

## Land at GE Aviation, Kings Avenue, Hamble-Le-Rice, Southampton

APP/W1715/W/20/3255559

### Appellant's Closing Submissions

1. Introduction. These closing submissions do not attempt to rehearse the evidence that the inquiry heard has over the course of last week. Rather, their purpose is to set out a route-map for the Inspector, setting out a logical and lawful approach to the determination of the appeal.
2. In the end, with all the non-points in the Council's evidence stripped away, this becomes a simple case, with the clear and obvious answer being that permission should be granted.
3. Before getting into the detail, it is important to keep continually in mind the fact that application was presented to Committee twice by Mr Grandfield, the Council's Head of Housing and Development, on both occasions with a clear and unambiguous recommendation for approval. Those recommendations were the product of very extensive pre-application and post-submission negotiations between the Appellant and all relevant stakeholders. Mr Grandfield's conclusions, which were not challenged in any way by the Council during the inquiry, should be given considerable weight.
4. The Committee nonetheless resolved to refuse planning permission for six reasons. Three of those reasons have since been resolved. That means that – from the Council's point of view – there are now less things to weigh in the balance against the grant of planning permission. As Mr Errington accepted in cross examination, the balance is tilted further towards the grant of permission.
5. In terms of the remaining matters, the Council contends that the scheme would be harmful in three respects: its impact on the road network; its impact on pedestrian and cyclists; and its impact on the countryside. As set out below, these concerns do not justify the refusal of permission.
6. Highway network. When Councils refuse planning permission they are under a legal obligation to set out their position clearly and precisely in the decision notice:

“the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision”<sup>1</sup>.

7. Reason for refusal three is very clear: the Committee did not consider that the appeal scheme would have a severe impact on the network in isolation. Rather, their concern was with the cumulative impact of the appeal scheme “with the potential for ... growth in traffic associated with the retained commercial activities on site”. It is highly important to note that the Council has not produced any evidence to support its reason refusal. It is also highly relevant to note that Mr Witney’s evidence presents an argument that is wholly inconsistent with the Committee’s own views.
8. Further, Mr Witney withdrew substantial parts of his evidence the day before the inquiry started. This included his fundamental arguments that the Appellant had miscalculated not only the amount of traffic that the appeal scheme would generate but also the amount of background growth on the network. That change of position fundamentally undermined his assertion that the impact would be severe.
9. Mr Witney’s few remaining points remain misconceived.
10. First, Mr Witney contends that Appellant has not properly assessed the baseline traffic conditions<sup>2</sup>. In his written evidence Mr Witney argued that the traffic numbers captured in the 27.4.17 survey were not representative because they were captured on the Thursday before a bank holiday weekend. Mr Tungatt’s rebuttal evidence presented ATC data which (a) was available to Mr Witney before he wrote his proof; and (b) shows beyond sensible argument that the data is representative. Mr Witney conceded the point under cross examination. This is now common ground between the parties.
11. Second, despite his concession, Mr Witney nonetheless maintained that the data might not be representative of junction movements on the network and that therefore the Appellant’s queue length calibrations might not be accurate<sup>3</sup>. He did not put forward any explanation as to why that might be the position on the facts of this case, and none was suggested to Mr Tungatt in cross examination. Importantly, of course, the County Council is content that the

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<sup>1</sup> Regulation 35 of the Town and Country Planning (Development Management Procedure) Order 2015.

<sup>2</sup> Proof page 10 paragraph 4.2

<sup>3</sup> Proof page 18 paragraph 5.2

data is representative. There is therefore no evidence before the Inquiry to support this point and simply no credible basis on which Mr Witney's position could be upheld.

12. Third, Mr Witney argues that the Appellant had not properly assessed the impact of the scheme on Windhover roundabout<sup>4</sup>. Again, Mr Witney's ultimate position was much diluted compared to what was said in his proof given that this point was underpinned by Mr Witney's abandoned "netting off" point. Of the three points Mr Witney put forward in paragraph 5.4.4 of his proof, Mr Witney's only remnant point was that the Appellant had not modelled the impact on the roundabout (point 1), but as Mr Tungatt explained HCC did not consider that it was necessary to model the scheme's impact on Windhover roundabout even on the "Development 1" scenario, i.e. even if the traffic generated by the extant uses on the appeal site was not netted off. This was because HCC was content that the scheme impact in that scenario would be minimal. Mr Witney did not put forward any evidence to suggest that this conclusion was wrong. Again therefore, there is simply no evidence before the Inquiry on which a different conclusion can properly be reached.

13. Fourthly, Mr Witney argued that it would have been "better" if the Appellant had assessed the impact of the appeal scheme using a micro-simulation model<sup>5</sup>. Neither Mr Tungatt nor HCC agree, but in any event this is a non-point, both in principle and on the facts of the case. In terms of principle, even if a micro-simulation model was "better", this would not mean that the Appellant's modelling work was unsound. It is notable that Mr Witney was unable to explain why it a micro-sim model was necessary, i.e. what critical evidence it would show that the Appellant's modelling had not shown. In terms of the facts of this case, as Mr Tungatt explained, HCC does have a micro-simulation model and has reviewed the impact of of the scheme against the Hamble Lane improvement scheme and do not consider that the (very limited) additional traffic generated by the scheme would have a significant detrimental impact on it as robust assumptions in relation to background traffic growth have been made<sup>6</sup>. Mr Witney did not challenge that conclusion. Again, there is simply no basis on which it could credibly concluded that the Appellant has used an inappropriate modelling tool.

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<sup>4</sup> Proof page 20 paragraph 5.4

<sup>5</sup> Proof page 22 paragraph 5.5

<sup>6</sup> CD77 paragraph 6.1

14. Fifthly, Mr Witney sought to suggest that the Appellant had accepted that without mitigation the impact on the relevant junctions would be severe<sup>7</sup>. That is simply wrong and betrays a fundamental misunderstanding on the Council's part. As Mr Tungatt explained in cross examination, the Appellant and HCC are agreed only that the scheme would have a severe impact if the package of measures set out in the Committee Report were not secured, e.g. the works to Coronation Parade and the implementation of a Travel Plan<sup>8</sup>. It is not the case that the scheme would have a severe impact on the junctions if mitigation measures were not implemented<sup>9</sup>. As Mr Tungatt explained in cross examination, the scheme will have different impacts on different junctions and different times of day. Table 5.2 of Mr Tungatt's proof sets out the (now) agreed position: the appeal scheme would result in fewer peak hour trips on the network (16 less in the am, and 11 more in the pm). As to their impact on the network, see Appendix 1 to these closings. Even without mitigation, it could not sensibly be said that the scheme would have a severe impact.
15. Sixthly, Mr Witney argues that the Appellant has not demonstrated that the mitigation measures proposed would offset the scheme's highways impacts<sup>10</sup>. Once again, Mr Witney's analysis is flawed. As set out above, the scheme would not have a severe impact even absent mitigation. As to the adequacy of the mitigation measures, again it is important to note that HCC's assessment is based on the "Development 1" scenario – and they are content that the proposed mitigation measures would be appropriate<sup>11</sup>. Again, there is simply no basis to conclude that the scheme would be likely to have a severe impact on the network.
16. Finally, Mr Witney seeks to rely on HCC's EMET Report as evidence that the appeal scheme would be likely to have an unacceptable impact on the network<sup>12</sup>. That approach is again misconceived. HCC has considered the appeal scheme in detail and has concluded that it is entirely unobjectionable in highways terms. The EMET Report is a broad policy statement which, on the evidence before this Inquiry (including of course HCC's own stated position with regard to this scheme), cannot possibly be said to suggest that HCC think this scheme is unacceptable: as a matter of indisputable fact they do not<sup>13</sup>.

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<sup>7</sup> Proof page 25 section 6

<sup>8</sup> CD 77 paragraph 5.4; proof

<sup>9</sup> DT proof page 16 paragraph 6.4

<sup>10</sup> Proof page 27 section 7

<sup>11</sup> CD 77 paragraph 5.2 and DT proof 6.2 and 6.5

<sup>12</sup> Proof page 29 section 8

<sup>13</sup> CD 77

17. As to any suggestion by the Council that there might nonetheless be some “non-severe” impacts that would weigh against the grant of permission, this has never been part of the Council’s case and there is simply no evidence to support it.
18. On the evidence before the Inquiry, the only sensible and defensible conclusion is that the scheme would not have an unacceptable impact on the highways network and that reason for refusal 3 is patently unsound.
19. Pedestrians and Cyclists. The scheme will change the current pedestrian and cyclist infrastructure in the vicinity of Coronation Parade. The Council’s evidence on this issue was truly myopic: focussing only on perceived disadvantages and not referring at all to the benefits that the scheme would deliver.
20. Dealing first with the Council’s concerns:
- (i) Increased journey times. For all cyclists and 75% of pedestrians (those currently using the footway on the western side of Coronation Parade) the increase in journey times would be utterly imperceptible – no more than about 5 seconds at worst. The pedestrians currently using the footway adjacent to the northbound traffic on Hamble Lane would see their journey times increase by just over 20 seconds – an immaterial increase even if it were perceptible. Mr Witney sought to categorise this as a best case scenario, on the basis that a user might be delayed en route, e.g. crossing Kings Avenue. That observation had obviously influenced his overall judgement as to impact, but he had failed to appreciate the obvious point that users on the existing route might be delayed too.
  - (ii) The quality of the new route. The Council argues that the new proposals will increase conflict between pedestrians and cyclists. The weakness of the Council’s position was amply shown by its repeated attempts to hide behind the percentage increases. It is impossible to sensibly argue that the addition of 10 pedestrians and 4 cyclists per hour would even be perceptible, let alone a significant issue, even ignoring the fact that the shared route will be significantly more commodious than it is now. The Council’s calls for segregation are baseless, both in terms of policy and in terms of the real world position: the route is not segregated now and there is no need for it to be segregated.

- (iii) Crossing provision at Coach Road. Yet another non-point from the Council. As set out above, the numbers are tiny and any design issues can be resolved in the usual way at s.278 stage.
- (iv) Road Safety Audit. The evidence conclusively demonstrates that the Auditor is fully aware of the layout of the proposed scheme and the likely pedestrian and cyclist numbers and is satisfied that the scheme is safe<sup>14</sup>.

21. As can be seen, there is no basis to any of the Council's arguments. But further and in any event, in deciding whether the scheme would have a detrimental impact on pedestrians and cyclists it is obviously necessary (as Mr Witney accepted in cross examination) to take into account all the changes that are being proposed, not just some of them. Mr Witney accepted in cross examination that his evidence did not do this. This concession necessarily means that the Council's evidence was partial, and therefore flawed. The scheme would in fact deliver a whole range of wider benefits, as set out in Mr Tungatt's evidence<sup>15</sup> both in relation to safety and amenity. Taking everything into account (something the Council simply has not done) it is clear that the Mr Tungatt is right to conclude (and remember he was rightly not challenged on this in cross examination) the scheme provides an improved environment for all users. It follows that rather than being a reason for refusal, the scheme's impacts are a further benefit which weigh in favour of the grant of permission and must be taken into account as such.

22. Conclusions on reasons 2 and 3. As set out above, there is nothing in reason for refusal 3 and reason for refusal 2, properly analysed, gives rise to an important scheme benefit, which in fact weighs in favour of the grant of permission.

23. Having got these distractions out of the way, the remainder of these submissions explain how the appeal should be determined on the issues that remain, including the fact that part of the scheme would be built outside the urban edge (reason for refusal 1).

24. **Section 38(6)**. Section 38(6) mandates that the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.

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<sup>14</sup> DT Rebuttal Proof Appendix A

<sup>15</sup> DT Rebuttal paragraph 2.5

25. So far as material for the purposes of the appeal, the development plan comprises the adopted Local Plan 2001-2011.
26. The Council's remnant reason for refusal alleges a breach of Policies 1.CO, 18.CO and 59.BE(i).
27. It is common ground that the scheme would not comply with Policy 1.CO to the extent that part of the development would be on land that is designated as "countryside".
28. The Council sought to argue that the policy should be given "great" weight (Mr Errington in chief, confirmed in cross examination). That is clearly an untenable position. Under cross examination Mr Errington accepted that if Policy 1.CO was inflexible as to grant of permission for "normal" housing in the countryside then it was inconsistent with the NPPF and should be afforded limited weight. That is of course the correct interpretation of 1.CO<sup>16</sup>: see paragraphs 11 – 19 of the Satchall Lane appeal decision<sup>17</sup>. Remember that the interpretation of policy is a matter of law and that the Inspector's decision was upheld by the High Court. On that basis, it is common ground that 1.CO should be afforded limited weight.
29. It should also be noted that 1.CO also seeks to protect the countryside for its own sake, a position that has been inconsistent with national policy since the NPPF was introduced in 2012. Further, it is common ground between the parties that the Council has had to grant permission / allocate greenfield sites in order to deliver the housing the Borough needs – an important consideration in deciding the weight to be given to policy<sup>18</sup>. The blanket ban on new general market housing contained in 1.CO is therefore inconsistent with the NPPF's endorsement that policies should enable housing needs to be met. Given the agreed position between the parties it is not necessary to look to the various appeal decisions, but if that exercise were to be done then it is clear that, for the reasons set out in Mr Chapman's evidence the right approach is as set out in the Satchall Lane decision, the legality of which was expressly endorsed by the High Court.
30. It is also common ground that the scheme would not comply with policy 18.CO. That is because 18.CO prohibits any development that causes any adverse landscape impact. It is now agreed between the parties that 18.CO is inconsistent with the NPPF – it would for

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<sup>16</sup> Mr Errington's novel contention that 1.CO(iv) should be read as allowing any development to come forward in the countryside if its benefits outweighed its harms should be rejected. But if it was accepted then it would mean that the scheme would comply with 1.CO, as its benefits clearly do outweigh its harms.

<sup>17</sup> CD 11; and see the High Court's decision at CD 86 in particular paragraphs 61-62

<sup>18</sup> Again see Satchall Lane – CD 86 paragraphs 51 - 54

example given more protection to Eastleigh's countryside than the NPPF gives to the country's national parks - and that limited weight should be given to it (Mr Errington in cross examination).

31. 59BE(i) does not add anything material to the debate.
32. As to the real world impacts the scheme would have, these are minimal, as set out in the Appellant's LVIA and Mr Ellis' proof. Mr Errington said that the Council thought that the impacts were greater but as he rightly acknowledged he is not a landscape expert and in any event he was unable to articulate what he thought the increased level of harm might be. The Council's position therefore remains unknown and untested. The only defensible conclusion is that Mr Ellis' evidence should be accepted in full.
33. That, then, is the full extent of the harm the scheme would cause.
34. In those circumstances, the scheme would only need to deliver some fairly minor benefits to justify the grant of permission.
35. But of course the scheme will deliver a very substantial package of measures, which far outweigh the scheme's low level landscape character impacts. These include – but are not limited to – the following:
36. First, the scheme will regenerate a substantial amount of brownfield land within the urban edge. That strongly accords with the need to make effective use of land. NPPF 118 says planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes.
37. Second, the scheme will substantially enhance the significance of Sydney Lodge as a heritage asset. Sydney Lodge is Grade II\*, making it one of the most important listed buildings in the country<sup>19</sup>. Again, this attracts great weight: NPPF 193.
38. Third, the scheme will deliver much needed affordable housing. Whilst the Council's performance has picked up over the past couple of years, it is still well below meeting the needs of the Borough. It is common ground that there is still a very substantial and growing

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<sup>19</sup> Grade II\* buildings make up just 5.8% of all the listed buildings in the country:  
<https://historicengland.org.uk/listing/what-is-designation/listed-buildings/>

unmet need in the Borough<sup>20</sup> - the Council's Assessment identifies a very substantial shortfall and the need for 160 units per year from 2016 onwards - and it is common ground that the Appeal Scheme's contribution should be given significant weight.

39. Fourth, the scheme will make an important contribution to the Borough's housing stock. There is an issue between the parties as to the weight that should be given to this issue. The Council's housing land supply has fallen dramatically even since the application was determined, from just over 7 years to just over 5.5 years. Further, the Council's emerging Plan is dependent on windfall sites coming forward. The scheme will contribute to the Council's ability to significantly boost housing supply in the Borough and should be given significant weight.

40. Fourth, the scheme will deliver substantial economic benefits. As set out in the Committee Report<sup>21</sup> the scheme would support a forecast 178 construction jobs each year. It would also result in additional spending within the Borough of over £2m per year. The Council will also benefit from the New Homes Bonus<sup>22</sup>. These on their own are benefits of significant weight. In addition, it is important to remember the genesis of this application: it has been submitted and pursued in order to improve the Appellant's prospects of remaining competitive in the face of increasing global competition, in an industry that has since been decimated by the Covid-19 Pandemic. Those threats are very real, and have real world consequences: the Company has this week announced 83 on site job losses, about 15% of its workforce. Mr Errington is right that nothing is guaranteed, it can't be, but that does not mean that this is not an important factor that weighs in favour of the grant of permission.

41. Fifth, the scheme will deliver benefits that benefit the wider population, not just the new residents of the scheme – including on-site open space and on-site and off-site sports enhancements. Again, these matters weigh significantly in favour of the grant of permission.

42. Seventh, as set out above, the scheme will deliver improvements to the existing access and parking arrangements for existing residents and retail / commercial units, as well as safety improvements and environmental improvements around Coronation Parade. Again, these weigh significantly in favour of the grant of permission.

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<sup>20</sup> See internal page 39 of the Council's Affordable Housing Assessment 2017 – link at the bottom of page 57/96 of CD 67

<sup>21</sup> CD 64 paragraph 143

<sup>22</sup> This must be taken into account: see s.70 of the 1990 Act.

43. As the Council now accepts, it would be wrong in principle to adjust the weight to be given to any of these benefits by reference to their (unknown) potential for their delivery via other schemes, whether on the appeal site or on other sites in the Borough. The Council also now accepts that it would be wrong in principle to adjust the weight to be given to the benefits by reference to the harm that the scheme would cause (just as you don't downgrade the weight to be given to the harm by reference to the benefits the scheme would deliver). Mr Errington had applied both these principles in downgrading the weight he had given to a number of the scheme's benefits and he accepted that he was wrong to do so. The Council's planning balance is simply not fit for purpose.

44. Do other material considerations materially change the position? The only one in play is the emerging Local Plan. There is an issue between the parties as to the weight that should be given to the emerging Local Plan. The Appellant's position is simple: there is no way of knowing what the Inspector's conclusions will be following the next round of public consultation. The public will need to respond to new evidence and new modifications – so the extent to which objections to the Plan have been resolved is unknown and unknowable. It follows that limited weight should be given to the Plan. But even if more weight was given to the Plan – as per Mr Errington's evidence – that would still not come close to justifying refusal of the scheme<sup>23</sup>. There is no prematurity point here and the scheme's real world benefits would still heavily outweigh its very limited real world harm.

45. **Conclusions.** In conclusion, on the evidence as it has emerged from scrutiny at the Inquiry, there is only one sensible conclusion here. It boils down to this: should the fact that part of the scheme would extend beyond the urban edge, thereby causing some limited landscape harm, really be thought to stand in the way of the all the benefits the scheme will deliver? The answer is – of course not. Permission should be granted so that this highly beneficial development can come forward without further delay.

**Robert Walton QC**

**16<sup>th</sup> November 2020.**

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<sup>23</sup> Remember that Mr Grandfield gave considerable weight to 1.CO and moderate weight to the emerging Local Plan and still concluded that permission should be granted.