

Appendix D



Appeal Decision

Hearing Held on 16 and 17 November 2021

Site Visits made on 15 (unaccompanied) and 17 (accompanied) November 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/X0360/W/21/3275086

Willow Tree House, Brookers Hill, Shinfield RG2 9BX

- 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 Trevor & Lisa Collins, P Byfield & Kahn Properties Limited & E Rube against the decision of Wokingham Borough Council.
 - The application Ref 203560, dated 18 December 2020, was refused by notice dated 16 April 2021.
 - The development proposed is full application for a mixed use development comprising the proposed erection of 23 dwellings and community hall with vehicular access off Brookers Hill and pedestrian and cycle access from Hollow Lane together with open space and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the Hearing I was provided with a copy of a deed of agreement to provide planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) (the S106 Agreement). This deals with securing contributions to infrastructure, affordable housing, employment skills, biodiversity net gain and highways works.
3. At the Hearing, the appellants agreed to include provisions to secure the installation of the noise attenuation barrier and measures for the ongoing maintenance of both it and the proposed open space being provided on the site. To enable the S106 Agreement to be redrafted to address these matters and due to the large number of signatories to the S106 Agreement, I allowed extra time for the conclusion of these matters after the Hearing. I will discuss this S106 Agreement in more detail later in this decision.
4. Since planning permission was refused, a number of amendments were made to the scheme. These were submitted as part of the appeal. The amendments included changes to the layout and footpaths, removal of a woodland path, increased green space facilitated by a reduction in a 'public art' area, amended landscaping proposals based on alternative site re-grading, provision of additional cycle storage and refuse collection points. Whilst these amendments are numerous, they do not fundamentally alter the scheme. Furthermore, these amended drawings were available to interested parties as part of the notification of the appeal. I am therefore satisfied that interested parties have had the opportunity to consider and respond to these.

5. During the appeal process, in seeking to address the highways reason for refusal, a number of technical changes to the site layout were required which resulted in further amendments to the scheme. Given the technical nature of these changes, I am satisfied that these do not materially change the scheme. I have therefore proceeded to deal with the appeal on the basis of the amended plans submitted with the appeal and those plans subsequently amended and provided as Revision 5¹.
6. The planning application was refused for 8 reasons. The Council's third reason for refusal referred to the absence of sufficient information in relation to the proposals impact on ecology and biodiversity. During the appeal the appellants undertook further survey works and provided contributions to securing a biodiversity net gain through the proposed development. At the Hearing, the Council verbally confirmed that, subject to the imposition of appropriate conditions and securing biodiversity net gain through a legal agreement, this addressed its objection.
7. The Council refused the scheme on the grounds that insufficient information had been provided to demonstrate that the scheme would not have an unacceptable impact on highway safety with regards to the provision of adequate parking, providing a safe internal layout for pedestrians or promoting sustainable transport options. Prior to the Hearing, the appellants agreed with the Council measures for mitigation and addressing highway concerns. These would be secured through a combination of conditions and a planning obligation to secure highway works through a Section 278 Agreement under the Highways Act 1980. The Council confirmed that this addressed its reason for refusal as set out in reason 4 of the decision notice.
8. In terms of highway safety, the Council additionally set out under its fifth reason for refusal that it had not been demonstrated that the proposed noise barrier would not have a detrimental effect on the safe operation of the M4 motorway. This was on the basis of the response from National Highways (formerly Highways England) objecting to the scheme on the grounds that it had insufficient details to determine its effect on the M4 motorway.
9. During the Hearing, a condition to secure the approval of details of the noise barrier was discussed. Subject to the imposition of conditions securing approval of details of the proposed noise attenuation barrier and drainage systems and a construction management plan, National Highways confirmed in writing that it no longer objected to the scheme. The Council has however, not confirmed that it no longer objects to the scheme on this basis. I discuss this matter later in my decision.
10. The fifth reason for refusal also set out that it had not been demonstrated that the proposed noise attenuation barrier could adequately protect against road traffic noise from the M4 motorway without significant impact to residential amenity of future occupiers. In particular, the Council was concerned that this could not be addressed without windows having to be kept fixed shut. The appellants confirmed at the hearing that all windows would be openable at all times. The Council confirmed that on this basis, its reason for refusal in this regard had been addressed.

¹ Plans Ref: ITB15419-GA-001G, 009E, 011E, 014A and 016C

11. The Council's sixth, seventh and eighth reasons for refusal referred to the absence of a signed S106 Agreement to make the development acceptable in planning terms. However, the unsigned agreement provided to me at the Hearing addressed those matters set out under these reasons for refusal. The Council confirmed that, subject to securing the required signatories to the agreement, this addressed their concerns on these issues and removed its objection to the appeal in respect of these reasons for refusal. Since this completed legal agreement has been provided, I have proceeded on the basis that the Council is no longer pursuing its objections to the scheme on these matters.
12. Since the Hearing was closed, the Council published its annual Five Year Housing Land Supply Statement at 31 March 2021 on 7 January 2022. This superseded the Five Year Housing Land Supply Statement at 31 March 2020, published 14 January 2021 which formed the basis of the discussion at the Hearing. I sought the comments of both the parties on the revised Housing Land Supply Statement (HLSS). I have determined the appeal on the basis of the most recent HLSS.
13. On 14 January 2022 the Government published the Housing Delivery Test (HDT) Results for 2021. I wrote out to the parties for their views on this. I have taken their comments into account in my decision.
14. The Government launched its First Homes scheme in England, as set out in its Written Ministerial Statement of 24 May 2021. This came into effect on 28 June 2021 with a transition period which ended on 28 December 2021. I sought the views of both parties on the implications, if any, of this national policy in relation to the appeal.

Main Issues

15. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on protected trees; and
 - whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

Reasons

Character and appearance

16. The appeal site is located adjacent to the settlement of Shinfield and within the designated 'South of the M4 Strategic Development Location' (SDL). The SDL is 1 of 4 such areas within the Borough designated for growth. Within this context, the appeal site is included in the built-up area of Shinfield, although it lies outside the defined development limits.
17. The appeal site is approximately 2.4 hectares. It is an irregular shape and falls into 2 distinct sections. The southern section of the site which has a frontage to Brookers Hill comprises Willow Tree House and its gardens including an area of unmanaged orchard and woodland and trees. These provide enclosure of the site, largely screening existing development from

view. This gives the site a sylvan character which makes a positive contribution to the area. Development along this stretch of Brookers Hill is largely confined to the north side of the road, characterised by large, detached properties set within spacious grounds, similar to the appeal property. Beyond, on the opposite side of Brookers Hill, there are open fields. This contributes to the semi-rural character of the area.

18. Within the site, the ground rises up from Brookers Hill towards a wooded ridge. The northern section of the site lies beyond this. This part of the site slopes steeply down towards the M4 motorway which runs along its northern boundary. The large gardens to Brookers Hill properties form a boundary to its southern edge with an area of undeveloped land forming part of its south-eastern boundary with a small housing development off Brookers Hill beyond. Towards its eastern end there is a commercial building, a number of commercial shipping containers and an access onto Hollow Lane which runs between the Shinfield Arms and residential properties fronting this road.
19. The northern section of the site is an area of undeveloped grassland flanked by woodland and has a more open and rural character than the southern section. This is however limited in extent due to the hard edge formed by the M4 motorway. From here, it is viewed in the context of close-boarded acoustic timber fencing to the adjacent site and with the commercial buildings and containers visible through the trees and boundary vegetation separating the site from the M4 motorway corridor.
20. The scheme seeks the formation of a new access road, which would traverse the site from Brookers Hill. Six detached dwellings would be provided within the southern section of the site. Towards the top of the slope, a row of pairs of semi-detached houses would be constructed with an area of open space including a play area to the west. Two small blocks of flats would be located on the opposite side of the access road and adjacent to a new single-storey community building with car parking to its west. This would be adjacent to the boundary with the M4 motorway.
21. Along the northern edge of the site, and set in slightly from the boundary, a 240 metre long and 8 metre high 'Eco-Barrier' would be constructed to provide separation and acoustic screening from the M4 motorway. The eco-barrier would be an ivy covered steel structure forming a green wall between the trees and vegetation along the motorway corridor and the proposed buildings on the site.

Effect on the landscape character

22. The appeal site lies within the Spencers Wood Settled and Farmed Clay area an area of overall moderate quality as described in the Wokingham Borough Landscape Character Assessment (WBLCA). The WBLCA recognises that the area has a rural character but is strongly influenced by its proximity to Reading. The area itself is formed as a clay ridge that separates it from other landscape areas. It is characterised by a range of distinctive features which include pastoral land use within a wooded setting as well as displaying remnants of historic parklands and the sense of elevation and views provided across the adjacent lowland landscapes.
23. The appeal site displays some of the characteristics of this landscape area in the form of small-scale woodland and the northern section of the site

contributes to the undeveloped slopes of the clay ridgeline. This part of the site is visible for a short section travelling along the M4 corridor, from both a footbridge to the west and the Shinfield Road bus and cycle bridge to the east over the motorway.

24. The lower parts of the site are screened from view by boundary trees and vegetation along the M4 corridor outside the appeal site. A large cantilevered sign over the motorway significantly restricts views of the site from some sections of the footbridge, although it remains visible from its far side on the opposite side of the motorway. The views from the Shinfield Road bridge are significantly more open, where the contribution of undeveloped slopes and woodland to the rural character on the edge of the settlement can be seen.
25. The eco-barrier would be a substantial structure both in terms of its height and length. Once fully vegetated it would have a solid appearance. It would be partially screened in views from the motorway and bridges by the existing trees and vegetation on the sites northern boundary many of which would be a similar height or taller. Whilst this would go some way towards reducing its visual impact, the solid and impenetrable appearance of the eco-barrier, would make this a prominent feature running along a significant stretch of the motorway.
26. The ivy clad and verdant appearance of the eco-barrier would have a less harsh appearance than the timber fencing which characterises much of this stretch of the motorway including the adjacent site. However, it would be more than double the height of this fencing and would significantly reduce views into the site from the motorway. The enclosure of the site in this manner would significantly detract from the existing open character of the site. It would also have an enclosing effect on this stretch of the motorway.
27. The eco-barrier would only be visible from a limited number of viewpoints. It would be experienced over a relatively short period of time due to the speed of traffic travelling along the motorway. However, it would draw the eye due to its excessive length and height. Nonetheless, I agree that the harm would be relatively localised with a degree of seasonality, with the proposal less prominent during summer months when trees between the eco-barrier and the motorway are in leaf. As such, the proposed development would give rise to significant rather than substantial harm to landscape character.
28. The eco-barrier would provide some screening of the proposed development to the northern slopes. However, the proposed houses at the top of the slope, the green roof of the community building and parts of the proposed access road would be visible beyond this. This would erode the rural character of the site, diminishing its contribution to the undeveloped slopes north of the ridgeline and the landscape character.
29. The scheme proposes the retention of a modest area of open land at the top of the slope and to the west of the proposed housing with a wooded backdrop. This area would be visible beyond the eco-barrier similar to how the slopes are currently visible above the tree tops along the motorway verge, although with the eco-barrier providing a much less permeable view. Whilst this would retain some of the open character of the site, the undeveloped area would be much reduced and viewed in the context of the proposed houses and the new road. This would not therefore mitigate the loss of the rural character of the site.

30. In order to develop the appeal site, it is evident that extensive ground works would be required to provide the appropriate levels for the development so that the roads and buildings could be constructed. This would require a substantial amount of cut and fill development to create a series of terraces within the slope. This would fundamentally change the character of the slope. Whilst a portion of the most visible part of the site which can be seen above the existing boundary trees would be retained as open and sloping land, the changes to the slope would appear engineered and urbanising, which would be harmful to its natural and undeveloped character.
31. Views of the surrounding lowlands beyond the motorway are only possible from the higher parts of the site. These would be mostly retained and possible beyond the eco-barrier, although this would appear as an intervening feature in those views. However, as the motorway is also an intrusive feature within those views, the eco-barrier would have a negligible impact on the quality of those views.
32. Within the southern section of the site, the removal of trees and the formation of an additional access to Plots 1 and 2 would open up the site to views from Brookers Hill and the surrounding area. The proposed development of 6 houses would be prominent due to the reduced tree cover. The arrangement of houses would have a more suburban form which would be out of character with the low density, unobtrusive and dispersed pattern of development along this section of Brookers Hill. This would cause significant harm to the semi-rural and sylvan character and appearance of the area.

Settlement Separation

33. Policy CP19 of the Wokingham Borough Core Strategy Development Plan Document 2010 (the CS) sets out the requirement that development South of the M4 should include measures to retain separation of settlements from each other. This includes settlements both to the south of the M4 within the SDL as well as those to the north of the M4. The South of M4: Development Brief Supplementary Planning Document (the SPD) expands on this, explaining that this is to retain the character of the existing settlements and wider surrounding landscape. To achieve this, the CS defines settlement separation by means of a series of broad zigzag lines on a map running east to west and north to south.
34. Of relevance to the appeal, one of the zigzag lines runs along the M4 corridor broadly following its alignment, extending beyond the settlement of Three Mile Cross to the west and Shinfield to the east. This indicates the area of separation being protected between settlements south of the M4 and those to the north within the greater Reading area. The appeal site lies mostly within the area covered by this zigzag line.
35. The M4 motorway is a major lit highway corridor. Whilst this provides a clear physical and visual barrier between greater Reading and Shinfield, on its own it would not be sufficient to maintain a suitable gap between the settlements. However, in combination with the substantial area of undeveloped woodland directly to the north of the M4 opposite the appeal site, it separates the built-up area of Greater Reading and Shinfield.
36. The appeal site, in forming part of the undeveloped northern slopes of the clay ridgeline, also contributes to the separation of these settlements. The

enclosure of the site by both the M4 motorway to the north and development to the south and east, including the existing commercial building and containers on site and the rooftops of development beyond, does however limit its contribution.

37. Development of the site would cause some reduction in the gap between the settlement areas north and south of the M4. However, with an undeveloped area of slope retained and some screening by both the boundary vegetation and the eco-barrier, a visible green gap, albeit reduced, would continue to exist. Together with the area of woodland to the north of the M4, the extent of harm in terms of settlement separation that would arise from this would be moderate.
38. In coming to this view, I have taken into account the Council's conclusions in its recent grant of planning permission at Hogwood Park² on the grounds that the site was landlocked by SDL development and Park Lane and would not result in urban sprawl beyond the site into the wider countryside.
39. I have also had regard to the conclusions in respect of the approved development at Ashridge Farm, Wokingham³. In this case, it was accepted that the proposal would not result in the proliferation of development away from development limits into open countryside nor would it compromise the separate identity of settlements with the A329(M) forming the barrier for development in north Wokingham. This scenario is similar to that of the appeal scheme.
40. Whilst I appreciate that in both these 2 cases there were other benefits of the schemes, nevertheless the principle of roads and other development forming an enclosure of the site has been accepted. It seems to me that with these elements in place, some separation would be retained, the identity of Shinfield would be adequately protected and it would not merge into Greater Reading.
41. The Council has drawn my attention to a dismissed appeal⁴ at Shinfield Glebe site some 350m south of the appeal site where the Inspector considered the extent of development would be harmful to the sensitive edge of the settlement location, leading to greater coalescence of Shinfield and greater Reading. However, that site was much larger than the appeal site with very little enclosure on any of its boundaries.
42. Unlike the appeal scheme where there is woodland opposite, the urban area within Greater Reading to the north of the M4 corridor extends right up to the motorway. Consequently, the only separation between the settlements was provided by the motorway and a relatively narrow area of open land to the south of the Shinfield Glebe site. This represented a much more intrusive and significant encroachment into the countryside and closing of a settlement gap than the appeal scheme.
43. Overall, whilst I do not find that the scheme would undermine settlement separation, I nevertheless conclude that it would cause significant harm to the character and appearance of the area in regards to its effect on landscape character. It would therefore conflict with Policies CP3 and CP11 of the CS, Policies CC02 and TB21 of the Managing Development Delivery Local Plan

² Council Ref 163547

³ Council Ref 201515

⁴ APP/X0360/A/10/2133804

2014 (the MDD LP) and Policy 2 of the Shinfield Neighbourhood Plan 2017 (the SNP). These policies together seek development appropriate to the character of the area, that protects the separate identity of settlements and maintains the quality of the environment, retaining or enhancing the character and features that contribute to the landscape. It would also not accord with the Borough Design Guide SPD 2012 (the BDG) which seeks the same.

The effect on trees

44. There are numerous trees within the southern section of the site and along the ridge. These give the site a sylvan character, particularly to its southern section and provide a wooded backdrop to the northern part of the site. Collectively the trees and woodland make a positive contribution to the landscape of the area. These are subject to a Tree Preservation Order (TPO)⁵ which comprises a combination of individual, groups and an area of trees.
45. The appellants have provided an Arboricultural Assessment and Method Statement (AAMS). The AAMS, which categorised trees based on guidance in British Standards⁶, identifies that most of the trees and groups of trees on site are considered to be either Category C grade and of low quality. There are a few individual trees and one group of trees within the site plus some off-site trees that are considered to be of moderate quality and classified as Category B. A small number of trees are Category U trees which are not suitable for retention.
46. The proposal would require the removal of 2 category B trees, a mature Norway spruce (T25) and a mature false acacia (T41), as well as several category C trees and groups of trees. The most significant area of tree removal would be to the southern section of the site. Here a large number of trees and groups of trees would be removed in order to both form the proposed access road running along the boundary with the adjacent property to the west, Foxglade; and to provide open garden space to the proposed dwellings in this part of the site.
47. There are a few trees within the grounds of Foxglade along its boundary with the appeal site. However, they are sparsely positioned and would not, on their own, provide a commensurate density of tree cover to that which currently exists. As I have set out in my reasoning above, this would significantly open up the site, and would erode the sylvan and semi-rural character of this area.
48. A limited number of trees would be removed from the belt of trees running across the ridgeline of the site. This includes a category B tree. The removal of these trees would effectively thin the line of tree cover, potentially forming a break within the canopy. This would detract from the wooded character of the ridgeline. This would be visible from the surrounding area and harmful to the landscape character of the site.
49. Within the area of woodland separating the 2 sections of the site, I observed that there are significant variations in ground level with evidence of some trees growing within embanked areas. The AAMS acknowledges that a number of these will require protection in the form of no-dig surfacing. Whilst this may provide some mitigation from harm where the ground is level, the AAMS is

⁵ Tree Preservation Order No. 1682/2019

⁶ BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

less clear on how protection would be provided for those trees growing at different levels close to where the proposed access road would run.

50. I have not been provided with details of existing levels in this area nor how the access road would be constructed. It seems to me that, with trees growing at different levels in combination with the ground works to form the required level area and width for the access road, there is likely to be some disturbance to the ground in this part of the site. This would be either through excavation or the piling of additional soil within the root protection area (RPA) of the trees to be retained. This could result in harm to the long-term health of the trees either through root damage from exposure or starving the trees of oxygen. Insufficient details have been provided in this regard. Had I been minded to allow the appeal, the imposition of a suitably worded condition to require further details and control over works associated with levelling the ground could provide some mitigation of this.
51. The off-site category B trees along the south-eastern site boundary to the northern section of the site are also protected as an individual and group of trees under the TPO. One of these, a poplar tree (T45), would be located at the end of the rear gardens to the proposed houses on Plots 11-13 and a protected group of poplars (G47) at the rear of Plots 14-18. Due to the differences in ground levels and the presence of these trees, it is proposed to construct a retaining wall at the rear of these gardens to accommodate the change in levels.
52. At the Hearing, the Council raised concerns about how this wall would be constructed so as to minimise any harm to these trees. The submitted tree protection plan indicates that the retaining wall would extend around the RPAs of these trees. This should minimise harm to these trees and a suitably worded condition could ensure their protection during construction.
53. The gardens to these properties are relatively small and with the overhanging tree canopies, the amount of useable space is reduced. This may give rise to pressure from future occupants to reduce or remove these trees to provide more space. I accept that any such works would require permission due to the protection afforded these trees, however, it may be difficult to resist such requests given the circumstances.
54. I am told that the TPO was only put on the site in May 2019 when the Council became aware of the proposed development of the site. A significant part of the TPO, covering the entire southern section of the appeal site and the area of woodland along the ridge to the north of this, is an 'area category' TPO. The Planning Practice Guidance (PPG)⁷ sets out that this type of TPO can be used to protect individual trees dispersed over an area. It is intended for short-term rather than long-term protection as a temporary measure until the trees on the site can be fully assessed and classified.
55. I have not been made aware that any further assessment of the trees has been undertaken. Whilst I recognise that this is a requirement, it does not alter the protection which these trees currently benefit from. I have found that the trees collectively make a positive contribution to the area and that their loss or works that may adversely affect their long term health would be harmful to the character and appearance of the area.

⁷ Paragraph: 029 Reference ID: 36-029-20140306

56. I appreciate that the proposal includes significant tree planting, indicated to be a net gain of some 87 new native trees. In the long term this would certainly provide some mitigation for the loss of trees on the site. However, in the short to medium-term the loss of trees would harm the character of the site, reducing its contribution to the wider area. Furthermore, these trees would not replace those lost along the western site boundary as this area would be occupied by the access road. The reduction in tree cover here would be permanent and harmful for the reasons I have set out.
57. I conclude that the proposed development would have a significant adverse effect on protected trees. In this respect, it would conflict with Policies CC03 and TB21 of the MDD LP and Policy 2 of the SNP which together seek the protection and retention of existing trees and features that contribute to the landscape. For the same reasons, it would also not accord with the BDG. I have found no conflict with Policy 6 of the SNP referred to in the decision notice as this relates to trees in the context of ancient woodland which is not relevant to the appeal scheme.

Other Considerations

Planning Policy Context

58. The development plan includes the CS, the MDD LP and the SNP. The Council is in the process of preparing a new Local Plan, but this is at an early stage and has not been submitted for examination. It therefore carries limited weight at this time.
59. Paragraph 11 d) of the National Planning Policy Framework (the Framework) sets out that for decision taking where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. 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.
60. The Framework does not provide any definition of what constitutes 'most important' however, the wording is clear it refers to the policies most important in the determination of the application rather than the appeal that need to be considered. This means that it is those policies relating to the consideration of the whole scheme rather than those matters in dispute at the appeal that should be included. Other policies may be relevant but would not necessarily be the most important.
61. In accordance with the approach established through case law⁸, a consideration of which policies are the most important must be made and an assessment about whether these are out-of-date. It is for the decision-maker to consider whether the 'basket' of most important policies as a whole is out-of-date, a matter which I return to in my conclusions below.

⁸ Wavendon Properties Ltd vs SSCLG and Milton Keynes Council [2019] EWHC 1524 (Admin)

The most important policies

62. The parties do not agree which are the most important policies for determining the appeal. At the hearing it was agreed by both parties that Policies CP9 and CP11 of the CS, Policies CC02 and TB21 of the MDD LP and Policy 1 of the SNP would be most important policies for determining the appeal. In addition, the Council considers that Policy CP3 of the CS and Policy 2 of the SNP should be included.
63. Policy CP3 sets out general principles for development. As the design of the proposed development in the context of the site constraints and its relationship to the surrounding area is an important factor, I consider that Policy CP3 is one of the most important policies. For the same reasons, I consider that Policy 2 of the SNP which sets out general design principles should be included as one of the most important policies.
64. The list of most important policies put forward by the parties are focussed on the location of development, landscape character and design. In terms of locational factors, I consider Policy CP19 of the CS is also most important as it sets out the expectations of development within the South of the M4 SDL. In respect of trees and landscaping, Policy CC03 of the MDD LP is also most important.
65. In addition to those referred to above, I consider that a number of the policies included within the reasons for refusal would also be most important policies. This includes Policies CP1 of the CS and CC01 of the MDD LP which secure sustainable development and Policy CP2 of the CS which relates to inclusive communities and the provision of community facilities.
66. The scheme includes residential development and proposals for a mix of housing types and affordable housing, therefore Policies CP5 of the CS and TB05 of the MDD LP are most important.
67. A community facility and 23 residential properties are proposed. Policies CP6 of the CS, CC07 of the MDD LP and Policies 4 and 5 of the SNP which manage travel demand and secure car parking are most important policies for assessing the effects of the scheme on the highway network and travel patterns.
68. The appeal scheme proposes the development of an area of land that is semi-improved grassland and woodland. The scheme would extend built development into this area which would remove some of this habitat. Consequently, I consider Policies CP7 of the CS and TB23 of the MDD LP and Policy 7 of the SNP which seek the protection of biodiversity and mitigation against its loss are also most important policies.
69. Due to the proximity of the appeal site and the proposed dwellings to the M4 motorway, the effect of noise on the proposed development is a significant factor. For this reason, I consider Policy CC06 of the MDD LP which relates to noise impacts and mitigation is also a most important policy.
70. Policy TB12 of the MDD LP and Policy CP4 of the CS which seek to secure employment skills and infrastructure in association with the development are relevant but not the most important.

71. Having regard to the above, I consider that the most important policies in the determination of the application are: Policies CP1, CP2, CP3, CP5, CP6, CP7, CP9, CP11 and CP19 of the CS; Policies CC01, CC02, CC03, CC06, CC07, TB05, TB21 and TB23 of the MDD LP; and Policies 1, 2, 4, 5 and 7 of the SNP.

Whether the most important policies are out-of-date

72. Paragraph 219 sets out 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. Such an approach has been established through case law⁹ where it has been held that there are a number of reasons why a policy may be considered out-of-date but the age of a policy is not decisive in this matter.
73. The parties agree that policies CP1, CP2, CP7 and CP19 of the CS, policies CC01, CC03, CC06, CC07, TB05, TB21 and TB23 of the MDD LP and Policies 1, 2, 4, 5 and 7 of the SNP are consistent with the Framework and should be attributed full weight. There is some dispute between the parties as to whether the remaining most important policies are consistent with the Framework, namely Policies CP3, CP5, CP6, CP9 and CP11 of the CS and Policy CC02 of the MDD LP.
74. Policy CP3 is a generic policy which sets out general principles for development. I have not been alerted to any significant inconsistencies with the Framework and whilst I accept that some wording may demonstrate minor inconsistencies, as found by the Inspector in the Land East of Finchampstead Road appeal¹⁰, overall I do not find this policy to be out-of-date.
75. Policy CP5 includes a provision that residential proposals of at least 5 dwellings will provide 50% affordable housing, where viable. This policy does not accord with paragraph 64 of the Framework and therefore is out-of-date.
76. Policy CP6 is a criteria-based policy which indicates that permission will be granted if road safety is enhanced, adverse effects on the network mitigated and highway problems are not causes. It is a permissive policy which does not state that permission will be refused if these provisions are not met. Although there is a difference in wording between this policy and paragraph 110 of the Framework, the approach of the policy is not inconsistent with the Framework.
77. Policies CP9, CP11 and CC02 are restrictive policies, which amongst other things, set out a settlement hierarchy, require development to occur within development limits, apart from allowing for some limited development including affordable housing on rural exception sites. The housing requirement set out under Policy CP17 of the CS reflects the revoked South East Plan. This has been superseded by the Local Housing Need (LHN) figure of 768 dwellings per annum plus a 5% buffer (806) compared to the CS requirement under Policy CP17 of an average of 623 dwellings per annum from April 2021.

⁹ Bloor Homes Ltd v SSCLG [2014] EWHC 745 (Admin) and Gladman Developments v SS & Central Bedfordshire Council [2019] EWHC 127 (Admin)

¹⁰ Appeal Ref: APP/X0360/W/19/3235572

78. The Council has set out that the defined development limits are not specifically drawn up to deliver a simple quantum of development. It has also confirmed that the housing numbers upon which these limits were based, in this case those set out under Policy CP17, are not a ceiling. Whilst this is accepted, it is nevertheless evident that the Council is reliant on several sites outside development limits in order to deliver a sufficient supply of housing. Together these sites would deliver 420 dwellings and just over 10% of the Council's 5 year housing requirement.
79. Of the dwellings permitted outside development limits and included in the Council's 5 year housing land supply (5YHLS), some 306 dwellings would be within the SDLs where significant investment in infrastructure has taken place or is programmed to be delivered as part of future housing. In these cases, the Council has stated that in granting permission a 'normal balance' was taken weighing up material considerations against any policy conflict. The remaining approvals were granted on appeal when the Council could not demonstrate a 5YHLS. This indicates that the policies can and are applied flexibly.
80. Recent HDT results show the Council is performing well in delivering its housing requirements and has significantly exceeded its annual requirement since 2018, with delivery at 189% in 2021. This indicates that the Council's strategy for housing and other growth, as set out within Policies CP9, CP11 and CC02 and the policies relating to SDLs, can be applied flexibly to deal with changing circumstances including changes to housing requirements.
81. Nevertheless, it is clear that the policies are unable to deliver the housing requirement without having to be applied flexibly and reasonably often, in order to meet housing requirements. Given the extent of development outside settlement limits and my findings that the Council cannot currently demonstrate a 5YHLS, which I discuss in more detail later in my decision, I conclude that Policies CP9, CP11 and CC02 are all out-of-date and inconsistent with the Framework. This accords with a recent judgment, *Eastleigh BC v SSHCLG*¹¹, where it was held that development plan policies were not consistent with the Framework where compliance with a 5YHLS had been achieved, in part, by greenfield planning permissions outside settlement boundaries.
82. These matters have also been considered in various appeals within the Borough where Inspectors have reached differing conclusions. Most recently, Inspectors for appeals at Land east of Finchampstead Road, Wokingham and Land north of Nine Mile Ride, Finchampstead¹² concluded that since the Council was relying on sites outside settlement limits for its 5YHLS, then Policies CP9, CP11 and CC02 are all out of date.
83. I am aware that the Inspectors in both the Land to the rear of 6 Johnsons Drive, Finchampstead appeal¹³ and Land at Lodge Lane, Hurst appeal¹⁴, which pre-dated the Finchampstead Road and Nine Mile Ride appeals, concluded that these policies were not out of date.

¹¹ *Eastleigh Borough Council v SSHCLG* [2019] EWHC 1862 (Admin)

¹² APP/X0360/W/19/3238048

¹³ APP/X0360/W/18/3205487

¹⁴ APP/X0360/W/18/3194044

84. In the Johnsons Drive appeal, the Inspector found that the Council could demonstrate a 5YHLS even when deducting those sites outside the settlement boundary. Within the Hurst Lane appeal, there was no dispute that the Council could not demonstrate a 5YHLS, although it was not specified whether any of this would have been made on land outside settlement boundaries. The circumstances are therefore different to those before me where the Council acknowledges reliance on sites outside settlement boundaries and I have found a 5YHLS does not exist.
85. In coming to this view, I am also mindful of case law¹⁵ which confirmed that the weight to be given to restrictive policies could be reduced where settlement boundaries were drawn up on the basis of out-of-date housing requirements. In this case, the settlement boundaries were drawn up in the context of a much lower housing requirement although I acknowledge that housing requirement was not set as a ceiling.
86. The Council has referred me to an appeal decision¹⁶ at Land off Moseley Road, Hallow, Worcestershire where the Inspector concluded that since the Council could demonstrate in excess of a 5YHLS, its policy restricting development outside settlement boundaries was up-to-date. However, there is nothing to suggest that the 5YHLS was in dispute or whether it relied on the delivery of housing development outside defined settlement boundaries. For this reason, a comparison with the circumstances of the appeal before me is not possible. I therefore give this appeal decision limited weight.
87. It has been established through the *Eastleigh BC v SSHCLG* judgment that the Framework adopts a more nuanced approach requiring that planning decisions should contribute to and enhance the natural and local environment by meeting a series of objectives which includes the recognition of the intrinsic character and beauty of the countryside. Similarly, the Secretary of State¹⁷ in determining an appeal for the redevelopment of Wheatley Campus of Oxford Brookes University confirmed that 'recognition' and 'protection' are not the same being distinguishable terms, finding that the restrictive policies seeking blanket protection of the natural environment were not consistent with the Framework.
88. The type of restrictive approach that protects land outside of defined settlements as set out within Policies CP11 and CC02 does not, in my view, accord with the more nuanced approach advocated by the Framework. This also makes these policies out of date.
89. I acknowledge the benefits and the certainty that a plan-led approach to development provides, as recognised in the *Gladman Development Ltd v Daventry DC*¹⁸ judgment. I also recognise that the Council has taken steps to address issues arising within the Borough that have affected planned housing delivery, notably in relation to the extension of the Detailed Emergency Planning Zone around AWE Burghfield. I also appreciate that it can be unfair for landowners to seek to short-cut the plan-led process when the Council considers development needs are being met.

¹⁵ Suffolk Coastal District Council v Hopkins Development Ltd [2017] UKSC 37

¹⁶ APP/J1860/W/17/3192152

¹⁷ APP/Q3115/W/19/3230827

¹⁸ Gladman Developments Limited v Daventry District Council and SSCLG [2016] EWCA Civ 2246

90. However, I have found that, at present, the Council cannot demonstrate a 5YHLS and that a reasonable proportion of its HLS is on sites outside development limits. It is therefore not unreasonable that landowners seek to promote their sites through the planning application process.
91. Consequently, I have found that 4 of the 22 most important policies are out-of-date. I will return to the matter of whether the 'basket' of policies itself is out-of-date and therefore whether the appeal scheme complies with the development plan as a whole in my final conclusions.

Housing Land Supply

92. The Council's latest HLSS for the period 1 April 2021 to 31 March 2026 is based on an assessment of LHN using the standard methodology and includes a 5% buffer as required by the Framework. The LHN identifies an annual need of 768 dwellings which including the 5% buffer equates to 4,032 dwellings over the 5 year period.
93. As of 1 April 2021, the HLSS sets out the Council has a 5.10 years supply of deliverable housing sites. This equates to an annual rate of 806 dwellings and a total deliverable supply of 4,115 dwellings. This represents a surplus of 83 dwellings.
94. The appellants dispute this on the basis that the Council has included sites that came forward beyond the base date and, through the inclusion of a windfall allowance for larger sites, has double counted its supply. It is the appellants' view that the Council has a deliverable supply of 3,742 dwellings and therefore a shortfall of 290 dwellings from its total housing requirement. This equates to a 4.64 years housing land supply.
95. The Framework sets out within its glossary that to be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. It goes on to give examples under a) and b) of the categories of sites which are capable of meeting that definition. Under a) this includes all sites with detailed planning permission; and under b) those sites which have outline planning permission for major development and whether there is clear evidence that housing completions will begin on site within 5 years.
96. It is clear from a recent High Court Consent Order¹⁹ that the examples given in categories a) and b) are not exhaustive of all the categories of sites which are capable of meeting the definition and that whether a site does or does not meet the Framework definition is a matter of planning judgement on the evidence available.
97. I have been referred to an appeal at Land on East Side of Green Road, Woolpit, Suffolk²⁰ where the Inspector concluded that in order to meet the definition of deliverable, a site would need to have a resolution to grant permission within the assessment period, that is by the cut-off date for the assessment period. The Inspector took the view that to include sites granted planning permission after the cut-off date but before the publication of the assessment, in that case the Annual Monitoring Report, would be erroneous.

¹⁹ East Northamptonshire Council v SSHCLG, Case Number: CO/917/2020

²⁰ APP/W3520/W/18/3194926

This was due to it overinflating the supply without a corresponding adjustment of need.

98. Whilst the findings of this Inspector are noted, I do not find it is that clear cut. The PPG sets out that to demonstrate a 5YHLS, the local planning authority should use the latest available evidence. To my mind, whilst this may include formal land availability assessments or the Annual Monitoring Report, it does not suggest that a base-line or cut-off date means no further evidence can be taken into account if is available.
99. In coming to this view, I have had regard to an appeal²¹ at Woburn Sands, Buckinghamshire where the Secretary of State also concurred with the view of the Inspector that it is acceptable, in relation to an assessment of housing land supply, that evidence can post-date the base date provided that it is used to support sites identified as deliverable as of the base date. It was also held in that appeal that a proforma can, in principle, provide clear evidence of a site's deliverability. This approach is reasonable and I have no reason to disagree.
100. At the Hearing, the Council emphasised that it is a delivering authority. Certainly, in terms of its recent record of housing delivery, as demonstrated in the HDT results, the Council has been strongly performing at 189% for 2021, 200% for 2020 and 175% for 2019. However, evidence of housing completions indicates that until 2019/20 housing delivery had fallen short of meeting the cumulative housing requirements set out within the CS.
101. Nevertheless, based on current projections, the Council anticipates that over the remaining CS plan period to 2026, an additional 1,965 dwellings will be delivered over the minimum requirement. This equates to a significant boost in housing of 14.9% above plan levels. Whilst I do not have firm evidence to confirm this, housing delivery in recent years does suggest that the CS housing figures may be exceeded.
102. The Council has a specialist delivery team and a dedicated officer for each of the SDLs. Through this, the Council gathers information regarding sites and forthcoming applications which inform its housing delivery analysis. On this basis, the Council considers its information to be both up to date and robust. In support of its position, the Council has asserted that evidence on housing delivery given at the Hearing on sites that are no longer contested demonstrates the reliability of this engagement and the intelligence gleaned from it. Whilst I accept this, I do not find that on its own, this is sufficient to provide the firm evidence of deliverability which, to my mind, must additionally be backed up by other information.
103. It has been argued that reliance on sites outside defined settlement boundaries or development limits to demonstrate a 5YHLS may, in some circumstances, indicate that certain policies relating to housing land supply carry less weight. I have discussed this earlier on in my decision. However, this does not mean that sites outside development limits with planning permission cannot be included within the calculation of 5YHLS in accordance with the relevant tests of deliverability. This approach has been confirmed in the judgment in *Gladman Developments Limited v Daventry DC*. I have

²¹ APP/Y0435/W/17/3169314

therefore taken such sites into account in my assessment of the Council's 5YHLS.

104. In the context of the above and taking into account that the test of deliverability is about a realistic prospect not certainty and that the onus to demonstrate delivery lies with the Council, I now turn to look at the disputed sites within the HLSS.

Ashridge Farm, Warren House Road, Wokingham

105. This site is within the North Wokingham SDL. A scheme for 153 dwellings was granted full planning permission on 25 June 2021. Build out rates have been indicated by the developer operating on the site who has confirmed they will be delivered within years 2, 3 and 4 of the 5 year period. The latest available evidence confirms these have permission and that the new homes are being marketed for sale on David Wilson Homes' website. Whilst this certainly indicates deliverability, this was not the case at base date when the site had no permission at all.
106. In my view, this site did not meet the definition of deliverable having neither full nor outline permission at base date. Whilst I accept that evidence can be taken into account post base-date, this should only be the case where the site was considered deliverable at that point which was the not case here. For this reason, I conclude that the 153 dwellings should be excluded from the trajectory.

Land at 1 Barkham Road, Wokingham

107. This site is a brownfield site with a proposal for 14 dwellings. At base date, there was a resolution to grant planning permission subject to the completion of a legal agreement. I have nothing before me to show this has now been resolved. This degree of uncertainty could in my view put back the potential start date of a development by some time or may act as an impediment to development. For this reason, whilst I acknowledge that this would be a small site and should be deliverable within 5 years, I do not consider it appropriate to include this development within the calculation of overall supply. These 14 dwellings should be removed from the calculation.

Land at Hogwood Farm, Sheerlands Road, Arborfield

108. This is part of a larger scheme for 1,500 dwellings which has outline planning permission. Phases 1 and 2, delivering 178 and 235 dwellings respectively, have been subject to reserved matters and approved. A further reserved matters application in respect of 135 dwellings has been validated by the Council on 22 November 2021. The Council considers 73 dwellings arising from this would be deliverable in years 4 and 5.
109. The scheme is being brought forward by one developer who is a national housebuilder. Phase 1 is due to complete in year 3 and the Council has assumed that the 73 dwellings would be completed in the subsequent years. They have based this assessment on the Council working closely with the developer which has helped them understand the forthcoming projects. However, I note that in the proforma responses to the Council, the developer has not provided any information in respect of the timing of this phase of the development.

110. Notwithstanding the findings of the Inspector in the Nine Mile Ride appeal, I have been provided with no firm evidence that indicates that the use of modular housebuilding has speeded up delivery. Nevertheless, I recognise that the development would benefit from the completion of the Nine Mile Ride Extension – South which would provide the highways infrastructure to enable this development to come forward. The reserved matters for this road scheme have been granted permission and the road it expected to be fully built out within 2022.
111. In view of the expected completion of the road and phase 1 of development, on balance, I consider it is likely that this third phase of development will commence during the 5 year period. Taking into account delivery rates for both phases 1 and 2, the assumptions made by the Council in this regard do not appear unreasonable. For this reason, I consider that these 73 dwellings should be included within the trajectory.

Land to West of Shinfield

112. The disputed housing forms part of a larger scheme comprising 3 parcels of land for which outline planning permission was granted for 1,275 dwellings on 8 November 2012. This parcel of land relates to 137 dwellings remaining to be delivered following reserved matters. Of these the Council considers 25 dwellings will be delivered within the 5 year period. The Council has indicated that there have been 3 developers operating on the site and given the size of the permission, its location within an SDL and indications of expected delivery they consider its inclusion is justified.
113. An EIA Screening was submitted which the Council has referred to providing evidence of progress. The appellant disputes this as the EIA Screening did not indicate a time frame. Nevertheless, at the time the HLSS was published a reserved matters application had been approved for the 25 dwellings and it was therefore the latest available evidence relating to a site which did have outline permission at base-date.
114. The Council has adopted a cautious approach and proposed these would be delivered within year 4 which is reasonable. I find that these 25 dwellings should be included as part of the overall supply.

Land east of Gorse Ride South, south of Whittle Cross and north and south of Billing Avenue, Finchampstead

115. This site has planning permission for 249 dwellings, granted on 19 February 2021. It includes demolition of existing housing resulting in a net gain of 71 dwellings. The Council has projected that 44 of these will be delivered within the 5 year period. The scheme will be brought forward in 3 phases.
116. The majority of this site is within the Council's ownership but a number of properties and land holdings are in third party ownership. Negotiations are being undertaken to acquire the properties and a Compulsory Purchase Order (CPO) application was made to acquire any others. The CPO has been rejected and in order to acquire these properties for the development, the Council would be likely to need to again apply for a CPO. Furthermore, condition number 35 of the planning permission requires a legal agreement to be signed by the owners before development commences.

117. I have no evidence that this legal agreement has been signed and, in view of some of the landowners' resistance to the development, there is no certainty that this will be completed. This degree of uncertainty could in my view put back the potential start date of a development by some time or may prevent the development from coming forward in the manner proposed.
118. I appreciate that the site has been included on the brownfield register and budget allocated to its redevelopment, the Council's commitment to the development is not disputed. However, given the position in relation to land acquisition and securing a legal agreement, I do not consider there is robust evidence that these dwellings will be delivered. The 44 dwellings should therefore be excluded.

Windfalls

119. Paragraph 71 of the Framework sets out that where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. The parties dispute the windfall allowance from large sites.
120. A large windfall site is an unidentified site that delivers 10 or more dwellings. The Council has provided evidence that the average build out time for a large windfall is just over 2 years and that between 1998/99 and 2020/21 there was an average of 51 net completions from large sites. More recently, the Council has suggested that over the last 5 years, the average windfall delivery from large sites has been 116 dwellings per annum. On this basis, the Council has included a windfall allowance of 32 dwellings per annum for large windfall sites to be delivered in years 4 and 5.
121. The appellants have argued that the large windfall allowance which includes both large prior approvals and non-allocations means that there is a pool of 933 dwellings with permission (excluding sites the appellants have disputed). This would equate to a build rate of 186.6 dwellings per annum and a rate that has only been achieved in 2 years, 2018/19 and 2019/20. They also consider that the inclusion of a large site delivering 120 dwellings at land west of Beech Hill Road, Spencers Wood, which was allowed on a greenfield site outside a settlement boundary when the Council could not demonstrate a 5YHLS, does not represent the type of windfalls that would normally come forward. This therefore skews the figures.
122. The appellants contend that this scenario is unrealistic based on past delivery rates and that any additional windfall allowance should be excluded as it would represent double-counting as concluded by the Nine Mile Ride Inspector.
123. I recognise that the build rates would represent a significant uplift in delivery. However, there is evidence of high levels of housing delivery within the Borough as borne out in the recent HDT results. The evidence indicates that windfall sites can and do get developed relatively quickly. It therefore seems to me that should one or two such sites come forwards within year 1 or 2, it is quite feasible that they would be completed by the end of the 5 year period. On that basis, I do not consider the Council has been unrealistic in its assumptions around windfalls coming forward in years 4 and 5. I also concur that an annual rate of 32 dwellings is modest and not unreasonable. In coming to that view, I am mindful that were I to allow this appeal, the appeal

site would be one such windfall which the appellants have, in their evidence, indicated would be built out within 5 years.

124. I appreciate that I have reached a different conclusion on this matter to the Nine Mile Ride Inspector. However, it seems that she did not have evidence before her on delivery rates which have been provided in this case.

Overall findings on HLS

125. Based on my assessment above, I find that 211 dwellings should be taken out of the trajectory. By my calculation, this would mean the Council can demonstrate that 3,904 dwellings would be deliverable. This amounts to a shortfall of 128 dwellings against the 5 year requirement and a 4.84 year supply of deliverable sites.

Benefits

Affordable housing

126. Policy CP5 of the CS requires a minimum of 35% affordable housing on schemes of 5 dwellings or more within the SDL. The appeal scheme would provide 17 affordable housing units, representing 74% affordable housing. All of these would be delivered on site.
127. The Berkshire and South Bucks Strategic Housing Market Assessment 2016 (SHMA) provides an assessment of affordable housing needs. This identified an annual net need for the period 2013-36 for 441 affordable dwellings. This represents over 51% of the total housing need for the Council for this period. A subsequent appraisal of affordable housing need was undertaken in 2020 as part of the LHN Assessment. The identified an annual average figure of 407 affordable homes, which represented 51% of the minimum LHN figure.
128. In the period April 2013 to March 2020, 1,831 affordable homes were delivered, equivalent to an annual average rate of just under 262 affordable dwellings per year since 2013. There is evidence that delivery has increased in recent years, with a small surplus against the annual requirement having been delivered in just 2 of the 7 years, 41 affordable dwellings in 2017/18 and 5 in 2019/20. Consequently, the cumulative shortfall against need amounts to 1,256 affordable dwellings.
129. There is clear evidence that Wokingham has an affordability problem and that delivery of affordable housing has fallen well below need. The provision of 74% of the dwellings as affordable and more than double the affordable housing requirement is a positive aspect of the scheme. However, this has to be viewed in terms of its wider contribution to the supply of affordable housing. The scheme would deliver just over 4% of the total annual need for affordable housing and would make a modest contribution to supply. However, in the context of significant under-delivery over a number of years, this modest contribution would amount to a significant benefit of the scheme.
130. I appreciate that the Council considers that 1,769 affordable housing units can be delivered through the local plan process. I also appreciate that there are some large schemes coming forward within the SDLs. This includes one at Spencers Wood where I was told a contribution of £18 million to affordable housing was agreed and another for a development of some 1,800 dwellings of which 500 would be affordable in the South Wokingham SDL at land South

of the railway. However, I heard that this site is not due to deliver until after March 2025. The existence of these schemes do not therefore alter my view on the benefits to be attributed to the provision of affordable housing.

131. I have been referred to a decision²² by the Secretary of State at Moor Lane, Woodthorpe, York where the Inspector recognised the value in terms of national policy of a contribution of 5% excess over policy. In that case the Inspector considered that the excess contribution to the supply of affordable housing should be given disproportionate value because of the overall deficiency of supply. The Secretary of State agreed with the Inspector. However, I am also mindful that that scheme would have delivered 516 residential units and was of a scale much greater than the scheme before me.
132. The Nine Mile Ride Inspector also recognised the affordability issues within the Borough. That scheme would have provided some 59 affordable dwellings, again significantly more than the appeal scheme. The Inspector recognised this as an important benefit to which she attributed substantial weight.
133. Both these appeals to which I have been referred would have delivered significantly higher numbers of affordable housing units than the appeal scheme. For this reason, I do not accord greater weight to the provision of affordable housing than the significant weight I have stated.
134. For the avoidance of doubt, the Government's First Homes affordable housing scheme does not apply in respect of this appeal. It does not apply to applications where there has been significant pre-application engagement and which are determined before 28 March 2022. Substantive pre-application discussions and engagement between the main parties relating to the proposed quantity and tenure mix of affordable housing has already taken place and this forms the basis of the completed S106 agreement. The main parties share my view that First Homes affordable housing is not required.

Accessible location

135. The appeal site is located on the edge of the settlement which has a modest range of services and facilities, including a few convenience shops, a public house, school and healthcare facilities. It is also close to both the footbridge across the M4 and Shinfield Road bridge providing access to additional facilities north of the M4. The submitted Transport Assessment indicates that most of these facilities would be over 15 minutes' walk from the site and around 5 minutes' cycle ride. However, the footbridge incorporates some steps and may not be accessible to those with reduced mobility. The scheme would also provide improved linkages between Brookers Hill and Hollow Lane. In terms of walking and cycling, access to the site would therefore be modest.
136. There is a bus stop close to the eastern access of the site on Shinfield Road which provides frequent services to Reading as well as Wokingham and Arborfield Garrison. On this basis, future occupants would have reasonable access to services and facilities by means other than the private car. This leads me to conclude that the accessibility of the site carries moderate weight.

²² APP/C2741/W/19/3233973

Provision of a community hall

137. The scheme would provide a community hall which would be for the Tamu Pye Lhu Sangh UK Community group (the TPLS) and the wider Gurkha community. The TPLS is a charitable organisation which I am told has been looking for a site since 2015 to be used as a community hub. The charity requires a freehold tenure to provide them with security, a minimum size with sufficient parking and access to outdoor space for meetings and social events as well as being close to major public transport hub and the strategic highway network. I was also told that the members of the group are particularly keen on basketball and that the proposed facility would provide flexible space to accommodate this.
138. I have been provided with very limited information about the TPLS. Whilst I accept that the TPLS may be seeking their own premises, no evidence such as correspondence from the TPLS or indeed anything to connect this group with the appeal proposal was submitted to support this. There is no substantive evidence of any search for sites having been undertaken nor anything from the TPLS setting out their specific requirements.
139. The Council has questioned the need for an additional community hall as there is a recently built community hall within Shinfield as well as other schemes coming forward that would provide access to community space locally. I appreciate that the TPLS may require their own freehold premises and that the community hall may be able to provide a hub and facility to support and conserve the culture of this group, but there is nothing substantive before me to confirm this.
140. In the absence of firm evidence that this community building would be for them and with the recent and forthcoming provision of other community facilities locally, I am not persuaded that there is a need for this building. I therefore give this limited weight.

Living conditions of adjoining occupiers

141. The provision of the eco-barrier would reduce noise from the M4 motorway to existing dwellings on Brookers Hill. The appellants' submitted noise report²³ has assessed that for the garden facades of these houses facing towards the motorway, occupants would experience a noise reduction of between 4 to 6 dBA and at the end of their gardens where existing noise levels would be higher, a greater reduction of around 8 to 12 dBA.
142. This would improve the living conditions for these occupiers with subsequent health and well-being benefits. I accept that the M4 motorway has been in existence for some considerable period and that existing occupants would be both used to it and would have most likely purchased their properties in full knowledge of the motorway and the noise arising from it. Nonetheless, it seems that any reduction in noise disturbance from this source would be a benefit to occupiers. I therefore give this moderate weight.

²³ SBS Environmental Noise Barrier Design Study – Willow Tree House, Shinfield Noise Impact Assessment and Barrier Design, 3 December 2020

Biodiversity

143. The appeal site is considered to be in poor to moderate condition in terms of biodiversity. The appeal scheme provides an opportunity to enhance the existing habitats on the site. There was some debate at the Hearing as to whether the site should be managed for biodiversity or simply left to evolve with the possibility of turning into lowland mixed woodland in time. Nevertheless, both parties agreed that through the proposed management of the habitats, there would be enhancement to biodiversity and that this carried moderate weight. I have no reason to disagree with this.

Economic and social benefits

144. During construction and subsequent occupation of the development, there would be a number of economic benefits in relation to employment, supply of goods, use of services and spending money within the local economy. Those associated with construction would be time limited, however, longer term benefits would result from future occupants. Additional financial benefits would be accrued from the New Homes Bonus and CIL contributions. These benefits together carry moderate weight.
145. The proposal would add to the supply of housing, providing a mix of housing to meet housing needs including affordable housing as I have already discussed. In addition, the scheme would provide public open space which would provide health and well-being benefits to the local community. These social benefits of the scheme would carry moderate weight.

Other Matters

146. As noted above a Planning Obligation has been completed that would make contributions towards infrastructure, affordable housing employment skills, biodiversity net gain, securing highways works, provision of and maintenance of both public open space and the noise attenuation barrier.
147. In each case I am satisfied that the Obligation meets the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and complies with the tests set out in paragraph 56 of the Framework. Since they are to ensure that effects of the development are mitigated, I consider them to be neutral in the final balance.
148. The Council has maintained its objection to the eco-barrier on the basis that it does not consider a structure of this size and in close proximity to the motorway should be dealt with by a condition. My attention has been drawn to an appeal²⁴ at Land west of Grasslands, Cooper Close, Smallfield where a similar acoustic barrier was proposed adjacent to the M23 motorway and where the Inspector found it acceptable to deal with the matter by the submission of details secured through a condition. National Highways have confirmed that they would accept the details being submitted as a condition. I have no substantive grounds to disagree with either the Smallfield Inspector or National Highways. In these circumstances, had I allowed the appeal, I would have imposed a condition to secure this.

²⁴ APP/M3645/W/15/3135733

Planning Balance

149. I am required to make a judgement as to whether the most important policies, the 'basket', taken as a whole are to be regarded as out of date for the purposes of this decision. Of these, I consider Policies CP9 and CP11 of the CS, Policies CC02 and TB21 of the MDD LP and Policy 1 of the SNP, which relate to location of development and character and appearance, have the greatest bearing on my decision. I therefore give these policies more weight when considering the overall 'basket'.
150. Within these, I have found some inconsistency with the Framework and I have found that the development limits, as set out under Policy CC02 of the MDD LP, and applied through Policies CP9 and CP11 of the CS should be regarded as out of date. This is due to the Council's reliance on sites outside of these limits to deliver its housing requirement and because I have found that the Council cannot currently demonstrate a 5YHLS.
151. When taken as a whole, this means that, in this appeal, the basket of most important policies is out of date. For this reason, I consider that the presumption in favour of sustainable development (the tilted balance) as advocated within the paragraph 11d) of the Framework would apply.
152. In addition, the Council cannot demonstrate a 5 year supply of deliverable housing sites. This also triggers the tilted balance under paragraph 11 of the Framework.
153. The shortfall in the Council's 5YHLS is very modest. Furthermore, in the context of the Council's strong performance on housing delivery as demonstrated through the HDT results, whilst the development limit boundaries are considered out of date for the purposes of this appeal, I do not find that the Council's strategy for housing growth is failing to deliver in its entirety. In the context of housing delivery, the Council is therefore meeting the Government's objectives to significantly boost the supply of housing. For this reason, whilst the presumption in favour of sustainable development applies, this only weighs moderately in favour of the development.
154. The appeal site lies outside the settlement limits of Shinfield although within the South of the M4 SDL where the Council has highlighted that significant investment in infrastructure has taken place or is programmed to be delivered as part of future housing. I therefore find the locational conflict would carry moderate weight.
155. The proposed development would cause significant harm to the character and appearance of the area, the landscape and trees on the site. These adverse impacts are matters of very substantial weight and importance in the planning balance.
156. The scheme would make a small contribution to housing within the Borough. In the context of the absence of a 5YHLS, this carries moderate weight. The provision of affordable housing is a significant benefit of the scheme which I accord significant weight. Additional benefits of the scheme include the provision of housing in an accessible location, providing a mix of housing, public open space, contributions to biodiversity gains, improvements to living conditions of nearby occupants and a range of economic benefits both during construction and subsequent occupation of the proposed development. These

all carry moderate weight. The provision of a community hall carries limited weight.

157. As I have identified above, the proposal would give rise to significant harm in respect of the character and appearance of the area and harm to protected trees to which I attribute substantial weight. In my view, 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. Therefore, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.

Conclusion

158. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

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John Seymour	Landscape Architect
Giles Parker	Acoustic Consultant
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Karen Jones	Solicitor, Plan B Solicitors
Daniel Clark	Land Agent
Eleanor Frew	Ecologist

FOR THE LOCAL PLANNING AUTHORITY:

Chris Howard	Delivery Manager
Vincent Healy	Solicitor, Wokingham Borough Council
Ian Church	Team Manager, Growth and Delivery Team
Duncan Fisher	Ecologist
Victoria Higgins	Housing Policy Officer
Bridget Crafer	Landscape Officer
Gordon Adam	Borough's Highway Officer

HEARING DOCUMENTS

- HD1 Drawings 556-02-16 Proposed Ground Floor Key Plan P5, 556-02-16 Proposed site plan P5, 556-02-20 Proposed parking plan P5, 556-02-12 proposed Block Plan Pt 1 P5, 556-02-12 proposed Block Plan Pt 2 P5, 556-02-12 proposed Block Plan Pt 3 P5,
- HD2 Appeal Decision – Land west of Grasslands, Cooper Close, Smallfield Surrey, APP/M3645/W/15/3135733
- HD3 Horley image from adjacent road
- HD4 Email dated 17/11/21 including correspondence dated 8/12/2015 including written representations on behalf of Highways England in respect of the Horley eco-barrier
- HD5 Information relating to discharge of Condition 15 ref APP/M3645/W/15/313573

POST-HEARING DOCUMENTS

- PHD1 Copy of Deed of Agreement to Provide Planning Obligations pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 11 Local Government Act 1972 (undated and unsigned – to supersede all versions submitted during the Hearing)
- PHD2 Revised list of conditions incorporating changes in relation to trees, highways and ecology
- PHD3 Email from appellants dated 23 November 2021 setting out changes to condition and confirming acceptance of pre-commencement conditions
- PHD4 Email correspondence dated 23 November 2021 confirming that, subject to the imposition of agreed conditions, National Highways no longer objects to the appeal proposal for the installation of the eco-barrier.
- PHD5 Copy of plan 556-04-10 Proposed Site Sections a-a b-b P5
- PHD6 Email dated 23 November 2021 from the appellants confirming that drawing only includes added dimensions and no change to the scheme design.
- PHD7 Updated Tree Protection Plan, Ref 20212-3
- PHD8 Updated Arboricultural assessment & method statement
- PHD9 Copy of executed S106 Agreement dated 16.12.21
- PHD10 Wokingham Borough Council 5 Year Housing Land Supply Statement at 31 March 2021 and Appendix 4 – SDL Progress maps
- PHD11 WBC Post Hearing Statement on Housing Land Supply
- PHD12 Further Planning Hearing Statement (Housing Land Supply) January 2022 and appendices (DB31, DB32 and DB33)
- PHD13 Joint response from both main parties regarding First Homes
- PHD14 Email dated 4 February 2022 from the appellant commenting on WBC Post Hearing Statement
- PHD15 WBC response to appellant's statement – WBC Post Hearing Statement Feb 2022 and appendices
- PHD16 Rebuttal to LPA Statement Feb 2022 and appendices (DB3, DB5, DB9 and DB34)