IN THE MATTER OF

THE TOWN AND COUNTRY PLANNING ACT 1990

AND IN THE MATTER OF

LAND AT SATCHELL LANE,

HAMBLE-LE-RICE,

HAMPSHIRE.

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANTS

---

1. These Closing Submissions are made on behalf of the Appellants in respect of an appeal of a full application for 61 dwellings and associated development on land at Satchell Lane, Hamble-le-Rice, Hampshire ['the site']. The site lies outside but immediately adjacent to the adopted settlement boundary of Hamble, a sustainable settlement in terms of its services and facilities for residential development. The site is bordered on its north, east and southern sides by existing residential development and on the western side by a vegetated public right of way.

2. The context is that in December 2018 this same site was granted outline permission (with detailed access) on appeal for 70 dwellings (9 fewer than the current proposal)[1]. That decision was unsuccessfully challenged in the High Court by the Council[2], so both decisions pay careful reading in the light of the objections currently raised by the Council to the appeal scheme.

[1] CD8.1
[2] CD9.1

3. As observed in Opening, and as has been made clear throughout this inquiry, much of the Council's current case is no more than a re-statement of the case it ran - and lost - in the last appeal and in the High Court. In addition other aspects have been added, despite not taking those objections against the earlier – and larger – scheme on the same site.

4. The Council refused the current application/appeal for seven reasons. Of these, as expected, three had been overcome by the start of the inquiry and it was the remaining four which took up inquiry time in terms of evidence:

    landscape/visual;
    sustainability/accessibility;
    highways capacity impact; and
    design quality.

5. Accordingly, and in the light of the Inspector's identified Main Issues, these Closing Submissions are structured as follows:

    (1) Policy Framework and 5-year Housing Land Supply;
    (2) Landscape and Design;
    (3) Accessibility/Sustainability;
    (4) Highways Capacity;
    (5) European Protected Sites & Biodiversity Net Gain;
    (6) The Planning Balance and Conclusions

(1) Policy framework and 5-year Housing Land Supply:

6. The s.38(6) development plan consists of the 2022 Local Plan[3] adopted in April this year.

[3] CD4.1

7. On the surface at least, therefore, the development plan policy context has altered since the last appeal (although not between the last appeal and the refusal). This is because (since that case and since the refusal of this application), the old 2006 Local Plan has been replaced by a new set of policies. Old 1.CO and 2.CO have been replaced by S2, S3 and S5.

8. But in truth, though, and as submitted in Opening, the only real change is the change to the policy numbers to which we must now refer. The settlement boundary has not altered, nor the approach to development outside settlement boundaries. Moreover, whereas in the last appeal the 2006 Local Plan was *found* out of date (despite a claimed 7-10 years' land supply) and hence reduced weight was accorded to the settlement boundary polices, in this appeal, the 2022 Local Plan is *deemed* out of date by operation of Footnote 8 of the NPPF and the absence of the required 5-year land supply[4]. Accordingly, therefore, not only the settlement boundaries, but all the 'most important polices' are rendered out of date, and breaches of them are given reduced weight as a result.

9. It might also be noted, in addition, that by virtue of a quirk in the drafting of then NPPF, the inspector at the last appeal was operating an 'untilted' balance because the site had been subject to an 'appropriate assessment'[5]. Under the current NPPF, provided the outcome is favourable, undergoing an appropriate assessment does not rob a scheme of the 'tilted' balance under para. 11(d)(ii) - and neither party has suggested that a favourable appropriate assessment should not be forthcoming in this case (see Issue 5, below).

10. In development plan policy terms, therefore, despite the replacement of the 2006 LP with the 2022 LP, the correct analysis is the same as before the last inspector: policies restricting development in the 'countryside' are out of date. Thus, in substance, the planning analysis of the previous inspector – upheld by the High Court – applies equally to the current scheme (if not more so, as in this case, the 'tilted balance' does apply). This is a proposal which delivers much needed housing and affordable housing,

[4] Even the Council – despite the best efforts of Cllr House – can only claim a 5.1 year's supply! – see the HLS SoCG at para.4.1
[5] See CD8.1 at para. 62

together with significant economic benefits, in a sustainable location and out of date settlement boundaries should not be used to deny the public those benefits.

11. The Council contests the Appellant's contention that it (the Council) cannot demonstrate the required 5 year housing land supply. It is wrong to do so. Mr Brown has carefully and fairly analysed the Council's purported supply. But it remains the Council's duty to demonstrate the required supply, not an appellant's task to disprove their claimed figure. Similarly, although the Local Plan was adopted on the findings of an expected 5 year supply on adoption, the 'delivery' of the anticipated sites was judged under the 2012 NPPF definition, not the more stringent 2021 NPPF definition. As such, and as observed in the Handslope appeal decision[6] the task falls to the s.78 inspector to assess the 5 year housing land supply afresh, on the current best evidence and against the up-to-date test of deliverability.

12. The starting point is just how narrow is the Council's claimed achievement of the required numbers. Despite all the protestations of Cllr House that the Council is straining every corporate sinew and adopting novel and direct means to increase delivery, the latest (August 2022) assessment only claims a 5.1 years' supply, or a surplus of 116 dwellings. Mr Brown graciously acceded to new evidence as it was presented to him, but that still left some 823 dwellings claimed by the Council as deliverable in dispute[7] across some nine sites and the windfall allowance[8].

13. It will be for the Inspector, now, to review the evidence that has been brought before him to see if it constitutes the 'clear' evidence required; but if the Council is out by only 1/8th of its vaunted supply, it has failed to discharge the duty the NPPF places upon it, and Footnote 8 of the NPPF is engaged. Mr Brown, having reflected on what he heard, considers, very clearly, that the Council can only demonstrate a 3.9 year's supply[9].

14. In any event, even if the Council can demonstrate the required 5 year supply, the matter does not end there. Attention simply shifts to the second half of s. 38(6), and the planning balance is undertaken without the additional policy 'prism' of para. 11(d)(ii).

---

[6] CD8.7
[7] See ID18
[8] See the HLS RTS Agenda and the HLS SoCG Table 2
[9] ID18, above.

Provided the benefits outweigh the identified harm (which it is submitted, below, they plainly do), then permission should still be granted, in the public interest. This is, for the reasons noted, precisely the situation before the last inspector, on the 70 unit scheme, because the NPPF excluded the 'tilted balance' where an appropriate assessment had been undertaken. Correctly, we say, he found that the scheme was sustainably located and its localised landscape and visual impact should not stand in the way of permission being granted, so allowing the social and economic benefits to be delivered.

15. For the reasons set out below, that, it is respectfully submitted, should be the outcome for the current scheme at appeal.

(2) Landscape & design:

16. As to landscape and visual matters, also, the findings of the last inspector still stand as valid. Mrs Butcher for the Council acknowledged[10] that prevailing conditions of the site, the embracing townscape, the vegetated boundaries and the adjacent wider landscape have not altered. Further, although the planning evidence sought to distinguish between the previous and the previous scheme[11], Mrs Butcher had already accepted that for the purpose of LVIA and her evidence, the differences between the outline 70 scheme and the detailed 61 scheme did not alter the findings in terms of magnitude or extent of landscape and visual impact[12].

17. Thus, for these purposes at least, the appeal scheme is materially the same as the previous one: it proposes 61 (as opposed to up to 70) dwellings on the same site, with the same access and the same boundaries. The baseline conditions are unchanged, and the baseline value and sensitivities are as they were before the previous inspector.

18. Importantly in terms of baseline, all parties agree that this site is *not* part of a 'valued landscape' for the purposes of para. 174(a) of the NPPF. It, therefore, falls 'off the bottom of the scale' of the hierarchy in para. 175 of the NPPF. Thus, the policy

[10] Butcher xx CBKC, Day 2
[11] Altman xic, Day 5
[12] Butcher xx CBKC, Day 2

framework is not, for this landscape, as it is for 174(a) 'valued landscapes'. That is important when one comes to assess Mrs Butcher's findings on value and susceptibility of the landscape receptors she identifies (for example she gives a 'high' value to the landscape receptor she identifies as 'Satchell Lane' – a category equal, on her methodology, to not only a 'valued landscape', but to AONBs, National Parks and World Heritage Sites[13]). It is also important when it comes to weighing 'harm' in the planning balance.

19. There are disputes between the two landscape witnesses appearing at the inquiry, but there is also much common ground. The Appellant urges, where there is a dispute, that the evidence of Mr Smith be preferred, but it is important also to consider the consequences, in the planning analysis, of taking even Mrs Butcher's evidence *at its highest*.

20. The landscape comparator tables indicate that Mrs Butcher finds a major adverse impact on the site itself. But that, we know from her written and oral evidence, is confined to the field that is the red line area *excluding* any influence from the surrounding residential development. It is hardly surprising, therefore, to record such an impact given the terms of GLVIA; indeed, it is inevitable.

21. The moment Mrs Butcher lifts her gaze from the site itself to 'the wider context' (site, airfield, urban edges, the road and the PROW), the impact – correctly – drops to 'moderate'[14]. That is the same finding Mr Smith has for his equivalent receptor 'settlement edge Hound Plain' (ie site, road, residential edge).

22. Similarly, for visual impacts, Mrs Butcher finds impacts above 'moderate' only for two immediately adjacent receptors (users of the PROW on the western boundary, and residents of the ribbon housing on the SE boundary).

23. These two findings (landscape impact limited to the site itself, and visual impact only on the very boundary of the site) are exactly as can be expected for any residential development extending (as sustainably it must) an existing urban area onto what is

[13] See the landscape comparison tables and Butcher xx CBKC, Day 2; ironically, it was in respect of Satchell Lane (not assessed as a free-standing receptor by Mr Armstrong at the last appeal) that Mrs Butcher found the previous scheme had a greater landscape impact – see para. 12.11 of her proof.
[14] See also her proof at 10.8

currently undeveloped land. It is an impact no more than axiomatic with such development and cannot, therefore, amount to an objectionable outcome. There is a localised impact, but it is *not* unacceptable, and it does not stand in the way of permission being granted.

24. This was precisely what the previous inspector found[15]. None of these findings was challenged in the High Court (quite rightly)[16] and, given that nothing has changed on the ground, that sets the proper context for judging this scheme in landscape and visual terms. The appeal proposals will, of course, introduce new built form on a greenfield site, but they will do so in the context of existing urban development already influencing the character of the site, and with the proposed development being wholly in keeping with the surrounding settlement[17].

25. Only *localised* landscape and visual impacts will be experienced as with *any* such development[18]. These do not – and cannot – amount to objections to development on the site. In short, the acceptability in landscape and visual terms has already been established, here, by the last appeal and should not be being re-run by the Council on this appeal.

26. 'Design' is – to be fair to the Council - legitimately a new issue, as the current scheme is in detail whereas the approved scheme was in outline. The matters in dispute were, of course, explored in evidence.

27. A striking theme with 'design' as an objection – as accepted by Mr Osmond[19] - is how the self-same feature or proposal can be described, as a matter of English, either pejoratively or as praiseworthy. For example, if one wishes to damn a scheme, it is a matter of what language to use, not analysis: regularity becomes monotony; variety becomes incoherence and so on.

[15] CD8.1 at para's 26, 29 and 31
[16] The challenge that the inspector should not have taken these matters into account in the context of a 5 year HLS was rejected – see CD9.1
[17] Ibid at para. 28
[18] ibid para. 26
[19] Osmond xx CBKC, Day 1

28. A striking aspect of Mr Osmond's own evidence (especially orally) was how his language changed when his attention was drawn to parts of the scheme demonstrating that they did not manifest the particular vice he was at the time engaged in criticising. He would flip his observation on its head, and criticise the part of the scheme now drawn to his attention for an opposite (and presumably equal) vice.

29. Thus, to his desire for curves instead of 'too many straight roads', his attention was drawn to the curves of the western boundary road; these curves became 'pointless wiggles'. When uniform building lines were objected to as 'monotonous', the variety of set-back distances actually apparent were drawn to his attention; these variations became 'random' and 'driven by parking'. At one point he demanded 'loose' rural-edge development, and objected to 'containment' of the public realm by buildings; but when it was drawn to his attention that it was a good design approach that, for example, the central green was framed by its surrounding buildings, he opined that it wasn't contained enough and complained that it 'bled from the corners'. Even the DAS[20] and the Design Statement[21] were not good enough for Mr Osmond, with dark hints that the latter, at least, was dishonest in its description of the process followed[22].

30. Of course one recognises that judging design quality is a subjective thing, but it is a wise saying that nothing will be seen by those who will not see, and many a Design Review Panel/CABE response is ample demonstration that nothing will be pleasing to those who have set themselves not to be pleased. Mr Osmond's evidence is, it is respectfully submitted, a particularly stark example of that.

31. By contrast, the Appellants have fully embraced the 'beauty agenda' set forth in the NPPF at Section 12. They have produced a detailed scheme – laying itself open to criticism in a way an outline application would not do – which carefully responds to the opportunities and constraints of the site, which delivers an architecture drawn from the best of the local vernacular, and which disposes a layout which creates a coherent streetscape at once efficient and elegant – more so, one might think, than the branched

[20] CD1.18
[21] CD1.19
[22] An allegation he was forced to accept was unfounded in evidence – yet was curiously reluctant to recant; Osmond xx CBKC, Day 1

cul-de-sac illustration of the 70 unit scheme, with its perhaps obvious 1970s suburban overtones[23].

32. All of this makes some degree of objectivity in the framework of assessment all the more important. The NPPF at para, 130 gives criteria against which to judge 'good design'. The National Design Guide (in the absence – as here – of a locally produced one) gives 10 specific considerations to test a scheme against. The Quality Places SPD gives 17 headings for achieving good design. Only Mr Hillson reviews these guidelines in the evidence before the inquiry. The scheme passes with flying colours. Indeed, the SPD is acknowledged by the Council's witnesses (and contrary to RRef 4) to be complied with[24].

33. This appeal scheme which fully accords with Section 12 of the NPPF and the 'build beautiful' agenda espoused by the Government. It should be commended and applauded, not carped at. Government policy at para 134 of the NPPF is that 'great weight' should be given in favour of proposals such as this, 'which reflect … government guidance on design, taking into account any … supplementary planning documents [on design]'.

34. Accordingly, neither Reason for Refusal 1 nor 4 is made out.

(3) Accessibility/Sustainability:

35. Reason for Refusal 2 (accessibility/sustainability) is a naked re-run of the argument the Council mounted – and lost – at the last inquiry[25], and challenged – and lost – in the High Court[26]. To run the same case again, without material changes of circumstances, is to offend the clear advice in the NPPG on Costs[27].

[23] Not that we criticise the 70 unit scheme, but the appeal scheme expressly 'builds on' (ie improves) what was established there – see the DAS (CD1.38) at para. 4.1.
[24] Osmond xx CBKC, Day 1 and Altman xx CBKC, Day 5.
[25] CD8.1
[26] CD9.1
[27] See for the detail, the separate Partial Costs Application on behalf of the Appellants; ID17

36. As accepted by Mr Grantham[28], neither the location of the scheme vis-a-vis the facilities in question, nor the conditions on the ground, have altered since the previous Inspector found the site accessible and sustainable. That finding was found legally unimpeachable by the High Court[29]. There is no justification for running the same point again. It is an unreasonable case to mount.

37. Accordingly, little more needs to be said on this reason for refusal.

38. Mr Grantham acknowledged in his written evidence and orally that Reason for Refusal 2 was limited only to accessibility to the secondary school and the health centre and only in respect of walking. He had no accessibility objections to raise in respect of retail, leisure, employment, other social or primary education. He had no objection to raise even in respect of the secondary school and health centre by other non-car modes, be they cycling or buses. He accepted that there was no actual policy requirement that for a site to be accessible one had to be able to walk to a secondary school or a health centre AND he accepted, in this case, that there is a safe walking route to the secondary school and health centre – to the south – at an acceptable walking distance[30].

39. All of the above – exactly pertaining then as it does now – led the last inspector to conclude that the appeal site is sustainably and accessibly located[31]. The northern route has been judged not to be suitable to be relied upon as a pedestrian route, and it is not relied upon by the Appellant. The residents do not need to make use of the unsafe northern walking route; they have other opportunities for sustainable transport options available to them (including, as Mr Wilde reminded us[32], car sharing with mum or dad). The site is sustainably located – read CD8.1 at 33-42.

40. This finding was challenged in the High Court, including express reference to the emotive phraseology deployed in this inquiry about the propensity of teenagers to do this or not do that. That challenge was comprehensively and roundly rejected: see CD9.1 at para's 10 (3rd bullet), 25, and 28-37. Nothing, we'd suggest, could be clearer

[28] Grantham xx CBQC, Day 3
[29] CD9.1 at para.36
[30] See Grantham proof Section 2 and xx CBKC, Day 3
[31] CD8.1
[32] Wilde xx PSKC, Day 3

and it might well be thought astonishing that the Council (especially in the light of the Costs advice in the PPG) would *persist* in pursuing this failed objection.

41. Through Miss Altman, the Council drew attention to High Court Authority that a different judgement can – as a matter of law – be reached by the same decision-maker on the same facts[33]. But firstly, the facts of that case are very specific (the weighing up of factors differently between two differently constituted committees) and not comparable to the situation here (where the Council is not changing its mind – it is just not admitting defeat), and even, then, the Court recognised that the LPA would need 'a good planning reason' for its change of heart it was not to face losing an appeal and suffer an award of costs[34].

42. Here, the Council has not 'changed its mind on the same facts' – which, even if lawful, is bad enough in its conduct as a public body - is doggedly 'persisting' in pursuing an objection it has already lost, not once but twice, and it pleads no changes in circumstances to justify that[35]. Reason for Refusal 3 has already been found not to be made out and there is no justification proffered for taking a different view; a Costs application has consequently been made, in accordance with PPG advice.

(4) Highways capacity:

43. By contrast to accessibility being an old objection 'persisted' in by the Council, despite it having been lost before, highways impact in terms of congestion is a newly invented point, never before raised, even though the facts on the ground have not altered. It is striking that Reason for Refusal 3 is taken, now, against a scheme of fewer dwellings than the previous scheme, where no such objection was mounted[36].

[33] The Kings Cross case CD 14.5
[34] See para. 17 of CD14.5
[35] Reference to the LP consideration of the Mercury Marina turns out to be a red herring, once the documents are examined for their contents rather than the spin Mr House puts on them. See esp CD5.10 and CD5.1.
[36] Despite the fact that Mr Grantham was the consultee and witness on both schemes

44. As said in Opening, this objection is groundless – there have been no material changes in highways conditions since the (unobjectionable) previous scheme[37] and the PICARDY and VISSIM modelling demonstrating no 'severe' residual cumulative impact on the network. Para. 111 of the NPPF, accordingly, is met, and permission should not be refused on transport grounds.

45. Unable to mount an evidenced objection on impact grounds, Mr Grantham (HCC officer, but the LPA's highways witness) pointed to what he called two 'changes of circumstances' which justified an 'in principle' highways objection to new development affecting Hamble Lane[38].

46. The first was a report by HCC in March 2019 stating that it would oppose new development on the Hamble peninsula until projected highways improvement works to Hamble Lane were undertaken. This, tellingly, Mr Grantham told the inquiry[39], resulted from the County Council acting 'in support' of the Borough Council's position – ie it represented a political not a technical position. Technically, as Mr Grantham and Miss Altman both accepted[40], an HCC 'position statement' could not override the operation of para. 111 of the NPPF and a scheme which passed para. 111 should not be refused on highways grounds.

47. Certainly, there does appear to be a political drive to oppose development on the Hamble peninsula. Cllr House saw fit to attend as an EBC witness to affirm his opposition, as Leader, to the scheme, and para. 3.7(l) of the 2022 LP[41] explains the Council's non-allocation of residential sites in Hamble on the basis of congestion, minerals and gap. Plainly the latter two do not apply to the appeal site, and – on the basis of para. 111 of the NPPF and the modelling undertaken - neither does the first. None-the-less, we have this dogged opposition to a site already granted once on appeal.

48. The second matter Mr Grantham raised as founding an 'in principle' objection to any new development was the GE Aviation appeal decision[42], but as he rapidly had to

[37] Grantham xx CBKC, Day 3
[38] Grantham proof para. 3.10
[39] Grantham rx, Day 3
[40] Grantham xx CBKC, Day 3 and Altman xx CBKC, Day 5
[41] CD4.1
[42] Mr Wilde's Appx 2

concede[43], quite contrary to his written evidence at para 3.8, the appeal inspector had *not* ruled against *any* development until Hamble Lane had been improved; he had ruled that *that* development proposal before him, on the evidence before him, should not be permitted without mitigation, on the basis that on the evidence before him it would have a 'severe' impact on the network, and accordingly fail para. 111 of the NPPF.

49. Two important consequences flow from the GE Aviation decision, both of which go against Mr Grantham's position:

> first, the inspector is very clear that he is looking (properly) at the para. 111 test of 'severity' in relation to the *residual cumulative impacts* of the scheme; he is not following Mr Grantham's approach[44] of asking if the existing network congestion is 'severe' and then mounting an in-principle objection to any more development.
>
> secondly, the inspector gives – having regard to the local conditions – something of a 'yardstick' against which one might, here, judge 'severity' of impact, namely in excess of 30 seconds - 1 minute delay[45]. Less than 10 seconds delays are discounted.

50. The first undermines Mr Grantham's reliance on para. 111 as giving him an 'in-principle' objection – but that objection had no foundation anyway. Interpretation (as opposed to application) of policy is a matter of law[46], based on a proper reading of the words in their context. On no conceivable legal basis could the terms of para. 111 be twisted to make the test of 'severe' apply to anything other than 'residual cumulative *impact*'. It is not a test applied to the baseline condition, thereby barring all future development, and to suggest otherwise is to seek to tempt the inspector into erring in law (a temptation, if presented to him, which the inspector in GE Aviation astutely avoided).

---

[43] Grantham xx CBKC, Day 3
[44] What Mr Wilde described as 'something one sometimes hears from lay people'… Wilde xic, Day 3
[45] See GE Aviation at para's 43-45
[46] Scottish Ministers

51. The second gives – at least for this case[47] - a useful means of measuring severity of impact. As is apparent from Mr Wilde's summary tables[48] delays predicted never approach even the 10 second level, let alone the 30 second-1 minute threshold of 'severe'. Based on the approach of the GE Aviation inspector, far from that case supporting the Council's position on Reason for Refusal 3, it conclusively shows that Reason is not made out. Para. 111 of the NPPF is satisfied and permission should not be refused on transport grounds.

52. There followed, in the written and oral evidence, the unedifying spectacle of a non-expert criticising the technical aspects of modelling which he plainly did not understand.

53. First, Mr Grantham wanted to see PICARDY 'validated' against observed queue data, despite the fact that PICARDY (as an empirical model) does not get 'validated', and that as a model, it is not intended to produce absolute queue lengths, but rather identify the relative changes in queue length between scenarios. How Mr Grantham has been in post for so long without knowing this is a wonder, but it does not change the fact that he fundamentally does not know how PICARDY works, or is to be used[49].

54. Secondly, Mr Grantham – who freely admitted that he is not familiar with VISSIM – tried in his written evidence to mount a similar objection re observed queues, but abandoned that in his oral evidence, adopting in its place a criticism of the Appx JW12 Validation Report, following 'hints from colleagues' that that was where to look if he wanted to challenge the model[50]. He then told the inquiry that the actual criticism was his 'own work' rather than relying on colleagues, was in relation to one of the three validation criteria and was based on extrapolating figures in a manner – to be frank – incomprehensible in explanation and entirely without foundation in guidance.

55. As Mr Wilde patiently explained, when he came to give evidence, Mr Grantham had fundamentally misunderstood the criterion used in verifying journey times and adopted a test of 'spurious precision', unmeasurable in the model. WebTAG allowed a 1 minute

[47] Mr Wilde was clear that it could not be universally binding, but it was useful as being derived, recently, from a consideration of conditions on this very corridor
[48] Wilde proof Tables 3.2 and 3.3
[49] See Wilde (who does) xx PSKC, Day 3, where none of this was challenged.
[50] All this: Grantham xic and xx CBKC, Day 3

margin for validation; for a smaller geographic model, Mr Wilde had taken that down to a 30 second margin 'for robustness'; Mr Grantham's approach would not be followed by 'anyone who understood VISSIM modelling.'[51]

56. Importantly for the public inquiry process in which we are engaged, and the evidence-based decision-making which is intended to result from it, the Council had the opportunity to challenge Mr Wilde's explanations as to why Mr Grantham's non-expert criticisms of the models were groundless in cross-examination by Leading Counsel. It did *not* do so[52], and so they stand unchallenged before this inquiry and binding on the Council.

57. Whether characterised as an 'in principle' objection (which is inappropriate) or an evidence-based objection (as para. 111 of the NPPF demands), Reason for Refusal 3 is not made out and by reference to para. 111 of the NPPF, the appeal scheme should not, therefore, be refused on highways capacity grounds.

(5) European Protected Sites and Biodiversity Net Gain:

58. The scheme is subject to a report to inform the HRA, the Ecological Statement and the Supplementary Ecological Statement[53]. Mr Rose spoke to all three of these at the Biodiversity RTS (Day 3).

59. Nutrients (through foul water and surface run-off) have been mitigated to the satisfaction of the LPA and NE.

60. Recreation to the Solent has been mitigated to the satisfaction of the LPA and NE.

61. There is a dispute between the LPA and NE as to the suitability of the EBC Interim Strategy for recreation impact on the New Forest SPA. The Appellant takes no part in that debate.

[51] Wilde xic, Day 3
[52] Wilde xx PSKC, Day 3
[53] ID4

62. There is also a suggestion from the Council[54] that the EBC scheme is 'closed' to the appeal proposal as not being allocated – but that is not borne out by the documents: the appeal scheme would be classed as a windfall, within the Council's projected numbers in its plan (not all of which, as Mr Brown and the Local plan at para. 4.11 and 4.12 make plain, are identified).

63. In any event, for an Inspector as 'competent authority' on appeal, given that NE object to the EBC Strategy, it becomes rather academic whether or not EBC consider that strategy to be available to the appeal scheme.

64. As a result of this fluidity of debate, the s.106 obligation is worded flexibly in Sch 9, to allow for a variety of outcomes to be agreed such that certainty of mitigation can be secured. In the event, this might be the EBC scheme (if NE agrees it and EBC allows access), it might be an enhanced EBC scheme (agreed by NE and if EBC allows it), or it might be the NFNPA scheme (agreed by NE and out of the jurisdiction of EBC to thwart). The latter has certainly been the solution adopted – with the encouragement of NE – in appeals where there was no LPA strategic mitigation as yet agreed[55].

65. However Sch 9 of the s.106 is discharged in the event, the parties are agreed that the Inspector can conclude on the grant of permission that a favourable appropriate assessment can be arrived at.

66. Turning to Biodiversity Net Gain, it has now been agreed with the Council that this can be secured (at a minimum of 10%) though condition.

67. The adopted policy does not seek anything above a net gain; the national expectation of 10% is not yet binding and will not be prior to a decision on this appeal.

68. A commitment, secured by condition, to deliver at least 10% net gain, therefore, weighs in the positive basket in the planning balance[56].

[54] Altman at Biodiversity RTS, Day 3
[55] See Crofton Cemetery – Appx J to Ecological Statement and at CD 8.6.
[56] And does so, whether or not the off-site gain is in Eastleigh, as that is expressly allowed for in the Defra Metric; Altman xx CBKC, Day 5

(6) The Planning Balance and Conclusions:

69. Whether under the tilted balance (by virtue of Footnote 8) or the s. 38(6) balance (if the Council can demonstrate the required 5 year land supply) it is critical to establish the correct weight to be given to the positives of the scheme. Without this, balancing the negatives will be done in error.

70. Ecological matters now move into the positive basket in terms of BNG – a change since the LPA made its decision. Mr Brown gives that moderate positive weight[57].

71. Of perhaps more moment are the social and economic benefits of the scheme.

72. In pure economic terms, the Council has misjudged the positive weight to be given to the economic contribution to jobs and local spending the scheme will bring. It does not dispute the quantification or characterisation of those benefits[58]. However, it does not seem to have reflected upon the policy advice in para. 81 of the NPPF that this is a matter of 'significant' weight.

73. More acutely, Miss Altman's argument that only 'moderate' weight should be accorded to what she sees is 'generic' economic benefit is in direct contradiction to the findings of the previous appeal inspector when exactly the same argument was presented to him. He rejected that approach and accorded 'significant' weight to the economic benefits[59]. Miss Altman was unable to give any reason to depart from that finding, her rationale for 'moderate' having been considered and rejected[60].

74. Possibly of even more moment is the Council's erroneous approach to the social and economic benefits of housing per se, and affordable housing in particular. Miss Altman only accorded 'moderate' weight because the Council could demonstrate a 5 year housing land supply.

75. That position is a startling – but telling – error. The Secretary of State, in light of the national policy in the NPPF to 'boost significantly' the supply of housing in a time of

[57] Brown proof at para. 7.20
[58] Altman xx CBKC, Day 5
[59] CD8.1 at para. 64
[60] Altman xx CBQC, Day 5

acknowledged housing crisis, consistently gives the provision of housing and affordable housing 'significant', 'very significant', 'substantial' or 'great' weight *whether or not* the LPA can demonstrate a 5 year land supply. Two examples are given in the Core Documents: Watery Lane and Dark Lane[61]. In both cases, the Secretary of State did not diminish the positive weight to be given to the provision of housing by reference to his finding that the Council can demonstrate a 5 year HLS – directly contradicting the approach taken by Miss Altman.

76. But, as if to rub salt in the wound, in this case we have the example in this authority and on this site of the previous appeal inspector giving significant weight to both market housing and affordable housing and the social and economic benefits they bring, despite finding a housing land supply in the region of 7-10 years[62] (now reduced to the Council's maximum of 5.1 years).

77. It is astonishing, therefore, and entirely unsupportable, for the Council to claim only 'moderate' weight to housing and affordable housing. To this it grudgingly adds 'moderate' weight for economic benefits and – it seems – no material weight to the ecological contributions made.

78. Against this misjudged basket of positives, it may be more explicable how Miss Altman can persuade herself that localised landscape impact on a non-valued landscape can justify refusal on the straight balance she sets herself. This is especially so, as she unquestioningly adopts the spurious design objection, the previously rejected accessibility objection and the unfounded congestion objection.

79. Correctly re-calibrated, however, the balance looks very different.

80. On the positive side[63] lie the substantial weight to be accorded to the social and economic benefits of housing per se, and the substantial weight, in like terms, of affordable housing, as endorsed by the previous inspector on this site and the Secretary of State elsewhere. To this we add the substantial weight to be attributed to the undisputed economic benefits of the construction and increased local spending. And to

[61] CD8.14 and CD8.15
[62] See CD8.1 at 64 and see also 47 for the HLS.
[63] See in summary Brown proof 7.20

this we add the further moderate weight of the BNG at a level of at least 10%, and the recreational open space made available to more than just the residents.

81. With this gathered in the positive basket, whether we are to apply a tilted balance or a 'straight' balance, the negatives pale.

82. The accessibility objection is empty. The site has already been judged on appeal to be accessible – a finding upheld by the High Court - and nothing has changed to alter that.

83. The congestion objection is illusory. It was not mounted before, it's adoption now seems to be more a matter of local politics than proper highways analysis – it is unjustified objectively against para. 111 of the NPPF on any technical evidence.

84. The localised landscape and visual impact concomitant with any greenfield development has again already been judged on appeal to be a matter that should not be allowed to deny the public at large the benefits of allowing this scheme. That finding was not challenged in the High Court. This is a non-valued landscape in para. 174(a) terms and the impacts are recorded only at the level of the site and (two of its three) immediate boundaries.

85. The design issues raised are carping at what – in truth – is a very worthy response to the constraints of the site, the aspirations of the NPPF and the agenda to build beautiful places for people to call home. In truth, they were exposed through the evidence as nothing more than opportunistic objections raised only by virtue of the scheme being in detail rather than in outline. On proper analysis against national and local guidance, they evaporate into contradictory bluster, not objective criticism.

86. By no rational measure, therefore, could these harms be said to outweigh the substantial benefits, once those are properly recognised, either at all or – still less – 'significantly and demonstrably'. Rather, the benefits clearly outweigh the limited harms properly identified.

87. It would be wholly wrong, therefore, and contrary to the strive for sustainable development for permission to be refused.

88. Consequently, for all of these reasons, the Inspector is respectfully urged to allow this appeal, and grant this much-needed development, in the public interest and to the public benefit.

CHRISTOPHER BOYLE KC

9th November 2022

Landmark Chambers,

180 Fleet Street,

London,

EC4A 2HG.