Section 78 Town and Country Planning Act 1990

Town and Country Planning Appeals (Determination by Inspectors)
(Inquiries Procedure) (England) Rules 2000

LAND TO THE SOUTH OF MALLARDS LANE, BURSLEDON

CLOSING SUBMISSIONS

On behalf of the Local Planning Authority

by

Paul Stinchcombe QC

Ned Helme

INTRODUCTION

1. This planning appeal is the latest in a long line of appeals concerning residential proposals for Eastleigh and yet, in two important ways, the issues before us today are more limited than in the appeals that came before:

    a. First, we now have the Supreme Court's judgment in ***Suffolk Coastal v Hopkins Homes Ltd and another, Richborough Estates Partnership LLP and another v Cheshire East Borough Council*** [2017] UKSC 37[1] as to the approach to take; and

    b. Second, we now have an agreed position so far as the Council's housing requirement is concerned, which reduces the issues between the parties on whether or not there is a five-year housing land supply to ones of the deliverability of housing from certain sites only, which were usefully the subject of the round table discussion held on day one of this Inquiry.

STRUCTURE OF CLOSING SUBMISSIONS

2. It will, I hope, help if I outline where I shall be taking you in these closing remarks, given that matters have moved on from the previous appeals that have been determined in Eastleigh:

    a. I will start with the essential factual background – the nature and location of the appeal proposal; the policies here in issue and how they are breached; and the consistency of those policies with the NPPF;

    b. I will then address you on the approach which needs to be taken to this appeal proposal in the light of the recent judgment of the Supreme Court in ***Suffolk Coastal***, noting that housing land supply is still in issue at this Inquiry;

[1] EBC 5.15

c. I will then turn to housing land supply and explain that the Council does, now, have a five-year supply of deliverable housing sites;

d. I will then address you as to where that leaves matters so far as the approach mandated by case law is concerned – looking at the current housing land supply position; how the Council got there; and the purpose of the principal policy which is here breached, the Local Gap Policy 3.CO;

e. I will then turn to the harms occasioned by the appeal proposal – both in planning terms and on the ground;

e. I will, finally, address you on the planning balance which falls to be weighed in this case, before ending with some short concluding remarks.

FACTUAL BACKGROUND

The Nature and Location of the Appeal Proposal

3. The appeal proposal is for residential development of up to 80 dwellings, consisting of 52 market houses and 28 affordable dwellings, on an appeal site which is approximately 2.81 hectares in size and located to the south of Bursledon. The site is mainly open and comprises grassed areas used for horsiculture, sloping from east to west. Further to the south lies Hamble Lane Farm. The Pilands Wood Site of Interest for Nature Conservation lies immediately to the east. Hamble Lane, the B3397, which provides the main north-south link between the peninsula and the north, forms the appeal site's western boundary.

The Breach of Policy

4. The Development Plan relevant to the consideration of this appeal comprises the Saved Policies of the Eastleigh Borough Local Plan Review (2001-2011)[2]. It includes

[2] EBC 2.8-2.11

Policies 1.CO, 3.CO, 18.CO, 59.BE and all the other policies referred to in the Council's Decision Notice[3]. In closing, I shall concentrate, however, on Policies 1.CO and 3.CO.

Policy 1.CO

5. The appeal site is, as we have seen, located outside of any settlement or development boundary and is designated as "Countryside" on the Proposals Map. Policy 1.CO therefore applies. That policy provides that planning permission will not be granted for development outside the urban edge unless it meets at least one of four listed criteria. None apply in the case of the appeal proposal, which therefore breaches Policy 1.CO. All of this is agreed.

Policy 3.CO

6. The appeal site is also located within a Local Gap protected from development by Policy 3.CO. That gap is identified as "Gap G. Hamble – Bursledon – Netley Local Gap" in Appendix I to the Local Plan. Policy 3.CO provides that planning permission will only be permitted for appropriate development in a Local Gap if it cannot be acceptably located elsewhere and would not diminish the gap, physically or visually.

7. The context within which that policy imperative - not to diminish the gap, physically or visually - is to be understood is that Gap Policies are planning policies, not landscape policies. They are designed to keep settlements apart and, hence, their importance is afforded simply by being free from development, and not by any particular landscape feature or quality – other than being open. The appeal proposal plainly offends that purpose. It will replace open green fields with an urban estate and diminish the gap both visually and physically. Further, the proposal can be located elsewhere and not in a gap at all. That must be so, since Gap Policies are only applied to those specific parts of the Borough where they are deemed necessary, and only around 50% of the designated countryside in Eastleigh Borough is so designated. The appeal proposal therefore plainly breaches Policy 3.CO as well as Policy 1.CO. That, too is agreed.

[3] EBC 1.3

8. The reason for designating the "Hamble – Bursledon – Netley Local Gap" in the extant Local Plan, and affording to the appeal site and adjacent land the additional tier of protection from development that Policy 3.CO provides, is briefly explained in Paragraph 10 of Appendix I:

> "The visual separation of the three settlements can be appreciated from Hamble Lane, Satchell Lane, St Marys Road, the railway line, several public footpaths, Southampton Water and the River Hamble. Because of the multitude of vantage points and routes between settlements it is not possible to break this gap into separate units between the individual settlements. The gap includes predominantly undeveloped land comprising the Royal Victoria Country Park, sportsfields, agricultural land, woodland, the former airfield and salt marshes on the west bank of the Hamble River. Its boundary runs along the edge of urban development, natural features such as hedgerows, the River Hamble and Southampton Water. The gap is the minimum land required to achieve a reasonable physical and visual separation between the three settlements. No changes to the boundary as identified in the adopted local plan are proposed."

9. It is important to consider this passage with some care in the context of this appeal:

a. The first sentence is perhaps a statement of the obvious, but important nonetheless in the context of this appeal since the area of gap most affected is that between Bursledon (i.e. Hamble Lane) and Hound (i.e. Satchell Lane), as Mr Armstrong notes in his Proof at paragraph 5.8.

b. The next sentence rightly makes the point that the gap here is single and indivisible, and it follows that any harm to part of it is a harm to the whole of it.

c. The third sentence starts by noting that the gap includes predominantly undeveloped land comprising various land types including agricultural land. The appeal site may therefore fairly be described as characteristic of the gap in this respect (albeit it is now used for horisculture rather than strictly agriculture).

d. The fourth sentence notes, inter alia, that the gap's boundary runs along the edge of urban development and natural features such as hedgerows, so here too the appeal site is characteristic.

e. The penultimate sentence then notes that the gap is the minimum land required to achieve a reasonable physical and visual separation between Hamble, Bursledon and Netley. The position under the adopted Local Plan is therefore that any encroachment into this gap is harmful to its purpose. If the only purpose of the gap were to prevent actual coalescence, this approach would not be necessary. But to protect the identities of these settlements, a greater level of physical and visual separation is required.

10. The Local Plan was, of course, adopted on 25th May 2006, and so its evidence base cannot be entirely up-to-date. However, the Council has recently undertaken a detailed review of its gap policies as part of bringing forward its emerging Eastleigh Borough Local Plan (2011-2036), as explained in the Report to Cabinet dated 15th June 2017 (just a few days ago)[4]. That review includes detailed policy analysis, and is underpinned by a substantial assessment including landscape and visual appraisal of existing gaps. At the 15th June 2017 meeting, Cabinet resolved to approve countryside gap designations shown in the plans appended to the Cabinet Report. As shown on the plans, the decision was taken to retain the gap in the area of the appeal site. The Council's recent review of its gaps therefore provides an up-to-date evidential basis for not only the emerging gap policy but also Policy 3.CO in this particular location.

11. In maintaining Gap Policies, the Council is, of course, building on the long heritage of Gap Policies not just in the Borough but in the PUSH area more generally, a heritage

[4] The Review is currently in draft. It is still being finalised in respect of certain areas, and is being further aligned with the selection of a Strategic Growth Option and other development sites to be made by Council on 20th July 2017 as part of the decision on the Local Plan Preferred Approach.

which reflects the unusual settlement pattern in the area and the imperative of protecting individual settlements, their character, and their identity.

12. I will return to that later, when I assess the harms occasioned by the appeal proposal in both planning and landscape terms.

Consistency of Policy 1.CO and Policy 3.CO with the NPPF

13. Paragraph 215 of the NPPF states that the weight afforded to policies should be proportionate to the degree to which they are consistent with the NPPF (a separate question from whether policies are deemed to be out-of-date by virtue of Paragraph 49 of the NPPF and housing shortfall). I therefore turn to consider the extent to which Policies 1.CO and 3.CO are consistent with the NPPF.

Policy 1.CO

14. In important respects, the Policy 1.CO is plainly consistent with the NPPF, including the NPPF Paragraph 17 core planning principle of "recognising the intrinsic beauty of the countryside".

15. The Bubb Lane Inspector found, however, that, insofar as Policy 1.CO acts as a bar to any major residential development beyond the defined settlement boundaries, and makes no provision for an NPPF-type balancing exercise, the policy was at odds with the NPPF and that impacted upon the weight to attributable to its breach[5]. At the outset of the Inquiry, and out of respect to the previous Inspector, the Council was not minded to dispute this approach. However, you helpfully alerted us to the judgment of Lindblom J in ***Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government, Hinckley and Bosworth Borough Council*** [2014] EWHC 754 (Admin), which has given us compelling reason to reconsider, noting that Lindblom J expressly rejected the argument of the Bubb Lane Inspector at [186] of his judgment.

[5] EBC 4.2

16. Hence, you should approach the appeal proposal upon the basis (which is common ground) that it breaches Policy 1.CO and that this policy is consistent with the NPPF[6].

Policy 3.CO

17. As for Policy 3.CO, and as Mr Wilmshurst explained:

a. This policy is consistent with the fifth core principle identified at NPPF Paragraph 17, which states that planning should: "Take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it."

b. Policy 3.CO is also entirely consistent with NPPF Paragraph 157, which requires Local Plans to: "... identify land where development would be inappropriate, for instance because of its environmental... significance".

18. Further, as Mr Wilmshurst also told you, in December 2015 a Planning Inspector came to very similar conclusions when examining the neighbouring Test Valley Revised Local Plan (2011-2029) and, specifically, a gap policy contained within it[7]. The same is plainly true here.

Conclusions

19. The inescapable truth is, therefore, and this is common ground, that the appeal proposal breaches the Development Plan and breaches, so far as the most important policies relevant to this appeal are concerned, policies which are fully consistent with the NPPF. It is against that backcloth that I therefore turn to the approach which must be taken to such a proposal, guided by the most recent case law.

[6] The same position applies to 18.CO. In the light of ***Bloor***, the Boorley Green Inspector (with whom the Secretary of State agreed) was wrong at IR12.6 to find 18.CO to be only partly consistent with the NPPF on the basis that the NPPF "requires a balance to be struck" [EBC 4.5]

[7] EBC 6.1 paragraph 190-195

APPROACH

Introduction

20. You have also given us cause to reconsider the concession that we made in opening that the 'tilted balance' provided for by Paragraph 14 of the NPPF (as referred to by Lord Carnwath in ***Suffolk Coastal*** at [54]) is necessarily engaged in this case simply because the adopted Local Plan period ran only to 2011. We made that concession because of the comment made by Lord Carnwath at [63] of his judgment in ***Suffolk Coastal*** that: "On any view, quite apart from Paragraph 49, the current statutory development plan was out of date, in that its period extended only to 2011."

21. We noted in opening, however, that, this statement of Lord Carnwath was contrary to previously decided case law in that, in *Wynn-Williams v. SSCLG* [2014] EWHC 3374 (Admin) [EBC 5.16], at [34-36] the Judge rejected the proposition that "the mere age of the policy is sufficient to render it out of date ... given the provisions of Paragraph 211 of the NPPF". It may be, therefore, that the Council was too ready to attribute decisive weight to a single comment of Lord Carnwath, a comment which may have been directed solely at the facts of the case before him, and may not have been intended to overturn (rather casually) previously decided authority. I therefore consider, first, the question as to whether the tilted balance of Paragraph 14 of the NPPF is engaged in this case after all; and if so upon what basis or bases that might be so.

Paragraph 14 of the NPPF

22. Paragraph 14 of the NPPF provides as follows so far as decision-taking is concerned:

> "For decision-taking this means[8]:
> • approving development proposals that accord with the development plan without delay; and
> • where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
> – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or –

[8] Footnote 10 here provides "unless material considerations indicate otherwise"

specific policies in this Framework indicate development should be restricted.[9]"

23. Hence, and by reference to the first bullet point of Paragraph 14 for decision-taking, one must approve proposals that accord with the Development Plan without delay. Further, and as recently held in ***East Staffordshire Borough Council v Secretary of State for Communities and Local Government and Another*** [2016] EWHC 2973 (Admin) at [21 *et seq.*], whilst the NPPF is silent as to what happens in the converse situation, it "must be implicit" in Paragraph 14 of the NPPF that where a proposal is inconsistent with relevant policies it should not be approved. Where a proposal is in breach of an up-to-date development plan, therefore, the Paragraph 14 presumption is <u>against</u> development. That must, therefore, be the starting-position for the decision-maker, and it is one which carries a "considerable gravitational pull". And although he or she retains a "residual discretion" to permit if material considerations indicate otherwise, the scope for exercise of that discretion is limited to "exceptional" cases (see ***East Staffordshire*** at [31-32 and 54]). That is entirely as one would expect: an up-to-date Plan should ordinarily be expected to prevail in a Plan-led system.

24. It is, of course, the second bullet point of Paragraph 14 which makes provision for the tilted balance and it only applies when the Development Plan is "absent, silent or relevant policies are out-of-date". It is the final possibility which the Appellant relies upon in this case and I therefore turn, first, to consider the bases upon which "relevant policies" might be considered out-of-date. I do so by reference to Policies 1.CO and 3.CO, those upon which (principally) the Council rely in objecting to the appeal proposals.

[9] Footnote 9 here states "For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."

Are Policies 1.CO and/or 3.CO Out of-Date?

25. In *Wynn-Williams* it was held that policies could be rendered out-of-date (in the light of Paragraphs 211 and 215 of the NPPF) where they were inconsistent with the NPPF. That certainly remains good law. However, Policies 1.CO and 3.CO are consistent with the NPPF for all of the reasons I have given (indeed, this is common ground). If, therefore, those policies are out-of-date at all, it must be for some other reason.

26. Neither, however, can Policies 1.CO and 3.CO be rendered out-of-date by virtue of Paragraph 49 of the NPPF (which provides that "relevant policies for the supply of housing" are deemed to be out-of-date in the absence of a five-year supply of housing land) because they are not policies of this kind. The recent judgment of the Supreme Court in ***Suffolk Coastal*** made this clear at [57]:

> "57. Unaided by the legal arguments, I would have regarded the meaning of paragraph 49 itself, taken in context, as reasonably clear, and not susceptible to much legal analysis. It comes within a group of paragraphs dealing with delivery of housing. The context is given by paragraph 47 which sets the objective of boosting the supply of housing. In that context the words "policies for the supply of housing" appear to do no more than indicate the category of policies with which we are concerned, in other words "housing supply policies". The word "for" simply indicates the purpose of the policies in question, so distinguishing them from other familiar categories, such as policies for the supply of employment land, or for the protection of the countryside. I do not see any justification for substituting the word "affecting", which has a different emphasis. It is true that other groups of policies, positive or restrictive, may interact with the housing policies, and so affect their operation. But that does not make them policies for the supply of housing in the ordinary sense of that expression."

27. Nor, with respect, can Policies 1.CO and 3.CO be rendered out-of-date by reference to Saved Policy 81.H of the Local Plan, as Mr Farrelly argued in paragraphs 6.7-6.8 of his Proof of Evidence. True it is that Policy 81.H may be considered out-of-date, but it is too much of a stretch to call it a relevant policy for the purposes of Paragraph 14. This appeal is not about Policy 81.H, and the mere fact that it is out-of-date does not mean that, necessarily, Policies 1.CO and 3.CO are out-of-date also.

28. That only leaves the possibility that Policies 1.CO and 3.CO are out-of-date, if at all, for the reason identified by Lord Carnwath at [63] of his judgment in ***Suffolk Coastal,*** and by the expiry of time alone, with the previous authority of ***Wynn-Williams*** overruled on this point. That is a matter for you to decide.

Is The Tilted Balance Engaged?

29. If you do decide that it follows from [63] of Lord Carnwath's judgment in ***Suffolk Coastal*** that Policies 1.CO and 3.CO are out-of-date because the Plan itself is time-expired, then the Council accept that it must follow that the Paragraph 14 tilted balance will be engaged. If you do not find those Policies to be out-of-date at all, however, you can only decide that the Paragraph 14 tilted balance is engaged because other policies are out-of-date (for example housing supply policies through housing shortfall); or because you find the extant Local Plan to be "absent or silent" (for example, through not having a housing requirement). Both, therefore, involve consideration as to whether the Council has a five-year supply of housing sites. If it does, the first possibility does not bite; and any "absence or silence" in this regard will not have caused housing shortfall.

30. That matters because even if you were to decide that the tilted balance was engaged for either of these reasons, or through time expiry alone, it is decided law[10] that Paragraph 14 of the NPPF does not modify or dis-apply the statutory framework established by Section 38(6) of the 2004 Act. One still has to decide planning applications and appeals in accordance with the Development Plan unless material considerations indicate otherwise (the NPPF being merely a material consideration, albeit an important one). And that exercise would have to be undertaken here in the knowledge that Policies 1.CO and 3.CO are consistent with the NPPF; and having assessed whether or not they have not prevented the Council from having a five-year housing land supply.

[10] As held by Lindblom LJ in ***Ivan Crane v. Secretary of State for Communities and Local Government*** [2015] EWHC 425 (Admin)[10] and confirmed by the Supreme Court in ***Suffolk Coastal*** at [29].

31. If, of course, the tilted balance is not engaged, we are in 'un-tilted' Section 38(6) territory and must follow the approach recently stated in ***East Staffordshire Borough Council.*** (supra).

The Ongoing Relevance of Housing Land Supply

32. The approach to weighing the tilted balance in such circumstances is a matter which has been considered in two further judgments of Lindblom J (now LJ): ***Phides Estates (Overseas) Limited v. Secretary of State for Communities and Local Government*** [2015] EWHC 827 (Admin); and ***Suffolk Coastal*** in the Court of Appeal[11]. I deal with each case in turn, looking at both sides of that planning balance.

The Benefit Side

33. In the first, the ***Phides*** case, Lindblom J (as he then was) made it clear at [60] that, so far as the 'benefit side' of the planning balance is concerned, Paragraph 14 of the NPPF did not prescribe the weight to be attached to a contribution towards meeting a housing shortfall. This was a matter for the decision-maker and would depend on not just the extent of the shortfall but on "how long the deficit is likely to persist". In other words, if action is being taken to meet housing needs in the medium to longer term, the weight to be attributed to the ability of a particular proposal to reduce a shortfall in the short term can properly be reduced.

The Harm Side

34. This point was then re-iterated and elaborated upon in the second case, ***Suffolk Coastal*** in the Court of Appeal at [46-47], where Lindblom LJ (as he had then become) addressed the other side of the planning balance – the weight to be attributed to the breach by a housing proposal of development constraint policies which are to be deemed out-of-date by reason of housing shortfall. He stated as follows:

> "46. We must emphasise here that the policies in paras 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe

[11] Noting that both are cases in which a housing shortfall did exist – in other words they were decided upon the basis, as the Appellant here contends and which the Council disputes, that the Council could not demonstrate a five-year housing land supply as called for by Paragraph 47 of the NPPF.

how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ... Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.

47 ... The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, **the action being taken by the Local Planning Authority to address it, or the particular purpose of a restrictive policy—such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in para.49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF.**"

(emphasis added)

35. Lindblom LJ therefore confirmed that determinative weight can properly be given to out-of-date Development Plan policies, and that the breach of such policies can properly justify the refusal of housing proposals even when there is a housing shortfall and the tilted balance is engaged (*a fortiori*, therefore, where it is not and where we are in 'un-tilted' Section 38(6) territory – see: ***East Staffordshire Borough Council*** (supra)).

36. Moreover, Lindblom LJ set out three considerations which can lead to attribution of such determinative weight:

a. The first invokes consideration of the extent of housing shortfall;

b. The second (which flows from ***Phides Estates***, albeit now looking at the other side of the planning balance) invokes consideration of the action being taken to address the shortfall; and

c. The third invokes consideration of the particular purpose of a restrictive policy—noting that in this regard, the purpose of Policies 2.CO and 3.CO is precisely the kind of purpose Lindblom LJ referred to in his judgment as properly carrying determinative weight, being policies to protect a gap between settlements.

37. Although the Court of Appeal's approach in ***Suffolk Coastal*** was overturned with regards to the meaning of "policies for the supply of housing", there was no complaint about this aspect of its approach, as is clear from [29] of the judgment of Lord Carnwath in the Supreme Court. I therefore turn to housing land supply with the above legal framework in mind, and in particular the first two of the above considerations.

THE HOUSING LAND SUPPLY

Introduction

38. The requirement of Paragraph 47 of the NPPF is for the Council to demonstrate a five-year supply of deliverable housing land. This, in turn, depends on the answer to two antecedent questions: What is the housing requirement? And what is the supply of deliverable sites?

39. I shall deal with each matter in turn, but the first only briefly since it has been agreed.

Requirement

The Five-Year period

40. It is agreed that the period 1st April 2017 to 31st March 2021 is the appropriate five-year period to use for the purposes of this Inquiry – see: Paragraph 2.2 of the Housing Land Supply Statement of Common Ground.

The Starting Point

41. It is also agreed, given that the Council has no up-to-date housing requirement figures within either an adopted or emerging Local Plan, that the five-year land supply should be assessed against the 'policy off' Objectively Assessed Housing Need (OAN) for

Eastleigh Borough – see: Paragraph 2.4 of the Housing Land Supply Statement of Common Ground.

42. Further, and based on both the most recent demographic evidence and the conclusions of recent Inspectors determining appeals in Eastleigh, it is also agreed that 630 dwellings per annum (dpa) represents the OAN for the Borough and is the appropriate annual requirement against which to assess the five-year land supply at this Appeal – see: Paragraph 2.5 of the Housing Land Supply Statement of Common Ground.

Approach to Shortfall/Under-Delivery

43. It is also agreed that whilst there is no need to include any undersupply accumulated in the years prior to 2011 (which is when the adopted Local Plan expired and the start of the emerging Local Plan period) since this is taken into account in calculating the OAN (which uses a 2011 base date), it is necessary to take into account the shortfall *since* 2011, which amounts to 1,589 dwellings – see: Paragraphs 2.6-2.7 of the Housing Land Supply Statement of Common Ground.

44. It is also agreed that:

a. A buffer of 20% should be applied to reflect a record of persistent under delivery of housing in Eastleigh – see: Paragraph 2.8 of the Housing Land Supply Statement of Common Ground; that

b. This should be applied to both the requirement and the shortfall – see: Paragraph 2.9 of the Housing Land Supply Statement of Common Ground; and that

c. The 'Sedgefield approach' to recovering the shortfall in the first five-years should be applied within the Borough – see: Paragraph 2.10 of the Housing Land Supply Statement of Common Ground.

Conclusions on Requirement

45. Given the above agreements, the overall five-year housing requirement for Eastleigh (including buffer) is also agreed. It stands at 5,689 dwellings over the agreed 1st April 2017 – 31st March 2022 period (which equates to an annual requirement of 1,138 dpa) – see: Paragraph 2.11 of the Housing Land Supply Statement of Common Ground and the agreed Table which follows:

	Housing Requirement 1st April 2017 - 31st March 2022	
a	Objectively Assessed Housing Need: Dwellings per annum, 2011-36	630
b	Total Objectively Assessed Need from 1st April 2017 - 31st March 2022	3,150
	Shortfall in Housing Provision 1st April 2011 - 31st March 2017	
c	Dwellings required between 1st April 2011 and 31st March 2017	3,780
d	New dwellings completed, 1st April 2011 and 31st March 2017	2,189
e	Shortfall during period 1st April 2011 and 31st March 2017 (c - d)	1,591
f	20% Buffer for persistent under-delivery (b + e)*20%	948
g	**Total housing requirement for period from 1st April 2017 - 31st March 2022 (b + e + f)**	**5,689**

Supply

Introduction

46. So far as the supply side of the equation is concerned, footnote 11 of the NPPF states as follows with regard to the "deliverability" of housing from any given site:

> "To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five-years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five-years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."

47. The PPG provides further guidance on assessing deliverability as Mr Ireland's Proof explained[12], and it makes clear that a planning permission or allocation in a development plan is not a prerequisite to deliverability (see also ***St Modwen Developments Ltd v SSCLG*** [2016] EWHC 968 (Admin)[13]; and that a planning judgement as to deliverability can clearly be made in respect of sites which do not have planning permission now, but can reasonably be expected to receive one so as to enable housing to be built on them within the next five years. Mr Packer's approach is inconsistent with this and excludes supply from all sites without planning permission or a resolution to grant it.

48. Further, Mr Packer's approach on delivery rates has been to rely on information on national averages and apply these in a rigid way, not taking account of site-specific circumstances; or the developers' own expectations; or differences in local market dynamics between different parts of the Country; or, as Mr Ireland explained, the importance of driving delivery rates on large sites to support their viability, taking account of upfront infrastructure costs and the finance costs associated with this. Mr Packer provided no evidence that he has engaged developers/promoters in any discussions whatsoever in order to understand site-specific issues and drivers even though the PPG [at 3-023] specifically states that the advice of developers and local agents will be important in assessing lead-in times and build out rates.

49. Mr Ireland and his team have, however, done precisely what the PPG requires. He has assessed issues related both to lead-in times and delivery rates on a site-specific basis, using a range of information available to him, including his own research relating to market conditions; analysis of completions not just in Eastleigh but for large sites across Hampshire; research undertaken in the preparation of Strategic Housing Market Assessments for Authorities across South Hampshire; and information provided by site promoters. His is a thorough and comprehensive approach which draws on locally-specific information.

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[12] Ireland Main Proof paragraphs 3.37-3.40

[13] EBC 5.14, referred to by Mr Ireland in his Main Proof at paragraph 3.41

50. And Mr Ireland's approach was, moreover, to test developers' assertions as to expected delivery by reference to such research and analysis, not blindly to accept them. That is highlighted by reference to two of the contested sites: Land South of Chestnut Avenue (Site 20), where the developer expected delivery of 600 homes in the five-year period, but Mr Ireland assumed 540 dwellings; and Land to the South of Foord Road and West of Dodwell Lane (Site 50), where the developer expected delivery of 106 homes in the five-year period, but Mr Ireland had made a cautious assumption of 50 dwellings. The requirement is not, however, for the adoption of an overly cautious (or pessimistic) approach, as this would result in a supply position which was unrealistically low when the PPG requires, [at 3-033], assessments of five-year land supply to be realistic, based on up-to-date and sound evidence. This is plainly what Mr Ireland has done and his evidence should be relied on.

51. As Mr Ireland explained, it is also relevant that the calculation includes a 20% buffer. The purpose of increasing the buffer from 5% to 20% is "to provide a realistic prospect of achieving the planned supply". Hence, through increasing the requirement by 711 dwellings in this case, one inevitably builds in a level of supply-side flexibility. Whilst there may be risks of slippage on some sites, other sites may progress more quickly than Mr Ireland currently envisages.

Sources of Supply

52. It is with the above fully in mind that the Council's 'May Position Statement'[14] identifies five key sources for the supply (see: Paragraph 3.1 of the Housing Land Supply Statement of Common Ground):

a. Small Sites (less than 10) - Outstanding Permissions (Appendix A of the May Position Statement);

[14] EBC 2.24

b. Large Sites - Outstanding Permissions (Appendix B of the May Position Statement);

c. Large Sites - Resolutions to Grant Permission (Appendix C of the May Position Statement);

d. Large Sites - Developments under Negotiation (Appendix D May Position Statement); and

e. Windfall Allowance.

Sources Not In Dispute

53. There is no dispute as to the latter source. It is agreed that a windfall allowance of 174 units for years 3-5, including a 10% discount, can be included in the deliverable five-year supply - see: Paragraph 3.8 of the Housing Land Supply Statement of Common Ground. Further, and having conferred on the supply from small sites, the parties also agreed the removal of two schemes from the Council's statement of deliverable supply - 18 Romsey Road (7 dwellings) and Nightingale House (4 dwellings) – with the agreed outcome that the small site commitments, discounted by 4% for lapses, would contribute 194 dwellings over the five-year period - see: Paragraphs 3.2-3.3 of the Housing Land Supply Statement of Common Ground.

Sites in Dispute

Large Sites - Outstanding Permissions

54. So far as the large sites with permission are concerned, the parties are in dispute, but the sites about which they disagree are few. There are just three of them[15] (see: Paragraph 3.4 of the Housing Land Supply Statement of Common Ground):

[15] It is also agreed that Site 28 - Hobb Lane, Hedge End would contribute 9 dwellings, as opposed to 8, given the extant planning permission at the base date, the effect of which was to increase the supply by 1 dwelling from that shown in the Council's May 2017 Position Statement - see: Paragraph 3.5 of the Housing Land Supply Statement of Common Ground.

a. Site 7 - Land North and East of Boorley Green;

b. Site 20 - Land South of Chestnut Avenue; and

c. Site 31 - Land at Hedge End North, Winchester Road, Botley.

Large Sites - Resolutions to Grant

55. So far as the large sites with resolutions to grant are concerned, the dispute is even more limited. Mr Packer's evidence contests the contribution over the five-year period of just one site:

d. Site 42 – Land at Pembers Hill Farm, Fair Oak (see: Paragraph 3.6 of the Housing Land Supply Statement of Common Ground).

Large Sites – Developments under Negotiation

56. Finally, and so far as the large sites under negotiation are concerned, Mr Packer's evidence disputed the contribution over the five-year period of three sites (see: Paragraph 3.7 of the Housing Land Supply Statement of Common Ground):

e. Site 49 – Land to the North and East of Winchester Drive, Botley;

f. Site 50 – Land to the South of Foord Road and West of Dodwell Lane; and

g. Site 51 – Land to the West of Woodhouse Lane, Hedge End.

Extent of Dispute

57. I will come on to the detailed reasons which underpin the differences between these experts on a site by site basis shortly. However, in numerical terms the extent of the dispute between the parties on the 7 sites in issue is 947 units, broken down as follows in the Table within Section 4 of the Housing Land Supply Statement of Common Ground:

Site Ref	Site	Deliverable Supply		
		Council	Appellant	Difference
7	Land North and East of Boorley Green	900	600	-300
20	Land South of Chestnut Avenue	540	350	-190
31	Land at Hedge End North, Winchester Rd	350	280	-70
42	Land at Pembers Hill Farm, Fair Oak	250	123	-127
49	Land to the North and East of Winchester Street, Botley	105	0	-105
50	Land to the South of Foord Road and West of Dodwell Lane	50	0	-50
51	Land to the West of Woodhouse Lane	105	0	-105
Total		2,300	1,353	**-947**

58. I shall take each disputed site in turn.

Site 7 - Land North and East of Boorley Green

59. As noted above, Mr Ireland assumes that 900 dwellings will be delivered on this site within the five-year period whereas Mr Packer has assumed 600, a difference of 300 dwellings. The basis of the difference is the different delivery rates assumed by the experts. Mr Ireland assumes that each of the three developers on this site – Bovis, Linden and Bloor – will each deliver 60 units per year, giving a total output of 180dpa; whereas Mr Packer assumes 40 units per year, giving an output of 120dpa.

60. This site is already under construction and Bovis, Linden and Bloor are all on-site. Mr Ireland's assumptions are informed by the information provided by the agent on behalf of the development consortium. A schedule of completions was set out in Appendix 1 to the Boorley Green Development Consortium's application for a Deed of Variation to the S106 Agreement, included in Mr Ireland's Appendix J, which clearly shows an expected 15 completions per month from March 2017 onwards. The agent also confirmed in April 2017 that, based on his close liaison with his clients, this remains the expectation. As already noted, the PPG is clear that the advice of developers and local agents will be important in assessing build-out rates.

61. Mr Packer contends that 127 units will be completed by December 2017. He also contends (in his Supplementary Proof at Paragraph 2.11) that this is the expected delivery rate per year and that this supports his assumption of an average of 120dpa. However, the actual situation, as Mr Ireland explained, is that first completions were achieved in February 2017 and 6 dwellings were completed by 31st March. On this basis, 121 dwellings can be expected to be delivered over just a 9-month period. This equates to an annual delivery rate of 161dpa which does not support the 120dpa delivery rate suggested by Mr Packer.

62. The monitoring data, as provided by Mr Ireland Additional Evidence Pack, indicated that, as at 31st March 2017, 93 dwellings were under construction. At 15 completions per month, this relates to a pipeline of over 6 months and provides supporting evidence that the pace of delivery of 15 completions per month (180dpa) he expects is reasonable.

63. Mr Packer's analysis relies on applying an average sales rate of 40dpa per housebuilder, based on average completions per site nationally of 8 national housebuilders (his Table 6.4). Whilst the average for Bovis and Linden, nationally, is broadly consistent with this, Mr Packer is wrong to suggest that every site nationally will deliver at this rate. It is logical, as Mr Ireland explained, that sites in stronger markets will support sales rates which are above average. As he explained, the

recovery in sales in Eastleigh as shown in Table 26 in his Proof, points to this being a strong market.

64. Mr Ireland further explained that his team had also reviewed analysis of completions achieved on major sites across Hampshire looking back to the late 1970s, an exercise which clearly showed the potential of large strategic sites such as this to sustain delivery rates of 180dpa or more. This information was submitted in the Additional Evidence Pack. It shows the last major strategic development in this broad location, North of Hedge End, sustaining delivery rates of on average 190dpa over the course of a decade (1998-1998). It also shows that it is often the case that for large sites such as this, completions in initial phases will be slower than once the scheme has established. It is not therefore safe for you to rely on delivery rates in 2017 alone as an indication of those expected over the five-year period as a whole.

65. Mr Ireland also highlighted the need for large sites to deliver at pace in order to support infrastructure delivery. The Hampshire monitoring data supports this. And, in addition to this, Mr Ireland explained that his team had spoken to the sales agents for each of the three developers. Sales offices opened in January 2017 and sales to-date equate to 3.6 per month for Linden; 5.4 per month for Bloor; and 7.8 per month for Bovis – totalling, collectively, 17 sales per month. Plainly, the range of local market evidence supports a delivery rate of 180dpa and, therefore, reinforces the reliability of Mr Ireland's assumptions. Mr Ireland also highlighted that the latest data nationally shows that completions levels have now recovered to pre-recession levels.

66. For all of these reasons, we invite you to endorse Mr Ireland's conclusions on Site 7. The evidence is compelling.

Site 20 - Land South of Chestnut Avenue

67. Mr Ireland assumes that 540 dwellings will be delivered on this site within the five-year period whereas Mr Packer has assumed 350, a difference of 190 dwellings. The

basis for the difference is a combination of disagreements as to the lead-in time to first completions and the delivery rate assumed.

68. Mr Packer assumed first completions in Autumn 2018 (identifying that there are significant highways works to be undertaken influencing the phasing of housing delivery) and suggested that his delivery assumptions were informed by the EBC April Position Statement. Mr Ireland, on the other hand, pointed out that the developer intends to start on site in August 2017, with first completions in August 2018, and produced a detailed programme to the Inquiry (and Appendix V to his Proof). He also made clear that that the interaction between pre-commencement obligations, highways works and the phasing of completions had been fully considered and had informed his delivery assumptions for this site.

69. The broad facts are clear. Outline planning consent for the scheme (1,100 homes) was granted in January 2016. A reserved matters consent for the first phase of 560 dwellings had been granted on 26th May 2017 and a reserved matters application for the remainder of the site was due to be submitted in July 2017. A formal application was made on 12th June 2017 for the discharge of conditions on the outline consent. Badger and archaeological surveys were submitted on that date and mitigation procedures are already underway.

70. With regard to Mr Packer's contention that there remain further conditions to discharge (Conditions 7, 21, 23, 25, 30-33, 35, 43 and 44), the further information which Mr Ireland submitted indicates that these relate to works commencing in October, and that further applications for discharges of these conditions will be submitted in the next two weeks. Further, and so far as the highways works were concerned, Mr Ireland told you that he had taken these into account – they are explicit within Highwood's construction programme and have informed his phasing and build-out assumptions: a phasing plan for highways works formed part of the Construction Management Plan which Highwood submitted in May 2017; the S278 Agreement is already with Hampshire County Council for final technical approval, with the target date for

signing the agreement of 4th July 2017 just a few weeks away; and Highwood is already in discussions with contractors to deliver the highways works. The further information submitted shows that the contractor is due to be appointed this Friday, that the engineering works to address the levels are taken into account in the contractor's programme, and that taking all of this into account Highwood intend to start on site in August 2017.

71. As Mr Ireland also explained to the Inquiry, the increase in the delivery rates that he has assumed for the site reflect the recent work which he and his team have undertaken to understand its specific circumstances and the bespoke delivery model that has been designed to deliver it, specifically catering for a number of different market segments - homes for market sale; affordable housing in partnership with Vivid Housing Association (formerly Sentinel Housing Association); and build-to-rent by the Council's own Housing Company and Vivid – a model which would deliver higher housing completions than standard development schemes, with the Council's active involvement helping both to kick-start the development and to drive the pace of delivery. Highwood's construction programme envisages delivery of 600 homes from this site over the five-year period. As Cllr House explained, the Council and Vivid will each deliver 100 units in Phase 1, and a further 100 units in Phase 2 for market rent, increasing the pace of delivery to well above what might be achieved from a standard market-led housing scheme, as Mr Packer has assumed. He also explained the Council's proactive role in forward funding the school to allow the development to get onsite quicker.

72. The appellant questioned Highwood's capacity and expertise. Mr Ireland's further evidence shows that the company's staff are from developer backgrounds with experience in delivering large schemes; and that it will be appointing sub-contractors to build homes.

73. In the premises, Mr Ireland's site-specific evidence as to the deliverability from Site 20 is manifestly to be preferred and we invite you to endorse it.

Site 31 - Land at Hedge End North, Winchester Road, Botley

74. Mr Ireland assumes that 350 dwellings will be delivered on this site within the five-year period whereas Mr Packer has assumed 280, a difference of 70 dwellings. That difference again relates to the assumed build-out-rate. Mr Ireland assumes a rate of 150dpa, Mr Packer 120dpa. Since both parties assume three developers building concurrently, the difference relates solely to the assumed output per developer.

75. As Mr Ireland explained, his expert view in this regard was properly sourced in the highly relevant evidence presented on behalf of the developers (Gleeson, Miller and Welbeck Land) to the Hedge End North Inquiry in Summer 2016; by his own review of the likely date of initial completions; and by delivery assumptions provided by the Consortium in April 2017 (Mr Ireland's Appendix FF). The first reserved matters application for 310 dwellings is, as Mr Ireland explained, due to be submitted in September 2017 (Mr Ireland's Additional Evidence, Appendix D). Furthermore, Mr Ireland's evidence is corroborated by his wider analysis of build-out rates for other development schemes in South Hampshire (Mr Ireland's Additional Evidence Appendix A); and, once again, we invite you to endorse it.

Site 42 – Land at Pembers Hill Farm, Fair Oak

76. For Pembers Hill, Mr Ireland assumes that 250 dwellings will be delivered over the five-year period whereas Mr Packer has assumed 123, a difference of 127 dwellings. The difference relates to both the assumed lead-in time to initial completions and the build-out-rate.

77. As for lead-in time, the Council resolved to grant planning permission for this 250 home scheme on 25th January 2017. Both the Council and developer, Drew Smith Homes, anticipate that the Section 106 will be signed and permission issued by 14th July 2017 in accordance with a Planning Performance Agreement. Further, discussions with Drew Smith indicate that work on the first Reserved Matters application is underway, as are pre-application discussions, and Drew Smith has progressed many

aspects of the detailed design. The first reserved matters application is to be submitted shortly on concluding the S106 Agreement, with commencement of development on-site in late Spring 2018, resulting in initial completions in Autumn 2018. This was covered in Mr Ireland's verbal evidence, his Appendix NN, and his Additional Evidence Appendix E; and his evidence fully took into account the pre-commencement conditions.

78. Mr Packer also challenged delivery rates. Mr Ireland's approach to delivery rates was, however, properly informed by the delivery rate expected by the developer (Mr Ireland's Appendix NN). He also noted that Drew Smith's Knowle Lane/Mortimers Lane scheme (Site 25) was directly opposite, with the site's construction underway, a show home and marketing suite on site, and the developer's website showing 45% of the market homes already sold prior to first completions. As Mr Ireland stated, the existing marketing presence by the developer in this area will plainly help to support the speed of delivery of this site.

79. Mr Ireland explained that the delivery of homes in 2017/18 would not necessarily be spread over the full year. The additional evidence Mr Ireland has submitted shows that at Site 25, six plots have been completed to date [as at 21st June 2017] and that the remaining 68 plots will be completed within the next 12 months (see: Mr Ireland's Additional Evidence). The delivery of the Pembers Hill Farm site would simply follow on from this. The appellant's contention that the delivery rate for Site 25 does not support the assumed delivery rate for this site does not therefore hold true.

80. For all of these reasons, Mr Ireland's evidence in respect of Site 42 should also be supported.

Site 50 – Land to the South of Foord Road and West of Dodwell Lane

81. As for the Foord Road site, Mr Ireland assumes a modest contribution of 50 dwellings over the five-year period whereas Mr Packer assumes zero, citing unresolved objections; stating that no planning application had been submitted; and asserting that

there can be no certainty that this site will be taken forward by Foreman Homes. As I have explained, a planning consent is not a pre-requisite for a site to be regarded as deliverable and included within the five-year land supply.

82. Moreover, and as Mr Ireland explained, Site 50 is owned by the Council; is adjacent to an adjoining Foreman Homes scheme (Site 27 - "Land off St Johns Rd, South of Foord Road and West of Dodwell Lane") which is already in development; and there are no impediments to its own development. A Section 106 Agreement in respect of the adjoining development site includes provision for the access from that site (Mr Ireland's Appendix W) so that there are no ransom issues; and Foreman Homes is bringing forward the development as an extension to the current scheme. A planning application was submitted by Foreman Homes on 22nd May 2017 for 106 dwellings (reference F/17/80651). The target committee date for consideration of this is 11th September 2017.

83. The Inspector in the Botley Road appeal[16] (Inquiry held in September 2016) agreed that Site 50 was deliverable and that it was appropriate to include the site within the five-year housing land supply (to 30th June 2021). Moreover, as Mr Ireland's Appendix W explains, the developer expects with a fair wind that the full development of 106 dwellings would be completed by March 2020, well within the five-year period. Mr Packer concurred in the round table that if planning permission was granted, the site would be built-out in the five-year period. The site is plainly deliverable and Mr Ireland's assumption of just 50 dwellings in the five-year period to 31st December 2021 is, if anything, conservative. In light of the information now available, you may feel that it would be appropriate to assume a higher contribution from this site.

<u>Site 49 – Land to the North and East of Winchester Drive, Botley; and Site 51 – Land to the West of Woodhouse Lane, Hedge End</u>

84. Finally, Mr Ireland expects a modest contribution of 105 dwellings from each of these sites within the five-year period. Mr Packer assumes zero, citing a number of

[16] EBC 4.3

constraints affecting these sites; objections; and a lack of viability evidence together with the findings of the Botley Road Inspector, which were based on the position in July and September 2016.

85. Both sites are, essentially, in the ownership of Hampshire County Council and had been allocated for residential development in the draft Local Plan 2011-29: for 300 units (Winchester Road) and 800 units (Woodhouse Lane) respectively. The Council maintains an 'in principle' support for their development. As Mr Ireland fully acknowledged in his Proof, the deliverability of these sites was questioned by the Botley Road Inspector and he openly recognised that there is a greater uncertainty regarding them than others within the five-year supply. However, Mr Ireland was also clear that, from what the Council had told him about the latest position, supported by his own investigations, there had been significant progress since summer 2016 such that there was now a proper basis for the inclusion of a contribution from each of these sites to the five-year land supply.

86. In particular, the County Council appointed consultants to prepare planning applications for these sites in September 2016; the Council has made EIA scoping requests; pre-application discussions and discussions on draft Planning Performance Agreements are underway; and planning applications are expected to be submitted for both sites by December 2017. The circumstances are therefore materially different from those considered by the Botley Road Inspector. In respect of both sites, moreover, Mr Ireland's delivery assumptions are agreed as reasonable by Hampshire County Council. It is against the backcloth of the above general comments on Sites 49 and 51 that I turn to deal with these sites in turn.

Winchester Street (Site 49)

87. The "Land North and East of Winchester Street Botley" (Site 49) is "available". It is owned, principally, by the County Council who are promoting it for development and third party landowners have indicated their willingness to make land available.

88. Site 49 is also "suitable", having been thoroughly assessed through the preparation of the 2011-29 Local Plan:

a. It is within walking distance from the centre of Botley and the railway station;

b. The majority of the site is within Flood Zone 1;

c. An HRA Screening Report has been undertaken confirming it is capable of development without adversely affecting European sites;

d. The development is being designed to protect listed buildings at Uplands Farm and preserve their setting;

e. An open space buffer to the rail line is proposed; and

f. The County Council has assessed the feasibility of, and consulted on, the route for the Botley Bypass, has undertaken an EIA, and is due to apply for consent for its delivery shortly – which will have a positive effect on addressing local air quality and congestion issues.

89. The County Council has also confirmed that it intends to submit an outline application for 450 homes. As indicated above, the application is expected by December 2017. Mr Ireland has considered the timeframe to determine the application, for the County Council to dispose of the site, for Reserved Matters applications, and for the discharge of pre-commencement conditions before first completions in 2020 as reasonable.

90. In all of these circumstances, Mr Ireland is right to consider the site "deliverable".

West of Woodhouse Lane, Hedge End (Site 51)

91. The circumstances relating to Land West of Woodhouse Lane, West End (Site 51) are similar. So far as being "available" is concerned, the site is wholly owned by Hampshire County Council which is actively promoting it for development, with

work on a hybrid planning application underway for up to 650 homes, the potential for a secondary school, a primary school site and local centre.

92. As for being "suitable", the site has been assessed as suitable for development through the SLAA and through a thorough assessment of the site as part of the Local Plan 2011-29 preparation:

a. A Phase 1 ecological survey has been undertaken, as has master-planning work, confirming that a semi-natural buffer will be retained to the Bottom Copse SINC and Ancient Woodland at the centre of the site;

b. An HRA Screening Report has been undertaken confirming it is capable of development without adversely affecting European sites;

c. The majority of the site is not susceptible to flooding;

d. Overhead power lines run across the northern edge of the site, close to the rail line, but this has been taken into account in identifying the developable area and site capacity;

e. An open space buffer to the rail line is proposed; and

f. The County Council has indicated that the scheme is financially viable.

93. Given all of this, Mr Ireland is again right to consider the site "deliverable". Furthermore, the Woodhouse Lane site is intended to deliver a new secondary school which the County Council want to be operational by 2020. This will influence the total capacity for the site, but not the numbers within the five-year period. More importantly, it also provides a clear driver for delivery timescales for the development.

Viability Evidence

94. The outstanding contention regarding these sites relates to viability. This, in turn, relates only to the Botley Bypass. However, as set out in the email from Mark Biles

dated 27th May 2017 (in Mr Ireland's Appendix UU), the delivery of these schemes is not contingent on the delivery of the Botley Bypass. Rather, the bypass is a separate strategic piece of transport infrastructure supporting a range of development sites in both Eastleigh and Winchester District, as is plain from the 2011-29 Local Plan, and which (as the email from Heather Walmsley of 22nd May 2017 indicates) will be supported by a package of funding, including contributions from a range of development sites.

95. The evidence in regard to these sites does not, therefore, point to there being insurmountable viability challenges which would prejudice the delivery of these sites.

Conclusions on Deliverable Housing Land Supply

96. For all of the above reasons, we invite you to endorse in their entirety the evidence and judgements of Mr Ireland on housing issues. Mr Ireland's judgements on the supply side are sound, based on thorough research and sourced in the best and most up-to-date evidence. Eastleigh has a housing land supply of 5.21 years. The end result is tabulated below in the middle column (taken from the second Table within Section 4 of the Housing Land Supply Statement of Common Ground), with Mr Packer's figures included also for completeness:

Housing Supply 1/4/2017-31/3/20122	Ireland	Packer
Small Sites – Outstanding Permissions	194	194
Large Sites – Outstanding Permissions	3,948	3,388
Large Sites – Resolution to Grant	1,356	1,229
Large Sites – Under Negotiation	260	0
Windfall Allowance Years 3-5	174	174
Expected Supply 1/4/2017-31/3/20122	5,932	4,985
Annual Requirement 1/4/2017-31/3/20122	1,138	1,138
Supply in Years	5.21	4.38
Land Supply Shortfall/ Surplus	243	-704

97. Moreover, and as Mr Ireland pointed out in Paragraph 7.13 of his Proof, even if one were to exclude any contribution from the two County Council sites entirely, the housing land supply for Eastleigh would still be in excess of five-years (5.03).

98. Indeed, and even if you were to accept Mr Packer's evidence in its entirety, the Council would still have a deliverable housing land supply of 4.38 years, which is in excess of that found recently at previous Planning Inquiries in Eastleigh (4.25 years in the Botley Road Decision Letter and "around 4 years" in the Boorley Green Decision Letter[17]) and plainly indicates that travel is in the right direction.

99. It is in the light of this robust evidence on housing land supply that I therefore revisit the legal framework set out above in order to address where matters now stand.

WHERE DOES THIS LEAVE US?

Introduction

100. It will be recalled that the legal framework is as follows:

a. **If the tilted balance is engaged,** the weight to be attached to either side of the planning balance is a matter of judgement for the decision-maker, and determinative weight can be attached to the breach of policies, having regard to:

i. The extent of shortfall;

ii. The action taken to address it and boost the supply of housing, thus shortening how long it is likely to persist; and

iii. The purpose of the policy.

[17] EBC 4.5

This must even more emphatically be the case where the tilted balance is engaged merely as a result, if so found, of a Plan period having come to an end but when there is no shortfall at all.

101. **If the tilted balance is not engaged**, we are in 'un-tilted' Section 38(6) territory and must follow the approach recently stated in ***East Staffordshire Borough Council.*** (supra), albeit that the above three matters will still be relevant to the exercise.

102. I therefore address the three matters set out in (a)(i)-(iii) above, in turn:

a. What the housing land supply situation in Eastleigh now is;

b. What action the Council has taken to get where it now is (and the prognosis for the future); and

c. The purpose of the main policy in question, Policy 3.CO.

The Housing Land Supply Situation

103. So far as the first consideration is concerned, for all of the reasons already given the Council considers it has a five-year housing land supply on the very worst-case scenario – that is to say even excluding in their entirety both Site 49 (Land to the North and East of Winchester Drive, Botley) and Site 51 (Land to the West of Woodhouse Lane, Hedge End). Further, and even if you were to hold for Mr Packer in absolutely all regards, the Council would still have a housing land supply of 4.38 years, in excess of that previously found on appeal. On any view, therefore, either there is no housing shortfall at all, or there is one which is rapidly reducing. The Council's case, however, is that it is plainly the former.

The Action Taken by the Council

104. The second consideration material to the weighing of the planning balance by reference to housing numbers is what action the Council has taken to address any deficit and how long the deficit, if any, is likely to persist. In other words, and even assuming there might still be a shortfall (contrary to the above submissions), if action

is being taken to meet housing needs in the short and medium-longer term, then the weight to be attributed to the benefit of reducing that shortfall in the short term can properly be reduced. That is because it is poor planning to inflict permanent damage for a short-term reason only.

105. In this regard, it is quite plain from the dramatic improvement in Eastleigh's housing land supply position over recent years that considerable action has been taken. That is demonstrated by the objective evidence of the numbers and was spoken to, with some passion, by Cllr House. As he explained, this change in the Council's housing supply position is a result of its strong commitment to increasing housing delivery. The Council actively encourages pre-application discussions with landowners and developers in advance of applications being submitted in order to smooth out any possible difficulties. The Council will continue to encourage landowners and developers to bring forward proposals for housing on appropriate sites. Furthermore, the Council has established its builders' guarantee scheme, and its own development company, and, as landowner, is actively bringing forward its own identified sites for development as soon as possible.

106. One can see further confirmation of the effect these endeavours are having in boosting housing supply, when we look ahead to what will happen after five-years, in years five to ten. That was set out in Mr Ireland's Main Proof in Section 8, where he dealt with the direction of travel. Using the information provided to GL Hearn by site promoters, he constructed an indicative housing trajectory looking forwards not only over the next five-year period (2017-22) but also for the subsequent five-years (2022-27), shown in his Figure 8, showing that delivery is expected to accelerate significantly over the subsequent five-year period to achieve 1,000+ completions *per annum*. This is based on sites which already have planning permission, a resolution to grant or in principle support. Delivery over the period to 2027 is expected to exceed the OAN. It is clear from this that the Council is actively planning to achieve, and can be expected to deliver, a significant boost to housing supply.

107. The Council is also progressing its new Local Plan which will shortly be published and identify additional sites, including, as Mr Ireland explained, sites which can reasonably be expected to be delivered, and so to contribute to housing supply, in the short-to-medium term.

The Purpose of the Policy

108. The third consideration material to the weighing of the planning balance and by reference to housing numbers, is the purpose of the policy – as made clear by Lord Justice Lindblom in the Court of Appeal in ***Suffolk Coastal*** at [47], where he indicated that gap policies such as 3.CO are precisely the kind of policies which can properly carry determinative weight.

109. I turn to the actual weighing of the planning balance, whether under the tilted or un-tilted approach later - having first identified how the breach of Policies 1.CO and 3.CO (and also 18.CO and 59.BE) translate, on this particular appeal site, to harm in planning terms and on the ground.

THE HARM TO COUNTRYSIDE, GAP AND LANDSCAPE

Introduction

110. As Mr Armstrong explained, whilst Local Gap Policy 3.CO is not, strictly, a landscape character based policy and does not ascribe any quality to the landscape (apart from being predominantly undeveloped), its aims are to protect the gaps between urban edges in order to prevent their coalescence and maintain distinctive places through the limitation of development. They therefore function, albeit by default, in a similar way to a landscape designation.

111. Further, and as noted in GLVIA (3rd Edition) (quoted by Mr Armstrong in his paragraph 4.23): "Character is not just about the physical elements and features that make up the landscape but also embraces the aesthetic, perceptual and experiential aspects of the landscape that make different places distinctive." It follows that the perception of the appeal site, and its role within the landscape, is an important element in the necessary assessment.

112. It is with that in mind that we must consider the planning and landscape impact of building on the appeal site, introducing an urban estate onto green fields in a protected gap between settlements.

Environmental Change without the Development

113. In the event of the appeal site not being developed, the "baseline" in landscape terms would be unchanged, of course, with the appeal site left as open countryside. Approaching the appeal site from the north, along Hamble Lane, there would still be a clear perception, when passing Mallards Road, that one was leaving the urban edge of Bursledon. Equally, when arriving from the south along Hamble Lane, there would still be open views into the site and a sense of arrival at the urban edge of Bursledon.

The Development and its Potential to Generate Landscape Effects

114. That would, of course, all change if development were to take place pursuant to this appeal, and these green, open fields largely replaced with an urban housing estate.

115. In objective terms, the current gap between the urban edges of Netley and Bursledon is circa 0.88km and the gap between Bursledon and Hamble is 1.18km. With the proposed loss of landscape to development pursuant to the appeal proposal, this would reduce to circa 0.84km and 1.10 km respectively. As Mr Armstrong explained, the most sensitive section impacted on by the proposed development is between Bursledon and Hound given the impact that the development around Hound, Hamble Station/Hamble School has on the sense of leaving and arriving at settlements. The current distance between the urban edge of Bursledon and the arrival at the roundabout on Hamble Lane / Hound Road is 0.8km. This would be reduced to 0.73km if taken from the southern edge of the proposed development.

116. It is quite plain, therefore, that the proposed development would, if permitted and built out, erode the separation between those settlements. Moreover, and in terms of perception, the urban edge as proposed would connect to the currently isolated development of Hamble Lane Farm to the south of the appeal site and extend the urbanising effect of the development yet further.

117. The completed development of the site would, moreover, be a major change in the landscape character from countryside to an urban development. There would be changes to the majority of the current, open, green character of the site, through extending the urban character of Bursledon into the countryside. As such, the development would generate a range of other landscape impacts (alongside the inevitable perception of a reduced separation between Netley, Hamble and Bursledon), including as follows:

a. Land take and character impacts on the currently open green landscape;

b. Direct landscape impacts on existing landscape elements such as vegetation and topography; and

c. Direct and indirect impacts on the perception of the site for inhabitants and visitors.

118. In addition, the activity of people living in the new housing would itself bring about a noticeable change in the character of the appeal site too, and its immediate context. The housing estate would, obviously, be a far busier scene than the baseline. And there would also be lighting effects and noise. These effects, resulting from the presence of the development, would also be permanent. All of this would readily be perceived by local residents, and users of the roads and footpaths, and would significantly change the perception of the site from all sides.

119. Further, and since the proposed development would connect with the existing farm building along the southern boundary, a weak urban edge would be created – less defensible in the future (indeed the evidence of Mr Ghysel made clear the pressure already being exerted by Gladman to continue development south of the appeal site). Moreover, the edge would not sit sensibly with that on the western side of Hamble Lane, and the field boundaries either side of that Lane are not in step, leading to the risk of future proposals extending yet further into the gap on each side of the Lane.

120. The "tangible" harms of the proposal are, therefore, of an identical kind to those which Inspector Dignan found in the Grange Road Decision Letter [EBC4.6].

121. Inspector Dignan described the site in similar terms to this one at [12] – used for horsiculture and of ordinary quality and medium value – nothing special. But even so, it made a very positive contribution to the character and appearance of Netley, to which it was adjacent, being, essentially, its doorstep countryside, just as this site is adjacent to Bursledon. And Inspector Dignan found, also at [12], that the site with which he was then concerned had a semi-rural character which was easily appreciated from, in that case, Woolston Road, just as this site's semi-rural character is easily appreciated from Hamble Lane. Accordingly, and in Policy 1.CO terms alone, he found, for these reasons, that the proposal would result in the loss of a significant piece of open countryside. The same, we say, is plainly true here.

122. Further, and at [DL13], Inspector Dignan went on to find that the proposal with which he was then concerned would merge with the existing development beyond the site, just as this appeal proposal will merge with Hamble Lane Farm to the south. And Inspector Dignan found that this meant, in that case, that the urban envelope would be extended further and a new urban edge created which would be far less clear than the present urban edge. The same is plainly true here.

123. Inspector Dignan went on, at [DL14-16], to consider the impact of the proposal which was before him on the gaps between settlements. He found, in these regards, that protecting gaps between settlements was a long-standing spatial planning tool in not just Eastleigh but Hampshire as a whole. He found, also, that separation of the settlements on the peninsula was necessary if the character of those settlements was to be preserved. He was right in all of these regards, and you should find similarly.

124. The gap between the settlements with which Inspector Dignan was concerned was, at present, just over 1km, but the development would reduce that gap to about 0.85 Km. In our case, with the proposed loss of landscape to development pursuant to the appeal proposal, the current gap between the urban edges of Netley and Bursledon

would reduce to circa 0.84km, narrower than the resultant gap considered by Inspector Dignan. And Inspector Dignan found that narrowing the gap to that distance was a qualitative harm to the existing gap between the settlements, resulting from the loss of open countryside. We invite you to find likewise.

Conclusions

125. Put shortly, the change from countryside to housing would bring about major and adverse changes to the countryside, gap and landscape and to people's perception of them. Open fields would be lost and the replacement landscape would be of housing, lighting and roads across the majority of the site. Moreover, none of these harms could be mitigated. The proposed development would completely, and permanently, change the character of the appeal site for the worse – from open countryside separating settlements to a built estate as urban development creeps from one settlement towards others. That is an unavoidable consequence of development.

126. Indeed, the appeal proposal is precisely the form of development which Policies 1.CO and 3.CO are there to prevent (not forgetting Policies 18.CO and 59.BE, which are also breached); and precisely the form of development that the emerging Replacement Local Plan will prevent also.

WEIGHING THE BALANCE

127. I turn, then, to the planning balance, and in the light of the approach set out above.

If The Balance Is Tilted

128. The titled balance weighs benefits against harms, and I therefore address each of these in turn.

The Benefits

129. Starting with the benefits, Mr Wilmshurst rightly recognised that the primary benefit of the appeal development relates to the provision of housing, including affordable housing. Those benefits are of substantial weight in the absence of a five-year housing land supply, but their weight (particularly that for market housing) must necessarily

be reduced if (as the Council contends) a five-year supply is found to exist and the housing supply position in years 5-10 is healthy.

130. Whatever the housing land supply position, there will also be economic benefits associated with housing construction and spending by future residents, though these would accrue from any housing development, including proposals not sited in sensitive local gaps.

The Harms

131. These benefits must be weighed against the harms, which in this case, as I have already explained, are substantial. The proposal would not only give rise to the loss of countryside, with attendant landscape harms, but would also (as in the Bubb Lane appeal[18]) thwart the underlying aims of local planning policy by leading to damage to a Local Gap that has endured for a very considerable time and that can be expected (as a result of the recent Countryside Gaps Review) to continue to give protection into the future.

132. Moreover, and through thwarting the underlying aims of Development Plan policy, any grant of permission here would prompt yet more development pressure, and further loss of the open countryside which separates the settlements on the peninsula. We know already that Gladman are waiting in the wings, ready to tempt landowners who would far prefer to keep their land open and put to agricultural use. If housing can leap the firm urban edge of Mallards Road, it will find it far easier to leap the weaker edge which will result from this appeal being permitted; and who will gainsay the view, then, of the adjacent landowner – faced as he will be, with housing so much closer to his enterprise.

Conclusion on Tilted Balance

133. In the event, therefore, that the tilted balance is engaged, the Council unhesitatingly submit that it weighs against the grant of planning permission. The tilted balance is

[18] EBC 4.2 at [57]

not a developer's charter. It does not require the grant of permission for housing on open countryside sites, still less ones in a sensitive and protected gap between settlements, and especially in circumstances when the Council has a five-year housing land supply (or are on the very cusp of achieving this), and when the Policies breached are entirely consistent with the NPPF.

If The Tilted Balance is Not Engaged

134. And if the tilted balance is not engaged, the case for the appeal proposal falls away completely. In those circumstances, and applying the ***East Staffordshire*** approach, since the appeal proposal does not accord with the Development Plan, the first bullet of the decision-taking part of paragraph 14 indicates that permission should be refused. The Development Plan and the Paragraph 14 presumption therefore pull strongly against permission, which could only be granted in "exceptional" circumstances. There can be no such exceptional circumstances for an ordinary housing proposal which harms the countryside, landscape and gap.

CONCLUSION

135. For all of these reasons, the case against this appeal proposal is overwhelming and it should be refused. It was an application made, opportunistically, when the Council did not have a five-year housing land supply; it was rightly refused permission in the absence of a five-year supply; and now that a five-year supply has been identified, the case against it is overwhelming.

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