associated with the hog roasting. As set out elsewhere in this decision the existing buildings provide ample space, for the agricultural activity on the site, without then need for the infill extensions. I say that given the domestic storage that was being carried out at the time of my site visits.
89. In addition arguments that the walls constructed as part of the infill extensions, up to 2 meters in height, should be considered as permitted development is not well-founded. They form part of the development as a whole and there is nothing before me to corroborate the view that they should be considered in isolation.
90. However requirement 9 'to sow with an amenity grass seed mix' goes beyond the purpose of the notice. Agricultural land would not normally be sown with an amenity grass seed mix. The requirements therefore exceed what is necessary to restore the land to its condition before the breach took place. The appellant is best placed to know what the condition of the land was before the breach took place and I will amend the notice by deleting the reference to a grass seed mix and replace it with "return the land to its former condition".
91. The appeal will therefore succeed on ground (f) to that limited extent.
92. Finally under this ground the appellant argues that the requirements of the notice should be amended to reflect that carcasses of pigs weaned on the land can be stored on the land. However the requirements do not require such storage to cease in any event.

Appeal A the appeal on ground (g)

93. It is claimed that 2 years are needed to comply with the notice in order to locate and fit out suitable alternative premises for the hog roast activities. Without which the business would cease trading leading to the loss of jobs. However there is nothing before me to indicate that there would be a lack of suitable premises elsewhere and that such premises would not already be suitably fitted out for the purposes required.
94. Furthermore there is no detail of what such fitting out would involve in any event but if it reflected that currently found at the farm I would not foresee that to be too complex in nature. Thus I find that six months would be sufficient. The appeal on ground (g) should fail.

Overall Conclusion Appeal A

95. For the reasons given above, I conclude that the Appeal A should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals C and D the s78 appeals and Appeal B on ground (a)

96. The appeals as submitted effectively give potential for a number of outcomes:

- Permission for the excavation of a pond and formation of a bund under the ground (a) appeal.
- The erection of an agricultural livestock building and rainwater storage pond (Appeal C).
- The erection of an agricultural livestock building (Appeal D)
- Or any combination of the aforementioned.

97. Given that I will deal with these appeals together and consider the impact of the agricultural buildings and the pond both together and individually.

Main Issues

98. From all that I have heard, read and seen the main issues to consider are; whether the proposed buildings and pond would be reasonably related to the agricultural activity; the effect upon the character and appearance of the countryside; the effect on the setting of the adjacent listed building and whether the development could be considered to be sustainable having regard to its contribution to rural enterprises within the Borough.

Agricultural Activity

99. As set out above the agricultural holding consists of fields and four buildings around a courtyard along with a number of pig arks and pens toward the northern boundary. A pond and bunding have been constructed to the west of the existing agricultural buildings. Those buildings were being used as set out above.
100. Policy CP11 of the CS sets out criteria for development proposals outside the development limits in order to protect the separate identity of settlements and maintain the quality of the environment. The development does not fall within any of the categories identified by Policy CP11 as being acceptable in such locations. The appellant criticises Policy CP11 and argues that CP11(3) effectively prohibits all new agricultural building in the countryside and is therefore inconsistent with the Framework; the appellant points to paragraphs 77 and 78 which require planning policies and decisions to be responsive to local circumstance and need.
101. I disagree, to suggest the policy does not allow any agricultural development is counter-intuitive. I see no reason to disagree with the Council's stance that CP11(3) is of no relevance to new agricultural buildings and it is not relied upon by the Council in any event. Furthermore the broad aims in relation to the character of the countryside and the delivery of sustainable development

remain consistent with its core planning principles and it has a high degree of consistency with the Framework. Therefore the weight to be afforded to Policy CP11 should not be reduced. That reflects the approach of previous Inspectors elsewhere in the Borough⁹. In addition paragraphs 77 and 88 of the Framework fall to be considered with regards to rural housing, not the development sought here.

102. There is no dispute that in order for the buildings and pond to be acceptable they must be necessary for the purposes of agriculture. To that end the appellant sets out that Barkham Manor Farm operates as a well-established pig production unit. There is a need for the proposed buildings to ensure that the pigs are kept within "controlled housing conditions" as required by the Regulations concerning *Trichinella Spiralis*. Furthermore the existing agricultural buildings are currently in use and necessary for the functioning of the farm on a daily basis.
103. Turning in the first instance to the matter of *Trichinella Spiralis*. I accept that the email from the Food Standards Agency (FSA) sets out that the legislation was written with the intention that pigs are primarily housed in buildings and that carnivorous birds need to be kept out of the holding. In that light the keeping of pigs inside controlled housing (the proposed buildings) would, on its face, be the preferable approach. However the author of the email did not appear at the Inquiry and it is of note that the email includes an extract from the Regulations that states 'none of the domestic swine has access to outdoor facilities unless the operator can show by risk analysis to the satisfaction of the competent authority that the time period, facilities and circumstances of outdoor access do not pose a danger for introduction of *Trichinella* in the holding'.
104. That is reflected in the FSA's own guidance¹⁰ which states that there is a useful degree of flexibility in the definition of controlled housing which includes scope for pigs to have some access to outdoor facilities provided that does not pose a danger for introducing *Trichinella* in the holding. The FSA email concludes that 'it will be challenging to show by risk assessment that an FBO¹¹ is applying controlled housing conditions given the situation you describe'. Two points arise from that statement firstly the FSA do not rule out rearing outdoor pigs and secondly the response is based on an extremely brief description of the current operations on the holding and that inevitably tempers the weight I give to it.
105. In addition to that I do not accept that fox control is the only option and that would be difficult; whilst electric fencing may be problematic to maintain, the appellant is on site and I fail to see how such maintenance would be onerous. That and a vermin management plan could well result in a satisfactory risk analysis for the competent authority. Indeed such an analysis has not been carried out to inform the appellant's stance. That may well reinforce the view, which was accepted by the appellant's agricultural witness, that free range pigs can live in controlled housing conditions and it was a matter of what is reasonable and allowable with producers being given a degree of leeway. That was how the appellant was currently operating.

⁹ See decisions submitted by the Council refs: APP/X0360/C/15/3138106 & APP/X0360/A/14/2214855

¹⁰ Testing for *Trichinella* in pigs

¹¹ Food Business Operator

106. Finally on this matter, whilst the appellant's desire to reduce the risk of Trichinella should not be dismissed and I understand he may wish to do that to reduce the public perception of risk, there is simply nothing before me to corroborate the view that such a perception exists. Further, if it does, that it would have an unacceptable impact on the sale of pork. The combination of these factors leads me to conclude that there is no justification for the buildings on controlled housing grounds.
107. Moreover, even if I accepted there was a requirement under the Trichinella regulations to keep the pigs in buildings, there is the matter of the existing buildings and their use. It is to them which I now turn. Under cross examination the appellant's agricultural witness did not dispute the Council's findings that the existing buildings could provide the necessary space for the pig rearing. Albeit additional space would be beneficial.
108. Whilst the appellant maintains that the existing buildings are currently in use such that they would be unavailable for pig rearing I saw during my site visit that the majority of them, save for the small area used for turkey preparation, were in use for servicing of the hog roast business. Storage of catering and hog roasting equipment, personal household items and the office. Whilst there was some storage of agricultural equipment this was minimal and as set out under Appeal A the office space is excessive for the size of holding. I say that given it was agreed that the pig husbandry is the equivalent of one permanent job; on any reasonable consideration of the pig rearing operation it does not require the current level of administrative support. Thus the office space and rest room use of the existing buildings is to my mind excessive.
109. Nevertheless I see no reason to disagree with the view that the operation of an outdoor pig business is extremely difficult and the existing buildings are not suitable for the operation of a pig unit. However that is in their current form and works would be required to make the existing buildings suitable for raising pigs. Double glazed units would need to be removed, floors and walls re-finished and fittings changed or removed. Inevitably though such matters carry little weight; permission was sought for these buildings for agricultural use, the appellant chose to fit them out with fixtures and fittings more suited to a domestic or commercial setting. That should not negate their use as agricultural buildings fit for any other agricultural use.
110. With regards to the pond I accept that it could be used to collect rainwater from the roofs of the proposed buildings and would be good for wildlife and the appellant suggests it would be used for drinking water for his livestock. However that would be at odds with the expert evidence that a pond open to all wildlife should not be used for drinking water. There is also no detail of what impact muck removal from the sow units would have on the quality of water in the pond. Moreover, the appellant has made much of the need for animal hygiene. The pond would be open to all wildlife and the Council's agricultural consultant's view that it would be unsuitable for drinking water was undisputed. There is therefore simply no agricultural justification for the pond and bund.
111. The combination of these factors leads me to find on this issue that the business does not need additional accommodation for practical or welfare purposes and there is no agricultural justification for the proposed buildings or pond.

Character and appearance

112. The policy context and description of the location is set out above under Appeal A. That description does not include any modern agricultural buildings of a similar size to that being proposed. In the first instance therefore they would be unlike anything else in view and at odds with the key characteristics of the LCA. The buildings, on a plateau, either individually or together, would intrude into the topography of the site and would be an unwelcome and incongruous addition into the sparsely settled landscape buffer which is recognised as a key characteristic.
113. The pond with its regular sides and engineered bund is also at odds with the 'secretive landscape' in which it has been placed and does not conserve or strengthen the existing character of the area. Its shape and form appearing more urban than rural. Furthermore whilst the character of the use and appearance of the buildings would be agricultural, that alone does not justify granting permission.
114. In addition I agree that the coalescence of settlements cannot be a valid argument in this case as agricultural buildings are not normally associated with that. However, the size and scale of the buildings proposed is not, as set out under the previous issue, justified by the size of the land holding or agricultural operation on the site; in that light the argument that the buildings would look disproportionately large in context with the associated agricultural land, is not without merit.
115. Furthermore, there is no dispute that the buildings could be viewed from public vantage points. Whether or not that would amount to just the roofs and half the height of the walls, seems to me to be somewhat irrelevant; even with the low pitch of the roofs, their sheer size would lead the viewer to question how they came to be. As set out previously, those views would be exacerbated when taken from horseback. Whilst I accept that views of the pond and its bunds are limited, the regular shape and engineered bunds cannot be ignored and are at odds with the rural setting.
116. I accept that landscaping measures could be carried out to alleviate the harm but I am not convinced that a landscaping scheme, which took into account the local context, would be effective given the scale of the buildings or not look out of place in the open agricultural setting. As previously set out, the adverse impact upon the landscape character should not be ignored and the argument that the development could be screened is not a good one in principle.
117. The combination of these factors leads me to conclude that the development would result in unacceptable harm to the character and appearance of the countryside and is at odds with the aforementioned planning policies and the Framework which seeks development that is sympathetic to local character and landscape setting. That conclusion is in respect of all the developments within the bullets above.

Setting of the listed building and wall

118. There would be little merit in rehearsing all of the detail set out under Appeal A under the same issue, I shall therefore focus on the matter of the impact of

the proposed buildings. There is no dispute as set out under Appeal A that the buildings would be viewed in the context of the land which forges a strong and distinctive relationship between Manor house and the surrounding countryside, thus forming part of the wider setting of the listed buildings and therefore their significance. There would be a direct degree of inter-visibility between the proposed buildings and the Manor house. Views would also be available from the Right of Way to the north across the buildings toward the Manor to the south.

119. Again I accept that views would be screened by some vegetation but there would remain a degree of inter-visibility that cannot be ignored. It is inevitable therefore that the impact of proposed development¹², as set out above in landscape terms, would impact upon the setting of the heritage assets. That impact would be the introduction of fairly utilitarian, steel framed units with manmade bunds into the historic setting. That would fail to preserve or enhance the character as described under Appeal A.
120. Consequently, in accordance with the clear expectations of the Planning (Listed Buildings & Conservation Areas) Act 1990, I find that the proposed development would result in unacceptable harm to the setting of the listed buildings which would not be preserved. It would therefore be at odds with Policy TB24 of the MDD which seeks to conserve and seek the enhancement of designated heritage assets.
121. Although the development would cause harm to the significance of the heritage assets, given the level of inter-visibility and the distance between the Manor house and the proposed buildings I consider that the harm, whilst material, is less than substantial. Paragraph 193 and 194 of the Framework advise that great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance and any harm to, or loss of, the significance of a designated heritage asset from development within its setting, should require clear and convincing justification.
122. Paragraph 196 sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
123. As explained under the agricultural justification issue, the agricultural operation and the contribution it makes to employment and the local economy is limited and carries little weight. Inevitably these benefits only carry limited weight in the heritage planning balance. Moreover, whilst the identified harm may be less than substantial, this does not mean this should amount to less than substantial planning objection, especially where the statutory duty to preserve the setting of the listed building has not been met.
124. So considered, the harm to the setting of the listed building is clearly not outweighed by the benefits of the scheme. There is therefore, no clear or convincing justification for the development.

¹² That is any of the outcomes set out in the bullets above.

Contribution

125. The appellant has grown a profitable rural enterprise and profitability has increased year-on-year. There is no dispute that the agricultural element of the enterprise is lawful. However as found under Appeal A the hog roasting activities are not. The enterprise as a whole employs a number of people, the appellant, his son, agricultural and administrative support, along with a number of workers involved in the catering side of the hog roasting activities. It is inevitable therefore that the economic contribution in its entirety should be set aside and this appeal should focus on the agricultural activity.
126. The case made by the Council's agricultural witness, that the pig rearing-enterprise would not generate enough income to pay for one full time worker, went unchallenged. The appellant also accepted that the hog roast pays a significant subsidy to the agricultural use. Therefore setting aside the hog roasting activities, the economic contribution of the pig rearing activity carries minimal weight in the planning balance.

Other matters

127. At the Inquiry there was some discussion around the ground conditions and whether or not the land was suitable for operating an outdoor pig enterprise as set out by the appellant's agricultural witness. I have been pointed to the soilscape profile for the area and times of heavy rainfall, in addition the evidence of the appellant that he uses rubber conveyor belt material to aid ground conditions in wet weather. These are all matters for consideration. However, the most compelling seems to me to be the fact that the appellant has been rearing pigs successfully for some time in the current conditions. That success in itself is sufficient to suggest that ground conditions should not weigh in favour of replacing the outdoor with an indoor enterprise.

Overall Conclusions

128. For the reasons set out above I find that the construction of one or two buildings with rainwater pond, or the rainwater pond and bunding in isolation would result in unacceptable harm to the character and appearance of the countryside and the setting of the adjacent listed buildings. It would also fail to have any meaningful positive contribution to rural enterprises within the Borough.
129. That would be at odds with Policies CP1, CP3 and CP11 of the CS and Policy TB21 and TB24 of the MDD which seek amongst other things sustainable developments which maintain or enhance the high quality of the environment, respect the character of the area, contribute to diverse and sustainable rural enterprises, retain or enhance the condition, character and features that contribute to the landscape and conserve and seek the enhancement of designated heritage assets.
130. Thus the appeal developments would be in conflict with Development Plan policies. There are no other material considerations that would outweigh the identified conflict with the Development Plan. Furthermore the schemes would not represent a sustainable form of development when considered against the policies of the Framework as a whole.

Final Conclusions Appeals C & D

131. For the reasons given above and having considered all matters raised the appeals should not succeed.

Appeal B – the appeal on ground(f)

132. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified should seek to achieve the restoration of the land to its condition before the breach took place.

133. In my view the requirements are generally entirely appropriate to achieve the objective of restoring the land to its condition before the breach took place. However the requirement 'to sow with an amenity grass seed mix' goes beyond that purpose. Agricultural land would not normally be sown with an amenity grass seed mix. The requirements therefore exceed what is necessary to restore the land to its condition before the breach took place.

134. The appellant is best placed to know what the condition of the land was before the breach took place and I will amend the notice by deleting requirements 2 and replacement it with "return the land to its condition before the breach took place".

135. The appeal succeeds on ground (f). .

Final Conclusion Appeal B

136. For the reasons given above, I conclude that the Appeal B should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

Appeal A Ref: APP/X0360/C/16/3142135

137. It is directed that the enforcement notice is varied by the deletion of the description of requirement 9 in paragraph 5 of the notice and the substitution of the words "Restore the land to its condition before the breach took place".

138. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/X0360/C/16/3142138

139. It is directed that the enforcement notice is varied by the deletion of the description of requirement 2 in paragraph 5 of the notice and the substitution of the words "Restore the land to its condition before the breach took place".

140. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/X0360/W/16/3141924

141. The appeal is dismissed.

Appeal D Ref: APP/X0360/W/16/3141922

142. The appeal is dismissed.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Michael Rudd of Counsel	Instructed by Ruth Reed
He called	
Roy Maslin	Appellant
Matthew Green	Planning Consultant
Ruth Reed	Landscape consultant
Charles Holt	Agricultural consultant

FOR THE LOCAL PLANNING AUTHORITY:

Cain Ormondroyd of Counsel	Instructed by Wokingham Borough Council
He called	
Angus Farquhar	Agricultural witness
Marcia Head	Planning Officer – s174 appeals
Giles Stephens	Urban Design and Conservation Officer
Chris Hannington	Landscape Witness
Rebecca Walkley	Rights of Way Officer
Mark Croucher	Planning Officer s78 appeals

INTERESTED PERSONS:

Stephen Ollerhead	Local resident
Robert King	Local resident
Graham Powell	Local resident
Martin James	Local resident
Laurence Heath	Parish Council
Keith Refson	Local resident
Richard Firth	Local resident
Janet Firth	Local resident
Nigel Loughlin	Local resident
Stephen Henry	Local resident
Paul Steel	Local resident
Tim Webb	Local resident

DOCUMENTS

DAY 1

1	Rebuttal of Mark Croucher Appendices
2	Invoice copies from Ockwells and Mutchmeats submitted by appellant (Appendix 2 Appellant)
3	Invoice copies from Turner and Mutchmeats submitted by appellant (Appendix 2 Appellant)
4	Signed copy of appellant's statement.
5	Copy of appendices to Mr Farquhar's original planning statement

DAY 3

1	Email from Darren Cutts dated 4 November 2016 submitted by appellant
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2	Copy of Commission Implementing Regulation (EU) 2015/1375 submitted by the Council
3	Plan setting out Council's interpretation of the local soilscales submitted by the Council
4	Charles Holt Proof of Evidence

DAY 4

1	Rebuttal of Mark Croucher Appendices
2	Invoice copies from Ockwells and Mutchmeats submitted by appellant (Appendix 2 Appellant)
3	Invoice copies from Turner and Mutchmeats submitted by appellant (Appendix 2 Appellant)
4	Signed copy of appellant's statement.
5	Copy of appendices to Mr Farquhar's original planning statement

DAY 5

1	Signed Statement of Common Ground
2	Copy of Stephen Ollerhead Statement
3	Copy of Tim Webb Statement

DAY 7

1	Copy of Keith Refson Statement & attachments
2	Copy of Martin James Statement & attachments
3	Copy of Laurence Heath Statement
4	Copy of Graham Powell Statement & attachments
5	Copy of Paul Steel Statement & attachments

DAY 8

1	Note on application for listing submitted by the Council
2	Drawing showing Allotments in the Liberty of Newland submitted by the appellant
3	Copy of British History Online extract in relation to the above.
4	Copy of Robert King Statement & attachments
5	Copy of Letter dated 17 January 2017 from Buffery & Co

During Adjournments

1	Annual weather data submitted by the appellant
2	Plan showing location of weather stations submitted by the appellant
3	Amended Plan 10_390A_999 'overlay plan'
4	Amended Plan 10_390A_003 'site plan - large scale'
5	Statement of Common Ground unsigned
6	Letter from Historic England dated 26 July 2017

Photographs

- A Aerial photo dated 9 March 2014 submitted by the Council
- B Photograph of hardstanding dated 15 March 2010

