

LAND AT SATCHELL LANE, HAMBLE-LE-RICE, SOUTHAMPTON

APPEAL BY FOREMAN HOMES LTD

CLOSING SUBMISSIONS

ON BEHALF OF EASTLEIGH BOROUGH COUNCIL

INTRODUCTION

1. The Appeal Scheme was refused on 13th August 2021 for 7 reasons, of which the first four remain live, related (respectively) to:

Reason for Refusal 1

- a. The unacceptability of residential development in the open countryside, which is both:
 - i. Contrary to Policy S5 of the recently adopted Local Plan (CD 4.1) and therefore unacceptable in principle; and
 - ii. Harmful to the intrinsic beauty of the local landscape, contrary to Policy DM1 of the Local Plan and paragraph 174(b) of the National Planning Policy Framework (NPPF).

Reason for Refusal 2

- b. The unsafe pedestrian access between the Appeal Site and the nearby Health Centre and Secondary School, which is both:
 - i. Contrary to Policy DM13 of the Local Plan and paragraphs 110(b) and 112(c) of the NPPF; and
 - ii. Will lead to increased use of the motor car, contrary to Policy S11 of the Local Plan and paragraphs 104 and 105 of the NPPF.

Reason for Refusal 3

- c. The additional traffic generated on a peninsula where junctions are already severely impacted by congestion and delays, with the inevitable result that this situation will become even more severe, contrary to Policy DM13 of the Local Plan and paragraph 111 of the NPPF; and

Reason for Refusal 4

- d. The poor quality design of the Appeal Scheme, which is a detailed proposal and not in outline and therefore falls to be determined at this Inquiry, contrary to Policy DM1 of the Local Plan and paragraphs 126 and 130 of the NPPF.

2. As for Reason for Refusal 5, the Appellants have provided further information which has addressed the outstanding matters. Reasons for Refusal 6 and 7 can be addressed by the completion of a satisfactory Section 106 Planning Obligation.
3. Finally, by way of introduction, it is acknowledged that outline planning consent to develop the site for up to 70 dwellings has previously been granted at appeal (CD 8.1). However, and as we have heard at this Inquiry, and I shall return to later, that was in very different planning circumstances and the consent has now lapsed. Furthermore, there is one deeply disturbing aspect of that decision which is why we have pursued Reason for Refusal 2. Given that we are asking you to disagree with a previous Inspector's decision in that regard, and as I did in my opening remarks, I will deal with Reason for Refusal 2 first, and then Reasons 3 and 4, leaving Reason for Refusal 1 (the principle of the development) till last.
4. However before addressing any of the Reasons for Refusal in detail, let me first set the scene by outlining the factual background to this appeal, and then the statutory and policy framework within which it falls to be decided.

FACTUAL BACKGROUND

The Site

5. The Appeal Site lies at the northern tip of Hamble-le-Rice, where Satchell Lane turns west away from the river. To its south is a ribbon of loose-knit, residential

development of, principally, detached single storey dwellings and chalet bungalows, fronting the western side of the Lane, dating from the 1950s/60s onward. To the eastern side is a later, 1980s, estate development of relatively modest, link-detached, two storey dwellings in a typical cul-de-sac layout. To the north of the site, opposite the proposed entrance and hidden behind dense boundary and tree planting, is a set of terraced properties known as the 'Halyards', with the 'Riverside' holiday park behind this, and 'Mercury Marina' and the River Hamble yet further beyond.

6. The site is roughly triangular in shape, having northern, south-eastern and western boundaries. The shortest side is to the north and fronts Satchell Lane. To the west is a very straight, north-south, boundary running along the edge of the former Hamble Airfield, which is now used for general recreational purposes. On this boundary a footpath runs from Satchell Lane to the north, all the way to Hamble (Butcher, Figure 2). The south-eastern boundary is a little more disjointed and forms the rear garden boundaries to the properties which front Satchell Lane.
7. Boundary treatments vary. The northern boundary is fairly dense at its western end, but thins out as it gets closer to built-up development to the east. The western boundary with the airfield is a little more consistent, but not as high or dense. The south-eastern boundary varies from dense hedge to simple post and rail fencing, allowing views from these gardens out to the currently open paddock and former airfield beyond.
8. In terms of topography, the site slopes down from the north-western corner across to the south-eastern boundary, and beyond to the river. Land to the west, which forms the former airfield, continues to slope up, albeit more gently, before levelling off. Given the site's current use for grazing, there are no trees within it. However, there are a number of trees forming the site boundaries, principally to Satchell Lane (some of which are quite substantial), with more trees to the southern end of the western boundary.

9. The Appeal Site forms part of the semi-rural/edge of village character of the immediate surrounding area. As Mr Osmond explained, whilst the urban edge in this location is clearly demarcated on the new Local Plan policies map, in reality it is far less obvious and presents, instead, as a soft and gradual transition from the higher, open, airfield to the north and west, to the edge of the built-up area on the lower ground to the east, assisted by the fact that the majority of existing built development is set back from the urban edge and predominantly single storey.

Planning History

10. The planning history of the site is set out in the Officer's Delegated Report. Planning Application O/17/80319 is of most relevance, being the outline application for up to 70 dwellings which was refused in September 2017, but subsequently allowed at appeal on 20th December 2018 (CD 8.1). The permission was never implemented, however, and lapsed on 20th December 2020. Since then, of course, the new Local Plan has been adopted and Policy S5 of Plan found "sound" and fully aligned with the NPPF. Subject only to consideration of the housing land supply (which is considered in paragraphs 33-70 below), full weight must therefore be attributed to it. The following appeal decisions in Eastleigh make this clear.

Recent Decision Letters

11. In particular, the unacceptability of development that does not accord with the new Local Plan has recently been confirmed in the following decision letters:
 - a. Snakemoor Lane, (Appeal Ref. 3283337), dated 6th July 2022 (CD8.3); and
 - b. Sovereign Drive, Botley (Appeal Ref. 3269897), dated 4th August 2022, CD8.4).

Snakemoor Lane

12. The Snakemoor Lane decision letter (CD8.3) concerned a residential proposal outside the defined settlement boundary and the Inspector commented as follows, at paragraphs 17 and 46, respectively:

"17. ... [A]llowing five houses ... in this particular location would run counter to the overarching strategy established by the LP. ... I therefore find that the proposal would not be in a suitable location having regard to the spatial strategy for the

Borough. The proposal would therefore conflict with the requirements of Policies S1, S2, S3 and S5 of the LP when read as a whole, insofar as they relate to this main issue¹.”

“46. The LP has only recently been adopted and is consistent with the Framework and the conflict with relevant policies is a matter that weighs significantly against the proposal. Indeed, the spatial strategy for the Borough would be undermined if it was allowed, bearing in mind that Paragraph 15 of the Framework reminds decision-makers that the planning system should be genuinely plan-led. This reflects the primacy of the development plan set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004².”

Sovereign Drive, Botley

13. As for Sovereign Drive, Botley (CD8.4), the parallels with the Appeal Scheme are even more obvious, as Mr Brown agreed (Brown XX). Like the current appeal, it concerned a site which benefited from a permission granted on appeal before the adoption of the new Local Plan; that permission had subsequently expired; and an appeal was brought against a subsequent refusal of a new application that was in breach of the recently adopted, new, Local Plan. The Inspector held as follows:
 - a. The appeal proposal breached the newly adopted Local Plan read as a whole (paragraph 42); and
 - b. Whilst the NPPF sought to boost housing supply, it also made it clear that the intrinsic character of the countryside should be recognised, and housing development should not result in an urbanising impact that would harm countryside character (paragraphs 44 and 45).

STATUTORY AND POLICY CONTEXT

14. The above decision letters properly reflect the statutory requirement to decide planning applications and appeals in accordance with the Development Plan unless material considerations indicate otherwise – see: section 38(6) of the Planning and Compulsory Purchase Act 2004, and sections 70(2) and 79(4) of the Town and Country

¹ The same is true for the Appeal Scheme, as agreed by Mr Brown (Brown XX).

² The same, once again, is true for the Appeal Scheme, as agreed by Mr Brown (Brown XX).

Planning Act 1990. That Development Plan comprises the recently adopted (25th April 2022) Eastleigh Borough Local Plan (2016- 2036) (CD 4.1).

Policy S1: Principles of Sustainable Development

15. Policy S1 sets out the principles of sustainable development.

Policy S2: Housing Requirement

16. In terms of the housing requirement to be met, Policy S2 requires the delivery of a minimum of 14,580 dwellings during the Plan period, 2016–2036. As there is no specific phasing in the Plan, this equates to 729 dwellings *per annum* (dpa), as a target annualised average over the whole Plan period.
17. Policy S2.2 makes it clear that the urban edge as set out on the Policies Map defines the main built-up areas within which there is a presumption in favour of new development, subject to the policies of the Plan (including Policies S3 and S5, considered below).

Policy S3: Location of Housing

18. Policy S3 sets out the approach to new housing, identifying the sites for greenfield allocations. The Appeal Site is, of course, unallocated.

Policy S5: Countryside

19. As already noted, the Appeal Site is located within the countryside and is subject to Policy S5 of the recently adopted Local Plan (previously Policy 1.CO of the Old Local Plan). New development in the countryside is permitted under Policy S5 only where it is related to specific forms of development, including (amongst other things), rural workers dwellings and limited residential conversions. The proposal does not accord with any of the listed forms of development and therefore breaches Policy S5³, as Mr Brown agreed (Brown XX).

³ And Policies S2 and S3 of the recently adopted Local Plan, and its spatial strategy – see: fn1 and fn2 above.

20. During the Inquiry for the previous scheme in 2018, referred to in paragraphs 3 and 10 above, the weight attributed by the Inspector to the then extant countryside policy (Policy 1.CO) was “limited”, as it was considered out of step with the flexibility of the NPPF. Furthermore, the Inspector also afforded limited weight to the policies of the then emerging Local Plan as it had only reached the consultation stage. The adoption of the new Local Plan is, therefore, a significant change in circumstance: Policy S5 of Plan has been found sound and is fully aligned with the NPPF. All of this is also agreed by Mr Brown (Brown XX).

Policy S11: Sustainable Transport

21. Policy S11 concerns sustainable transport and requires, *inter alia*, that all new developments must encourage walking, cycling and the use of public transport; and minimise congestion on the highway network.

Policy DM1: Criteria for New Development

22. Policy DM1 sets out the general criteria for development proposals and requires, *inter alia*, that new development:
- a. Should not have an unacceptable impact on the character and appearance of the countryside;
 - b. Should take full and proper account of the context of the site including the character and appearance of the locality; and
 - c. Should be well integrated with this in terms of layout and design.

Policy DM13: Criteria for Transport

23. Policy DM13 sets out the general criteria for transport impacts and states that new development must have safe and convenient access to the highway network and make provision for access to, and by, other transport modes including public transport and cycle and pedestrian routes as appropriate. National standards must be met.

National Planning Policy

24. As for national planning policy, the NPPF sets out the Government's planning policies for England and how it expects them to be applied. The most relevant paragraphs for the purposes of the present appeal are summarised below.

Section 2: Achieving Sustainable Development

25. As you will be very well aware, paragraph 7 of the NPPF makes it clear that the purpose of the planning system is to contribute to the achievement of sustainable development, and paragraph 8 goes on to make it clear that this has three overarching objectives:
- a. An economic objective – to ensure that sufficient land of the right types is available in the right places and at the right time to support growth;
 - b. A social objective – to support strong, vibrant, and healthy communities; and
 - c. An environmental objective – to protect and enhance the natural, built, and historic environment.
26. As you will also know, paragraph 11 of the NPPF states what the presumption in favour of sustainable development means for decision-making, and footnote 8 to paragraph 11 of the NPPF makes it clear that, with regard to housing applications, policies are out-of-date where a Council cannot demonstrate a five-year housing land supply (5YHLS). In these regards:
- a. For all of the reasons covered by Mrs Howbrook, Mr Ansell and Mr Exley in the roundtable session (and I come on to this in paragraphs 33-70 below), the Council do have a 5YHLS and so the so-called 'tilted balance' in favour of sustainable development is not engaged;
 - b. However, and without prejudice to that principal submission, and as I will come on to when I address the Planning Balance in paragraph 142 below, even if that were not the case and the tilted balance were to be engaged, there are compelling reasons why permission should be refused under the tilted balance

also: the adverse impacts of the Appeal Scheme do significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

27. Paragraph 12 of the NPPF makes it clear that the presumption in favour of sustainable development does not change the statutory status of the Development Plan as the starting point for decision-making. Accordingly, where (as here) a planning proposal conflicts with an up-to-date Development Plan, permission should not usually be granted. Paragraph 15 of the NPPF reinforces this, stating that the planning system should be genuinely Plan-led, as expressly referred to in the Snakemoor Lane decision letter (CD 8.3, paragraph 46).

Paragraphs 20: Strategic Policies

28. Paragraph 20 of the NPPF states that strategic policies in the Local Plan should set out an overall strategy for the pattern, scale, and design quality of places, and make sufficient provision for housing (including affordable housing). This is precisely what Policies S2 and S5 of the recently adopted Plan, and its housing allocations, addresses.

Section 5: Housing

29. Section 5 of the NPPF sets out the Government's policies to support its objective of significantly boosting the supply of homes. Paragraphs 68-73 deal with identifying land for homes and require planning policies to identify specific deliverable and developable sites for the length of the Plan period; and paragraphs 74-76 set out the requirement for Local Planning Authorities to provide a minimum of 5YHLS, including an appropriate buffer.

Section 9: Sustainable Transport

30. Section 9 of the NPPF contains the national planning policies to promote sustainable transport:
- a. Paragraph 104 requires transport issues to be considered from the earliest stages so that opportunities to promote walking, cycling and public transport are identified and pursued;

- b. Paragraph 105 goes on to state that significant development should be focused on locations that are, or can be made, sustainable;
- c. Paragraph 110(b) sets out that a safe and suitable access to the site should be achieved for all users;
- c. Paragraph 111 states that development should be refused on highways grounds if, *inter alia*, the residual cumulative impacts on the road network would be severe; and
- d. Paragraph 112(c) makes it clear that development should create places that are safe, secure and attractive, and minimise the scope for conflicts between pedestrians, cyclists and vehicles.

Section 12: Design

- 31. Since the previous appeal decision on this site in 2018, national planning policy on design has been updated to place an increased emphasis on achieving good design:
 - a. Paragraph 126 makes it clear that the creation of high quality, beautiful, and sustainable buildings and places, is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development, creating better places in which to live and work, and helping make development acceptable to communities; and
 - b. Paragraph 130 identifies various requirements for achieving good design, including ensuring that a development functions well, is visually attractive and sympathetic to local character, and creates a strong sense of place and a safe and inclusive environment.

Section 15: Conserving and Enhancing the Natural Environment

- 32. Paragraph 174(b) of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the

intrinsic character and beauty of the countryside. This applies to all countryside and all landscapes, not just designated or “valued” landscapes.

HOUSING LAND SUPPLY

Introduction

33. The issue as to whether or not the Council has a 5YHLS relates to the whether or not the ‘tilted balance’ provided for by paragraph 11 of the NPPF is engaged. For all the reasons given by Mrs Howbrook, it is not: the Council **do** have a 5YHLS.
34. The Council’s most recent 5YHLS Report (CD5.6) was prepared by the Land Supply Team at Hampshire County Council’s (HCC), with whom the Council works in partnership to monitor housing land supply in the Borough. The methodology used by HCC is set out in Quarterly Reports, providing a position statement covering each quarterly monitoring period.
35. As Mr Ansell of HCC explained in the roundtable session, the Quarterly Reports for July, October, and January only include progress derived from Building Control and NHBC reports and the data has historically proved to undercount the progress (commencements and completions) that has occurred on sites. However, as Mr Ansell also explained, site visits are undertaken on an annual basis to provide the most complete picture for the April update.

Preliminary Points

36. Before coming on to the sites which are in issue at this Inquiry, it is necessary to make two preliminary, but uncontroversial, points.

Definition of “Deliverable”: An Open List, not Closed

37. First, it is agreed with Mr Brown for the Appellant that the “Category A” and “Category B” definition of “deliverable” in the Glossary of the NPPF is **not** a closed list (Brown XX). Any argument about this has been firmly resolved following the Secretary of State’s consent to judgment, on 7th May 2020, in the case of *East Northamptonshire Council v Secretary of State for Housing, Communities and Local Government and Lourett Developments* (Howbrook, Appendix EH3(4); CD 15.8).

38. The *East Northamptonshire* case concerned a challenge to a decision letter of Inspector Graham Chamberlain, dated 24th January 2020, in which the Inspector had stated as follows:

“36. ... The Council has included sites allocated in the emerging Local Plan (around 549 homes) and unallocated unapproved development schemes that are likely to come forward on previously developed land in urban areas, two of which were discounted by the Council from the brownfield register (around 225 homes). This is a significantly flawed approach as the definition of ‘deliverable’ in the Framework is a closed list. As such, at least 774 homes can immediately be removed from the Council’s housing land supply. This alone means the Council is unable to demonstrate a five-year housing land supply, the supply being in the region of 4.28 years.”

39. The Council challenged that decision on the basis that the Inspector was wrong to follow the “closed list” approach. As you know, the Secretary of State consented to judgment and the Consent Order quashing the decision states as follows in these regards (CD 15.8):

"The Defendant has carefully considered the Inspector’s decision and the Claimant’s Statement of Facts and Grounds and Reply, and the evidence served in support. He concedes that he erred in his interpretation of the definition of deliverable within the glossary of the National Planning Policy Framework (“NPPF”) as a ‘closed list’. It is not. The proper interpretation of the definition is that any site which can be shown to 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 five years’ will meet the definition; and that the examples given in categories (a) and (b) are not exhaustive of all the categories of site which are capable of meeting that definition. Whether a site does or does not meet the definition is a matter of planning judgment on the evidence available.”

40. Moreover, the Secretary of State’s consent to judgment was entirely unsurprising given that he had endorsed the “open list” approach himself, just a month earlier and on 7th April 2020, in a recovered appeal (CD 8.18) and when agreeing with Inspector Siobhan Watson, who had reported as follows:

“168. ... There is nothing in the Framework that confirms that the list is closed and therefore I do not read it to be so.”

41. The Secretary of State’s clarification on this means, as Mr Brown agreed (Brown XX), that decision-makers are perfectly entitled to come to their own judgement as to

whether any site which is not listed in either Category A or B should nonetheless be considered “deliverable”, there being sufficient evidence to support the view that they are:

“... available now, offer a suitable location for development now, and (would) be achievable with a realistic prospect that housing will be delivered on the site within five years.”

The Required Evidence

42. Second, whilst Mr Brown asserts, at paragraph 1.17 of his Housing Proof, that the position that he adopts differs from the Council’s “primarily due to the application of what constitutes a deliverable site, taking account (sic) the clarification provided by numerous appeal decisions”, as Mrs Howbrook made clear in answer to you during the roundtable session (and see, also, her Proof of Evidence at paragraph 5.13), the Council’s consideration of what was “deliverable” fully took into account all relevant guidance and precedents.
43. In particular, the Council’s 5YHLS Report (CD 5.6) is entirely based on the type of evidence that can demonstrate deliverability in accordance with the guidance given in PPG Paragraph: 007 Reference ID: 68-007-20190722, as follows:
- “Such evidence, to demonstrate deliverability, may include:
- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
 - firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers’ delivery intentions and anticipated start and build-out rates;
 - firm progress with site assessment work; or
 - clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.”
44. As for the quality of the evidence that is required, it is again agreed by Mr Brown (Brown XX) that the correct approach is as stated in paragraph 51 of the Hanslope

decision letter (CD 8.7), to which Mr Brown refers at paragraph 3.18 of his Housing Proof of Evidence:

“... [I]n the context of a section 78 appeal, there has to be a reasonable limit to the amount of information that can be forthcoming concerning the development of many sites elsewhere in the borough, and so an element of proportionality has to be applied to the evidence. Furthermore, the nature of the housing market, and the fact that many of the sites are under the control of parties not involved in the appeal, means any such evidence can never be expected to be watertight or irrefutable, and must always be accepted with some flexibility and uncertainty.”

45. As agreed by Mr Brown (Brown XX), there is no need for certainty therefore; and there has to be a proper appreciation of the need for proportionality when assessing what evidence a Local Planning Authority is reasonably capable of assembling from multiple other sites for a section 78 appeal. However, in this case, (helpfully) we have the Quarterly Reports and, moreover, many of the sites in issue relate to land in the control of the Authorities which compile those Reports: HCC and Eastleigh Borough Council itself. They have up-to-date and, often, personal knowledge, therefore.

46. With those preliminary points of in mind, I turn to address the sites which are in dispute.

The Disputed Sites

47. As you will have seen from the evidence, and recall from the roundtable discussion, Mr Brown disputes the deliverability under several categories of supply, helpfully tabulated in several places in his Proof of Evidence and in part replicated below (updated after the roundtable session and Mr Brown’s subsequent Note (ID 18)). I shall deal with each of the disputed sites identified below in order.

Supply Site / Source	Council	WBP	Difference
Net Outstanding Planning Permissions for Large Sites			
Land to the North and East of Winchester Street, Botley	63	0	63
Land West of Woodhouse Lane, Hedge End	345	0	345
Sites with a Resolution to Grant Permission			
Land West of Allbrook Way, Knowle Hill	52	0	52

Land West of Horton Heath	643	300	343
Sites in Adopted Local Plan			
Kings Copse Avenue, Botley	35	0	35
Sites in Council Housing Programme			
Land at 30-32 Queens View, Netley	20	0	20
Land at 237 Chamberlayne Road, Eastleigh	11	0	11
Land at Station Road (Arch Theatre), Chandlers Ford	17	0	17
Windfall sites (for years 3 - 5)			
Windfall Allowance	162	110	52
Total	1,348	410	938

Net Outstanding Planning Permissions for Large Sites

Land to the North and East of Winchester Street, Botley (also known as 'Botley Fields')

48. As you heard at the roundtable session, HCC is the lead landowner of the site (approximately 85%), and highly motivated to develop the housing as soon as possible. In particular, Botley Fields is an integral part of the 'Uplands Development' (along with Woodhouse Meadows, considered in paragraphs 52-53 below), and to HCC's broader development strategy there, which includes a new 7FE Secondary School and the Botley Bypass. Put shortly, the residential development of the site is a key priority for HCC in order to help contribute towards the funding of this infrastructure.
49. As Mr Brown agreed in the roundtable session, a significant amount of the Uplands Development infrastructure has already been delivered, and more is subject to construction contracts which are already in place. The school has been built and construction of the Phases 1 and 2 of the bypass commenced in January 2021. Design details for the remaining sections of the bypass (Phase 3), and associated infrastructure (including noise bunds) is being progressed. The same is true for negotiations with SSE to underground overhead power line, which only affects the northern part of site and is not a showstopper in any event, as Ms Howbrook explained in the roundtable session.
50. HCC is now discussing next steps with the third-party landowners, with the aim of presenting an assembled site, in a single ownership, to the market. Expectations are

that HCC will be able to do so, as all landowners have signed the S106. Mrs Howbrook's conversations, as Strategic Development Manager at the Council, with the HCC development team, have confirmed that marketing for the entirety of the site is planned during 2023, and a Reserved Matters application is expected Summer 2024. Moreover, there is added confidence that this will be achieved given the progress made at Woodhouse Meadows, which has already seen two phases marketed (see paragraphs 52-53 below). Importantly, however, the early commencement of development is not dependent on marketing the site in single ownership - although a proposed southern access to the site is in third party ownership, an alternative access (whilst not expected to be required) is available.

51. Given this significant progress, and the clear motivation of HCC to keep up the pace, the Council's judgement of 63 completions by July 2027 is a perfectly reasonable delivery assumption, supported by substantial evidence.

Land West of Woodhouse Lane, Hedge End (also known as 'Woodhouse Meadows')

52. As for Woodhouse Meadows, the Council's 5YHLS Report (CD 5.6) explains this, too, is owned by HCC. Planning Permission was granted on 6th September 2019. The first phase marketing commenced last year, and Taylor Wimpey was selected as developer. Reserved Matters applications for Parcels 2A and 2B (which is the first phase) is currently being worked on and, at the base date, submission was expected in October 2022. In the meantime, infrastructure and servicing for Phases 1 and 2 is nearing completion, which enables Taylor Wimpey to start on site in spring next year subject to Reserved Matters approval. First completions are expected in Q4 2023/24.
53. Whilst the contract between purchaser and HCC is being negotiated (so the developer is 'subject to contract') and it is not appropriate, therefore, for the Quarterly Report to provide details of the transaction, you can note as follows:
 - a. The timescales have been provided by the HCC Property Team, as evidenced by the emails from the Senior Development Manager HCC in Mrs Howbrook's Appendix EH3 (Site ID 13,). Although the most recent are slightly after the base

date, these simply add more flesh to the timescales previously indicated in the mails of 2021 and March 2022.

- b. There is no reason why HCC might provide over optimistic timescales (and they have been sense-checked).
- c. The Council's assumed 6-9 months for Reserved Matter is supported by the direct discussions which Mrs Howbrook has had with the HCC development team and the Local Planning Authority case officer.
- d. Moreover, you can be confident that this agreed assumption is entirely reasonable and realistic as a significant amount of pre-planning work has been undertaken and scheme designs have already emerged as part of the marketing submission.
- e. As Mrs Howbrook also explained during the roundtable session, HCC expect to exchange contracts on first phase prior to submission of Reserved Matters and Taylor Wimpey will take ownership subject to planning.
- f. As for anticipated starting time, since all primary services will be complete when the housebuilder is on site, a predicted start in the summer of 2023 is entirely realistic, pursuant to which the Council's 5YLS Report (CD 5.6) reasonably shows first completions by March 2024.
- g. As for build-out rates, the Council's 5YLS Report (CD 5.6) anticipates 345 completions by July 2027. In these regards:
 - i. Mrs Howbrook's Appendix EH1 (page 4) shows a breakdown of the site delivery by phase, based on information provided by HCC's development team;
 - ii. The peak build-out for the first phase (2a and 2b of the masterplan) is 60 *per annum*, or 2-3 *per month per outlet* (the phases will have a market sale and Registered Provider outlet, i.e. two outlets); and

- iii. This, again, is supported by the direct discussions which Mrs Howbrook has had with the HCC development team and is entirely reasonable and realistic.

Sites with a Resolution to Grant Permission

Land West of Allbrook Way, Knowle Hill

- 54. As the Council's 5YHLS Report (CD 5.6) makes clear, a resolution to grant was decided at the meeting of the Eastleigh Local Area Committee on Tuesday 8th June 2021, albeit minor changes to the indicative layout have been required, with the total number of units reducing from 53 to 52. As Mrs Howbrook explained, the 52 completions anticipated by July 2027 is a perfectly reasonable delivery assumption given that:
 - a. The site is in single ownership;
 - b. The site is allocated;
 - c. The Council understand that the landowner close to agreeing sale (subject to planning) with a PLC housebuilder having bid for the site ('intelligence' which comes from the Council's own asset/development team because the Council put in a bid); and
 - d. There are no matters in dispute with regard to the S106 and it is with HCC for signing.

- 55. Planning permission has not yet been issued only because of a delay arising from Natural England (NE), relating to sediment loading in the River Itchen. However, progress has been made towards a wetland solution and the Council ecologist's confidence that there will be no significant effect has been confirmed by NE's recent letter regarding land west of Horton Heath (ID 14), considered immediately below.

Land West of Horton Heath ('One Horton Heath')

- 56. The Council's 5YHLS (CD5.6) includes land west of Horton Heath, covering greenfield land which has been in the land supply pipeline for a number of years following

previous emerging Plan allocations and planning permissions. The 5YLS Report (CD 5.6) reflects the most recent resolutions to grant for an outline (2,500 dwellings) and a full application (381 dwellings, counted within the 2,500⁴). The site is available now and has a reasonable prospect of delivery, especially considering that the Council is a motivated developer and landowner.

57. In particular, as Mr Exley explained at the roundtable session, and Cllr House spoke to (Day I of the Inquiry), the Council is expediting delivery by commencing enabling work and implementing the full planning permission for 381 dwellings in advance of Reserved Matters applications for subsequent parcels referable to the 2,500 Outline Permission. For the full application of 381, there are no outstanding matters to be resolved, except for the S106 Agreement to be signed.
58. The NE response to both the outline and detailed permission has now been received (ID 14) and, although awaiting it has delayed permission being granted, that response will not delay deliverability as the Council, as competent authority, have undertaken an awful lot of work on the appropriate assessment and are completely confident they have compelling evidence to justify their view that the Council's Interim Mitigation Strategy to address residual recreational impacts on the New Forest designated sites will ensure that there will be no significant effect. The application will go to a sign-off meeting with the Committee Chair /Vice Chair Committee tonight (9th November) for permission to be granted and the S106 negotiations are very nearly complete and ready for signature.
59. As for build-out rates, the Council is the owner, the Applicant, the developer, and is highly motivated to deliver. It has pursued all the applications and, whilst the Council will commission the construction, they will retain or sell all the properties. They have already commenced delivery of infrastructure in advance; and have rapidly progressed the discharge of pre-commencement conditions. As Mr Exley confirmed in the roundtable session, they can commence delivery in very short order.

⁴ Not 350, as wrongly suggested by Mr Brown in ID 18.

60. As Mr Exley also explained, and as set out in Appendix EH1 to Mrs Howbrook's Proof of Evidence, it is anticipated to have three outlets initially, and a fourth to the north later on, which speeds up construction rates. As for absorption rates, 35% of the dwellings will be affordable and retained by the Council; and an additional 25% retained for private rental. Only the remaining 40% will have to be sold on the open market, therefore, all on an individual plot basis. Mr Exley, the Project Manager, is understandably confident that the Council can sell those units as projected. However, the Council also have complete flexibility on tenure – to sell, convert into affordable housing, or increase the proportion of market rental – as matters unfold. Mr Brown readily accepted the advantage of this flexibility in terms of deliverability (Brown XX).
61. Mr Exley has set out a breakdown of the programme of works to start in-parcel infrastructure works by summer 2023 (see: Mrs Howbrook's Appendix EH3, Site ID 18). The remainder of the link road received planning permission in September 2022, with start on site planned for spring 2023. As further explained in Mrs Howbrook's Appendix EH1, 643 dwellings over a five-year period is entirely realistic when distributed across four phases and multiple outlets. The development team (which is highly experienced, as put to Mr Brown in XX) has programmed for four phases to be active by July 2027, supported by significant upfront infrastructure provision and entering into building contracts to enable the Council to manage the pace of delivery.

Sites in Adopted Local Plan

Kings Copse Avenue, Botley

62. The Council's 5YHLS Report (CD 5.6) explains this site is also owned by HCC and is allocated in the recently adopted Local Plan. HCC have confirmed that key studies have already been commissioned from Atkins; and the site is already being softly marketed to a single buyer (see: Howbrook Appendix EH3, Site ID 13). Furthermore, whilst the allocation is for 120, HCC are only projecting 35 completions in the next 5 years, which is obviously conservative given all of the above. The Council's 5YHLS Report (CD 5.6) has assumed preparation time of 15 months for the planning application and a determination period of 12 months, including the S106 Agreement,

enabling a start on site in Q4 2025/26 and first completions expected a year later. That is an entirely realistic estimation based on the evidence.

Sites in Eastleigh Borough Council Housing Programme

63. As explained in the Council's delivery strategy (CD15.3), the objective of its Housing Programme is to bring forward 'windfall' housing schemes on land the Council owns in order to help boost supply. As all three of the sites below have progressed to pre-planning stage with no identified constraints to delivery, and key studies have already been undertaken with respect to all of them, it is entirely reasonable to incorporate these new homes as a source of supply over the next five years.

Land at 30-32 Queens View, Netley

64. The Council's 5YHLS Report (CD 5.6) explains that this site is also owned by the Council, with emerging redevelopment plans for a 20-unit residential scheme, subject to planning. The pre-application advice received in June 2022 (Q/22/92640) indicated no objections in principle, and the scheme has been approved for progress by the EBC Housing Programme Board (July 2022), with a planning application to be submitted in 2023, and demolition and construction targeted for spring 2024.

Land at 237 Chamberlayne Road, Eastleigh

65. As with the site just considered, the Council's 5YHLS Report (CD 5.6) explains that this site, too, is in full Council ownership, with emerging redevelopment plans for an 11-unit residential scheme, subject to planning. Pre-application advice received in 2022 (Q/21/90499) indicated no objections to redevelopment in principle, and a redevelopment scheme was approved for progress by the EBC Housing Programme Board and Cabinet in 2021. Demolition of the site was completed in 2022 and the site is cleared and hoarded. A planning application is anticipated in 2023.

Land at Station Road (Arch Theatre) Chandlers Ford

66. The final site within the Council's Housing Programme is also in full Council ownership, this time with redevelopment plans for a 17-unit mixed use scheme, subject to planning. Pre-application advice received in 2021 (Q21/90496) indicated no

objections in principle and a redevelopment scheme has been approved for progress by the EBC Housing Programme Board. Submission of a planning application is anticipated in 2023, with target start in site early 2024.

Windfall Sites

67. As for windfall, Mrs Howbrook's and Mr Ansell's evidence for including a windfall allowance of 55 dwellings *per annum* is compelling. The Appellant's sole point appears to be that, adding the contribution of small sites with permission yields a total supply of 327 dwellings over the next five years (paragraph 3.139 of Mr Brown's Housing Proof) and anticipates an annual delivery, in some years, beyond 55 and as high as 93 (paragraph 3.140).
68. As Mrs Howbrook and Mr Ansell confirmed, however, net small site completions have exceeded 90 on four separate occasions (See Howbrook, Appendix EH6). Furthermore, the Council has tested whether 327 units from small sites over five years (an average of 65 dpa) is realistically achievable. Given the robust evidence at Mrs Howbrook's Appendix EH6, showing an annual average net small site delivery of 71 dpa over 2001-2021 (a timeframe which covers the entire economic cycle, including the periods of low delivery in 2010-2015), it plainly is.

Affordable Housing

69. As for Mr Brown's remarks about affordable housing in Section 4 of his Housing Proof, the recently adopted Local Plan target of 200 affordable dwellings *per annum* is the appropriate target, based on the best and most-up-to-date evidence. Furthermore, the data demonstrates that the average annual net dwelling completions of affordable housing since 2016/17 is 278 dwellings (paragraph 5.3 of Mrs Howbrook's Rebuttal Proof). The Council is, therefore, more than meeting the Local Plan requirement.

Conclusions

70. Paragraph 76 of the Local Plan Inspector's Report (CD 5.1) states that, on the adoption of the Plan just 6 months ago, the Council could demonstrate a 5YHLS. For all of the above reasons, you can be confident that the Council *still* have a 5YHLS. Each of the sites that have been included by Mrs Howbrook are supported by sufficiently robust

evidence, as guided by PPG Paragraph: 007 Reference ID: 68-007-20190722 and paragraph 51 of the Hanslope decision letter (CD 8.7). Mrs Howbrook's evidence, supported by the HCC Land Supply Team's monitoring and evidence gathering, is robust and can be relied upon. The tilted balance is not, therefore, triggered.

71. Moreover, and even if you were to conclude the Council did fall marginally below the 5YHLS (which, on the evidence, you should not), the weight to be attributed to that shortfall is minimal:

- a. What is quite inescapable, and Mr Brown essentially conceded this in the roundtable session, is that all of the sites which he contests are going to be delivered in the relatively short term. Indeed, Mr Brown repeatedly said the position he adopts might be different in just a few months' time. They are already firmly in the pipeline.
- b. In addition, and as Mrs Howbrook explained in paragraphs 4.5-4.6 of, and Appendix EH4 to, her Main Proof of Evidence, calculating the land supply using the "standard methodology", would generate a 5.6HLS, as did the Post-Examination Housing Trajectory Amendments (July 2021).
- c. All of this gives added confidence as to the security of supply, in real terms, to meet Eastleigh's future needs.

72. It is in the light of the above that I now turn to the Reasons for Refusal and, as indicated in paragraph 3 above, I shall address Reason for Refusal 2 first.

REASONS FOR REFUSAL

Reason for Refusal 2

73. As you have heard from Mr Grantham, the Local Highway Authority object to the Appeal Application *inter alia* on the grounds that the Appeal Site does not provide a safe and sustainable access for pedestrians to the local Secondary School and Health Centre. This, of course, was an objection that they also made at the previous appeal, when the Inspector agreed that this route was, indeed, unsafe (CD 8.1, paragraph 36):

“36. ... [T]he appellant’s position was that the northern route was a safe walking route for those choosing to walk to the northern facilities. I have to disagree with that position. I walked the route, in both directions, on two occasions – once before the Inquiry and once at the conclusion of my formal site visit. The first visit was undertaken as dusk was falling. The road is unlit, possesses no footpaths for most of the route, and includes a number of tight bends. In many places there are steep banks which limit the ability of pedestrians to avoid oncoming traffic.”

74. That, moreover, is a conclusion which the Appellant no longer contests (see: Wilde, paragraph 2.2.1). Indeed, in paragraph 2.8.2 of Mr Wilde’s Proof of Evidence he expressly states as follows:

“Noting the findings of the previous appeal scheme Inspector, I consider there to be common ground between the parties that the pedestrian route to the north along Satchell Lane cannot be considered sufficiently safe and secure as to reasonably contribute to the overall sustainable accessibility of the proposals.”

75. However, having firmly decided that the route along Satchell Lane was unsafe, the previous Inspector went on to ignore this because there was “no policy requirement” for schoolchildren or patients to use it, and there was another route available, albeit one which was far longer (CD 8.1, paragraph 38):

“38. If the use of the northern part of Satchell Lane as a safe walking route to the facilities, especially the school, were a policy requirement and there was no alternative, I might have a very different view on this issue.”

76. With the greatest of respect to the previous Inspector, that is a remarkably strange decision. The obvious question to which his earlier conclusion gives rise not whether there was some “policy requirement” for anyone to use a shorter, unsafe, route, but *whether vulnerable schoolchildren and/or patients would be likely to risk using that unsafe route, rather than take the much longer alternative.*

77. That, of course, is a question which, bizarrely (and certainly unhelpfully), Mr Wilde would not even concede was a relevant one to address (Wilde XX). Fortunately, however, you have also heard the far more sensible approach of Mr Brown on this matter, who readily agreed that it was a question which fell to be addressed (Brown XX). He was quite right to so concede. It is quite obviously the true issue to which Reason for Refusal 2 gives rise, and was the very issue which another Inspector

addressed in similar circumstances in the Fareham decision letter to which Mr Grantham referred (Appendix MG6).

78. Having addressed that issue, and for the reasons I set out in paragraphs 82 onwards below, it is little wonder that the Local Highway Authority maintained its objection. Furthermore, and as Cllr House told you, given the Council's obvious responsibilities regarding the safety of local residents, especially those who are vulnerable, the Council have to take the continued Local Highway Authority objection on safety very seriously indeed, as (of course) do you.
79. In so doing, and in raising that continued objection with you, Cllr House appreciated, of course, it had been raised at the previous Inquiry and dismissed by the last Inspector. However, as he explained, he was personally astonished by that decision, which is why he authorised a legal challenge to its rationality. And as he also explained, whilst that the legal challenge failed (CD 9.1), this was on a point of law only, not to the merits of the decision. You, of course, are fully entitled to come to your own conclusion on those merits, and are not in any way bound by the judgement of a previous Inspector provided you give good reasons for disagreeing with him.
80. The legal position on this is absolutely unequivocal and, quite rightly, has not been questioned by Mr Boyle KC:
 - a. Whilst Mr Justice Garnham determined that the Inspector had not erred in law in his approach to determining the site's accessibility, he highlighted that the Inspector's determination on this matter involved a planning judgement (CD 9.1, paragraph 36).
 - b. The breadth of legitimate planning judgements was emphasised by Mr Justice Sullivan in the seminal case of *Newsmith Stainless Ltd v Secretary of State* [2001] EWHC 74 (Admin) (CD 9.3, paragraph 7), where he stated as follows in an oft-quoted passage:

“Since a significant element of judgement is involved, there will usually be scope for a fairly broad range of possible views, none of which can be categorised as unreasonable”.

- c. The ability of a second decision taker to reach its own conclusions on a matter of planning judgement was also highlighted by Mr Justice Sullivan in *King’s Cross Railway Lands Group v London Borough of Camden* [2007] EWHC 1515 (Admin) (CD 9.2, paragraph 18), where he identifies that it is possible for a decision taker to reach a different decision to a previous one if:

“...the decision taker considers that a different weight should be given to one or more of the relevant factors, thus causing the balance to be struck against rather than in favour of granting planning permission”

81. Do not get misled, therefore, by reference to the word “unimpeachable” in Mr Justice Garnham’s judgment (CD 9.1, paragraph 36) That only means that the decision reached by the previous Inspector could not be “impeached” as a matter of law. However, that was because Mr Justice Garnham concluded that the Inspector’s decision was a matter of planning judgement, which is the exclusive province of the decision-maker not the Court. Had the previous Inspector come to a different planning judgement (as we invite you to, looking at this matter afresh), that decision would have been equally “unimpeachable” as a matter of law.
82. Moreover, and for all of the reasons given by Mr Grantham and Cllr House, as summarised by Ms Altman, there are ***absolutely compelling reasons***, in this case, to come to a different judgement to that reached on the last occasion on this specific issue.

Common Sense

83. Firstly, the alternative route relied upon by the previous Inspector would effectively entail circumnavigating much of Hamble and walking an additional 2km. With all due respect to the previous Inspector, it simply defies common sense to believe that many (if any) teenage schoolchildren who have to walk to school on a dark and rainy winter morning, and who are already late, will take the longer route. It is blindingly obvious that many (if not all) will take the risk of the much shorter, but unsafe, route up Satchell Lane instead.

Hamble Marina

84. Secondly, whilst the previous Inquiry Inspector reached the view that he did, the Inspector who examined the recently adopted Local Plan appears to have come to a very different conclusion when considering the possibility of residential development over the road and at Hamble Marina.
85. In these regards, and as Ms Altman and Cllr House both explained, draft Policy HA2 of the submitted version of the then emerging Local Plan initially sought to allocate the Marina site for the development of a hotel. During the course of the examination, however, the Council agreed that a hotel would not be viable and suggested that Policy HA2 be withdrawn. Marina Developments Ltd, however, had other ideas and were promoting residential development instead. The Inspector's initial response was that modifications to Policy HA2 would be the most appropriate course of action, rather than its deletion and was clearly considering an amendment which accommodated residential development. The Council continued to object to this possibility, and set out its objection in the clearest possible terms to the Inspector, including by reference to the unsafe position for pedestrians, and did so in direct correspondence, including a letter from the Chief Executive (Ms Altman, Appendix 4.4). Following this correspondence, the Inspector was persuaded to re-open the Examination Hearings exclusively to consider this single issue.
86. At the re-opened examination, the Marina continued to seek the inclusion of an element of residential development within the policy, but the Council provided a Hearing Statement (CD 5.11), highlighting the Council's concerns. These related to the general transport problems on Hamble Peninsula (which I return to under Reason for Refusal 3 below) and, *quite specifically*, to the very poor pedestrian access to the Secondary School and Health Centre. The Hearing Statement (CD 5.11), stated as follows, in paragraph 9:
- “The most notable detrimental effects regarding residential development are the very poor pedestrian/cycle access from the site to the secondary school, health centre ...”

87. Having considered the evidence for and against residential use on the Mercury Marina site, on 14th March 2022 the Inspector provided her final Report to the Council, including a schedule of Main Modifications with regards to Policy HA2 (Ms Altman, Appendix 4.8). Those Main Modifications contained *no reference at all* to residential development at the Marina. An obvious inference is that the Inspector *inter alia* accepted the Council's case that residential development was unacceptable in this location, *inter alia* because of concerns for pedestrian safety.
88. As Cllr House stated, therefore, whilst the previous appeal Inspector came to his own view on this issue, he is *not* the only Inspector to have considered the acceptability of residential development in this broad location. Rather, it has subsequently, and very directly, been considered by a different Inspector, who appears to have come to a different view of the planning merits of permitting residential development where the shortest pedestrian access (by a considerable distance) to a nearby School and Health Centre was obviously unsafe.

Fareham Decision Letter

89. Thirdly, and as already alluded to in paragraph 77 above, to so decide would be completely consistent with a very recent decision reached by an Inspector in nearby Fareham (Grantham, Appendix MG6), as referred to in Mr Grantham's Proof of Evidence at paragraphs 2.20-2.23. That appeal concerned a proposed development of 29 dwellings where, like the current Appeal Site, there was no footway on the shortest route to local facilities, and alternatives were available *via* longer routes that generally conformed to maximum recommended walking distances.
90. The issue was addressed in paragraphs 12–19 of the Inspector's decision letter:
- a. The Inspector stated as follows, at paragraph 15, regarding the likelihood of people choosing to walk a longer route to facilities:

“The walking distances to most of the existing services and facilities is at the upper end of acceptable walking distances in some guidance documents that I have been referred to and beyond them in others. Therefore, noting the distance to those services would be greater if

pedestrians were to choose this route it is unlikely to be used on a regular basis by most people.”

- b. The Inspector went on, in paragraph 17, to state as follows with regard to the shorter route which people were more likely to use on a regular basis:

“... the route is not safe, secure or attractive nor does it minimise the scope for conflict between users, in particular the need for pedestrians to step into the middle of the carriageway to avoid parked cars would place them in direct conflict with motorists and this would be particularly discouraging for users of wheelchairs or those with pushchairs. Occupiers of the proposed development would therefore be more likely to opt for the convenience of the private motor car”.

- c. Having so found, the Inspector expressly concluded as follows in paragraph 19:

“Paragraph 110 of the National Planning Policy Framework (the Framework) sets out that safe and suitable access to the site should be achieved for all users and paragraph 112 sets out that development should create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles. The identified conflict with both the Development Plan and the Framework is a matter which attracts significant weight.”

91. Moreover, the Inspector’s overall conclusions were as follows, at paragraph 53, having earlier found the proposal to bring about substantial benefits:

“53. Nevertheless, the identified adverse impacts of the development, in respect of the lack of an appropriate pedestrian access to nearby services and facilities are notable. The Framework is clear that significant development should be focused where the need to travel can be limited and promote walking and cycling. I consider that the conflict I have identified in this regard, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, including its presumption in favour of sustainable development.”

92. Reason for Refusal 2, therefore, has a secondary element. Not only does an unsafe pedestrian access breach paragraphs 110 and 112 of the NPPF in terms of safety, it also breaches national planning policies for sustainable development by increasing, rather than reducing, the prospect of trips by car, as Mr Grantham made clear in paragraphs 2.14 and 2.23 of his Proof of Evidence:

“2.14 ... [S]uch a location for residential development is not only manifestly unacceptable in terms of safety for schoolchildren, but also goes against the principles underpinning sustainable development as provided for in the National Planning Policy Framework, in that for many schoolchildren the more likely alternative to the unsafe walking route to school is not going to be the longer, safe, pedestrian route, but access by parental car, when, in order to be a sustainable location for housing, the site would need to promote safe and sustainable modes of transport - namely walking.”

“2.23 This [Fareham] Appeal Decision is relevant, given the similar circumstances of the two sites in regard to what is believed to be an unsafe short pedestrian route and a safe longer pedestrian route provided to local facilities. As previously outlined, there are concerns that pedestrians will use the short route for convenience and time reasons despite the road safety implications, and in addition, there is also the potential for the proposed development to become more reliant on use of the private motor car as a result. This would be in contrast to the sustainable travel aims of the National Planning Policy Framework.”

93. Given all of the above, I respectfully submit that the previous appeal Inspector’s planning judgement on this issue should not be followed, and that this is the ideal opportunity to make that clear. Whilst no one can plan in ways that prevent foolish people from *taking* unnecessary risks, one can plan to avoid *putting* vulnerable people at unnecessary risk.
94. Put shortly, one should not play dice with the personal safety of vulnerable people, and Reason for Refusal 2 should be upheld.

Reason for Refusal 3

95. I come, next to Reason for Refusal 3 which is, of course, closely related to Reason for Refusal 2. In particular, and as referred to in paragraph 86 above, in addition to concerns about the accessibility of the site, HCC Highways also objected to the application on the basis of the resulting, cumulative, traffic impacts on Hamble Lane, which already experiences high levels of congestion. These concerns about the impact of increased traffic on Hamble Lane have, of course, recently been considered in a recent appeal decision letter concerning a proposal for residential development of the GE Aviation Site (Appeal Ref. 3255559, CD 8.2). In dismissing the appeal, one of the key matters considered by the Inspector was that of highway impacts on Hamble Lane and nearby junctions. The Inspector held as follows:

- a. In paragraph 37, he correctly noted that Hamble Lane provides the principal route from Hamble-le-Rice to the wider road network including the M27 and roads into and out of Southampton, and he went on to state that:

“Hamble Lane is subject to significant congestion at peak times, with a number of junctions experiencing capacity problems, particularly nearer to the M27 from Portsmouth Road northwards.”

- b. In paragraph 45, the Inspector found that Hamble Lane is already congested, and the development would result in increased queuing (the same true is true, of course, for the current appeal).
- c. In paragraph 46, the Inspector stated that the proposed measures to mitigate this congestion indicated there would be a severe impact arising from development without that mitigation; and that even if the impact was less than severe, there would still be harm which was required to be mitigated and/or weighed in the planning balance⁵.
- d. In paragraphs 49 and 50, the Inspector explained that there was no guarantee that impacts could be mitigated through proposed Hamble Lane improvement works.

96. The latter point is, of course, is a considerable “change of circumstance” since the 2018 appeal, when – as Mr Grantham explained at paragraphs 3.10-3.13 of his Proof of Evidence – it was anticipated that funding for mitigation works could be secured. Moreover, it was the failure to secure this funding which led to a two further changes of circumstance, post-2018:

- a. The March 2019 HCC Report which states that, until improvements to the northern section of Hamble Lane have been implemented it is considered inappropriate from a traffic perspective for further development to be allocated or permitted along Hamble Lane; and

⁵ See: *Redhill Aerodrome Ltd v SSCLG* [2015] P.T.S.R. 274, at [32].

- b. The statement in paragraph 3.7.1 of the recently adopted Local Plan (CD 4.1) that there should be no significant additional development in the Hamble peninsula because of transport constraints.

97. Mr Wilde’s response to this, as articulated in paragraph 3.1.8 of his Main Proof, boils down, essentially, to the argument that, even though the congestion in Hamble is already severe (and could even be interchanged, he suggested, with the word “catastrophic”), one can happily add to that provided the additional impact of the new traffic is not, additionally and independently, also severe. As I noted in my Opening last week, in an endeavour to make this argument good, in paragraph 3.1.9 of his Main Proof, Mr Wilde even dips into the Cambridge Dictionary and relies on the definition of “impact”.

98. However, that semantic exercise entirely misses the real point:

- a. Residents in Hamble *already* experience delays, as Mr Grantham pointed out in the email which Mr Wilde attaches as his Appendix 5:

“... Hamble Lane corridor already has delays that could be described as severe for its users.”

- b. As Mr Grantham went on to point out:

“Any additional traffic brought forward via new development will exacerbate this situation further, and as such to ensure severe delays ... become even more severe ...”

- c. That analysis accords entirely with any common sense reading of paragraph 111 of the NPPF, which expressly requires the refusal of permission, on highways grounds, if “*the residual cumulative impacts*” on the road network would be severe.”

- d. In particular, the above-emphasised words plainly invoke consideration of the *extant and the additional*, and where the extant is already severe, adding to that only makes it *even more severe*, as Mr Grantham correctly pointed out.

99. Moreover, as I also pointed out in Opening, Mr Wilde’s alternative interpretation would lead to obviously absurd consequences. Developers could come forward, one after the other, each with proposals to add yet more traffic onto an already congested network, and argue that because their proposals did not, individually, have a “severe” additional impact, they were all acceptable despite their cumulative impact on roads which already suffered severe delays. That cannot possibly be right. Indeed, it is precisely to avoid that argument being made that paragraph 111 of the NPPF is worded as it is. In particular, if paragraph 111 were to be construed as Mr Wilde and Mr Boyle KC contend, there would be no means of ever preventing the residual accumulative impact of repeat developments, all of which only impact marginally on an already severe situation, from causing total logjam. The interpretation of policy is a matter of law, of course, not planning judgement (see: *Tesco Stores Ltd v Dundee CC* [2012] PTSR 983); and to accede to their entreaty would undoubtedly lead to challengeable legal error.
100. Moreover, Mr Boyle KC’s re-examination of Mr Wilde on this point, proves the very opposite of that which he intended. In that re-examination, Mr Boyle KC and Mr Wilde conjectured a moment during the course of repeat future applications when a tipping-point would be reached, and permission could be refused. However, if all of the repeat applications only have an additional marginal impact, rather than an additional severe impact, that contemplated refusal could only be because the situation on the existing network is already severe and the impact of the additional traffic makes it even more severe. The re-examination proves the correctness of the Council’s position.
101. For all these reasons, Reason for Refusal 3 should also be upheld.

Reason for Refusal 4

102. I come, then, to Reason for Refusal 4 and design, with regard to which national planning policy has been updated since the previous appeal decision so as to place an increased emphasis on achieving good design in new developments. In particular, Section 12 of the July 2021 NPPF, which concerns “achieving well-designed places”,

needs to be read alongside the National Design Guide (NDG) (CD11.1), published in January 2021, which identifies 10 characteristics that contribute towards good design (including context, identity, built form, nature, and public space) and explains, at paragraph 8, that:

“The underlying purpose for design quality and the quality of new development at all scales is to create well-designed and well-built places that benefit people and communities”?

103. As for the NPPF itself:

- a. Paragraph 126 makes it clear that the creation of high quality, beautiful, and sustainable buildings and places is fundamental to what the planning and development process should achieve, going on to say that good design is a key aspect of sustainable development, creating better places in which to live and work, and helps make development acceptable to communities; and
- b. Paragraph 130 identifies various requirements for achieving good design, including ensuring that a development functions well, is visually attractive, is sympathetic to local character, and creates a strong sense of place, and a safe and inclusive environment.

104. We have to aim high, therefore: we have to strive for beautiful buildings, laid out in a way which responds successfully to the context in which they are proposed, and are both sympathetic to the local character, and provide a safe and inclusive environment (including, of course, in terms of safe pedestrian access to the Secondary School and Health Centre (Reason for Refusal 2)).

105. And we can see that imperative reflected in a recent Eastleigh decision letter for Sovereign Drive, Botely decision letter (CD 8.4). As already mentioned in paragraph 13 above, like the current appeal, that decision letter concerned a site which benefited from a permission granted on appeal before the recent changes in NPPF regarding design. However, that permission had expired and a new application was made, resulting in an appeal brought against a subsequent refusal, in which the Inspector had to consider the acceptability of the new proposal against the new policy regime.

106. The Inspector dealt with design in paragraphs 21-34, and came back to it in paragraph 44, his conclusions:
- a. In paragraph 21, the Inspector made it clear that whilst the design allowed under the previous appeal “might establish a benchmark as to what may be acceptable”, that was in terms of design policies and guidance as they were 7 years ago, and was “not a particularly useful indication as to whether the current scheme would be well designed or follow current best practice and policy”;
 - b. In paragraph 22, the Inspector referred to the NDG, and the requirement there set out that:
 - i. Well-designed places are based on a sound understanding of the features of the site and surrounding context; and
 - ii. The NPPF indicates that developments should be sympathetic to local character, including their landscape setting;
 - c. In paragraph 25, the Inspector made it clear that the evidence presented by the Appellant needed to demonstrate a rigorous analysis of context that went beyond the style and layout of adjoining residential areas, prior to the commencement of design work;
 - d. In paragraph 28, the Inspector pointed out that good urban design required a coordinated, context-led approach;
 - e. In paragraph 31, the Inspector likewise identified that through such an approach it was necessary to create a sense of place through building positioning and layout design, and create a high quality environment, using views and focused vistas of buildings, the countryside, and key landscape features;

- f. In paragraph 44, the Inspector noted that, whilst the NPPF seeks to boost housing supply, it advocates this within the context that creating high quality, beautiful and sustainable buildings and places, which is fundamental to what the planning and development process should achieve - the built environment will exist for many years and must continue to provide high quality living environments for future generations; and
 - g. In the end, the Inspector refused that scheme on design grounds for failing to meet those requirements.
107. Notwithstanding the need to demonstrate a *rigorous* analysis of context *prior* to the commencement of design work (CD 8.4, paragraph 25), however, the Appellant chose to call no-one with any knowledge of what took place and when. The architects who designed the Appeal Scheme were not called to explain their approach. Mr Hillson, who was called, was not involved in the design at all, had only visited the site once before writing his Proof of Evidence, and did not bother even to talk to those architects. And Mr Smith, who also came to the party late, immediately chose to change the masterplan he inherited, and then promptly changed it back again when he could not fit a LEAP within the so-called 'village green' after all.
108. The approach which was actually adopted by the scheme architects can, however, best be understood by the Appellant's Statement of Case in this appeal (CD 12.2):
- a. In paragraph 7.15, it is asserted that:

"It is not considered that the current scheme is materially different from, or inconsistent with the principles established by, the previous scheme. There has therefore been no material change in circumstances since the previous appeal..."
 - b. In paragraph 7.26, a similar point is made, it being again asserted that:

"The current scheme builds upon the details deemed acceptable and secured as part of the previous outline planning permission, and is not materially different from, or inconsistent with, the principles established by it ..."

c. In paragraph 7.29, where the same assertion is made again:

“In light of the above, it is not considered that the current scheme is materially different from, or inconsistent with the principles established by, the previous scheme. There has therefore been no material change in circumstances since the previous appeal was allowed.”

109. Notably, however, the previous scheme was approved *before* the strengthening of design policies through the NDG and changes to the NPPF, before the requirement to create beautiful buildings, and so, in the words of the Sovereign Drive decision letter, was:

“... not a particularly useful indication as to whether the current scheme would be well designed or follow current best practice and policy.”

110. Moreover, the architects endeavour to follow the earlier scheme failed in any event. In particular, given that the Appellant was making its case on the basis that there were no material design differences between the two schemes, Mr Osmond understandably tested whether that was so. For the previous appeal scheme, the indicative masterplan is at Mr Osmond’s Appendix GO1; and the current version of the revised masterplan is at Drawing SL1 Revision B (ID 1). As soon as we turned those plans up, however, you will recall that Mr Hillson rapidly conceded they were very different indeed (Hillson XX). He was entirely right to do so: they are. The contrary assertions in the Appellant’s Statement of Case are entirely misleading.

111. The first point to note is that, as Mr Osmond explained, the layout of both schemes is partly determined by the presence of a gas main which crosses the site from east to west in its northern half. However:

a. The previous appeal scheme was also influenced by the importance, then attached, to the ability to appreciate the river from the site’s high spot in the north-western corner in a south-easterly direction - that is what the yellow arrow indicates on Appendix GO1.

b. For the current Appeal Scheme, however, that prospect has gone altogether. There has been a complete abandonment of the importance of the riverside in

the local setting, and as an important local feature that could add interest and offer views.

112. Mr Osmond's Proof of Evidence went on, helpfully, to tabulate the other differences between the two schemes in paragraph 5.3.

General Layout

113. As for "General Layout", the previous scheme contained a series of clear perimeter blocks accessed *via* a single central spine road, with a relatively generous buffer between built development and site boundaries. The Appeal Scheme, however, presents as a regimented series of linear runs, directly fronting a number of access roads, including two lengthy dead-end streets predominantly routed around the periphery of the site. Development is also pushed up close to the site boundaries.

Street Hierarchy

114. The previous scheme had a clear hierarchy of primary, secondary and tertiary streets/routes differentiated through surface materials, widths, and the presence or otherwise of footways. The Appeal Scheme, however, has limited differentiation in carriageway widths, and predominantly uses a single surfacing material - tarmac.

Boundary Buffers

115. The earlier scheme proposed relatively generous buffers between built frontages and site boundaries, with the space being used to provide additional trees, soft landscaping and naturalised SuDs. Any routes included in these spaces were low key pedestrian routes or of modest domestic scale. Driveways shared between two or three dwellings were finished in a visually softer material, not tarmac. For the Appeal Scheme, however, the spacing between development and the boundary edges is narrower and predominantly used to accommodate an engineered, highway grade, road. There is very limited scope to provide any additional planting or reinforcement of existing boundary planting; and no buffer at all is provided along a large portion of the south-eastern boundary with adjoining properties.

Satchell Lane Frontage

116. The earlier scheme had scope for significant additional landscaping to add to a generally green space between built development and Satchell Lane frontage. Formal vehicular routes were kept to a minimum and of a very low key nature. In addition, the built frontage undulated, providing a softer, informal frontage to the rural character of the Lane. By way of contrast, the Appeal Scheme proposes built development much closer to the Lane and has a very harsh, generally uninterrupted, straight building line. Scope for additional landscaping is minimal. The Appeal Scheme will provide a very suburban frontage, completely out of keeping with semi-rural character of the Lane.

Western Edge

117. On the previously allowed scheme, there were relatively few dwellings directly fronting the countryside edge. Spacing was generous and the building line gently undulated to provide a softer edge to the development. On the Appeal Scheme, however, the countryside edge is presented with a very suburban street scene of formal highway, footway, and an unrelieved building line.

Relationship with Existing Development

118. For the earlier scheme, the amount of new development directly facing existing development was kept to a minimum and set well back from the shared boundaries. All existing development backed onto communal open space, landscaping, and SuDs, thereby limiting visual impact. For the Appeal Scheme, new development is much closer to shared boundaries, with most directly facing. Most existing gardens would be bounded by rear gardens of new development, with some having an access road immediately on their boundary line.

Internal Street Frontages

119. The vast majority of dwellings in the earlier scheme had a clearly defined street frontage, some quite generous, providing defensible space and separation from vehicular traffic and allowing scope to provide true 'character areas' within the development. For the Appeal Scheme, nearly all dwellings have a very minimal

frontage with little to no separation from vehicular traffic and there is very limited scope to provide clearly defined character areas, or variety within the street scene.

Trees and Landscaping

120. As for trees and landscaping, even though the previous scheme preceded the Council's, now adopted, "Trees and Development" SPD, the generous areas of undeveloped space would indicate that the layout could meet, or be very close to meeting, the SPD requirements. General areas of landscaping also made use of above ground SuDs to add to the variety and biodiversity potential of landscaped spaces, making them multifunctional and enhancing the overall quality of the final development. For the Appeal Scheme, however, even with the late amendments proposed by Mr Smith, this would not meet the requirements of the SPD:
- a. The trees shown along street edges are within private domestic curtilage and not on highway/communal land, which means that the trees are not in the control of the Local Authority or any private management company and could be removed by future property owners who may be of the view that they are a hindrance or too difficult to look after;
 - b. In addition, the space provided will not allow for trees of an appropriate scale to grow and provide the visual and environmental amenity sought/expected for the tree-lined streets desired and encouraged by the SPD.

Conclusions

121. The above comparison between the indicative previous proposal and the Appeal Scheme shows that there are clear and material differences between the two, with the latter being notably less successful in significant regards. Furthermore, it should be noted that the illustrative layout submitted in support of the previous appeal was produced for an outline application. It was by no means the finished article and would very likely have altered moving to a more detailed level of design. However, the Appeal Scheme seeks full planning permission. There is very limited scope for improvement: the parameters of all built form have been set and cannot be changed.

122. For all of the above reasons, the Appeal Scheme would result in a development lacking in interest, imagination, or any sense of place. Development has been pushed hard up against the site boundaries, in an insensitive and unsympathetic manner, with insufficient room left over to provide worthwhile green infrastructure, tree planting, or useable public open space. Streetscapes have been poorly composed, lacking any form of hierarchy. When the NPPF calls for high quality, beautiful, buildings and places, the Appeal Scheme is anything but. It is a bog-standard, urban estate, inappropriately dropped into a semi-rural location. For all of these reasons, Reason for Refusal 4 must also be upheld.

REASON FOR REFUSAL 1

The Principle of Development

123. I come then to Reason for Refusal 1, the principle of development. In these regards, the Appeal Site lies outside of the defined urban edge and within the open countryside, protected from residential development by Policy S5. The Appeal Scheme is in clear conflict with Policies S2, S3, S5, and the entire spatial strategy of a *recently adopted* Local Plan, as Mr Brown readily conceded (Brown XX). This, of course, is a very considerable change of circumstance since the last appeal. That decision was based on adopted and emerging policies that the previous appeal Inspector considered to be of limited weight. Since then, the Council's approach to housing supply, delivery, and distribution, has been fully examined through the Local Plan process and found to be sound. Given that the Council has a 5YHLS, this breach of the spatial strategy of a recently adopted Local Plan, must be given full weight – as it was in both the Snakemoor Lane (CD8.3) and Sovereign Drive, Botley, appeals (CD8.4).

Landscape Impact

124. Moreover, and in addition to the objection in principle, the proposed development would also have an irreversible and urbanising impact on both the Appeal Site and the surrounding area, when, at present, the site contributes positively to the transition from the built-up area of the settlement of Hamble to the more rural character of the countryside beyond.

Landscape Value

125. As for “landscape value”, Mrs Butcher sets out the key landscape characteristics of the Landscape Character Area (LCA) in which the Appeal Site sits (LCA 13: Hound Plain) in paragraph 6.12 of her Proof; and points out, accurately, in paragraph 7.19, that the Appeal Site shares many of them, explaining that this makes it of medium value – having a positive character and quality, albeit reduced through degradation. In particular, and whilst the Appeal Site is undesignated and, in part, degraded with its use for horsiculture, it nonetheless has positive value for all of the following reasons (as Mr Smith agreed):
- a. It falls gently to the east and south, which is reflective of one of the key landscape characteristics of the LCA 13;
 - b. It is devoid of trees, except along the roadside boundary and a few trees along the PROW, again reflective of the LCA key characteristics;
 - c. It affords openness without interruption, yet again reflective of the LCA key characteristics, in both of the following views:
 - i. From the PROW and to the west, with western boundary formed by hedge line and post and wire fences; and
 - ii. From Satchell Lane to the north (and the lack of development and mature tree line contributes to the rural character of the Lane);
 - d. This openness contributes to visual separation between settlements;
 - e. The Appeal Site also makes a contribution to the ecosystem through the presence of vegetation and permeable grassland; and
 - f. The Appeal Site has value as a local ‘doorstep’ landscape for the community.

126. In coming to this view, moreover, Mrs Butcher was agreeing with both the Council's witness on landscape matters at the earlier Inquiry (CD 10.7, paragraph 7.13); and the Appellant's witness at that Inquiry (CD 10.8, paragraph 4.59).

Landscape Susceptibility

127. As Mrs Butcher explained in paragraphs 7.21-7.22 of her Proof, in her view the susceptibility of the Appeal Site to the type of development proposed is high because it is simply not able to accommodate proposed type of change or type of development without undue consequences to the baseline situation or landscape planning policies and strategies. Any development on the proposed scale would inevitably, and adversely, affect the openness and rural character of the site, as well as the rural character of Satchell Lane.

Landscape Sensitivity

128. As Mrs Butcher went on to point out in paragraph 7.23 of her Proof, combining the medium value and the high susceptibility means, on balance, that the Appeal Site has a medium/high sensitivity.
129. Mrs Butcher had previously explained, in paragraphs 7.1-7.17 of her Proof, that, in coming to this view, she was knowingly attributing higher sensitivity to the Appeal Site than was attributed by the June 2108 "Small and Medium Greenfield Housing Sites Background Paper" (CD 5.5), which considered sensitivity to be "low", a finding upon which the previous Inspector relied, at paragraph 24 of his decision letter (CD 8.1), when he concluded that the locality of the site had low sensitivity to residential development. However, that desktop study was for a different purpose, sifting out inappropriate sites for residential development, when this site had been sifted out for other reasons (relating to minerals and proximity to the Solent Maritime SAC), so that landscape value and sensitivity was not an issue upon which attention needed to be focused.

130. Moreover, and for the reasons Mrs Butcher gives in paragraphs 7.2-7.17 of her Proof of Evidence, subsequent, far more detailed, studies by different experts have come to views much closer to her own. In particular:
- a. The Council's witness at the last Inquiry considered the sensitivity of the Appeal Site to be "medium" (CD 10.7, paragraph 4.15); and
 - b. The Appellant's witness "low to medium" (CD 10.8, paragraph 5.24).
131. It is on this site of both value and sensitivity, that the Appellant proposes 61 dwellings, a development which will have permanent and irreversible, urbanising, impact, as Mr Smith fairly conceded:
- a. There will be a change in land use from green field to built development, inevitably affecting the character of the site;
 - b. There will be the permanent loss of permeable surfaces;
 - c. There will be a permanent loss of openness and views from Satchell Lane and PROW to the west of Appeal Site, and towards the River Hamble;
 - d. There will be the loss of trees and vegetation along Satchell Lane, all removed in order to create entrance and sight lines for access to the development;
 - e. There will be the introduction of engineered landform to overcome the change in levels at this access point; and
 - f. There will an increased level of lighting at night.
132. It is for all of these reasons that Mrs Bucher correctly concluded that the replacement of a rural landscape with housing development, and its associated infrastructure, lighting and engineered vehicular access off Satchell Lane, would lead to a harmful urbanisation of the local rural environment, and give rise to adverse effects, some of which are significant.

133. And, as Ms Altman explained in paragraph 8.5 of her Proof of Evidence, similar considerations were also at issue in the recent appeal decision Sovereign Drive, Botley (CD8.4), where the Inspector held follows in paragraph 45:

“45. Furthermore, the Framework indicates that the intrinsic character of the countryside should be recognised and that developments should be sympathetic to local character, including the surrounding landscape setting. It sets out the importance of trees within developments, including the retention of existing trees, wherever possible. The development would fail to do this, without adequate justification and overall, I have found that this proposal would result in an urbanising impact that would harm the character of the countryside.”

Conclusions

134. For all these reasons, the proposed development is both unacceptable in principle and would be harmful to the character of the area, contrary to Policies S5 and DM1 of the recently adopted Local Plan. Reason for Refusal 1 should also be upheld.

OVERALL CONCLUSIONS

135. I come, then to the planning balance, which for all of the reasons given by reference to housing land supply, is the ordinary, untilted, balance. In these regards, and as noted in paragraph 14 above, section 38(6) of the Planning and Compulsory Purchase Act 2004, and sections 70(2) and 79(4) of the Town and Country Planning Act 1990, require that planning applications and appeals be decided in accordance with the Development Plan unless material considerations indicate otherwise.
136. The Appeal Scheme proposes the development of 61 dwellings on a site that lies outside of the defined urban edge in the adopted Local Plan. As such, it is contrary to Policies S2, S3 and S5 of the Adopted Local Plan, and its spatial strategy. As Mr Brown correctly conceded, as such it breaches the Local Plan, read as a whole, one which was adopted as sound about 6 months ago.
137. Furthermore, the Appeal Scheme would also result in a poor quality development and have an unacceptably urbanising and visually intrusive impact on the countryside and surrounding area, along with significant accessibility and highway issues. The

development would therefore directly conflict with a number of adopted Local Plan Policies in these respects as well, all of which are fully aligned with the NPPF and up-to-date.

138. In accordance with the above statutory imperatives, and paragraph 2 of the NPPF, it is necessary to consider whether there are any material considerations that would warrant allowing the development contrary to the Development Plan. In these regards, whilst the previous appeal decision relating to the site is a material consideration, it should be given limited weight given the Council's updated policy position and the adverse impacts of the development as outlined above.
139. It is acknowledged, however, that there would be some economic and social benefits from the development in the form of market and affordable housing delivery; and economic benefits from construction jobs, New Homes Bonus and increased local spending. There would also be financial contributions towards improved infrastructure including education, health, community, and recreational facilities.
140. However, as demonstrated in the evidence of Mrs Howbrook, the Council is able to demonstrate a 5YHLS, and has not failed the Housing Delivery Test. There is, therefore, no identified need for the additional dwellings proposed. Indeed, there is also a healthy supply of development sites in the pipeline to maintain this position over the medium term.
141. Furthermore, whilst substantial or significant weight is often attributed to housing development, especially with regards to affordable housing, that is hardly the case where, as here, the location is such that it would put vulnerable occupants of that housing at risk to their personal safety. That should be seen as a "show-stopper".
142. Yet further, and even if the tilted balance were to be applied (which it should not), the adverse impacts of the Appeal Scheme would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF, in any event – in terms:

- a. Safety (NPPF paragraphs 110(b) and 112(c));
- b. Congestion (paragraph 111);
- c. Design (paragraphs 126 and 130); and
- d. Harm to the intrinsic character and beauty of the countryside (paragraph 174(b)).

143. For all these reasons, I respectfully request that this appeal be dismissed.

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9th November 2022