

IN THE MATTER OF LAND AT GE AVIATION, KINGS AVENUE, HAMBLE-LE-RICE,
SOUTHAMPTON, SO31 4NF

AND IN THE MATTER OF AN APPEAL BY GE AVIATION LTD UNDER SECTION 78 OF
THE TOWN AND COUNTRY PLANNING ACT 1990

PINS REF: APP/W1715/W/20/3255559

LPA REF: O/18/84191

CLOSING SUBMISSIONS
ON BEHALF OF EASTLEIGH BOROUGH COUNCIL

A. INTRODUCTION

1. These Closing Submissions are made on behalf of Eastleigh Borough Council (“the Council”) in the above Inquiry proceedings into the proposals of GE Aviation (“the Appellant”) for an outline residential-led scheme on the GE Aviation site (“the Site”). They have been drafted in advance of the roundtable discussion on conditions and planning obligations and will be adjusted orally as necessary in the light of that session and any other developments.
2. As I noted in Opening, the Appeal scheme is highly controversial. It is opposed not only by the Council, but also by Hamble and Hound Parish Councils¹, by the Local MP (Paul Holmes²), and by large numbers of local residents, with some 70 letters of objection at application stage³ and more since. It is controversial for good reason. It is contrary to the policies and spatial strategy of both the Eastleigh Local Plan Review 2001-2011 (“the Adopted Local Plan”) and the Eastleigh Borough Local Plan 2016-2036 (“the Emerging Local Plan”) as well as NPPF policy. And its impacts would be significantly harmful in landscape and countryside terms, in terms of failing to provide a safe and suitable access, and in terms of its impacts on an already highly congested local transport network.

¹ <https://www.eastleigh.gov.uk/planning-and-building/planning-inquiry-ge-aviation/appeal-documents>

² https://www.eastleigh.gov.uk/media/8191/210820_pins_3rd-party-representation-holmes-mp-p.pdf

³ CD64 paragraph 17 and https://www.eastleigh.gov.uk/media/8309/o_18_84191-appeal-representations.pdf

3. In Eastleigh, both Officers and Members take their responsibilities to work proactively with applicants⁴ seriously, and the treatment of the Appellant's application ("the Application") is a good example of this. Indeed, very considerable assistance has been provided to the Appellant both at pre-application⁵ and post-application stages, including during the inquiry.
4. The Application was first reported to the Bursledon, Hamble and Hound Local Area Committee ("the Committee") on 25 July 2019⁶, but the determination was deferred so that the Appellant could be given an opportunity to resolve various outstanding matters prior to determination⁷. The Appellant made some progress on these issues, and Officers recommended approval⁸, but ultimately Members found that the Application was too harmful, and permission was refused for the six reasons set out in the Decision Notice of 16 January 2020⁹. This is the democratic planning process in action, a process which works particularly successfully in Eastleigh, given the use of Local Area Committees, which means that Members are intimately acquainted with local circumstances and able effectively to represent local communities¹⁰.
5. As expected, and as a result of considerable collaboration between the Council and Appellant, the reasons for refusal have narrowed. Reason for refusal 4 has been withdrawn¹¹ (though at the time of writing the final position of Sport England is unknown, as discussed in section I below). Reason for refusal 5 has also been withdrawn¹² (though at the time of writing there remains an outstanding objection from Natural England¹³, as discussed in section J below). At the time of writing, the parties are also on the cusp of agreement on the section 106 (reason for refusal 6). But reasons for refusal 1 to 3 remain, and they are fundamental. This is a housing proposal that is not needed, given the robustly healthy supply of housing both over the next five years and in the longer term, and although it has some benefits, it is contrary to the policies and spatial strategies of both the Adopted and Emerging Local Plans as well as NPPF policy, and its adverse

⁴ NPPF paragraph 38

⁵ See, for example, Councillor Craig Proof paragraphs 10-11

⁶ Appellant's Statement of Case Appendix H

⁷ See 25 July 2019 email from Andy Grandfield (Appellant's Statement of Case Appendix I)

⁸ See the December Committee Report (CD64)

⁹ CD62

¹⁰ Craig Proof paragraphs 3-4

¹¹ CD106 paragraph 4

¹² CD106 paragraph 7

¹³ ID7

impacts significantly and demonstrably outweigh the benefits. The Council therefore has no hesitation in requesting that the Appeal be dismissed.

B. APPEAL SITE, APPEAL PROPOSAL AND RELATED APPLICATIONS

6. The Appeal Site is located northwest of the junction of Kings Avenue with Hamble Lane and is abutted by public open space at Mount Pleasant Recreation Ground and the Royal Victoria Country Park. To the southeast is the wider GE Aviation campus. There is a long history of aviation at the campus, complemented by a range of local community facilities on the Appeal Site¹⁴.
7. At application stage, the Appellant stated that the Appeal Site was 8.83ha in area¹⁵. This was accepted by the Council in determining the Application¹⁶ and was a position maintained in the Appellant's Statement of Case¹⁷. The Council queried the measurement in its Statement of Case¹⁸ and it is now common ground that the correct area is 9.45ha¹⁹. It is also common ground that (contrary to the Appellant's position that only a "small part" of the site is located in the countryside²⁰) the majority of the Appeal Site (55%) is countryside in both the Adopted and Emerging Local Plans²¹. It is fair to note that this includes the 19% that constitutes the football pitch and bowling green that will be retained, but this leaves 36% of the Appeal Site as countryside that will be built over, a very sizeable amount.
8. The Application is for an outline consent (with all matters reserved except means of access) for a residential-led scheme for up to 148 dwellings with new vehicular access, works to highways, landscaping and other associated works, as well as the relocation of the existing cricket pitch and works to the existing bowls and football facilities. It also seeks permission for the demolition

¹⁴ Craig Proof paragraph 8, and SOCG (CD63) paragraph 2.2.

¹⁵ Planning Statement paragraph 2.1 (Appendix E(iv) to the Appellant's Statement of Case)

¹⁶ CD64 paragraph 14

¹⁷ Paragraph 2.1

¹⁸ Paragraph 5.5

¹⁹ SOCG (CD63) paragraph 2.1.

²⁰ See paragraph 7.3 of the Appellant's Statement of Case and Chapman Proof paragraphs 4.47 and 6.13

²¹ SOCG (CD63) paragraph 6.5

of the non-original extensions to the Grade II* listed Sydney Lodge and certain factory buildings. The Site Location Plan²² provides a helpful visual summary of the scheme.

9. The demolition of the non-original extensions to Sydney Lodge, as well as related works, are addressed in a separate planning application (reference F/18/84621) and listed building consent application (reference L/19/85126) which were granted permission/consent on 3 November 2020²³. These applications, and their interrelation with the Appeal scheme, are addressed in section K below.

C. HOUSING LAND SUPPLY

10. Since this is a residential-led proposal, it is important to understand the housing land supply position in the Borough. It is common ground that the Council can demonstrate a 5-year supply of deliverable sites (plus buffer) in accordance with paragraph 73 of the NPPF²⁴. Indeed, as Mr Chapman accepted²⁵, the Council's most recently published Calculation of Five-Year Housing Land Supply paper (August 2020) demonstrates a 5.6-year supply²⁶, significantly above the 5-year level.
11. Councillor House gave compelling evidence of the action taken to get Eastleigh into this happy position²⁷. Contrary to Mr Chapman's view²⁸, this is not standard local authority fare, but an interventionist approach, with numerous ground-breaking measures, including as follows:
 - a. The Council launched a builders' guarantee scheme at the start of the housing market downturn, offering to buy new stock built by developers to keep developers on site,

²² CD61

²³ CD88 and CD89

²⁴ SOCG (CD63) paragraph 6.3

²⁵ Chapman XX

²⁶ SOCG (CD63) paragraph 6.3 and CD13.

²⁷ It is, you will have appreciated, a matter of huge importance to him: he helped lead the Coalition Government's national review of the role of Local Authorities in housing supply and, at the then Chancellor's request, jointly established the Housing & Finance Institute to assist Local Authorities in increasing housing supply (House Proof paragraph 1).

²⁸ Under XX

which provided a huge confidence boost in Eastleigh and was partly the model for the Government's national scheme²⁹;

- b. The Council also established its own development company to deliver supply over and above that which would be achieved by the market, aiming at an additional 100 homes a year without affecting the market absorption rates for homes for sale³⁰;
- c. The Council is taking a wider role in securing housing land for delivery, including stepping in to progress a site already permitted for 1,400-dwellings at Horton Heath when the scheme stalled due to viability and on which the Council is planning to build up to 2,500 dwellings³¹; and
- d. Councillor House personally chairs regular meetings to review progress and ensure that sites with the potential to stall are given the support needed to deliver against targets³².

12. The end result of these innovative interventions is the housing land supply that this Council now enjoys - around 5.6 years (which equates to a surplus of about 437 dwellings) - a remarkable achievement in fulfilment of Government policy; not only boosting significantly the supply of housing, but building the right homes in the right places.

13. Moreover, the Emerging Local Plan will ensure that housing supply is maintained. Substantial progress has already been made in delivering the Emerging Local Plan sites, with 3,795 homes already completed and a further 487 with resolutions to permit (at April 2020). As a consequence, against an annual target of 729 completions, the Council achieved nearly 1,200 new homes in 2018-19, and over 1,200 in 2019-20, and latest estimates record a further 756 homes as under construction (Q1 2020-21)³³.

²⁹ House Proof paragraph 4

³⁰ House Proof paragraph 5

³¹ House Proof paragraph 6 and XIC

³² House Proof paragraph 8

³³ House Proof paragraph 13, Errington Proof paragraph 11.3

14. One can also be confident that the Council will maintain a robust housing land supply over the Emerging Local Plan period. Despite the deletion of the Strategic Growth Option (“SGO”), the Emerging Local Plan Inspector was clear in her letter of 1 April 2020³⁴ that there would be sufficient supply from non-SGO sources to “meet both the need and requirement for housing for the majority of the plan period” (by which she meant into the early 2030s). Any uncertainty at that stage can and should be addressed through a review of the Local Plan (which is statutorily required within 5 years of adoption).
15. The upshot of all of this is that there is no market housing need case for the Appellant’s proposal. The Council will have no difficulty delivering the right homes in the right places in accordance with the Plan-led system, and its approach should not be upset by ad hoc proposals such as the Appellant’s scheme.

D. LEGAL AND POLICY FRAMEWORK AND THE PROPER APPROACH

Legal Framework

16. As will be all too familiar to you, sections 70(2) and 79(4) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require appeals to be determined in accordance with the development plan unless material considerations indicate otherwise.
17. Since the proposal affects Sydney Lodge (a Grade II* listed building), section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is also relevant. It requires that “in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. This section creates a “strong presumption” against proposals which would harm a listed building or its setting: *East Northamptonshire DC v SSCLG* [2015] 1 WLR 45³⁵.

³⁴ CD6 at paragraph 42

³⁵ Given that this proposition is uncontroversial and the Appeal proposal is agreed not to be harmful to heritage assets in overall terms, the Council has not provided a copy of this authority, but can do so if requested.

18. The NPPF is an important material consideration in all planning applications and appeals. Paragraph 11 applies a “presumption in favour of sustainable development”. However, it “cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan [and] must be exercised consistently with, and not so as to displace or distort, the statutory scheme”³⁶. The proper approach to paragraph 11 (in the equivalent context of the NPPF 2018) was considered by Mr Justice Holgate in *Monkhill Ltd v SSHCLG* [2020] P.T.S.R. 416³⁷ at [39] and [45], an approach which has been applied by the Council in this case.
19. Under paragraph 213 of the NPPF, Local Plans are not rendered out-of-date simply because they were adopted or made prior to the publication of the NPPF³⁸, nor simply because they are time-expired³⁹. However, the weight to be given to their policies depends on their degree of consistency with the NPPF. In housing cases, by virtue of footnote 7 to paragraph 11 of the NPPF, policies may also be rendered out-of-date by the absence of a five-year supply of deliverable housing sites.
20. Where policies are rendered out-of-date by the absence of a five-year housing supply, the weight to be attached to them will ordinarily be reduced, though this is a matter of judgment for the decision-taker: *Oxton Farm v Harrogate Borough Council* [2020] EWCA Civ 805 at [52].
21. Where, on the other hand, a Local Planning Authority can demonstrate a five-year housing supply, a decision-taker is not required to take into account the existence of the five-year supply when deciding the weight to be attached to policies: *Eastleigh BC v SSHCLG* [2019] EWHC 1862 (Admin)⁴⁰ at [49]-[50]. However, the existence (and extent) of a housing surplus may be a highly material consideration to be weighed in the overall planning balance, which is the “proper place” in the analysis for such a consideration: *Ibid* at [50]. It is a matter of common sense that the more secure the housing supply, the less the need for additional housing.

³⁶ *SSCLG v Hopkins Homes Ltd* [2017] 1 WLR 1865 at [21] (CD97)

³⁷ CD99

³⁸ NPPF paragraph 213, *SSCLG v Hopkins Homes Ltd* [2017] 1 WLR 1865 at [67] (CD97)

³⁹ CD7 at AD40-42, CD8 at [8], CD9 at [15]

⁴⁰ CD86

The Adopted Local Plan

Introduction

22. The Adopted Local Plan (the relevant policies of which were saved in 2009) is the key part of the development plan for the purposes of this Appeal⁴¹. It is common ground that it is not out-of-date because of its age or because it is time-expired, that its policies are not rendered out-of-date by the absence of a five-year housing land supply, and that the Plan is broadly consistent with the NPPF⁴². However, limited disagreement on individual policies remains, and I address this below.

Policy 1.CO

23. As already noted, the majority of the Appeal Site is located outside any settlement and/or development boundary identified on the adopted Proposals Map and, as such, is designated as “countryside” for the purposes of the Adopted Local Plan. Policy 1.CO therefore applies. The supporting text to Policy 1.CO recognises (at paragraph 1.2) that: “... the countryside is a diminishing resource and there is a need to be particularly vigilant about its future use”. Consistent with this, the policy itself provides that planning permission “will not be granted” unless it meets at least one of four listed criteria, none of which is met by the Appeal scheme.

24. As Mr Errington set out in paragraphs 6.16 to 6.20 of his Proof, Policy 1.CO has been considered in a number of Appeal Decisions. Mr Chapman only referred to one of these in his Proof (Satchell Lane) but he accepted under XX that all were material.

25. In the Mallards Road decision⁴³, the Inspector decided as follows:

“43. The Council also took the view that policy 1CO was out-of-date on the basis of the view of the Inspector in a relatively recent decision in the Borough. The Inspector considered the policy to be out-of-date by virtue of the fact that it did not contain an internal cost/benefit balancing exercise.

44. With respect to my colleague, I cannot agree with this position. Case law⁴⁴ is clear in this regard, with the relevant judgement stating that development plan policy should not be regarded as out-of-date, “*if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal*”.

⁴¹ The Hampshire Minerals and Waste Plan 2013 is also relevant, but the issues that arise under that can be straightforwardly addressed by condition (proposed condition 35).

⁴² Main SOCG paragraph 6.7

⁴³ CD7

⁴⁴ *Bloor Homes East Midlands Ltd v SCLG* [2017] PTSR 1283 at [186] (CD95)

45. Thus, I do not consider policy 1CO to be out-of-date on these terms and **full weight** is afforded to it..." (Emphasis added)

26. Shortly thereafter, the Bubb Lane Inspector stated as follows⁴⁵, slightly (but only slightly) disagreeing with the Mallards Road Inspector:

"14. As others have noted, the wording of policy 1.CO is consistent with the fifth core principle in NPPF, of recognising the intrinsic character and beauty of the countryside. From my reading of this section of the Local Plan, which sets out the context and objectives for the countryside policies, I note that although protection is a key objective, the Plan also accepts that genuine development needs have to be accommodated. Read in context, I consider that the policy does not necessarily establish a blanket protection of the countryside, as argued by the Appellant. On the other hand, it is undoubtedly the case that in its overall treatment of land beyond the urban edge, the policy lacks the flexibility of the approach to the rural area favoured by NPPF paragraph 28. Rather than full weight therefore, I would attach **considerable weight** to conflict with this policy." (Emphasis added)

27. Likewise, the Inspector in the Mazels decision⁴⁶ decided as follows:

"17. Whilst policy 1.CO seeks to prevent residential development beyond the urban edge, it does not apply a blanket protection of the countryside as it allows for certain forms of development including those where there is a genuine need for a countryside location, albeit it is not quite as flexible as the approach set out in paragraph 28 of the Framework. Its aims are, however, broadly consistent with the fifth core planning principle of the Framework, recognising the intrinsic character and beauty of the countryside.

...

20. In this context, based on the evidence before me, I consider that whilst policy 1.CO should be considered as being out-of-date for the reasons set out above, any conflict with it should nevertheless still carry **considerable weight**. This approach broadly follows the approach of my colleague in the Bubb Lane decision. Whilst it differs from the approach of my colleague in Mallards Road, my reasoning is based on all the evidence and circumstances before me for these appeals..." (Emphasis added)

28. Moving on, and now in the context of the NPPF 2018, it was held as follows by Inspector Wilson in the Roll Call decision⁴⁷:

"8. The appellant has also argued that reduced weight should be given to [Policy] 1.CO ... of the Local Plan suggesting a lack of consistency with the Framework.

⁴⁵ CD8

⁴⁶ CD9

⁴⁷ CD10

Moreover Policy 1.CO is argued to be relevant to the supply of housing and out of date. In contrast the Council stress that in the context of the Supreme Court Judgement Policy 1.CO is not specific to the supply of housing and therefore not out of date. A number of appeals have been referred to by the appellant and the Council in respect of Policy 1.CO within which it has been attributed varying degrees of weight.

9. Taking all these matters into account, even though the Council's housing policies are not saved, I find that Policy 1.CO is relevant as a saved policy which has aims broadly consistent with part [15]⁴⁸ of the Framework in recognising the intrinsic character and beauty of the countryside. It seeks to prevent residential development beyond the urban edge but does not apply blanket protection of the countryside allowing for certain forms of development where there is a genuine need for a countryside location. I therefore attribute **significant weight** to it." (Emphasis added)

29. The most recent decision (and the only one cited by Mr Chapman) is the Satchell Lane decision⁴⁹.

In this case, the Inspector took a different view to previous Inspectors, finding as follows:

"16. LPR policy 1.CO (and related policies) does not impose blanket protection in the countryside. However the approach clearly lacks the flexible and balanced approach towards the issue enshrined in the Framework. On that basis the policies should be accorded **reduced weight**.

17. The question of the extent to which the weight should be reduced was canvassed at the Inquiry. Appeal decisions at various locations within the area were discussed, but I am conscious that I do not know what evidence or arguments were advanced in those cases. Similarly a range of appeal decisions from elsewhere were considered, although these are of less relevance as the policy situation and the details of particular cases could be significantly different.

18. As stated above the fact that the authority can clearly demonstrate a five year housing land supply is not relevant to the weight which should be accorded to development plan policies. However when considering the currency of a policy, it is relevant to have regard to the record of how it has been applied. In this case the Council has achieved the current supply position in part by greenfield planning permissions outside settlement boundaries – in some cases on sites which were within Strategic Gaps (an additional policy objection which does not apply in this case). I do not criticise the authority for any of these decisions but it is reasonable to infer that, in those cases, the Council either considered that the settlement boundary carried reduced weight or that the policy harm was outweighed by other considerations.

19. In assessing the weight to be given to the settlement boundary and related policies the appellant accepted that a range from considerable/significant to full weight had

⁴⁸ See: paragraph 170(b) of the 2019 NPPF.

⁴⁹ CD11

been attributed in other cases. In this case, I find that although LPR policy 1.CO (and related policies) do not apply a blanket prohibition on development in the countryside they are out of step with national policy. I therefore attribute **limited weight to the countryside policies.**"

30. The Council sought, unsuccessfully, to challenge the Satchell Lane decision in the High Court⁵⁰.

Garnham J found (so far as relevant for present purposes) that:

- a. It was not irrational for the Inspector to have had regard to how Policy 1.CO (and other policies) had been applied in the past in order to obtain a five-year housing land supply⁵¹.
- b. It was not irrational of the Inspector to find an inconsistency between Policy 1.CO (and other policies) and paragraph 170 of the NPPF, which adopts a "much more nuanced approach" which the Inspector "rightly described" as a "flexible and balanced approach" and it was not irrational of the Inspector to conclude that this led to reduced weight being attributed to the policies⁵².
- c. The Inspector's attribution of "limited weight" to the countryside policies, despite other Inspectors having attached "considerable" or "significant" weight to breaches of Policy 1.CO, was a matter of planning judgment for the Inspector, and was not irrational⁵³.

31. As can be seen, therefore, and as is common ground⁵⁴, the High Court was looking (and was only entitled to look) at the lawfulness of the Satchell Lane decision. It was not looking at whether the planning judgements of the Satchell Lane Inspector were better or worse than those made by previous Inspectors. In the Council's view, they are worse. Given the robust current housing land supply, it is (with respect) not appropriate to reduce the weight to be attached to Policy 1.CO because of historic permissions in the countryside at a time when the Council lacked

⁵⁰ CD86

⁵¹ Paragraphs 51 to 54

⁵² Paragraphs 60-62

⁵³ Paragraph 63

⁵⁴ Accepted by Chapman under XX

a five-year supply. And it is not appropriate to give a significant reduction in weight to a countryside policy simply on the basis that the NPPF is more nuanced.

32. In the light of all of the above decisions, the Council's view is that Policy 1.CO is broadly consistent with the provisions of the NPPF, in particular paragraphs 20(d) and 170(b). It does not create a blanket presumption against development in the countryside, and although it does not contain the full degree of flexibility, or nuance, now sought by the NPPF, it does allow a degree of balancing to be undertaken. As a result, Policy 1.CO is not out of date and both the policy and any conflict with it should be afforded **significant/considerable** to **full** weight.

Policies 18.CO and 59.BE(i)

33. Policy 18.CO provides that "Development which fails to respect, or has an adverse impact on, the intrinsic character of the landscape, will be refused". As Mr Errington indicated⁵⁵, this is consistent with paragraphs 20(d), 127(c) and 170(a) of the NPPF.
34. Policy 59BE(i) provides that "Development proposals which are in accordance with the other policies in this plan will be permitted provided ... they take full and proper account of the context of the site including the character and appearance of the locality or neighbourhood and are appropriate in mass, scale, materials, layout, density, design and siting, both in themselves and in relation to adjoining buildings, spaces and views, natural features and trees worthy of retention". As Mr Errington correctly noted⁵⁶, this is aligned with Chapter 12 of the NPPF, which seeks to achieve well-designed places, and in particular, paragraph 127.
35. In the Satchell Lane decision, the Inspector considered Policy 18.CO to be "essentially parasitic" on Policy 1.CO⁵⁷ and appears to have attributed "limited weight" to it⁵⁸. For the reasons I have given in relation to Policy 1.CO, he was wrong to do so.

36. By contrast, in the Bubb Lane decision, the Inspector⁵⁹ stated as follows:

⁵⁵ Errington Proof paragraph 6.23

⁵⁶ Errington Proof paragraph 6.25

⁵⁷ CD11 at paragraph 11

⁵⁸ CD11 at paragraph 32

⁵⁹ CD8 at paragraph 18

“The fifth core planning principle provides general support for policies 18.CO and 59.BE. As I read it, NPPF paragraph 113 is framed to encourage the use of criteria-based landscape policies which are of general application, since it is in that context that the guidance concerning protection being commensurate with status makes sense. Although policy 18.CO is framed in simple terms it, too, should be read in the context of a plan which seeks to protect the countryside whilst also meeting development needs. Even though it offers no guidance as to how effects should be weighed, it does not necessarily represent a blanket level of protection. Likewise, NPPF continues to give strong support to policies for good design, as embodied in policy 59.BE, albeit that this policy also lacks guidance as to how effects should be weighed. There is some lack of consistency with NPPF, which would warrant **substantial rather than full weight** being attached to any conflict with these policies, but **this is not to such an extent that they should be regarded as out of date.**” (Emphasis added)

37. In the Mazels decision⁶⁰, the Inspector also found policy 59.BE to be “generally in accordance with the Framework” and that therefore any conflict with it would “carry full weight”.
38. The Council agrees that Policies 18.CO and 59.BE are up to date and that at least substantial weight should be afforded to the policies and any conflict with them. Mr Errington accepted that the Policy 18.CO does not include a balance, but this is not a prerequisite for NPPF compliance⁶¹ and in any event, as with Policy 1.CO, an absence of nuance is not a reason to give a significant weight reduction to a policy that is broadly aligned with NPPF aspirations to protect and enhance landscape.

Other policies

39. As Mr Chapman confirmed⁶², the Appellant does not dispute the consistency of any other policies with the NPPF and Mr Errington convincingly demonstrated in paragraphs 6.28 to 6.32 of his Proof that all are consistent with the NPPF, as a result of which they should attract full weight.

Conclusion on the Adopted Local Plan

40. For the reasons set out above, the policies which are most important for determining the Appeal are not out-of-date for the purposes of paragraph 11(d) of the NPPF and attract

⁶⁰ CD9 at paragraph 22

⁶¹ *Bloor Homes East Midlands Ltd v SCLG* [2017] PTSR 1283 at [186] (CD95)

⁶² Under XX

significant/considerable to full weight. The NPPF presumption in favour of sustainable development therefore does not arise.

The Emerging Local Plan

41. Paragraph 48 of the NPPF provides that local planning authorities (and, by extension, Inspectors on appeal) may give weight to relevant policies in emerging plans according to:
- a. the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
 - b. the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
 - c. the degree of consistency of the relevant policies in the emerging plan to the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given)⁶³.
42. So far as paragraph 48(a) is concerned, it is clear that the Emerging Local Plan has reached an advanced stage, and the Appellant was wrong to suggest otherwise. The Emerging Local Plan was submitted for examination in October 2018 and the examination hearings took place between November 2019 and January 2020. A draft suite of Main Modifications has now been provided to the Inspector, and it is anticipated that consultation on them will occur in early 2021. The Emerging Local Plan is therefore nearing the end of the examination process.
43. As for paragraph 48(b), the vast majority of objection to the Emerging Local Plan centred⁶⁴ on the proposed SGO which, following the Inspector's letter of 1 April 2020⁶⁵, is now proposed to be deleted from the Plan⁶⁶. The Appellant does not suggest that there are significant unresolved

⁶³ Footnote 22 here provides that "During the transitional period for emerging plans submitted for examination (set out in paragraph 214), consistency should be tested against the previous Framework published in March 2012."

⁶⁴ Errington Proof paragraph 6.35 and 6.43 and in XIC (in which he noted that 766 of the total 927 objections were to the policy for the SGO).

⁶⁵ CD6

⁶⁶ Errington Proof paragraph 6.35 and CD65

objections to the relevant policies for the purposes of this Appeal. Moreover, as Mr Errington explained⁶⁷, the limited modifications that have been proposed to the emerging policies at issue in this Appeal do not materially affect the way in which the submitted policies should be interpreted or applied in respect of the Appeal proposal; and the thrust of the relevant policies has remained broadly consistent over an extended period of time, as has the designation of the urban edge / countryside boundary in the vicinity of the Appeal site.

44. As for paragraph 48(c), Mr Errington convincingly demonstrated in paragraphs 6.37 to 6.42 of his Proof that the relevant emerging policies for the purposes of this Appeal are all fully consistent with the NPPF, and Mr Chapman confirmed under XX that he did not suggest otherwise.
45. Yet despite all of this, Mr Chapman suggested that “only limited weight” should be given to the Emerging Local Plan⁶⁸. With respect, his position on this issue was misconceived.
46. As both Mr Errington⁶⁹ and Mr Chapman⁷⁰ noted in their evidence, in her letter of 1 April 2020⁷¹, the Emerging Local Plan Inspector raised criticisms of the spatial strategy for strategic housing growth and recommended the deletion of the SGO and associated link road. Her criticism focussed in large part on the final paragraph of the Development Distribution Strategy & Principles document (“the DDSP”)⁷², which stated that there should be no significant additional development in the Hamble peninsula due to transport constraints, minerals safeguarding issues and the vulnerability of countryside gaps. The Inspector concluded that this principle had exerted a fundamental influence on the consideration of reasonable alternatives for the SGO, but that it had been drawn up without sufficient evidence, as a result of which the spatial strategy for strategic growth was unjustified⁷³. The Inspector also raised various criticisms of the sustainability appraisal for the SGO⁷⁴, including that the DDSP had predetermined the

⁶⁷ Errington Proof paragraphs 5.4 to 5.8

⁶⁸ Chapman paragraph 3.17

⁶⁹ Errington Proof paragraphs 6.45 to 6.50

⁷⁰ Chapman Proof paragraphs 3.4 to 3.17

⁷¹ CD6

⁷² CD16

⁷³ Paragraphs 11 to 12

⁷⁴ Paragraphs 13ff

settlement gaps needed on the Hamble peninsula and ruled out the possibility of a SGO on the peninsula⁷⁵.

47. As can be seen, therefore, the Inspector's criticisms concerned strategic growth (i.e. the SGO and reasonable alternatives, which included Hamble Airfield, but never included the Appeal Site, which is too small for strategic growth) and not the other site allocations under Policy S2, which the Inspector found to be justified by the evidence base⁷⁶. Moreover, the Inspector did not suggest that an alternative SGO would be preferable, merely that the Council's favoured SGO was unjustified on the current evidence. The Inspector therefore recommended that the SGO (and its associated link road) be deleted from the Plan⁷⁷, recognising that this would introduce uncertainty into the housing land supply position in the last 4 or 5 years of the Plan (i.e. in the 2030s), but recognising also that this could be addressed in a review within 5 years of adoption. As Mr Errington explained, the Council has accepted the Inspector's recommendation of deleting the SGO and addressing future strategic growth in a review⁷⁸, which is the appropriate mechanism for addressing that issue under a Plan-led system.

48. The position, therefore, is clear. The Emerging Local Plan is moving forward to adoption, but without a SGO. The Local Plan Inspector has been clear that she is not recommending additional allocations now to plug the SGO gap, but that the potential shortfall in the 2030s should be addressed through a review within five years after adoption. There will be a main modifications consultation, but that is not an open textured consultation, merely a consultation on the main modifications that the Inspector will be recommending. Future strategic growth will be addressed in a review within five years of adoption, and the Inspector has not commented one way or the other on where strategic growth should be directed.

49. Mr Chapman is therefore plainly wrong to state⁷⁹ that until matters relating to the distribution of strategic growth have been resolved, only limited weight should be given to the Emerging Local Plan. Those matters will be resolved under the review, so they will not have been resolved when the Emerging Local Plan is adopted. Yet Mr Chapman rightly accepted that on adoption

⁷⁵ Paragraph 33

⁷⁶ Paragraph 3

⁷⁷ Paragraph 41

⁷⁸ Errington Proof paragraph 6.48 and CD65

⁷⁹ Chapman Proof paragraph 3.17

the Emerging Local Plan will command full weight. His position is therefore, with respect, incoherent. The fact that a future review will consider where strategic growth needed in the 2030s will be located will do nothing to diminish the Emerging Local Plan's status on adoption, and it must follow that is no basis for limiting the weight to be attached to it as an advanced emerging plan now.

50. For those reasons, the Emerging Local Plan, and any conflict with it and its policies, should be given considerable weight⁸⁰.

E. WHETHER THE PROPOSED DEVELOPMENT WOULD BE IN AN APPROPRIATE LOCATION HAVING REGARD TO THE DEVELOPMENT PLAN AND THE EFFECT ON THE CHARACTER AND APPEARANCE OF THE SURROUNDING AREA

Locational Sustainability

51. It is common ground that the Appeal Site occupies a sustainable location within the settlement of Hamble-le-Rice⁸¹: Coronation Parade⁸² is 350m away; a bus stop (albeit one that is only part of a single regular bus route) is about 450m away; and Hamble Railway Station is about 1.2km away⁸³. There is no locational sustainability objection to the proposal. However, the Site's sustainability credentials should not be overstated. It must be remembered that it is at the lower end of Tier 3 settlements under the Emerging Local Plan's settlement hierarchy⁸⁴. And, although Mr Tungatt would not accept the point, it is clear that this will be a primarily car-based development.

52. Mr Chapman sought to bolster the site's sustainability credentials by reference⁸⁵ to the Satchell Lane⁸⁶ and Berry Farm⁸⁷ decisions, but these were different schemes on different sites with different surrounding circumstances. At the date of the Satchell Lane decision, the Emerging Local Plan was at a much earlier stage of preparation, and the Council and Appellant agreed

⁸⁰ Errington Proof paragraph 6.43

⁸¹ Main SOCG paragraph 6.4.

⁸² *Ibid* and Transport SOCG paragraph 2.1

⁸³ Transport SOCG paragraphs 2.1 to 2.3

⁸⁴ CD4 page 34 and Errington Proof paragraph 6.53

⁸⁵ Chapman Proof paragraph 4.10

⁸⁶ CD11

⁸⁷ CD101

that it could only attract “limited” weight⁸⁸. As for the Berry Farm decision, this predated the preparation of the Emerging Local Plan (and at the time of the decision the earlier submitted Eastleigh Local Plan Review 2011-2029 had been found unsound due to an under-provision of planned housing⁸⁹) and the Council could also only demonstrate a 4.5-year housing land supply⁹⁰. These decisions do not, therefore, assist the Appellant’s argument.

53. Moreover, as Mr Errington explained⁹¹, the location for housing developments of the scale of the Appeal scheme would be much more appropriately considered by way of a comparative site selection exercise under the review of the Emerging Local Plan rather than on an ad hoc basis at this stage, when there is a robust planned-for supply up until the 2030s. The Appellant sought to criticise Mr Errington in opening⁹² for raising a new prematurity point, but was wrong to do so. The Council has never suggested that permission should be refused under paragraph 49 of the NPPF – the development is not substantial or significant enough for that – but in a plan-led system it counts heavily against the Appeal scheme that it is in breach of adopted policy and emerging policy at an advanced stage of preparation in circumstances where there is no market housing need into the longer term.

Countryside Impacts and Conflict with Spatial Strategies

54. As already explained, the majority of the Appeal Site (55%) is countryside in both the Adopted and Emerging Local Plans⁹³. It is not allocated for residential development under either Plan, though, as Mr Errington explained⁹⁴, it was unsuccessfully promoted for residential development in the Emerging Local Plan through the Strategic Land Availability Assessment (“SLAA”) process.

55. Mr Chapman suggested that the Appeal Site should be considered a “windfall site” which would “contribute to the Borough’s housing need”⁹⁵. “Windfall sites” are defined in the NPPF Glossary

⁸⁸ CD11 at paragraph 20

⁸⁹ CD101 at paragraph 69

⁹⁰ CD101 at paragraph 72

⁹¹ Errington Proof paragraph 6.54

⁹² ID1 paragraph 25

⁹³ SOCG (CD63) paragraph 6.5

⁹⁴ Errington Proof paragraphs 7.1 to 7.7

⁹⁵ Chapman Proof para 4.16

as “Sites not specifically identified in the development plan” so, in reality, all Mr Chapman was recognising was that the Appeal site is not allocated for residential development. But, in addition, as noted in the Roll Call decision⁹⁶, paragraph 68(c) of the NPPF provides support for windfall within existing settlements, not outside them (as the majority of this Site is). Moreover, as in the Roll Call case, the Appellant has provided no evidence that the level of windfall sites envisaged by the Council could not be achieved without the Appeal scheme.

56. The countryside status of the Appeal Site is important for two reasons. First, it is an element of the spatial strategies established under the Adopted and Emerging Local Plans that the Appeal proposal fails to respect. And second, countryside is an important and diminishing resource which should be protected and enhanced⁹⁷, and “diminution of the countryside” is intrinsically harmful, as the Grange Road Inspector recognised⁹⁸, and as paragraph 170(b) of the NPPF itself recognises in requiring the “intrinsic character and beauty of the countryside” to be recognised.

Landscape and Visual Impacts

57. It is common ground that the Appeal proposal will give rise to landscape and visual harms. In particular, it is common ground that⁹⁹:

- a. The development would have a minor adverse impact on the wider landscape (and negligible impact on the Country Park);
- b. The construction of residential development with associated infrastructure on an open sportsground would reduce the sense of openness and would result in an obvious change to its character at a site-based level; and
- c. There would be a major adverse visual effect to areas of public footpath 13 adjacent to the cricket ground during winter.

⁹⁶ CD10 at paragraph 7

⁹⁷ See paragraphs 1.1 and 1.2 of the supporting text to Policy 1.CO of the Adopted Local Plan (CD3), paragraph 4.47 of the supporting text to policy S7 of the Emerging Local Plan (CD4), and paragraph 170(b) of the NPPF.

⁹⁸ CD12 at paragraph 17

⁹⁹ SOCG (CD63) paragraph 6.19(vi)-(viii)

58. So far as the first two of these are concerned, paragraph 5.6 of the Appellant's Landscape and Visual Appraisal fairly accepts that the:

"The proposed development would, however, change part of the application site from an open sportsground (cricket ground) to a residential development with internal roads, public open space, grasslands and areas of new plantings. Its sense of openness would be reduced and clearly there would be an obvious change to its landscape character at a site-based level. In association with the existing football ground and bowling green, it would thus become part of the urban area of Hamble le Rice."

59. That is clearly right. The building of up to 148 houses and existing infrastructure is clearly harmful at a site level and, albeit to a lesser degree, on the wider landscape. Mr Ellis seeks to minimise this by noting that the Appeal Site is not "rural" and suggesting that "Development of the Appeal Scheme would therefore not result in the loss of rural landscape"¹⁰⁰. However, it would still be harmful, and to suggest that "non rural" countryside should not be protected and enhanced would set a dangerous precedent, particularly in Eastleigh where the Emerging Local Plan notes that much of the countryside "has the characteristics of urban-fringe where careful management is required to avoid urbanisation and the coalescence of settlements"¹⁰¹.

60. As for the visual impacts on areas of public footpath 13, the Appellant rightly accepts that these would be major adverse in year 1 winter views (for areas adjacent to the cricket ground, and moderate adverse elsewhere). However, Mr Ellis was wrong to suggest that by year 10 the screening would be such that the effects would be "no more than negligible adverse during winter and summer"¹⁰². As Mr Ellis' Figure 3.1 shows, footpath 13 runs adjacent to almost the entire northern edge of the Appeal Site and affords very clear views into the Site in a range of places. A comparison between Mr Ellis' Figure 5.2 VP2a (existing view for viewpoint 2), VP2b (proposed view in year 1 for viewpoint 2), and VP2c (proposed view in year 10 for viewpoint 2) shows that the new development is very obvious in both years 1 and 10. Any gaps in the screening (whether those created by the Appellant to connect to the cycle/foot path and recreation ground¹⁰³ or those which otherwise arise) will render it more obvious, and the screening itself damages the open cricket ground views that are currently enjoyed.

¹⁰⁰ Ellis Proof paragraph 5.8 (Mr Chapman misquotes this at paragraph 4.21 of his Proof by substituting "countryside" for "rural landscape").

¹⁰¹ CD4 paragraph 4.51

¹⁰² Ellis Proof paragraph 5.10

¹⁰³ See CD61

61. A comparison of Mr Ellis' Figure 5.1 VP1a (existing view for viewpoint 1), VP1b (proposed view in year 1 for viewpoint 1), and VP1c (proposed view in year 10 for viewpoint 1) also shows negative visual impacts from Hamble Lane in both years 1 and 10.
62. Mr Errington was therefore clearly right to emphasise¹⁰⁴ that the visual effects are more harmful than the Appellant has suggested. He was also right (in the same paragraph) to suggest that the new northern boundary that would be formed by the development is less strong, clear and defensible than the existing boundary formed by King's Avenue.

Breaches of Adopted and Emerging Policy and the NPPF

63. As Mr Chapman accepts¹⁰⁵, the Appeal proposal is plainly contrary to Policy 1.CO of the Adopted Local Plan. This is fundamental, rendering the proposal contrary to the adopted spatial strategy. Contrary to Mr Chapman's position, this is sufficient on its own to render the proposal not in accordance with the development plan. But in any event, as a result of its landscape and visual impacts, the proposal also fails to respect and has an adverse impact on the intrinsic character of the landscape, which renders it in breach of Policy 18.CO¹⁰⁶, as Mr Chapman accepted under XX (though not in his Proof). Although Mr Chapman did not accept it, the proposal also fails to take full and proper account of the context of the site including the character and appearance of the locality or neighbourhood, which renders it in breach of Policy 59.BE(i).
64. So far as the Emerging Local Plan is concerned, the proposal is contrary to Policy S7 since it does not fall within any of the items in the list for which planning permission will be granted in the countryside, and is therefore contrary to the emerging spatial strategy. Its landscape and visual impacts also mean that it damages the existing environment, in breach of Policy S1(ix), and harms landscape character and appearance, in breach of Policy S7(2)(a) and Policy DM1(i)(a). Finally, the landscape, visual and countryside harms mean that the proposal fails to accord with paragraphs 20(d), 127(c) and 170(a) and (b) of the NPPF.

¹⁰⁴ In paragraph 9.6 of his Proof and orally

¹⁰⁵ Chapman Proof paragraph 4.50 and under XX

¹⁰⁶ See paragraphs 75 and 79 of the Mallards Road decision (CD7)

Overall Conclusion

65. The issues under the first Reason for Refusal are fundamental and on their own mandate dismissal of the Appeal. As Mr Errington and Councillor Craig both confirmed, even if there were no transport/access objection to the proposal, the first Reason for Refusal would still require the Appeal to be dismissed, and that is so even if the Appellant were right that only “limited” weight should be attached to policies 1.CO, 18.CO and 59.BE¹⁰⁷.

F. WHETHER THE PROPOSED DEVELOPMENT WOULD PROVIDE SAFE AND SUITABLE ACCESS FOR ALL USERS

Introduction

66. The Appeal scheme proposes significant changes to the access to the Site at the junction between Kings Avenue and Hamble Lane. This is a priority junction with a dedicated right-hand turning lane for traffic entering Kings Avenue. It has no particular capacity issues, although some queuing can occur¹⁰⁸; nor is there a pattern of accidents or any other safety issues warranting intervention (as Mr Tungatt accepted¹⁰⁹).

67. Immediately to the south of the Kings Avenue junction is the Coronation Parade retail strip. Cyclists and pedestrians currently use both the eastern and western sides, and there is currently a roughly even split in cycle usage between these¹¹⁰. The footway/cycleway on the eastern side is 4m wide¹¹¹ and is part of the Dani King Cycleway / National Cycle Route 2 (“NCR2”¹¹²), which shows the importance of cycling in this area¹¹³, and of ensuring that existing routes are protected and enhanced.

68. Coronation Parade is approached by cyclists and pedestrians from the south by crossing Coach Road, via tactile paving and dropped kerbs that connect to both sides of the Parade. Heading north from Coronation Parade, there are three principal desire lines for pedestrians and cyclists

¹⁰⁷ As Mr Errington expressly confirmed in Re-X

¹⁰⁸ Tungatt Proof paragraph 3.3.3

¹⁰⁹ Under XX

¹¹⁰ Tungatt Proof paragraph 4.4.2 and TN09 paragraph 3.5 (CD25(9)).

¹¹¹ Transport SOCG paragraph 3.4

¹¹² Note, the Transport SOCG wrongly refers to it as #4 at paragraph 3.10.

¹¹³ Mr Tungatt’s Figure DT01 provide a helpful illustration of the local pedestrian and cycle infrastructure, including NCR2, other off-road cycleways and footpath 13.

across the existing Kings Avenue junction, shown as red, red-dashed and blue on Mr Tungatt's Figure DT02¹¹⁴. There is also a further desire line across Kings Avenue adjacent to the entrance to Coach Road (shown yellow on DT02) and a desire line crossing Hamble Lane at the island by Folland Court (shown green on DT02). The Appellant has surveyed the use of each desire line, and the split is given in Mr Tungatt's Figure 5.1 (for pedestrians) and Figure 5.2 (for cyclists)¹¹⁵.

69. The changes proposed by the Appellant can be seen in Drawings P01 and P06 (appended to Mr Tungatt's Proof). In essence, the Appellant proposes¹¹⁶:

- a. To realign Kings Avenue approximately 20m to the north of its current alignment to provide off-street parking for existing residents, and to provide a turning head within the new parking area;
- b. To widen the carriageway of Coronation Parade (from a 2.5m to 3m minimum¹¹⁷) to improve the accessibility to large vehicles;
- c. To widen Coronation Parade's western footway/cycleway (from a 2.1m to a 3.5m minimum¹¹⁸) but to shrink the eastern footway/cycleway (from a 4m to a 2m minimum¹¹⁹) so that all pedestrians (apart from those accessing parked cars) and cyclists will use the western footway/cycleway¹²⁰;
- d. To reconfigure the pedestrian crossing across Coronation Parade to ensure a straight-line crossing of both Coronation Parade and Hamble Lane; and
- e. To provide a single new cycle/pedestrian link from the top of the western side of Coronation Parade across King's Avenue and then looping back to re-join the western footway/cycleway of Hamble Lane further north.

¹¹⁴ Transport SOCG paragraph 3.14

¹¹⁵ And see TN09 at CD25(9)

¹¹⁶ Tungatt Proof paragraph 4.4.3

¹¹⁷ Transport SOCG paragraph 3.4

¹¹⁸ Transport SOCG paragraph 3.4

¹¹⁹ Transport SOCG paragraph 3.4

¹²⁰ Transport SOCG paragraph 3.15

70. It is common ground that the proposed parking area on Kings Avenue would have the potential to reduce instances of on-street and on-pavement parking, which would be to the benefit of pedestrian and cycle movements along Kings Avenue¹²¹. There are also advantages in allowing larger vehicles to enter the parade and load/unload in the area provided, although these should not be overstated – as Ms Slater explained, lorries tend to park up and reverse into the current Coronation Parade, a manoeuvre that worked well in her view. Mr Tungatt went further and suggested that the arrangement would be beneficial in preventing pedestrians and cyclists from having to cross the wider junction bell mouth¹²² and that it would “improve safety for all users by formalising the point of crossing and will provide a more attractive environment for all users where pedestrian, cycle and vehicle conflict is reduced”¹²³. This is, regrettably, not the case. The existing crossings across the bell mouth have not led to accidents, and in trying to address the limited existing issues, the Appellant has not only failed to take opportunities to promote sustainable transport modes (as required by paragraph 108 of the NPPF) but also created a proposed access junction that is harmful to the safety and amenity of cyclists and pedestrians, as set out below.

The Road Safety Audit and the Support of the County Council

71. In support of its views on its proposed access, the Appellant relies on the Stage 1 Road Safety Audit (“RSA”) conducted by RKS Associates¹²⁴. However, there are significant doubts as to the robustness of the RSA, as Mr Whitney explained.

72. It is clear that the Auditor was not provided with materials that distinguished between footways and shared footways/cycleways, nor the proposed cycle crossing between Coach Road and Coronation Parade, nor the Appellant’s analysis of pedestrian and cycle desire lines¹²⁵. And it is common ground that the Auditor did not observe any cyclists during the visit¹²⁶. It is also clear that the Auditor did not have a proper understanding of the proposals, since in paragraph 4.2 of

¹²¹ Transport SOCG paragraph 3.9

¹²² Tungatt Proof paragraph 4.3.5

¹²³ Tungatt Proof paragraph 4.4.4

¹²⁴ CD26 and CD76

¹²⁵ Whitney Proof paragraphs 3.6.1 to 3.6.5

¹²⁶ Transport SOCG paragraph 3.6

the RSA it is stated that “It is unclear [from] the information provided if the existing shared use pedestrian/cycle facility along the western side of Hamble Lane is to be retained”.

73. In his Rebuttal Proof¹²⁷, Mr Tungatt pointed out that Auditors are required to carry out audits in accordance with GG-119, including consideration of: whether cycle routes have been provided where required; whether all cycling needs have been considered, especially at junctions; whether the routes are clear of obstructions; and whether shared facilities take account of all user groups. However, those general requirements do not address the issues Mr Whitney raised.
74. Mr Tungatt also corresponded with the Auditor. However, the Auditor’s response¹²⁸ adds to the confusion by stating “we did not witness any cyclists during the time of [the] site visit hence our report stated that ‘it [...] is unclear from the information provided if the existing shared use pedestrian/cycle facility along the western side of Hamble Lane is to be retained’”. But this is a complete non-sequitur and underscores the Auditor’s lack of understanding. Moreover, the Auditor’s response does not address the issues raised by Mr Whitney in connection with Coach Road, which Mr Tungatt accepts will need to be addressed under the section 278 process¹²⁹, and this casts further doubt on the Auditor’s thoroughness in identifying issues.
75. There therefore remain real doubts as to the robustness of the RSA, and since the County Council relied on this document, it also infects their advice¹³⁰. In any event, the views of the Auditor and County Council are not binding, and you have before you detailed expert evidence from the Transport witnesses to this inquiry. I therefore turn to the substantive issues.

Increased Journey Times and Journey Distances

76. It is common ground that the Appellant’s proposals would increase walk/cycle distance by approximately 28m for pedestrians currently using the entire eastern desire line¹³¹. At an average walking pace of 4.8kph, this equates to an increased journey time of approximately 21 seconds¹³²

¹²⁷ Paragraph 2.19

¹²⁸ Tungatt Rebuttal Appendix A

¹²⁹ Tungatt Rebuttal Paragraphs 2.17 to 2.18 and under XX

¹³⁰ Whitney Rebuttal paragraph 3.7.3

¹³¹ Transport SOCG paragraph 3.18

¹³² Tungatt Rebuttal paragraphs 2.2-3

for pedestrians (and approximately 5 seconds for cyclists). For those pedestrians and cyclists using the western desire line, the distance would increase by approximately 3m with an increased walk time of approximately 3 seconds¹³³. Contrary to the Appellant's view, these increased journey times and distances (which would apply to every user in perpetuity) are not insignificant, and they disadvantage sustainable modes, contrary to local and national policy. Moreover, the figures do not take account of interactions between users. Mr Tungatt pointed out that there will be interactions under the status quo, but that misses the point that the new arrangement would lead to increased conflict between pedestrians and cyclists, as I explain below.

Non-compliance with National Design Standards and Increased Conflict between Pedestrians and Cyclists on Coronation Parade

77. It is common ground that the national design standards for cycle infrastructure are to be found in Local Transport Note 1/20¹³⁴ ("LTN1/20"). It was published in July 2020, so Mr Tungatt was right to point out that it could not have been a material consideration when the design was produced¹³⁵, but that does not stop it from being material now. The Appellant's proposal is not compliant with the detail or the spirit LTN1/20. In particular:

- a. It is inconsistent with the principles of segregating cycles from pedestrians in the second of the summary principles set out in paragraph 1.6.1;
- b. It is inconsistent with the second of the core design principles set out in section 4.2, namely that routes be "direct"¹³⁶;
- c. It is inconsistent with paragraph 5.5.3, since the circumstances there listed where shared use might be appropriate do not apply¹³⁷. The western footway/cycleway on

¹³³ Transport SOCG paragraph 3.19

¹³⁴ CD46 and Transport SOCG paragraph 3.21

¹³⁵ Tungatt Rebuttal paragraph 2.10

¹³⁶ Whitney Proof paragraph 3.3.3

¹³⁷ Whitney Proof paragraph 3.3.4

Coronation Parade is also too narrow having regard to the minimums in Tables 5-2 and 5-3¹³⁸;

- d. The widening of the carriageway at the expense of the footway/cycleway is inconsistent with paragraph 6.1.9¹³⁹;
- e. The proposed arrangement is contrary to the “last resort” approach to shared use in paragraph 6.5.4; and
- f. Although the western footway/cycleway on Coronation Parade will be half a metre above the 3m minimum in Table 6-3, that minimum does not include an allowance for edge effects (here the wall, car doors, loading bay and associated goods trolleys etc). When an allowance is made for edge effects, the width is too narrow.

78. Moreover, and quite apart from the non-compliance with LTN1/20, the circumstances here will clearly lead to increased conflict between pedestrians and cycles. The retention of parking and widening of carriageway has led to a very significant decrease in the width of footway/cycleway, as Mr Whitney and Ms Slater explained.

79. Furthermore, contrary to the current even split, all pedestrians and cyclists under the Appellant’s proposed arrangement will be corralled along the western footway/cycleway. That will have a 3.5m width, which in reality will be reduced by edge effects from the wall and carriageway. There will also be an array or complicating lateral movements from people making deliveries to the shops, and from shop-going pedestrians. This presents new and unacceptable risks, since it will increase conflict between pedestrians and cycles here and is less safe than the current arrangement.

Inadequate Crossing Provision at Coach Road

80. Under the current arrangement, Coach Road may be crossed either at the intersection with Hamble Lane or further southwest of the junction, allowing access to both the western and

¹³⁸ Whitney Proof paragraph 3.3.7

¹³⁹ Whitney Proof paragraph 3.3.5

eastern footways/cycleways of Coronation Parade. This has the distinct advantage of a direct desire line for cyclists travelling up or down Hamble Lane (using the eastern footway/cycleway).

81. Under the Appellant's proposals, the eastern footway/cycleway is removed, and so cyclists must wiggle around the narrow footway of Coach Road (around 1.8m¹⁴⁰) to cross 13m from the junction¹⁴¹. This will be difficult for all cyclists, but particularly for those carrying children or goods. The numbers here are uncertain, since no data was collected by the Appellant relating to the crossing of Coach Road by cyclists¹⁴². However, the issue is an important one, particularly since both cyclists and pedestrians must share the very limited space. This is not compliant with LTN1/20 and it is not sensible.
82. Mr Tungatt suggested that this issue could be resolved under the section 278 process¹⁴³, but one cannot have confidence in this, given the lack of treatment of the issue in the application materials. It would be possible to address the lighting column issue at section 278 stage¹⁴⁴, but the reallocation of road space to footway/cycleway is obviously a much more significant matter which ought to have been addressed in the detailed design.
83. Moreover, the section 278 process is a private process between applicant and authority, as Mr Tungatt accepted under questioning by Ms Slater, so the failure of the Appellant to address the Coach Road issue at this stage has deprived the local community of the opportunity for consultation on the issue.

Breaches of Adopted and Emerging Policy and the NPPF

84. For those reasons, the proposed access is inadequate as it fails to make appropriate provision for pedestrians and cyclists, which is contrary to Policies 59.BE(v) and 102.T of the Adopted Local Plan, as well as Policy DM13 of the Emerging Local Plan and paragraphs 91, 102 and 108 of the NPPF.

¹⁴⁰ Whitney Proof paragraph 3.5.3

¹⁴¹ Transport SOCG paragraph 3.16

¹⁴² Transport SOCG paragraph 3.13

¹⁴³ Tungatt Rebuttal paragraph 2.18

¹⁴⁴ As Mr Whitney accepted under XX

G. THE EFFECT OF THE PROPOSED DEVELOPMENT ON HIGHWAY SAFETY AND TRAFFIC MOVEMENTS

Introduction

85. It is common ground that Hamble Lane experiences congestion, particularly during peak periods¹⁴⁵. This is the consequence of having a single road link to the wider world, and it is a serious and longstanding problem, as Councillors Craig¹⁴⁶ and Manning¹⁴⁷ so eloquently described. The Appellant's scheme, when considered cumulatively with other movements from committed developments, would add to the problem and cause impacts that the Council considers to be severe.
86. The parties sought to narrow the issues on traffic impacts in the Transport SOCG and, as a result of matters raised in Mr Tungatt's rebuttal, Mr Whitney was also able to concede on three areas, as set out in the Supplementary Transport SOCG¹⁴⁸. What remains, however, is fundamental, as explained below.
87. Before turning to this, however, it is necessary to pick up on a point raised in Mr Walton's Opening Submissions, namely the suggestion¹⁴⁹ that the third reason for refusal expressed dissatisfaction with the cumulative impacts only if there was a growth in the traffic associated with the retained activities on site. That is clearly not a fair reflection of what the reason for refusal says, nor what Councillors understood it to mean, namely that growth in movements from the site (including the wider site) caused by the Appeal proposal was objectionable. It is telling that Mr Walton did not raise his novel interpretation with Councillors, but it is perfectly clear that, had he done so, they would not have accepted it.

Flaws in the Observed Traffic Data

88. The Appellant's assessment of impacts is undermined by certain flaws in the methodology of the Transport Assessment¹⁵⁰.

¹⁴⁵ Tungatt Proof paragraph 3.5.1

¹⁴⁶ Cllr Craig Proof paragraphs 5 to 6

¹⁴⁷ Cllr Manning Proof paragraphs 9 to 19

¹⁴⁸ CD113

¹⁴⁹ ID1 paragraph 21

¹⁵⁰ CD25(1)

89. The first of these concerns the observed traffic data upon which the Transport Assessment was based. The Manual Classified Counts (“MCCs”) took place on 27 April 2017, the Thursday before the early-May Bank Holiday; and the Automatic Traffic Counts (“ACCs”) took place from 27 April to 3 May 2017 inclusive¹⁵¹. It was the MCCs (and not the ACCs) that were used to derive the turning movements at the junctions as well as the queue length information¹⁵².
90. The problem is that 27 April 2017 was not a “neutral” period for the purposes of paragraphs 3.3.6-3.3.7 of the Department for Transport’s TAG Unit M1.2¹⁵³. Mr Tungatt wrongly sought to suggest that this was inapplicable¹⁵⁴, but he referred to no paragraphs or other materials in support of his view, and it is clear from paragraph 1.1.1 of TAG Unit M1.2 that it is of general relevance to transport models.
91. Mr Tungatt also wrongly sought to draw support from the PPG on Travel Plans, Transport Assessments and Statements¹⁵⁵, but he was wrong to suggest that a Thursday before a bank holiday represented “normal” traffic flow and usage conditions for the purposes of the PPG¹⁵⁶.
92. Mr Tungatt also sought to demonstrate that the 27 April 2017 counts were representative of the general level of traffic¹⁵⁷, but that misses the point. What Mr Tungatt has not been able to demonstrate is that the turning proportions and queue lengths were representative, and there is good reason to believe that data from the Thursday before a bank holiday weekend (when people would be expected to have a higher proportion of unrepresentative trips to visit family, go on breaks etc) would not be representative in this regard¹⁵⁸, but unfortunately that is the only data the Appellant collected on the issue.

¹⁵¹ Transport SOCG paragraph 4.8

¹⁵² Transport SOCG paragraph 4.11

¹⁵³ CD44 quoted at Whitney Proof paragraph 4.2.7

¹⁵⁴ Tungatt Rebuttal paragraph 3.4

¹⁵⁵ Tungatt Rebuttal paragraphs 3.4-3.6

¹⁵⁶ Paragraph: 015 Reference ID: 42-015-20140306

¹⁵⁷ Tungatt Rebuttal paragraphs 3.7 to 3.11

¹⁵⁸ Whitney Proof paragraph 4.2.10

Flaws in the Modelling Methodology

Introduction

93. The correct choice of modelling methodology is obviously important in assessing impacts, but regrettably the Appellant's approach has been defective in certain regards, which risks understating impacts. Before coming on to this, it is necessary to address a point raised in Mr Tungatt's rebuttal concerning the threshold approach employed in the Uplands Farm Estate case¹⁵⁹. Mr Tungatt addressed the threshold approach in isolation, without giving evidence on the circumstances in the Uplands Farm Estate case. He accepted, however, that a threshold approach is less likely to be appropriate in cases in which there is significant congestion (i.e. the very circumstances that apply in Hamble). That was a fair concession, since it is obviously correct that marginal increases can have more significant effects in congested areas. The Uplands Farm Estate threshold approach is not, therefore, appropriate in the circumstances of Hamble, and Mr Whitney was right not to employ it in his evidence here.

Queue Length Calibration

94. The Transport Assessment involved a calibration process of the junction model to ensure that queues generated by the model were representative of those recorded on site¹⁶⁰. Any defects in the calibration process risk undermining the model and underrepresenting impacts. Unfortunately, the calibration process here was reliant on the MCCs made on 27 April 2017, which are unreliable for the reasons set out in the previous section¹⁶¹. Moreover, the use of counts from a single day is (as Mr Tungatt accepted¹⁶²) contrary to the approach recommended by the manufacturers of the software used in the Transport Assessment¹⁶³. For both these reasons, the queue length calibration process was unreliable.

Impact at Windhover Roundabout

95. It is common ground that the Transport Assessment did not present junction modelling for the Windhover roundabout¹⁶⁴. Instead, the Transport Statement estimates the number of trips that

¹⁵⁹ Tungatt Rebuttal paragraphs 4.1 to 4.7

¹⁶⁰ Whitney Proof paragraphs 5.2.1-5.2.5

¹⁶¹ Whitney Proof paragraphs 5.2.6 to 5.2.7

¹⁶² Under XX

¹⁶³ Whitney Proof paragraph 5.2.8 and the link in footnote 2

¹⁶⁴ Whitney Proof paragraph 5.4.1 and Tungatt Rebuttal paragraph 4.13

pass through the junction, and then presents this figure as a percentage of the total traffic observed at the junction¹⁶⁵. On that basis, the Appellant concluded that the increase in development traffic would “not be noticeable and cannot be considered severe”¹⁶⁶. Moreover, in his oral evidence, Mr Tungatt asserted that the increase at the Windhover Roundabout was “around 0%”, but that is a figure at odds with those given in Table 3.5 of his Rebuttal Proof.

96. In any event, the problem here is that the Windhover Roundabout is highly congested, and that adding any flows to a junction which is already over capacity results in a disproportionate increase in queues and delays¹⁶⁷. These impacts should have been quantified using an appropriate model for both the existing arrangement and the arrangement expected to be constructed by Highways England, but this was not done. Mr Tungatt accepted¹⁶⁸ that modelling could have been undertaken, but there was no modelling at all, either of the existing arrangement or to include the effect of the measures proposed by Highways England at the Windhover Roundabout¹⁶⁹. Table 6.11 of the Transport Statement shows significant modelled increases at the Tesco Roundabout (for example, an increase in queue length from 59 to over 81 vehicles on the Hamble Lane North Arm in the weekday pm peak hour). In the absence of modelling, there can be no confidence that there would be no significant impacts at the Windhover Roundabout too.

Incorrect Choice of Modelling Tools

97. As Mr Whitney explained, Hamble Lane is a congested network, with queues blocking back and leading to interactions between junctions¹⁷⁰ in the future year scenario (i.e. queues from one junction reaching another and so causing them to perform worse than they otherwise would). The network also experiences surges of traffic (known as platoons) at downstream junctions leading to diminished operational performance, and has a number of other features such as pedestrian crossings and bus stops, which affect capacity. Mr Whitney explained how microsimulation modelling is able to replicate these conditions, in a way that is not possible

¹⁶⁵ Paragraph 6.39 of CD25(1), quoted in Whitney Proof paragraph 5.4.4

¹⁶⁶ Paragraph 6.41 of CD25(1)

¹⁶⁷ Whitney Proof paragraph 5.4.6 and footnote 6

¹⁶⁸ Under XX

¹⁶⁹ Transport SOCG paragraph 4.17

¹⁷⁰ Whitney Proof paragraphs 5.5.1-5.5.12 and see CD41 at pages 16-21 and CD39 at pages 24-26

using the methods employed in the Transport Statement. A microsimulation model should therefore have been used, as the County Council has already done as part of the Hamble Lane Corridor Study¹⁷¹, and the Appellant's approach is not robust, as Mr Whitney explained.

98. Mr Tungatt suggested that a microsimulation model was not requested and would have been expensive¹⁷², but neither of these addresses the problem of underestimation of impacts raised by Mr Whitney, and the £60,000 figure given by Mr Tungatt is in any event likely to be an overestimate, particularly given the existing model utilised by the County Council. As a result of the failure to use a microsimulation model in a congested network, there is a serious risk that the Transport Statement has underestimated the impacts of the scheme.

Severity of Impacts

99. It is common ground that the modelling presented within the Appellant's Transport Assessment identifies that four of the relevant junctions currently operate over theoretical capacity and are expected to continue to do so with the development in place, and that the Transport Assessment indicates that the presence of the proposed development worsens the operation of these junctions¹⁷³. The defects in the Transport Assessment (set out above) mean that the real picture is likely to be worse, but even on the Appellant's approach, they are making a bad situation worse at four junctions, which the Council considers to be a severe impact for the purposes of paragraph 109 of the NPPF. The changes in vehicle numbers may be relatively modest¹⁷⁴, but as a result of the trips they will be making and the existing congestion on the network, the impacts (even under the Appellant's favoured Development 2 scenario) are very significant indeed.

100. By way of example only:

- a. Table 6.11 on page 36 of the Transport Assessment¹⁷⁵ shows that the result for Hamble Lane North in the PM peak goes from a 59-vehicle queue (in the Future Baseline Scenario) to an 81.2-vehicle queue (under the Appellant's favoured Development 2

¹⁷¹ Transport SOCG paragraph 4.30

¹⁷² Tungatt Rebuttal paragraphs 4.18 to 4.19 and under XX

¹⁷³ Transport SOCG paragraph 4.20

¹⁷⁴ Tungatt Rebuttal paragraph 5.4.6

¹⁷⁵ CD25(1)

scenario). The further detail in the Appendices¹⁷⁶ shows that this equates to moving from a 144.59 second to a 216.17 second delay, a 71.58 second increase to give a total three-and-a-half-minute delay.

- b. Table 6.7 on page 34 of the Transport Assessment and the Appendices¹⁷⁷ show a similar increase in already long delays at the AM peak at the Portsmouth Road/Hamble Lane Priority Junction, up from 185.03 seconds to 213.58 seconds for Stream B-AC (the Portsmouth Road Arm) under the Development 2 scenario, an extra half a minute to an already long delay.

101. Mr Tungatt said under XX and Re-X that these were only two data points and that it was important to view the impacts in the round, including the positive impacts. That is of course correct, but given the common ground¹⁷⁸ of a worsening at four junctions and a need for mitigation, it cannot seriously be suggested that (in the absence of mitigation, which I will come on to) the overall impact is anything other than harmful.

102. It is also common ground between the Appellant and the County Council that the impacts would be severe in the absence of mitigation: paragraph 5.4 of the Agreed Statement between the Appellant and the County Council¹⁷⁹ agrees that the impact is not severe, but only “subject to” securing the mitigation package. In XX, Mr Tungatt suggested that the mitigation being referred to in paragraph 5.4 included the new access, but that is simply part of the scheme, not a mitigation measure, and paragraph 5.4 is plainly not referring to it. In any event, Mr Whitney’s evidence on severity of impacts should be preferred to that of the Appellant.

103. Of course, even if the impacts were not “severe” for the purposes of paragraph 109 of the NPPF, it would not mean that such impacts could be ignored in the planning balance: they would still be material considerations pointing against the grant of permission to be added to the other harms which arise from the Appeal Scheme: *Redhill Aerodrome Ltd v SSCLG* [2015]

¹⁷⁶ Page 63 of CD25(8)

¹⁷⁷ Page 26 of CD25(5)

¹⁷⁸ Transport SOCG paragraph 4.20

¹⁷⁹ CD77

P.T.S.R. 274¹⁸⁰ at [32] (cited at paragraph 6.26 of the Council's Statement of Case). This was accepted by Mr Chapman under XX.

Sufficiency of Mitigation

104. As Mr Whitney rightly noted¹⁸¹, paragraph 108 of the NPPF requires that, in assessing specific applications for development, it should be ensured that any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. The Appellant has agreed a mitigation package with the County Council by way of a contribution to elements of the Hamble Lane Improvement Scheme, and this is provided under the section 106. However, two points fall to be made on this. First, it is important to note that the Hamble Scheme, even if it comes forward in full, is not a panacea: Mr Tungatt accepted under XX that pages 16-21 of the Hamble Lane Traffic Study Report¹⁸² show significant residual queues in the Current Option (i.e. with the Hamble Lane Improvement Scheme in place). Second, and importantly, it is common ground that no modelling was undertaken to demonstrate the appropriateness or sufficiency of the Appellant's proposed mitigation measures¹⁸³. This is simply not good enough and can give no confidence that the mitigation will be sufficient.

Likelihood of Mitigation Coming Forward

105. Even if (which is not the case) it had been demonstrated that the mitigation measures had been set at the right level to fully address the impacts of the scheme, this could not be relied upon unless it could also be demonstrated that the mitigation measures were likely to come forward. Regrettably, this is not the case.

106. The Hamble Lane Improvement Scheme is a longstanding aspiration of the County Council, but it has evolved slowly, and Hamble Lane remains heavily congested. Given this, paragraph 3.2 of the Executive Member for Environment and Transport ("EMET") Report of 12 March

¹⁸⁰ CD100

¹⁸¹ Whitney Proof paragraph 7.1.1

¹⁸² CD41

¹⁸³ Paragraphs 6.15 to 6.17 and Table 6.5 of the Transport Assessment demonstrate that the Appellant did model mitigation at Hound Road/Hamble Lane Roundabout by way of a signalised junction, but that is the only modelled mitigation.

2019¹⁸⁴ is clear that “additional development along the corridor would compound the existing problems and would negate the benefits of the Scheme, with very limited opportunity to make further improvements to the corridor in the future. Therefore until at least the preferred Scheme for the northern section has been implemented, it is considered inappropriate from a traffic perspective for further development to be allocated or permitted along Hamble Lane”.

107. Contrary to this clear position in the EMET Report, the County Council is content with the Appeal scheme. However, it is clear from paragraph 111 of the December 2019 Committee Report¹⁸⁵ and the 14 August 2020 email from Nick Gammer¹⁸⁶ that the reason that the County Council has not opposed the Appeal scheme is that it was submitted prior to the EMET Report. The email from Mr Gammer is worth quoting:

“Regarding the policy position, **as this application preceded the EMET Decision Report the Highway Authority did not consider it was able to sustain an objection** to the application on this basis. As we understand it, **the decision to refuse the application and subsequent appeal process does not represent a material change** that would enable a different stance or support a change in our position. As such, the highway authority’s position on this application remains unchanged. Please advise though if you have a different understanding.

EBC planning committee has refused this application based in part on the traffic impact on Hamble Lane in accordance with the EMET Decision Report. It will of course be for the inspector to determine the severity or otherwise of the site on the highway network, which may include a view regarding the applicability of the HA’s position. I would just reiterate that **should new applications come forward for consideration along Hamble Lane which are contrary to the highway policy position set out, the HA would support a reason for refusal based on the policy position; this would include any new application in relation to this site.**” (Emphasis added)

108. This is a fundamentally misconceived approach. Planning appeals are determined on the basis of development plan policies and material considerations as at the date of the appeal decision. For the County Council to fail to object on the basis that the Application snuck in before the EMET Report was written is wrong in principle. Consistent with the EMET Report, the County Council ought to be objecting to the Appeal proposal, and it is clear from Mr Gammer’s email that were the current Appeal to be withdrawn and a duplicate application made, the

¹⁸⁴ CD87

¹⁸⁵ CD64

¹⁸⁶ CD53

County Council would object. This therefore fundamentally undermines the County Council's lack of objection.

109. In any event, it is clear that the County Council does not currently have adequate funding for the delivery of the measures under the Hamble Lane Improvement Scheme. Mr Gammer's email of 14 August 2020 provides no comfort that funding will be forthcoming:

"Finally, it is noted that at the time of our final highway response, dated 11th July 2019, there was considered a high likelihood of securing the additional funding required to deliver the Hamble Lane improvement works. Given recent policy changes in central government, directing more funding away for the south of England and giving higher priority to sustainable travel schemes, the likelihood of obtaining sufficient funding to deliver the Hamble Lane works could be somewhat reduced. HCC are currently awaiting the outcome of a DfT Pinch Point funding bid submitted in January 2020; decision making has currently been put on hold due to Covid, but is likely to start again soon and I can of course advise if we receive a decision on the required funding."

110. A further update on the position from Jason Tipler on 17 August 2020¹⁸⁷ indicated that the Department for Transport had resumed assessment of Pinch Point bids, but that the County Council had heard nothing further on the bid, that if they did get funding there would be a further assessment stage to get through to demonstrate a business cases, and that if that was passed it would then be around two years to start of construction with a fair wind.

111. There is therefore a strong prospect that the full Hamble Lane Improvement Scheme will not be delivered in the foreseeable future. Cognisant of this, the Appellant is now proposing that its financial contribution be spent on changes at the Hamble Lane / Hound Road / Satchell [Lane] Junction and/or the Hamble Lane / Portsmouth Road Junction" (and in the event of any of the contribution remaining unspent after the completion of the works to those junctions, on other aspects of the Hamble Lane Improvement Scheme)¹⁸⁸. However, the only costings of the Hamble Lane Improvement Scheme before this Inquiry are those in Appendix A to the Hamble Lane Traffic Study¹⁸⁹. As Mr Tungatt accepted under XX, those figures are from 2017 and so will not include inflation since then. And although they include a combined optimism bias and contingency allowance of 60%, such an approach is standard practice where costings are

¹⁸⁷ CD52

¹⁸⁸ Tungatt Rebuttal paragraph 7.4 and ID3 definition of "Highway Contribution" on pages 12 to 13

¹⁸⁹ CD41

uncertain – it is no basis for suggesting confidence that the figures will not turn out to be higher. In any event, adding up the figures in Appendix A shows that the cost of the scheme substantially exceeds the sum that would be held by the County Council even with the Appellant's £750,000 contribution¹⁹⁰. Appendix A also includes no figure at all for the Hound Road junction and although Mr Tungatt suggested orally that this had been costed at £1.3m, he provided no evidence for this. Even if the £1.3m figure were to be accepted, it shows that the Appellant's contribution is insufficient to deliver those works on its own. Whether the works to the two junctions relied upon will come forward is therefore intrinsically uncertain. In any event, there is no basis for suggesting that works funded by the Appellant's contribution will provide effective and sufficient mitigation for the impacts. This has not been modelled, and Mr Tungatt was unable to point to any evidence apart from the common ground between the Appellant and the County Council on this issue. That is not good enough.

Breaches of Adopted and Emerging Policy and the NPPF

112. For those reasons (as well as the reasons in the previous section relating to the amenity and safety issues stemming from the access and changes to Coronation Parade) the Council considers that the Appeal proposal is contrary to Policies 100.T, 101.T and 102.T of the Adopted Local Plan, Policy DM13 of the Emerging Local Plan and paragraphs 91 and 108 of the NPPF.

H. THE EFFECT OF THE PROPOSED DEVELOPMENT ON AIR QUALITY

113. The Council does not have a freestanding objection to the proposal on air quality grounds, and it is common ground¹⁹¹ that sufficient information has been submitted to demonstrate that air quality has been considered during the construction and operational phases, and that further air quality impact assessment would be required at reserved matters¹⁹². However, it is also common ground¹⁹³ that the air quality assessment was informed by the outputs of the Transport Assessment. The Council therefore observes that if its objection on Transport grounds is accepted, this may impact on the robustness of the Air Quality Assessment. However, as explained during the Inquiry, this does not need to be addressed as a separate point because the

¹⁹⁰ Tungatt Rebuttal paragraph 7.4 and CD77 paragraph 6.4

¹⁹¹ CD63 paragraph 6.14

¹⁹² Secured by proposed condition 24

¹⁹³ CD63 paragraph 6.14 and see paragraph 3.21 of the Appellant's Air Quality Assessment (Appendix E(xiv) to the Appellant's Statement of Case)

issue is entirely parasitic on the Transport case. No separate Air Quality point is taken (save in relation to air quality monitoring under the sixth reason for refusal).

I. THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE PROVISION OF SPORTS FACILITIES

114. Agreement has now been reached between the parties on the Sports Facilities issue on the basis of the provision made in the draft section 106¹⁹⁴, and the fourth reason for refusal has therefore been resolved (subject to execution of the section 106). At the time of writing, Sport England have yet to come back with their final position, and the Council will provide an update on the issue as necessary.

J. THE EFFECT OF THE PROPOSED DEVELOPMENT ON HABITATS

115. As set out in the agreed Nitrates Note¹⁹⁵ and the Council's Position Statement on Reasons for Refusal 4, 5 and 6¹⁹⁶, agreement was reached between the parties in advance of the inquiry on habitats issues. The Council also produced a Shadow Habitats Regulations Assessment¹⁹⁷ explaining why it was satisfied that the mitigation measures secured by the section 106 agreement are sufficient to ensure no adverse effect on the integrity of any European Site.

116. On 13 November 2020, however, Natural England provided a consultation response¹⁹⁸ in which it concluded: (i) that "further work is required" to consider the impact of the Appeal Proposal on the New Forest SPA/SAC/Ramsar sites both alone and in-combination; (ii) that an appropriate mitigation strategy will need to be set out that proportionately addresses identified impacts; and (iii) that Natural England "does not concur with the current conclusion of the sHRA that this development would not have an adverse effect on the integrity of the New Forest designated sites".

¹⁹⁴ ID3

¹⁹⁵ CD102

¹⁹⁶ CD106

¹⁹⁷ CD90

¹⁹⁸ ID7

117. Natural England is the “appropriate nature conservation body” for the purposes of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”)¹⁹⁹. As a consequence, although the Inspector (as competent authority for this Appeal²⁰⁰) is not bound by its views, it would require “some cogent explanation” for the Inspector not to give “considerable weight” to those views: *R (Mynydd y Gwynt Ltd) v SSBEIS* [2018] PTSR 1274 at paragraph 8(8). Moreover, the tests under Regulation 63 are stringent. To grant permission (unless the derogation tests under Regulation 64 are made out) the Inspector must be “certain” (i.e. beyond a reasonable scientific doubt – absolute certainty is not required) that the Appeal proposal will not, either alone or in combination, have an adverse effect on the integrity of any European site (including the New Forest sites): see Regulations 63(5) and 70(3) and *Mynydd* at paragraph 8(4)-(7).

118. Given that Natural England’s consultation response was only received on 13 November, the parties have not yet had opportunity to address it. Ultimately, it is a matter for the Inspector to consider how to proceed, but the Council (and it understands that the Appellant agrees) sees merit in the parties being given time to address the issue, which may or may not lead to an agreed position, and may or may not lead to changes to the section 106 agreement (for example, if the parties were to consider that additional mitigation of impacts on the New Forest is required). The Inspector may also wish for Natural England to be consulted again once the parties have clarified their positions on the New Forest issue. I emphasise that this represents the Council’s thinking at the time of writing these Closing Submissions. The Council will update its position as necessary in the light of developments before Closing Submissions are delivered.

K. HERITAGE EFFECTS OF THE PROPOSED DEVELOPMENT

119. The Appeal proposal involves development of the open space to the north of the Grade II* listed Sydney Lodge which would slightly erode its significance²⁰¹. As a result, the balance under paragraph 196 of the NPPF must be applied: see *R (Kay) v SSHCLG* [2020] EWHC 2292

¹⁹⁹ See Regulation 5

²⁰⁰ See Regulation 7

²⁰¹ CD81 and paragraphs 10-11 of the Agreed Heritage Note (CD105)

(Admin)²⁰² at [34]. In this regard, the Appellant relies on various public benefits of the proposal, as follows²⁰³:

- a. Demolition of the later extensions to Sydney Lodge to better reveal the south-east elevation of the listed building;
- b. Demolition of surrounding structures to open new views of Sydney Lodge from the south-west;
- c. Landscaping works to better reveal the significance of Sydney Lodge;
- d. Creation of a formal landscaped area to the south-west of Sydney Lodge; and
- e. Revision of the secure boundary to the aviation facility, so allowing increased public access to Sydney Lodge.

120. The Appeal Application did not provide for the detail of the demolition of the later extensions to Sydney Lodge. Instead, these were addressed in a full planning application (Ref: F/18/84621) and a listed building consent application (Ref: L/19/85126), which were granted permission/consent on 3 November 2020²⁰⁴. In its Statement of Case, the Council identified a difficulty with the lack of provision in the Appeal Application for making good post-demolition and the lack of an associated listed building consent²⁰⁵. As a result of the 3 November 2020 permission/consent, it is now possible to address the Council's concerns by condition. At the time of writing these Closing Submissions, the session on conditions has not yet taken place, and the Council will update its position as required in the light of that session.

121. The Council considers that the condition should state as follows:

“Prior to the occupation of the 75th dwelling, the demolition and improvement works to Sydney Lodge shall be carried out in accordance with Listed Building Consent (L/19/85126) and the associated planning permission (F/18/84621).”

²⁰² CD98

²⁰³ Copp Proof paragraph 28 and SOCG (CD63) paragraph 6.10

²⁰⁴ CD88 and CD89

²⁰⁵ Council Statement of Case paragraphs 3.3 to 3.6

122. The Appellant has no concerns with the wording of that proposed condition, and should the Inspector consider it necessary to secure the public benefits, the Appellant would be happy to accept it²⁰⁶. However, the Appellant considers that the condition is not necessary and therefore does not meet the tests set out in paragraph 55 of the NPPF and prefers the following condition:

“The demolition and improvement works to Sydney Lodge shall be carried out in accordance with Listed Building Consent L/19/85126 and the associated planning permission F/18/84621.”

123. The fundamental problem with the Appellant’s preferred condition is that it does not secure the demolition and improvement works to Sydney Lodge, which are the principal heritage benefits of the Appeal Scheme. In the absence of the Council’s proposed condition, there is nothing to prevent or disincentivise the Appellant (or anyone else) from building out the Appeal Scheme without carrying out the demolition and improvement works. This would be a terrible missed opportunity, since the prospect of such works coming forward subsequently would be highly uncertain. Failing to impose the Council’s suggested condition would therefore be inconsistent with the NPPF paragraph 194 requirement for “clear and convincing justification” for any heritage harm (here the erosion of the setting). Moreover, there is a requirement to consider alternatives whenever (as here) schemes involve heritage harm²⁰⁷, and a development with the Council’s proposed condition is obviously a preferable alternative to one without.

124. The Council and Appellant agree that the public benefits outweigh the less than substantial harm under the NPPF paragraph 196 test even without the demolitions²⁰⁸, but the benefits without the demolitions are very much reduced, and as set out above, there is no sensible basis for failing to secure that the demolition works to Sydney Lodge provided for under the Appeal proposal are secured. For those reasons, the Council considers it plainly necessary (and consistent with paragraph 55 of the NPPF) to impose its preferred heritage condition were planning permission to be granted.

²⁰⁶ Paragraph 8 of the Agreed Heritage Note (CD105)

²⁰⁷ *R (Gibson) v Waverley BC* [2015] EWHC 3784 (Admin) at [70] (CD96)

²⁰⁸ Paragraphs 2 and 4 of the Agreed Heritage Note (CD105)

L. CONDITIONS AND WHETHER THE PROPOSAL MAKES ADEQUATE PROVISION FOR INFRASTRUCTURE NEEDS ARISING FROM THE DEVELOPMENT

125. The Council and Appellant have agreed draft conditions (subject to the disagreement on the heritage condition explained in the previous section). At the time of writing, the conditions session has not yet taken place. The Council will update its position as necessary in the light of that session.

126. The Council and Appellant are on the cusp of agreeing the section 106 agreement. The Council is also finalizing the CIL Compliance Statement, which will explain its position as to why all of the contributions are compliant with the CIL tests (and is also intended to set out the Appellant's position on any contributions it disputes). At the time of writing, the section 106 session has not yet taken place. The Council will update its position as necessary in the light of that session.

M. BENEFITS OF THE PROPOSED DEVELOPMENT

127. In paragraph 10.7 of its Statement of Case the Appellant suggested a number of benefits flowing from the Appeal proposal. That list is repeated (with immaterial amendments) at paragraph 6.11 of Mr Chapman's proof. The Council's position on these is, in summary, as follows²⁰⁹.

128. First, the delivery of market housing is a benefit of the proposal. However, it is of limited weight given that the Council has a robust five-year housing land supply, has been delivering housing at unprecedentedly high levels, and will be able to maintain its housing supply into the 2030s under the Emerging Local Plan (and beyond under a review of that Plan). Limited weight was given to the provision of market housing in the Bubb Lane Appeal²¹⁰ due to the existence of a five-year supply, and reduced weight was given in the Mazels decision²¹¹ for the same reason. In its evidence, the Appellant sought to justify its position by reference to the Satchell Lane decision²¹², but the significant weight attributed in paragraph 47 of that decision was to the

²⁰⁹ For further detail, see section 11 of Mr Errington's Proof

²¹⁰ CD8 at paragraph 54

²¹¹ CD9 at paragraph 46

²¹² CD11

provision of “market and affordable housing” so the decision lends no support to the Appellant’s view that significant weight should be attributed to market housing alone.

129. It is common ground that affordable housing provision is a significant benefit of the proposal. It is fair to note, however, that it is no more than a policy-compliant level²¹³. Moreover, as Mr Errington demonstrated²¹⁴, the rates of net affordable housing completions have increased very markedly in the last two years and that positive trend is set to continue as a result of the Council’s proactive approach to housing delivery.

130. Second, the provision of accessible public open space, together with landscaping, is primarily mitigation for (or screening of) the impacts of development, and not a benefit.

131. Third, the Council accepts that the improvement of sports facilities on site (including parking improvements and increased security of tenure for such facilities) does provide some recreational benefit. However, offsite sports provision package is mitigation, which would not be necessary were it not for the impacts of the proposed development on existing facilities.

132. Fourthly, in terms of the restoration and enhancements of a Grade II* listed building, if the Council’s preferred condition is imposed, the Council accepts that the heritage benefits secured by the proposal should be accorded great weight²¹⁵. However, if the Council’s preferred condition is not imposed, and the demolition works to Sydney Lodge are therefore not secured, the heritage benefits would be of lesser weight²¹⁶. Mr Chapman suggested under XX and Re-X that the heritage benefits should be given great weight under both scenarios, and sought to draw support from paragraph 193 of the NPPF, but with respect his position was misconceived. Paragraph 193 requires “great weight” to be given to “the asset’s conservation”. That is not the same as saying that great weight should be given to any heritage benefit however slight. The main benefit here is the demolition of the later extensions, and if that is not secured, the level of benefit is very significantly reduced.

²¹³ SOCG (CD63) at paragraph 6.9

²¹⁴ Affordable Housing Delivery Update (CD107)

²¹⁵ Paragraph 4 of the Agreed Heritage Note (CD105)

²¹⁶ Paragraph 4 of the Agreed Heritage Note (CD105)

133. Fifthly, the Council recognizes the economic benefits arising through construction, New Homes Bonus and additional local spending. The Council notes the business rationale²¹⁷ asserted by the Appellant, though it also notes that this is at least in part a private benefit to this Appellant, that there is nothing to secure that the profit from the Appeal proposal will in fact be channeled back into the business on site, and also that the evidence provided for the asserted business rationale is limited and generic.

134. Finally, with regard to financial contributions towards infrastructure, these are to mitigate the proposal's impacts, and are therefore not benefits.

N. PLANNING BALANCE

135. At the time of writing these Closing Submissions, there are various outstanding matters as set out above (on Sport England's position, on Natural England's position, and on the section 106). This section sets out the balance on the assumption that those matters will be fully resolved. The Council will update its position as necessary in the light of developments before Closing Submissions are delivered (and afterwards if the Inspector invites such comments, for example on the habitats issues raised by Natural England).

136. As in all cases, this Appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. As set out above, the Appeal proposal does not accord with the Adopted Local Plan, the relevant policies of which are broadly consistent with the provisions of the NPPF and are not out-of-date. Neither is it consistent with the Emerging Local Plan or the NPPF. Moreover, its impacts would be significantly harmful in landscape and countryside terms, in terms of failing to provide a safe and suitable access, and in terms of its impacts on an already highly congested local transport network. The Council recognises that there are certain benefits associated with the development, but they are insufficient to justify the harm.

137. Since the most important policies for determining the Appeal are not out-of-date, the tilted balance does not apply, but even if it did, the Council considers that the adverse impacts

²¹⁷ Appellant's Statement of Case paragraphs 1.4-1.8, 7.8 and 7.14-16, Chapman Proof paragraphs 2.3-4, 4.27-9, 5.17, 6.3 and 6.16 and CD66

significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. Moreover, the proposal is contrary to the development plan and material considerations reinforce the view that permission should be refused.

O. OVERALL CONCLUSIONS

138. For the reasons given above, I invite you to dismiss the Appeal.

NED HELME
39 ESSEX CHAMBERS
81 Chancery Lane, London, WC2A 1DD

16 November 2020