
STATEMENT OF CASE

**LAND NORTH OF RALEIGH DRIVE,
CLAYGATE**

**Appeal against the decision of Elmbridge
Borough Council to refuse outline planning
permission for:**

**Construction of up to 60 dwellings with
associated landscaping and open space with
access from Raleigh Drive. (Outline
Application with Appearance, Landscaping,
Layout and Scale Reserved).**

Prepared by:

Woolf Bond Planning

**On behalf of Claygate House Investments Ltd
& MJS Investments Ltd**

LPA Ref: 2023/0962

WBP Ref: SB/7679

DECEMBER 2023



Woolf Bond Planning
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CONTENTS

1.0	Introduction and Overview	2
2.0	The Appeal Site and Surrounding Area and the Appeal Scheme	7
3.0	The Development Plan and Material Considerations	11
4.0	Market and General Housing Matters	26
5.0	Affordable Housing Matters	30
6.0	Green Belt Considerations	36
7.0	Character and Appearance Considerations	41
8.0	Ecology Matters	42
9.0	Planning Obligations and Conditions	46
10.0	Third Party Representations	47
11.0	Planning Balance	48
12.0	The Justification for the Inquiry Procedure	55

1.0 Introduction and Overview

General

- 1.1. This Statement of Case has been prepared by Woolf Bond Planning LLP in support of an appeal (“the Appeal”) by Claygate House Investments Ltd and MJS Investments Ltd (“the Appellants”) against the decision by Elmbridge Borough Council (“the Council”) to refuse their application (“the Application”) for outline planning permission for the construction of up to 60 dwellings with associated landscaping and open space to include access from Raleigh Drive (LPA Ref: 2023/0962) (“the Application Scheme”, now “the Appeal Scheme”). Appearance, landscaping, layout and scale are reserved.
- 1.2. The Appellants submitted notice of an intention to submit an appeal to PINS and the Council on 24th October 2023.
- 1.3. The Appellants seek the Inquiry procedure (see section 12 below) and this Statement of Case is therefore accompanied by a draft Statement of Common Ground that the Appellants will seek to agree with the Council. As part of this, the Appellants will seek to agree a list of Core Documents with the Council.

The Council’s Decision to Refuse Permission

- 1.4. The Application was refused under delegated powers by Officers on 22nd September 2023. The reasons for refusal were as follows:
 - **Reason for Refusal 1:** “The proposed development would be inappropriate development within the Green Belt which would result in definitional harm as well as spatial and visual harm to the openness of the Green Belt and would conflict with the purposes of Green Belts. This harm would not be clearly outweighed by other considerations which would meet the bar for 'very special circumstances'. Consequently, the proposed development would be contrary to Policy DM17 of the Development Management Plan 2015 and the NPPF 2023.”

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- **Reason for Refusal 2:** “The proposed development, by reason of the on-site net loss of biodiversity which cannot be offset off-site, would result in harm to on-site ecology and biodiversity and would be contrary to Policy CS15 of the Core Strategy 2011 and the NPPF 2023”.
 - **Reason for Refusal 3:** “The proposed development, by reason of the absence of a completed legal agreement to secure on-site affordable housing, would fail to make a contribution to the provision of affordable housing in the Borough contrary to Policy CS21 of the Core Strategy 2011 and the NPPF 2023”.
 - **Reason for Refusal 4:** “The proposed development, by reason of the absence of a completed legal agreement to secure a 'Car Club' vehicle on-site and off-site highway improvements, would prejudice highway safety and cause inconvenience to other highway users and fail to promote sustainable transport. The proposed development would therefore be contrary to Policy CS25 of the Core Strategy 2011, Policy DM7 of the Development Management Plan 2015 and the NPPF 2023”.

Overview of the Appellants' Case

- 1.5. As set out in section 8 below, the Appellants consider that reason for refusal 2 is misconceived. There is no impediment to securing 10% biodiversity net gain through off-site measures secured by planning condition and/or planning obligation, and this represents a clear benefit of the Scheme to which moderate positive weight should be applied.
- 1.6. As set out in section 9 below, the Appellants will negotiate with the Council an appropriate planning obligation mechanism under the provisions of Section 106 of the Town and Country Planning Act 1990 to resolve Reasons for Refusal 3 and 4.
- 1.7. As for reason for refusal 1, the Appellant’s case, in essence, is as follows. Although there is a degree of conflict with the settlement boundaries established under policies CS1 and CS2 or the Core Strategy, the weight to be

attached to this is limited. The Appeal Site is within an enclosed parcel of land contained by the existing settlement of Claygate on three sides between Rythe Road to the east, Raleigh Drive to the south and the former Claygate House to the west. As a result, the Site is well related to the existing settlement. Moreover, the development plan is out of date in terms of the spatial application of its housing policies, whilst, in addition, the Council is not able to demonstrate a five year supply of deliverable housing land and the latest HDT results confirm that Elmbridge only achieved 70% of its housing target.

- 1.8. Although the Site is located in the Green Belt, it is immediately adjacent to the settlement of Claygate. Moreover, the Green Belt is tightly drawn and market and affordable housing needs cannot be met without use of existing Green Belt land.

- 1.9. Claygate is identified in the emerging draft Elmbridge Local Plan 2037 as needing to provide an additional 320 dwellings, which equates to 4.7% of the identified requirement. In the Draft Submission Local Plan (2022), the Council (paragraph 3.19) notes that the LHN is a capped requirement of 647dpa which equates to 9,705 dwellings over the plan period 2022 to 2037. However, Draft Policy SS3 only seeks the delivery of at least 6,785 dwellings¹ from 2021 to 2037 which is 2,920 dwellings less (notwithstanding that it is a longer timeframe). The emerging Local Plan has started its examination and, in a letter of 14th September 2023, the examining Inspector has raised significant issues, including strongly suggesting that the Council considers extending the Plan period to 2039 (which would require additional allocations to be made) and questioning (as a “fundamental issue”) whether the failure to meet housing needs is sound. The Appellants have provided representations at Regulation 19 stage, including on these issues.

- 1.10. The emerging New Local Plan is at an early stage of preparation and so only commands limited weight. This in itself means that it cannot be relied upon to satisfy the existing needs for market and affordable housing in the near term. That is exacerbated by its failure to provide for the release of Green Belt land

¹ Proposed to be reduced to 6,680 dwellings in the Council’s proposed Main Modifications.

in order to accommodate the significant additional future market and affordable housing needed in the Borough.

- 1.11. The current settlement boundaries (defining the settlements and the Green Belt beyond) cannot be maintained in their current position if the current identified market and affordable housing needs are to be met. This is a material consideration of significant weight in the consideration of this Appeal.
- 1.12. Since the most important policies are out of date as a result of the out of date spatial application of the housing policies, the inability to demonstrate a five year supply of deliverable housing land, and the latest HDT results, the presumption under paragraph 11(d) of the NPPF is engaged.
- 1.13. The only footnote 7 policies relied upon by the Council are those relating to Green Belts. It is accepted that the Appeal Scheme is for “inappropriate development” for the purposes of paragraphs 147 and 148 of the NPPF. However, as set out in section 11 below, the harms to the Green Belt are minor (albeit that any harm to the Green Belt should be accorded substantial weight). Assuming execution of a suitable Section 106 Agreement, the only non-Green Belt harm comes from the loss of countryside and landscape and visual issues, which carry limited weight.
- 1.14. Set against this, there are very substantial economic and social benefits and moderate environmental benefits which clearly outweigh the potential harm to the Green Belt by reason of inappropriateness and all other harm resulting from the Appeal Scheme.
- 1.15. There is therefore no “clear reason” for refusing planning permission under paragraph 11(d)(i) of the NPPF. And, applying paragraph 11(d)(ii), the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole (quite the opposite).
- 1.16. Whilst the Appeal Scheme conflicts with the settlement policy boundaries identified under Policies CS1 and CS2, and the Appeal Site is not allocated for development in the Development Management Plan, it nevertheless accords with policies DM1 (presumption in favour of sustainable development) and

DM17 (Green Belt), and it also accords with all other applicable development management policies. Policies DM1 and DM17 operate as an exception to the restrictive and out of date approach to settlement policy boundaries under the CS. In the circumstances, therefore, the Appeal Scheme accords with the development plan overall.

- 1.17. Based on the foregoing, **the Appeal Scheme is in conformity with the development plan when taken as a whole and material considerations (including the tilted balance under NPPF policy) lend further support for the grant of planning permission.**

2. The Appeal Site and Surrounding Area and the Appeal Scheme

Context

- 2.1. The Appeal Site is located within walking distance of the local services, being situated approximately 600 metres north of Claygate village centre and 1.4 kilometres southeast of Esher town centre, and therefore benefits from easy access to a variety of local amenities. These amenities include a number of schools, health care, retail, employment and leisure facilities.
- 2.2. There is also a good bus service in close proximity to the Site; bus route K3 runs between Esher and Roehampton Vale, with the nearest stop located approximately 230 metres south of the Site on Hare Lane. The frequency is around 3 buses/hour on weekdays and 2-3 buses/hour at weekends.

The Appeal Site

- 2.3. The Appeal Site is shown edged red on Site Location Plan No. 22071-S101C and extends to approximately 2.2ha.
- 2.4. The Site comprises a privately-owned grassland field, the boundaries of which are identified by hedgerows and mature trees.
- 2.5. To the south of the Site are residential garden boundaries of properties fronting Raleigh Drive and Rythe Road. To the west is a residential development known as Esher Park Gardens; an up to 5-storey apartment-led redevelopment scheme of the former Dairy Crest offices at Claygate House. To the north of the Site lie two fields which are used for grazing.
- 2.6. The northern boundary is defined by hedgerow and trees (some of which are subject to TPOs) separating the Site from the wider Green Belt beyond. Details are included in the Appellants' Arboricultural Impact Assessment ("AIA").
- 2.7. There is an existing private pedestrian access point to the site from the junction of Raleigh Drive, Loseberry Road and Rythe Road; this is proposed to be utilised as the access point for the proposed development.

- 2.8. The Multi Agency Geographic Information for the Countryside Map ('MAGIC') and the Council's Proposals Map indicate that the Site is not covered by any statutory designations for landscape character or quality.
- 2.9. The Site is not within any Conservation Areas or their setting. There are no Listed Buildings on the Site itself and the Site is not within the setting of any such buildings. No other designated or non-designated heritage assets have been identified on or within the vicinity of the Site.
- 2.10. As to the assessment of landscape considerations, the Site is generally visually well-contained from public views. The well-vegetated Site boundaries and surrounding built form limit views of the Site to the immediate surroundings. Views are possible from adjoining properties to the south and east, with vegetation generally filtering these views, and the recently converted apartments to the west, whose views are more open.
- 2.11. Views of the proposed development will be limited due to the surrounding built form and established boundary vegetation, which will help to visually contain the proposed new homes. Properties on Rythe Road to the east and south of the Site will look across the new area of public open space in the east of the Site, towards the new houses. Retained boundary vegetation together with new tree planting within the open space will increasingly filter these views as it matures.
- 2.12. Views from the Esher Park Gardens apartments, which currently overlook the Site and surrounding car park areas, will look towards the new houses in the west of the Site, which will be visible above the intervening boundary fence. New tree planting along the western edge of the Site will provide some filtering of these views.
- 2.13. Views from Rythe Road and Raleigh Drive will be largely restricted by the intervening existing properties, although occasional glimpsed views of the new houses may be possible through gaps between existing properties. The new access road junction into the Site will also be visible in near distance views from both roads.

- 2.14. Views from the northern section of Loseberry Road to the south and properties along it, will look towards the new access road junction into the Site, with a narrow framed view towards the new houses also being possible. These views will become increasingly narrowed as the road continues south.
- 2.15. In so far as the Site is visually well contained from the wider Green Belt by the existing planting forming the northern boundary, and further contained by existing residential development on three sides, the impacts on openness and Green Belt purposes would be limited (as further explained in section 6 below).

The Appeal Scheme

- 2.16. The Appeal Scheme proposes up to 60 dwellings, associated landscaping and open space, with access from Raleigh Drive.
- 2.17. Only the principle of developing the site for up to 60 dwellings (C3 use), including 50% affordable housing (30 dwellings), together with the means of access are to be determined as part of this appeal.
- 2.18. Appearance, landscaping, layout and scale are reserved for subsequent determination.
- 2.19. The principal elements of the scheme are summarised as follows:
- The scheme provides for up to 60 dwellings, to include an appropriate mix of house types, within a landscaped setting.
 - The scheme will include a mix of housing tenures, with 50% affordable housing.
 - Varied building heights, predominantly 2 storey, but including 2.5 and up to 3 storey development adjacent to the existing residential development to the west.
 - Vehicular and pedestrian access from Raleigh Drive.
 - On-site provision of public open space, including a children's play area.

- Landscaping, including enhancement of the northern field boundary buffer to the countryside.
- SUDS/drainage features.
- Associated biodiversity enhancements.
- Energy efficiency measures and electric vehicle charging points can be secured by condition.

2.20. A detailed description of the Appeal Scheme is set out in section 3 of the Appellants' Planning (and Affordable Housing) Statement.

3. The Development Plan and Material Considerations

General

- 3.1. Whilst the detailed policy position will be set out in evidence, this section summarises the planning policy considerations, against which the acceptability of the Appeal Scheme falls to be determined.
- 3.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the Development Plan unless material considerations indicate otherwise. This represents the s.38(6) 'balance'.
- 3.3. The first test, and the statutory starting point, is whether the Appeal Scheme is '*in accordance with the plan*'. This requires a judgment as to whether a proposal accords with the plan '*as a whole*'. A proposal may breach one or more policies of a development plan and still accord with the plan '*as a whole*' (see *R v Rochdale Metropolitan Borough Council ex parte Milne* [2001] Env. L.R. 22 and *Corbett v Cornwall County Council* [2020] EWCA Civ 508). The Appellants' case is that the Scheme accords with the development plan '*as a whole*' and that material considerations also indicate that the Appeal Scheme should be supported.

The Development Plan

- 3.4. At the local level, the development plan comprises the following:
 - Elmbridge Core Strategy (2011); and
 - Development Management Plan (2015).

Core Strategy 2011 (CS)

- 3.5. The CS was adopted in July 2011 and covers the period from 2011 to 2026.
- 3.6. Applicable policy considerations from the CS comprise as follows:

- CS1 Spatial Strategy
- **CS2 Housing Provision, Location and Distribution**
- **CS11 Claygate**
- **CS15 Biodiversity**
- CS17 Local Character, Density and Design
- CS19 Housing Type and Size
- CS21 Affordable Housing
- CS25 Travel and Accessibility
- **CS26 Flooding**
- CS27 Sustainable Buildings

- 3.7. The policies identified in bold represent those considered by the Appellants to be the most important for determining the Appeal.
- 3.8. The settlement boundaries as set out within the Proposals Map for Claygate were identified to meet the housing needs from the spatial vision and policies CS1 and CS2 of the CS.
- 3.9. The CS makes provision for an annual average of 225 dwellings, equivalent to 3,375 additional dwellings over the period 2011 to 2026. The boundaries were drawn based on this planned provision.
- 3.10. However, the CS is more than five years old, and in accordance with the requirements in paragraph 74 and footnote 39 of the NPPF, the housing requirement falls to be determined by the local housing need derived from the application of the standard method.
- 3.11. As set out in section 4 below, this gives a 647dpa requirement. The restrictive approach to providing for development within the settlement boundaries is therefore failing to satisfy current housing needs based on the definition of built-up areas as defined in the development plan.
- 3.12. As the settlement boundaries were not identified in relation to the current housing need, they operate as a (very significant) constraint to development. They cannot therefore be said to be consistent with the NPPF (including the paragraph 60 objective of significantly boosting the supply of homes) and the weight to be attached to any conflict with them should be reduced accordingly (see *Suffolk Coastal DC v Hopkins Developments Ltd* [2017] UKSC 37, paragraph 63). The weight should also be reduced on the basis of the Council's

inability to demonstrate a five year supply of deliverable housing land, the HDT results, and the Council's inability to meet its needs for affordable housing.

- 3.13. Accordingly, although the Appellants acknowledge the Appeal Scheme conflicts with the settlement strategy established under Policies CS1 and CS2 (in particular parts (2) and (3) of Policy CS1), the conflict attracts only limited weight.

Elmbridge Local Plan: Development Management Plan ("DMP") (April 2015)

- 3.14. The DMP was adopted in April 2015 and implements the spatial policies from the CS. It reflects the requirements of the NPPF in place at that time, noting that Policy DM1 applies the Presumption in Favour of Sustainable Development. Importantly, the DMP did not review the housing requirement or reconsider any amendments to the Green Belt to reflect a more up to date housing requirement.

- 3.15. The following DMP policies are considered relevant to this Appeal:

- **DM1 Presumption in Favour of Sustainable Development**
- DM7 Access and Parking
- DM10 Housing
- **DM17 Green Belt (Development of New Buildings)**

- 3.16. The policies identified in bold represent those considered by the Appellants to be the most important for determining the Appeal.

- 3.17. As outlined throughout this Statement, the scheme delivers a number of significant benefits that clearly outweigh the harm to the Green Belt by reason of inappropriateness and all other identified harms. Thus very special circumstances exist. As such, and by application of and conformity with Policies DM1 and DM17 (which operate as an exception to the restrictive and out of date approach to settlement policy boundaries under the CS), the Appeal Scheme accords with the development plan as a whole.

Summary

3.18. The conclusions drawn from the above assessment are as follows:

- The CS is out of date in relation to the housing requirement set out in the Spatial Vision and this means that Policies CS1, CS2 and CS11 are out of date (along with the associated settlement boundaries).
- The CS and DMP do not seek to identify the full objectively assessed needs for market and affordable housing for the purposes of the NPPF.
- The settlement boundaries defined under Policy CS1 relate to the out of date housing requirements in the Spatial Vision; and are of themselves out of date by application of paragraph 11(d) of the NPPF and footnote 8.
- The Development Plan does not provide for local housing needs derived from the standard method.
- The Council cannot demonstrate a five year supply of deliverable housing land and this reduces the weight to be attached to the conflict with Policies CS1 and CS2 from the location of the Site beyond the settlement policy boundary for Claygate, as do the HDT results.
- The conflict with the settlement strategy under by Policies CS1 and CS2 attracts only limited weight.
- The Appeal Scheme accords with all other relevant policies, including DMP Policies DM1 and DM17, and accords with the development plan when taken as a whole.

National Planning Policy Framework

3.19. The NPPF was most recently updated in September 2023². It is a material consideration of significant standing in the determination of planning applications and appeals.

3.20. The content of the NPPF as it relates to the proposed development of the Appeal Site is addressed in the order set below:

- The presumption in favour of sustainable development
- Decision making

² A further update is expected following the recent enactment of the Levelling-up and Regeneration Act 2023. The Appellants will update their position as required following any further update to the NPPF.

- Delivering a sufficient supply of homes
- Promoting sustainable transport
- Achieving well-designed places
- Protecting Green Belt land
- Meeting the challenge of climate change, flooding and coastal change
- Conserving and enhancing the natural environment

The Presumption in Favour of Sustainable Development

- 3.21. Paragraph 11 of the NPPF provides a presumption in favour of sustainable development.
- 3.22. It has been discussed earlier in this Statement why it is considered that the policies which are most important for determining the Appeal are out of date. Accordingly, the presumption under paragraph 11(d) is engaged. Since very special circumstances exist, the Green Belt does not provide a “clear reason for refusing the development proposed” for the purposes of paragraph 11(d)(i) and there are no other “clear reasons” for refusing the Appeal under that subparagraph. The tilted balance under paragraph 11(d)(ii) is therefore engaged.

Decision making

- 3.23. Section 4 of the NPPF sets out the approach to decision-making. Paragraph 38 makes it clear that decision-makers at every level should seek to approve applications for sustainable development where possible.
- 3.24. The Site is in a sustainable location and will improve the economic and social conditions of the area. It will also help to provide an enhanced landscaped edge to the settlement and new biodiversity habitats and lead to biodiversity net gain, so improving the environment.
- 3.25. Paragraph 48 refers to the weight to be given to relevant policies in emerging plans according to the stage of preparation and the extent to which there are

unresolved objections. This Statement addresses paragraph 48 below when considering the emerging draft Elmbridge Local Plan 2037.

Delivering a Sufficient Supply of Homes

- 3.26. Paragraph 60 sets out the Government's objective of significantly boosting the supply of homes.
- 3.27. This Appeal Scheme for up to 60 dwellings would make an important contribution towards the shortfall in supply. In the circumstances of this case, it represents a material consideration of very substantial weight in support of the Appeal Scheme.

Promoting Sustainable Transport

- 3.28. The Appeal Site is located adjoining an identified settlement, within safe and convenient walking distance to local services and facilities.
- 3.29. The supporting Transport Assessment demonstrates the acceptability of the scheme in sustainability and highways terms. Accordingly, the Scheme is consistent with the policy in section 9 of the NPPF.

Achieving Well-Designed Places

- 3.30. Section 12 sets out the approach to achieving well-designed places.
- 3.31. Paragraph 126 states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. It is added that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 3.32. Paragraph 131 adds that trees make an important contribution to the character and quality of urban environments, with planning policies and decisions to ensure opportunities are taken to incorporate trees within developments. The outline scheme incorporates a number of trees.

3.33. The DAS explains the appropriateness of the overall design response and the detailed design is a matter that can be controlled at the reserved matters stage.

Green Belt

3.34. Section 13 sets out the policy basis for protecting Green Belt land. It states that Green Belt boundaries can only be reviewed in exceptional circumstances, through the local plan making process.

3.35. Paragraph 138 sets out the five purposes of the Green Belt.

3.36. Policy guidance in respect to the assessment of applications which affect Green Belt land starts at paragraph 143.

3.37. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (“VSCs”).

3.38. Paragraph 148 requires local planning authorities (and in this case the Inspector) to ensure that substantial weight is given to any harm to the Green Belt. It is added that VSCs will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

3.39. Paragraphs 149 and 150 set out a limited number of exceptions to inappropriate development in the Green Belt. It is accepted that the Appeal Scheme does not meet any of those exceptions listed.

3.40. On the basis of the foregoing, the Appeal Scheme falls to be determined on the paragraph 148 test, which is set out in full as follows:

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason

of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”.

- 3.41. Green Belt considerations are set out in section 6 of this statement below.

Meeting the Challenge of Climate Change, Flooding and Coastal Change

- 3.42. Section 14 sets out the approach to supporting the move towards a low carbon future as well as the approach to the management of development and flood risk.

- 3.43. These requirements were addressed in the Energy and Sustainability Statement and the Flood Risk Assessment and Drainage Strategy.

Natural Environment

- 3.44. Section 15 sets out the approach to conserving and enhancing the natural environment.

- 3.45. Paragraph 174 states that planning policies and decisions should contribute to and enhance the natural and local environment including by inter alia, protecting and enhancing valued landscapes in a manner commensurate with their statutory status or identified quality in the development plan, recognising the intrinsic character and beauty of the countryside, and minimising impacts on and providing net gains for biodiversity.

- 3.46. As to landscape considerations, the Site is not located within any formal designations for the most valued landscapes and the landscape and visual impacts are limited. The Scheme can also secure a measurable 10% overall net gain in biodiversity, factoring in off-site habitat creation/enhancement. Accordingly, paragraph 174 of the NPPF supports the Proposal in this case.

Development Contributions SPD (July 2020 and with updates April 2021).

- 3.47. The Development Contributions SPD confirms that contributions towards the infrastructure required as part of new developments will be collected via CIL,

with planning obligations still be used to collect contributions towards affordable housing and SAMM (where applicable).

Emerging Local Plan

- 3.48. As noted above, the Council is currently preparing a new Local Plan. A Regulation 19 draft was submitted to the Secretary of State for Examination on the 10th August 2023.
- 3.49. The Appellants have engaged in the Local Plan process, with detailed representations submitted at the appropriate stages, including at the most recent Regulation 19 stage, objecting to various aspects of the Plan and seeking the allocation of the Appeal Site for development.

Treatment of the Appeal Site in the Emerging Local Plan

- 3.50. As identified in the original evidence base to the Local Plan, the Appeal Site is well related to the urban area and is well contained from the wider Green Belt, which conclusion is supported by the Council's original assessment of the Site as set out in Appendix A of the Council's Green Belt Review (December 2018).
- 3.51. Sub-area SA-59 (which includes the Green Belt area of the Site) was assessed on pages 46-50 of the Council's Annex Report 1C which sensibly assessed the Site as a sub-area of wider site 45. This responded to the Appellants' submissions as part of the earlier issues and options consultation in 2017 where they specifically made the submission to the Council that the Site performed a completely separate function to the wider area 45.
- 3.52. Page 47 of the Council's 1C Report assessed SA-59 against Green Belt purposes 1-3. Page 48 then assessed wider impact as follows:

“Local Area 45 was identified as performing strongly against Purpose 2, preventing the merging of Claygate, Esher and Greater London (Hinchley Wood). It was noted that the gap is particularly narrow here. Local Area 45 also performs moderately against Purposes 1 and 3. The sub-area is not at the edge of the large built-up area of Greater London, neither physically nor perceptually, thus plays no

role in relation to Purpose 1. Additionally, in the context of the wider Local Area, it plays a lesser role against Purposes 2 and 3 as a result of its small scale, semi-urban character and relative self-containment and separation from the wider Green Belt to the north.

SA-59 is adjacent to SA-60 to the north, both of which are part of Local Area 45. As a result of the strong separation between these sub-areas, both physically and visually, as well as the configuration of surrounding development (which wraps around SA-59 to the east, south and west), it is judged that the removal of SA-59 is unlikely to impact upon the performance of surrounding sub-areas. SA-60 to the north, as well as the wider Local Area, would continue to perform strongly against Purpose 2, maintaining separation between Claygate and Esher, and Greater London (Hinchley Wood).

Overall, SA-59 plays a lesser role in the context of the wider Green Belt and, as a result of its self-containment and severance from the Green Belt further north, would not affect the performance of surrounding Green Belt sub-areas or the wider Local Area.”

3.53. It added in relation to the consideration of Green Belt boundaries as follows:

“The northern boundary of the sub-area comprises a well-established tree belt / hedgerow, which could feasibly be subject to further strengthening to provide greater visual buffering from the Green Belt to the north.

The existing Green Belt boundary is of similar strength to the south and east, aligned with the backs of residential gardens, but is poorly defined to the west, cutting across hard-standing and through existing structures. The subarea would therefore result in the designation of a stronger and more readily recognisable boundary for the Green Belt.”

3.54. The final step in the assessment (step 5) concluded in relation to SA-59 as follows:

“Meets Purpose assessment criteria weakly, and makes a less important contribution to the wider strategic Green Belt. Recommended for further consideration”

3.55. In addition to the above, and as confirmed in the Council’s Green Belt Boundary Review Accessibility Assessment (June 2019), SA-59 was assessed as having ‘good’ overall accessibility. As such, it is one of the best performing Green Belt

sites in sustainability terms. This lends support for the proposed development of the Site for 60 dwellings.

3.56. SA-59 was also assessed in the Council's subsequent Green Belt Boundary Review 2019 – Assessment of Previously Developed Land.

3.57. The Site was subsequently identified (together with land to its immediate west) within the Council's Green Belt Review 2019 – Minor Boundary Amendments to be removed from the Green Belt, with page 86 of the Council's study stating:

“The Green Belt does not follow a logical or recognisable feature along the western boundary (cutting through a car park, part of the building etc.). It is recommended that it is relocated to remove the entirety of the curtilage of Claygate House, with the boundary running along the tree belt at its northern edge.”

3.58. Notwithstanding the evidence base, the Council decided not to make any changes to the Green Belt boundary under the emerging Local Plan. As a consequence, the Appeal Site remains in the Green Belt and countryside in the submission version of the emerging Local Plan and is not allocated for development.

3.59. On 10th November 2023, the Council uploaded various additional Green Belt documents onto the emerging Local Plan Examination website (documents OTH039 to OTH043).

3.60. Document OTH040 is dated 2021 and provides Green Belt Assessment Proformas for a range of sites including (at pages 72-77) SA-59. The assessment of green belt performance and integrity for SA-59 was set out on page 75 as follows:

“The sub-area plays a lesser role in the context of the wider Green Belt and, as a result of its self-containment and severance from the Green Belt further north, would not affect the performance of surrounding Green Belt sub-areas or the wider Local Area. Sub-area would result in a stronger and more readily recognisable boundary for the Green Belt. Meets purpose assessment criteria weakly and makes a less important contribution to the wider strategic Green Belt.”

- 3.61. Consistent with the earlier Green Belt evidence base, the overall conclusion for SA-59 (on page 77) was that “the land parcel could be considered for a release from the Green Belt designation”.
- 3.62. Document OTH041 was also uploaded on the Council’s Local Plan Examination website on 10th November 2023. It is dated “2022 (Updated 2023)” but as far as the Appellants are aware was not published prior to 10th November 2023, and so was not available for comment as part of the Regulation 19 consultation.
- 3.63. The document is entitled “Green Belt Site Assessment Proformas – Sites no longer considered suitable for release”. Among other things, it provides an updated Proforma for SA-59. The assessment of the site (at pages 89-95) is strikingly different from the Council’s previous assessments, concluding as follows:

“The sustainability appraisal of the development potential of the land parcel identifies positive impacts associated with the housing, accessibility, economic growth, water, the use of low grade quality soils and pollution objectives. However, it would also result in negative outcomes associated with the flooding and biodiversity objectives.

The land parcel sits within and contributes to a strategically important arc of Green Belt that can be traced from Heathrow Airport through to Epsom, providing a narrow break between Outer London and several Surrey towns (including Esher, Hersham, Claygate and Walton-on-Thames within Elmbridge), and preventing further coalescence between the Greater London built-up area and settlements in the Borough and the wider Surrey area. This strategic area of Green Belt is identified in the Council’s Green Belt Boundary Review, 2016 (GBBR) as ‘Strategic Green Belt Area A’. The GBBR states that this area of Green Belt performs very strongly against purpose 1 and 2 of the Green Belt – checking unrestricted urban sprawl of large built-up areas and preventing neighbouring towns merging into one another.

At the Borough level, the sub area (SA-59) sits within Local Area 45 (LA-45), which also performs strongly against Purpose assessment criteria. The local area is connected to the large built-up area of Greater London along its eastern edge and prevents its sprawl into open land. LA-45 forms much of the essential gap between the non-Green Belt settlements of Hinchley Wood (Greater London), Claygate

and Esher, preventing development that would significantly reduce the actual distance between the settlements. The gap is particularly narrow here and any development is likely to result in coalescence. In addition, despite a relatively urban context, only 3% of the LA-45 is covered by built development and the land parcel remains largely open, consisting of open fields and pony paddocks. And a golf course to the south. Development is restricted to a small number of farm buildings and facilities for the rugby club.

Whilst the sub-area itself is not free from development and its level of openness has been reduced, only 19% (approximately) of the sub-area is covered by built form (e.g. open car park). Development of the land parcel would therefore have a level of impact on the countryside. In addition, the LSA 2023 notes that the landscape of SA-59 has a medium to low sensitivity to change and that development would inevitably have a direct effect on the countryside and narrow the gap between settlements.

It is the Council's position that, on the whole, the Ove Arup assessment in regard to the Green Belt sites undervalues their 'performance' against the purposes of Green Belt as well as ensuring the fundamental aim of Green Belt in preventing urban sprawl by keeping land permanently open. In addition, the Council considers that, all of the sites, either via Ove Arup's assessment or the Council's own, performs some degree (weakly, moderately, strongly) of function when considered against the purposes of Green Belt. It is the Council's view that whilst some areas are considered to perform 'weakly' in the Ove Arup assessment in regard to the purposes of the Green Belt, they still perform some function. Neither the GBBR 2016 or 2018, identified any part of the Green Belt as no longer performing against the purposes overall.

In conclusion, the land parcel is not considered suitable for a release from the Green Belt designation."

- 3.64. As can be seen, therefore, the Council has had a recent volte-face in its consideration of SA-59.
- 3.65. The Council's new position is without reasonable justification and is in stark contrast to the position recorded at paragraph 3.51 above (namely the Council's new assessment fails to recognise that SA-59 performs a completely separate function to the wider area 45).

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- 3.66. The Council is now contending, contrary to its previous position, that the site is not suitable for a release from the Green Belt designation. The Appellants strongly disagree with that conclusion.

Other Matters Concerning the Emerging Local Plan

- 3.67. As noted in section 1 above, the Submission Local Plan does not plan for the full Local Housing Need (“LHN”) derived from the application of the Standard Method (“SM”).
- 3.68. The Appellants objected to this approach in their Regulation 19 representations.
- 3.69. This is a matter that has been raised in the Local Plan Inspector’s Letter of 14th September 2023, with paragraph 10 stating as follows:

“The evidence base sets out that utilising 2022 as the base date, the standard method indicates a requirement for 9,705 dwellings to be delivered to 2037. This would equate to 647 dwellings per annum (dpa). The Council’s preferred strategy (termed option 4a within the Sustainability Appraisal) is to deliver 6,785 dwellings across the Plan period, at 452dpa, this represents a shortfall of some 2,918 dwellings³. This would provide only 70% of the identified housing need for the borough across the Plan period. From my initial review of the evidence submitted, a fundamental issue for the examination will be whether this approach is a sound one, namely whether it has been positively prepared, is justified and is consistent with national policy.” (Appellants’ emphasis underlined)

- 3.70. The Inspector’s letter (at paragraph 8) also raises concerns about the plan period, “strongly” suggesting the Council consider extending it from 2037 to 2039 in order to look ahead over a minimum 15 year period from adoption. This would add a further two years’ worth of housing requirement to the overall requirement figure. In its response letter of 10th November 2023, the Council has indicated that it does not wish to extend the plan period, notwithstanding the Inspector’s “strong suggestion”.

³ A footnote here states “I note the main modifications put forward seeking to reduce this figure by a further 105 units as there are sites which the Council now consider to be not deliverable”.

- 3.71. Paragraph 11 of the Inspector's letter of 14th September 2023 refers to the Plan's acknowledgement that the Borough is one of the most expensive places to live in the country, with too many young people and families moving out of the Borough in order to have a realistic prospect of owning or renting their own home, as well as older residents struggling to downsize.
- 3.72. Paragraph 12 of the Local Plan Inspector's letter refers to affordable housing need being in the region of 269dpa, with the evidence submitted identifying that affordable housing delivery to 2018 has only averaged 64dpa.
- 3.73. As can be seen, the Local Plan Inspector has raised fundamental concerns relating to the soundness of the emerging Local Plan, which concerns are to be explored in a staged process. This will have serious implications for the ability to progress expeditiously with adoption of the emerging Local Plan.

Weight to be attached to the Emerging Local Plan

- 3.74. For the reasons set out above, and in accordance with the approach set out at paragraph 48 of the NPPF, the Appellants consider that the emerging Local Plan can only be afforded limited weight as a material consideration. The evidence base is also material and may be afforded weight (albeit the evidence base is not itself emerging policy and has not yet been tested through the examination process).

4. Market and General Housing Matters

- 4.1. The Council's latest Authority Monitoring Report (for 2021/22) includes the derivation of the housing requirement through application of the 40% cap within the Local Housing Need. This results in an annual requirement at April 2022 for 647dpa.
- 4.2. The Council's 2021/22 Authority Monitoring Report then applies a 20% buffer consistent with the results of the Housing Delivery Test ("HDT") published on 14 January 2022. This results in an annual requirement for five year supply from April 2022 through to March 2027 of 776 dwellings or 3,882 over the period. The Council's contended deliverable supply for this period is 3,289 dwellings. This results in a shortfall of 593 dwellings, or a 4.36 years supply.
- 4.3. Even on the Council's figures, therefore, the shortfall is substantial. However, on the Appellants' assessment of site deliverability, the actual shortfall is much greater. This was shown in the Planning (and Affordable Housing) Statement submitted with the application (paragraphs 5.92 – 5.94 refer) which referenced the lack of necessary evidence to demonstrate the deliverability of several contended sources of housing land supply in Elmbridge Borough at an April 2020 base date.
- 4.4. The Planning Statement (paragraphs 5.95 – 5.103 also included an appraisal of the potential housing land supply in Elmbridge Borough at April 2022, having regard to the information prepared to support the then draft Submission Local Plan.
- 4.5. Whilst the evidence which supports the Local Plan contends for a 4.67 years supply at April 2022 (see paragraph 5.98 of the Planning Statement), it is the Appellants' view that the supply is no greater than 3.3 years as explained at paragraph 5.103 of the Planning Statement. The shortfall at April 2022 is therefore of the order of 1,325 dwellings.
- 4.6. Although the Local Plan was submitted for Examination on 10th August 2023, the most recent data on sources of housing land supply still relates to the position at April 2022. Therefore, the assessment summarised above from the

Planning Statement remains as up-to-date as is possible on the current evidence.

- 4.7. The Council's correspondence with the Local Plan Inspector (10th November 2023) confirms that an updated land supply assessment relying upon an April 2023 base date is currently in preparation and is expected to be published in January 2024 (2nd paragraph on page 6). The Appellants' will review this as soon as it becomes available.
- 4.8. As confirmed in case law (see *Hallam Land Management Ltd v Secretary of State* [2018] EWCA Civ 1808), the extent of the shortfall is relevant to the weight that can be given to out-of-date policies, as well as to the benefits of housing delivery. Accordingly, whilst the Council concedes that it is unable to demonstrate an up-to-date five year housing land supply, the extent of the shortfall is substantially material to assessing the merits of housing delivery from the Appeal Scheme.
- 4.9. The Appellants will liaise with the Council with a view to preparing a separate statement of common ground on housing land supply. This will include matters in relation to the five year requirement and the deliverability or otherwise of the identified components of supply, hopefully narrowing the issues between the parties on this issue and saving time and resources at the inquiry.
- 4.10. The Appellants also reserve the right to review their five year housing land supply case on account of the publication of any more recent information, should that materialise prior to the inquiry.
- 4.11. The Council's inability to demonstrate a five year supply of housing land supply engages the presumption in favour of sustainable development pursuant to NPPF paragraph 11d.
- 4.12. Furthermore, the latest HDT results confirm that Elmbridge only achieved 70% of its housing target.
- 4.13. The HDT results mean the delivery of housing in the last three years (2018 to 2021) was substantially below the housing requirement over the previous three

years⁴. As such, pursuant to the approach set out at footnote 8 and paragraph 223 of the NPPF, the presumption is engaged on that basis as well. The Appellants will review the position when the next HDT results are published.

- 4.14. The 70% measurement represents a woeful rate of delivery against the identified requirement and results in the application of a 20% buffer to the five year requirement.
- 4.15. Given the Appeal Site is predominantly greenfield land and in single ownership, the ability of a site to deliver quickly and thus contribute towards the 5 year housing land supply is considered to represent a very substantial benefit of the proposal, as was found in the South of Millfield Lane, York appeal decision (23 Oct 2019) (APP/C2741/W/19/3227359) (paragraph 39 refers) as well as the decisions for up to 100 dwellings off Bullens Green Lane, Colney Heath (14 June 2021) (APP/B1390/W/20/3265925) (paragraphs 49 and 78 refer), 167 dwellings on land south of Heath Lane, Codicote (North Hertfordshire) (28 Sept 2021) (APP/X1925/W/21/3273701) (paragraph 36, 41, and 106 refer), and 144 dwellings at Sondes Place Farm, Dorking (28 Nov 2023) (APP/C3620/W/23/3324631) (paragraph 84 refers).
- 4.16. Other relevant Green Belt appeal decisions to which the Appellants will refer include (but are not limited to) North Lane, Huntingdon (York) (APP/C2741/W/21/3282969) (14 Dec 2022), Kennel Lane, Billericay (Basildon) (APP/V1505/W/22/3298599) (9 Dec 2022), and Oxford Brookes University, Wheatley Campus (South Oxfordshire) (APP/Q3115/W/19/3230827) (23 April 2020).
- 4.17. As set out in section 3 above, the weight to be attributed to the conflict arising from the location of the Appeal Site adjacent to, but beyond, the settlement policy boundary for Claygate as defined in Policies CS1 and CS2 of the Core Strategy is limited as a result of the conflict of those policies with the NPPF, the absence of a five year housing land supply, the affordable housing need, and the HDT results. This is the only development plan policy conflict that is said by

⁴ The HDT results reduced the 'homes required' within the 2019 to 2020 monitoring year by a month and four months for the 2020 to 2021 monitoring year.

the Appellants to be occasioned by the Appeal Scheme. All other policy tests are satisfied. Evidence will be submitted to demonstrate this.

- 4.18. Moreover, Claygate is specifically included in the settlement hierarchy at part 3 of Policy CS1. It is a sustainable settlement in the Borough.
- 4.19. As set out in paragraph 58 of the Officer's Report upon the Appeal Application, the Council rightly accepts that the Appeal Site is in a sustainable location. It is located within easy walking and cycling distance of local facilities and public transport connections. Bus stops are located within easy walking distance from the Site, providing access to frequent bus services to the surrounding area. As such, there are genuine opportunities for residents and visitors to the Site to travel to/from the Site using active travel (walking and cycling) and sustainable modes of transport (public transport with bus and railway).
- 4.20. The delivery of market housing from the Appeal Scheme, in a sustainable location is a material consideration of **very substantial weight** in favour of the grant of planning permission. This is consistent with the conclusions of the Inspectors in the appeal decisions referenced at paragraphs 4.15 and 4.16 above.

5. Affordable Housing Matters

- 5.1. The Appeal Scheme proposes the on-site provision of 50% affordable homes (up to 30 dwellings), thus achieving policy CS21 compliant affordable housing provision for a greenfield site, notwithstanding that parts of the site are brownfield (for which policy CS21 prescribes only 40% affordable homes). The provision is also significantly in excess of the emerging requirements under policy HOU4 of the emerging Local Plan (which prescribes 30% for brownfield sites of 10 or more units and 40% for greenfield sites of 10 or more units).
- 5.2. Paragraphs 20(a), 60 and 62 of the NPPF set a strong emphasis on the delivery of sustainable development including affordable homes, within the context of the Government's aim to "boost significantly the supply of homes".
- 5.3. The need for affordable housing within Elmbridge Borough is emphasised by its identification as a key issue within the Core Strategy which, in the SWOT analysis on Page 12, identifies "**High property prices and land values**" as a weakness of the Borough (5th bullet point).
- 5.4. Paragraph 3.15 states:

"High house prices and cost of living mean that affordability is a problem, even for those on above average incomes. As such, there is an increasing need for affordable housing. The East Surrey Strategic Housing Market Assessment 2008 identifies a shortfall of 698 affordable housing units per annum. Only 10% of the housing stock is social rented, compared to around 20% nationally. This has contributed to recruitment difficulties for some employers."

- 5.5. The need for affordable housing is also emphasised in the emerging draft Local Plan. Paragraph 2.7 states:

"The borough is one of the most expensive areas in the country to live, with high land values and intense pressure for new development. As a result, too many young people and families are moving out of the borough to have a realistic prospect of owning or renting their own home. Our older residents are struggling to affordably

downsize in a way that will enable them to continue to live independently or with care packages and remain in their local community. The cost of housing and reliance on people travelling into the borough is also making it difficult for local businesses and valued services to attract and retain employees, this includes essential key workers, such as teachers and health care providers.”

- 5.6. It is clear that there is a very substantial need for affordable housing.
- 5.7. The Council’s delivery of affordable housing is outlined in the Affordable Housing Topic Paper (Topic Paper 2) which has recently been submitted by the Council to the Local Plan Examination Library (Document Ref: TOP002). The figures within Topic Paper 2 have been compared with the need for affordable housing within Elmbridge as assessed in the Strategic Housing Market Assessment (SHMA) for Kingston upon Thames and the North East Surrey authorities (2015-35) (June 2016), the Local Housing Needs Assessment (LHNA) 2020 together with the Addendum to the Local Housing Needs Assessment (ALHNA) (2021), albeit that the ALHNA does not change the overall need.
- 5.8. This indicates the following minimum annual needs for affordable homes in Elmbridge Borough.

Analysis of need for affordable housing in Elmbridge Borough

Document	Assessment period	Affordable Need
SHMA	2015-35	458
LHNA / Topic Paper 2	2019-39	269 ⁵

- 5.9. The table below therefore compares the delivery of affordable housing since April 2015 with the need assessed through both the SHMA and LHNA.

⁵ [Table E.1 Elmbridge Borough Council Assessment of Local Housing Needs \(March 2020\)](#) and paragraph 3.6 of Topic Paper 2.

Comparison of affordable housing delivery with assessed need in SHMA and LHN

Year	Affordable completions ⁶	SHMA (delivery compared to 458 annual need)	LHN (delivery compared to 269 affordable annual need)
2015/16	78	-380	
2016/17	4	-454	
2017/18	73	-385	
2018/19	57	-401	
2019/20	126	-332	-143
2020/21	45	-413	-224
2021/22	111	-347	-158
Total	494	-2,712	-525

5.6. The above table indicates that there has been a very significant under delivery of affordable homes in the Borough. Whilst 494 affordable homes have been completed in the Borough since April 2015, this equates to only 70.6 homes annually. This is approximately 15% of the assessed annual need in the SHMA and 26% of that stated in the LHNA.

5.7. The very poor performance in providing affordable homes is further illustrated by the unchanging nature of the Borough's social housing waiting list. This is illustrated in the table below.

Changes in Housing register in Elmbridge Borough⁷

	1/4/15	1/4/16	1/4/17	1/4/18	1/4/19	1/4/20	1/4/21	1/4/22
Households on waiting list	1,266	1,671	2,057	2,152	1,835	1,391	1,809	1,976
Households in a reasonable preference category	521	691	871	662	709	515	823	387
Homeless	189	101	126	89	18	4	16	5

5.8. The unchanging nature of the Council's housing register together with the very significant under provision of affordable homes indicates that there is a very clear need to increase the provision of affordable homes in the Borough.

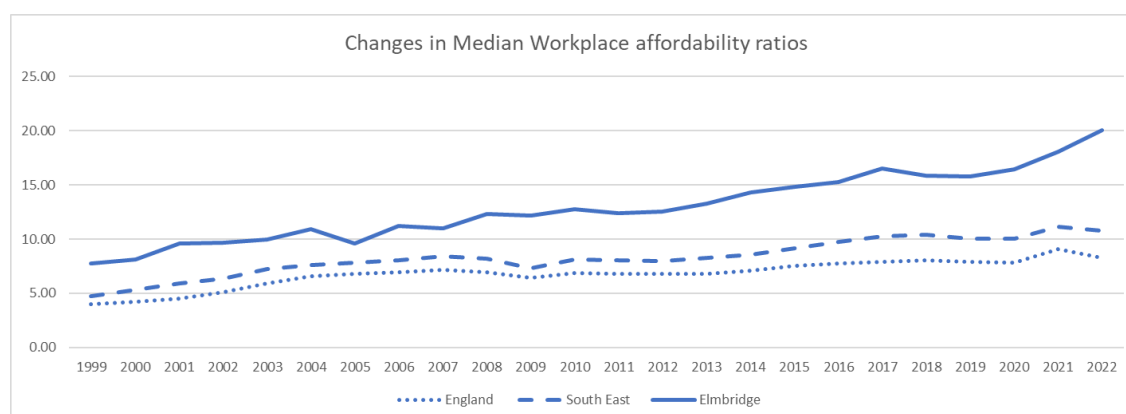
⁶ Source: Topic Paper 2)

⁷ Data sourced from: [Local authority housing data - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

- 5.9. Taking account past delivery of affordable housing (70.6pa), it would be nearly 30 years before all the households on the Council's housing register had a home.
- 5.10. However, this does not even begin to address the demand from households in the Borough which was for at least 269 affordable homes annually as assessed through the LHNA (2020) which takes account of demand arising from demographic changes in the borough.
- 5.11. Given the historic annual delivery rate of just 70.6 affordable homes, to achieve the minimum yearly need for 269 units, provision needs to increase by approximately four-fold. This is a very substantial increase in delivery of affordable housing.
- 5.12. As with the significant shortfall in housing land supply within the Borough, the under provision of affordable homes to meet the assessed need also contributes towards very special circumstances for justifying the Appeal. This contribution towards very special circumstances was also recognised in the appeal decisions referenced at paragraphs 4.15 and 4.16 above.
- 5.13. A step change in the delivery of affordable housing is therefore required if the Council is to get anywhere near the identified need in the SHMA together with the more recent LHNA and begin to address the dysfunctions of the local housing market. Such a step change would be consistent with the thrust of paragraph 60 of the NPPF, to boost significantly the supply of housing.
- 5.14. The acute affordable housing need reinforces the merits of this Scheme with the on-site provision of up to 30 affordable dwellings. The provision of the affordable dwellings, mix and tenure will be secured through a legal agreement on this outline Appeal.
- 5.15. The Appellants consider very substantial weight is attributable to the benefits associated with the provision of affordable housing. This is consistent with the

conclusions of the Inspectors in the appeal decisions referenced at paragraphs 4.15 and 4.16 above⁸.

- 5.16. The substantial inadequacy of affordable housing provision to address the housing waiting list impacts people and communities. A step change in the delivery of affordable housing is therefore required if the Council is to get anywhere near to resolving the very significant need within the Council's Housing Register. Such a step change would be consistent with the thrust of paragraph 60 of the NPPF, to boost significantly the supply of homes.
- 5.17. The inability to resolve the Council's housing waiting list has wider impacts upon the authority including the worsening of affordability ratios. This is shown in the chart below.



- 5.18. The Appellants will submit further evidence to demonstrate an acute need for the delivery of affordable housing in the Borough. This will have regard to the Council's evidence to accompany the emerging Local Plan (both the SHMA and the more recent LHNA) which indicates that there is an annual need for 269 affordable units after deducting the expected contribution from re-lets and new builds with the unmet need addressed over a 10 year period from April 2021 onwards.

⁸ See, for example, paragraphs 41 and 106 of the Codicote decision, paragraphs 54 and 78 of the Colney Heath decision, paragraph 89 of the Sondes Place Farm decision, and DL35 and IR13.111 of the Oxford Brookes University decision.

- 5.19. As set out above, the Appeal Scheme secures 50% affordable housing, achieving policy CS21 compliant affordable housing provision for a greenfield site, notwithstanding that parts of the site are brownfield (for which policy CS21 prescribes only 40% affordable homes) and significantly exceeding the emerging requirements (30% for brownfield, 40% for greenfield) under policy HOU4 of the emerging Local Plan.
- 5.20. In these circumstances, the delivery of up to 30 affordable homes from the Site, in a location that enjoys excellent access to a range of services, attracts **very substantial weight**. As noted at paragraph 5.15 above, this is consistent with the conclusions of the Inspectors in the appeal decisions referenced at paragraphs 4.15 and 4.16 above.

6. Green Belt Considerations

- 6.1. The Council accepts it cannot demonstrate an up-to-date five year supply of deliverable sites for housing. It claims a maximum of 4.36 years supply (a significant shortfall of 593 dwellings). This is an inadequate position, set against a pressing housing need. However, and as explained in section 4 above, the position is even more acute, given the inability of certain of the identified components of supply to deliver at the rates envisaged by the Council.
- 6.2. Nonetheless, the Appeal Site remains in the Green Belt, and the policy under section 13 of the NPPF and policy DM17 of the DMP therefore falls to be applied.
- 6.3. The Appellants will refer to relevant case law and Appeal Decisions on the Green Belt and the approach to the very special circumstances test, including *Sefton MBC v SoS* [2021] EWHC 1082 (Admin), *Brentwood BC v SoS* (1996) 72 P&CR 61, *Wychavon DC v SoS & Butler* [2008] EWCA Civ 692 and the appeal decisions referred to at paragraphs 4.15 and 4.16 above.
- 6.4. The Appellants' evidence on Green Belt issues will also have regard to the Council's assessments summarised in section 3 above, including the inclusion of the Appeal Site as sub area SA-59 in the Council's Green Belt assessments.
- 6.5. Informed by the above, the approach to assessing the suitability of the Appeal Scheme is as follows:
- i. To identify whether the proposed development would represent inappropriate development in the Green Belt.
 - ii. To assess the effect of the proposals on the openness and purposes of the Green Belt.
 - iii. Identifying any other harm resulting from the proposals; and
 - iv. Assessing whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to very special circumstances to justify the grant of planning permission.

Definitional Harm

- 6.6. Insofar as the Appeal Scheme is not included within the lists of exceptions at paragraphs 149 and 150 of the NPPF, it is, by definition, inappropriate development within the Green Belt.
- 6.7. As such, the Proposal would give rise to definitional harm to the Green Belt, which harm carries substantial weight. This represents definitional harm established as a matter of policy which applies to all Green Belt sites regardless of their specific circumstances.
- 6.8. Having identified definitional harm, the impact of the Scheme in Green Belt terms is now assessed in the context of (i) the effect of the proposal on the openness of the Green Belt; and (ii) the effect of the proposal on the purposes of including land in the Green Belt.

Impact on Openness

- 6.9. This matter is addressed (at Section 5) in the Landscape and Visual Impact Assessment and Green Belt Assessment prepared by CSA (which accompanied the Appeal Application) which may be summarised as follows:
- Development of the Site would be well related to the existing settlement edge, contained to the north by a tree belt and hedgerow. It would also be consistent with the existing settlement pattern, with development aligning with the rear of existing properties on Raleigh Drive, Rythe Road and Claygate House. The Proposed Site Layout shows how the Site could be developed in a manner which is consistent with the existing form and density of housing on the eastern edge of Claygate. Overall it is considered that development of the Site would provide a sustainable location for growth of Claygate, with the ability to deliver new housing to help meet the Borough's need.
 - The visual appraisal in Section 4 identifies that the level of vegetation cover and built form surrounding the Site provides a good level of screening of the Site, although more open views are possible from adjoining properties forming Esher house to the West.

- Proposed views from Esher Park Gardens (the former Claygate House) to the immediate west of the Site will look towards the new houses fronting the internal site road, which will be seen as a continuation of existing street network. The proposed access road into the Site will also be visible in close range views from Raleigh Drive, allowing a framed view of the new houses fronting the site entrance.
- Proposed views from Oakden Lane to the north, the adjacent common land and public footpath will be heavily filtered by intervening vegetation, allowing only limited glimpses of the dwellings along the northern part of the site whose upper floors and roofs will be seen above the intervening hedgerow, appearing as a continuation of existing properties along Rythe Road and Raleigh Drive. New tree planting to the frontages of properties will provide some further filtering of these views.
- The Site boundaries will be reinforced with additional trees and native thicket planting, and numerous street trees are proposed throughout the interior of the new development.
- The character of the Site would undergo a substantial change, as the existing grassland is replaced with a new housing development and associated landscaping, although the new housing would not appear 'out of character' in this location.
- In all instances it will be seen in the context of the adjacent settlement, with existing and new structural landscaping to the Site boundaries containing the new housing and limiting the effects on the surrounding countryside to a local level.

6.10. As such, it is the Appellants' case that the effects on the openness of the wider Green Belt would be minimal due to the visual containment of the parcel, and its close association to adjacent urban land uses.

6.11. The impact of the Scheme upon the openness of the Green Belt may be summarised as follows:

1. The Site is located adjacent to the settlement of Claygate, containing it on three sides, which urbanises its location.
2. There would be a noticeable change in the landscape character of the Site itself from an area of open grassland to an area of residential development with the associated road infrastructure.
3. Existing boundary planting encloses the general site area.

6.12. Based on the foregoing, the Scheme will result in a logical and sustainable settlement extension within a landscaped setting.

- 6.13. While accepting there will be impact on the Green Belt designation for the Site itself through definitional harm, the diminution of the perception of openness from outside the site (visual aspect) will not be significant.
- 6.14. As such, and as with the development of any (predominantly) greenfield site, the change to physical openness will be limited to the Site itself. There will be a change to visual openness on the Site itself, although the Site is not currently publicly accessible. In addition, there will be limited change to the wider landscape and visual setting, with limited change to the visual openness of the wider Green Belt to the north of Claygate. This results in minor harm to openness overall.

Effect on the Purposes of the Green Belt

- 6.15. The LVIA carried out (from para. 5.20 onwards) an assessment of the Appeal Site’s performance against the first four Green Belt purposes, and concludes with respect to each purpose as follows:

Purpose 1: To check the unrestricted sprawl of large built-up areas	No contribution
Purpose 2: To prevent neighbouring towns merging into one another	No contribution
Purpose 3: To assist in safeguarding the countryside from encroachment	Relatively weak contribution
Purpose 4: Preserve the setting and special character of historic towns	No contribution

- 6.16. The 5th purpose of the Green Belt was not considered in the LVIA, on the basis that this purpose was considered to apply equally to all areas within the Green Belt (see paragraph 5.19 of the LVIA). It was, however, considered in paragraphs 6.55 and 6.56 of the Planning (and Affordable Housing) Statement, which concluded that the 5th purpose would not be conflicted with, as there is insufficient previously developed land available to meet the Council’s housing requirements, such that the Site (which is itself partly previously developed, and recognised as such in the Council’s Green Belt Boundary Review 2019)

can be developed while not prejudicing the recycling of derelict and other urban land).

- 6.17. Although there is some minor conflict with the third purpose of the Green Belt (safeguarding the countryside from encroachment), any harm from this impact is in part mitigated by virtue of the existing landscape conditions with the Site being well contained and well related to the urbanised character of the suburban influences and the proposed landscaping. The Site does not conflict with any of the other Green Belt purposes.
- 6.18. Any harm to the Green Belt must be given substantial weight under paragraph 148 of the NPPF. However, it is nonetheless important in conducting the balance to recognise that the Green Belt harm in this case is minor and also that land that is currently Green Belt will inevitably be required to meet the Council's needs for market and affordable housing.

Identifying Any Other Harm

- 6.19. Aside from the Green Belt harms identified above, other potential harms have also been considered through the technical assessments undertaken in support of the Application. This includes in relation to heritage, impacts on local services and facilities, highways, drainage and loss of countryside.
- 6.20. As assessed, the only harm other than the harm identified to the Green Belt, is the loss of countryside and landscape change to the Site itself, with limited and immaterial landscape and visual impacts beyond the Site itself. In the circumstances, these carry limited weight, as set out in section 7 below.

The Green Belt Balance

- 6.21. As set out in Section 11 below, the Appeal Scheme delivers very substantial benefits which clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the other harm, such that the Appeal Scheme is supported by very special circumstances.

7. Character and Appearance Considerations

- 7.1. The LVIA records the main baseline elements relating to the landscape, and its character, as well as the visual attributes of the Site and its surroundings. It also seeks to identify the main landscape and visual effects that would arise from the proposed development and to identify measures that could assist with mitigation, all as generally shown on the Illustrative Landscape Strategy.
- 7.2. Prior to the submission of the Application, the Appellants engaged in pre-application discussions with Council Officers. The first of these meetings was held on the 3rd August 2022 and discussed a proposal for 60 dwellings. Council Officers considered that this did not achieve the desired density of 30 dwellings per hectare. The Appellants heeded this advice and produced a second layout for 66 dwellings. Upon review of the revised layout, Council Officers considered that the increased number of dwellings resulted in a form of development that was too dense and reverted back in favour of the initial 60-dwelling scheme. It is the principles of this quantum of development and indicative layout that the Appeal Scheme has advanced.
- 7.3. The Officer's Report takes no objection on landscape and visual grounds (save as regards Green Belt impacts). As noted in section 6 above, the loss of countryside and landscape change to the Site itself, with limited and immaterial landscape and visual impacts beyond the Site itself, carry limited weight.

8. Ecology Matters

- 8.1. A detailed Ecological Impact Assessment has been undertaken, finding that the scheme avoids impacts on the most valuable habitats, and with implementation of straightforward mitigation and precautionary measures, as proposed, the development will not result in any significant residual negative effects on important ecological features. Although Reason for Refusal 2 refers in general terms to harm to on-site ecology and biodiversity, the Officer's Report addresses only the Site's ability to deliver quantified biodiversity net gain. There is no suggestion of any concerns relating to protected or priority species, high value habitats or conservation designations. Natural England and the Surrey Bat Group have each commented upon the Application, and in each case confirmed that they do not object to the scheme and have raised no concerns. While some concerns were expressed by the Surrey Wildlife Trust in initial comments, it was subsequently confirmed that these have been satisfactorily addressed through the submission of further information from the Appellants' ecologist, with the exception of the position on biodiversity net gain.
- 8.2. The development would see a 58.10% net increase in river habitat units and a 33.76% net increase in hedgerow units, when factoring in the on-site habitat creation proposed. Off-site interventions are proposed to achieve a 10% net gain in habitat units. An off-site unit requirement to deliver biodiversity net gain has been calculated and presented within the submitted BNG Assessment, though this is of course based on the illustrative layout, and is itself therefore illustrative. The final offset requirement will need to be conclusively determined at the reserved matters stage of planning; informed by the detailed layout and soft landscaping proposals.
- 8.3. The Officer's Report did not take issue with the BNG Assessment but suggested that the off-site BNG could not be secured by condition (see paragraphs 59 and 93 of the Report) and that securing it by planning obligation would not meet the second of the tests under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 ("the CIL tests") (see paragraphs 60 and 93-94 of the Report). The Appellants consider the Council's position to be misconceived.

- 8.4. The Case Officer's objection to a Grampian condition was, in essence, that insufficient details had been provided and that the "lack of details provided raises significant concerns that such a condition would meet the tests set out in paragraph 56 of the NPPF" (paragraph 59). With respect, the Officer's Report confuses the level of detail needed to discharge a Grampian condition with the level of detail needed to impose one. It is commonplace for Grampian conditions to be imposed for a wide range of matters without full details being available at the date of the grant of permission (including for biodiversity net gain). Such conditions are entirely appropriate unless there are "no prospects at all of the action in question being performed within the time-limit imposed by the permission"⁹. There is no reason why a Grampian condition could not have been imposed by the Council preventing commencement or occupation of the scheme until BNG had been adequately secured (to the Council's satisfaction).
- 8.5. The provisions of the Environment Act 2021 relating to biodiversity gain are not yet in force¹⁰. However, it is notable that the approach of section 98 and Schedule 14 is to make biodiversity net gain a *condition* of planning permission. The condition (set out in Part 2 paragraph 13 of the new Schedule 7A to the Town and Country Planning Act 1990 to be inserted by Schedule 14 of the Environment Act 2021) is that "development may not be begun" unless a biodiversity gain plan has been approved by the LPA, not that permission cannot be granted without the finalisation of such details.
- 8.6. Paragraph 59 of the Officer's Report is therefore wrong to suggest that a Grampian condition could not be imposed in the absence of details of the proposed off-site mitigation. The paragraph is also wrong to object on the basis that improvements might be "a significant distance from the application site" and might be difficult to monitor or enforce. All of this is controllable through a Grampian condition. Moreover, paragraph 59 is wrong to suggest that off-site mitigation "a significant distance from the application site" would not be "relevant to the development". This runs counter to the mitigation hierarchy

⁹ See the Planning Practice Guidance at Paragraph: 009 Reference ID: 21a-009-20140306

¹⁰ Except for limited purposes of allowing regulations to be made and the biodiversity metric to be laid before Parliament (see the Environment Act 2021 (Commencement No. 7) Regulations 2023).

under the NPPF and counter to the approach to biodiversity gain under the Environment Act 2021.

- 8.7. There is no conflict with any local or national policy, or the Environment Act 2021, in achieving biodiversity net gain using off-site compensation, provided that the mitigation hierarchy has been correctly observed. The Appellants seek to maximise public benefits of the Appeal Scheme in terms of new housing at the Appeal Site to meet the recognised shortfall, which is considered to be in a sustainable location for development. In accordance with the mitigation hierarchy, the proposals have used sensitive design to avoid impacts of the most valuable on-site habitats. Therefore the only means of achieving biodiversity net gain (of habitat units) on-site would be a substantial reduction in built area; with corresponding reduction in realised public benefit. As such, the Appellants are sourcing a suitable off-site habitat creation and enhancement scheme, to be funded by the Appellants, to allow the Appeal Scheme to deliver an overall net gain in biodiversity.
- 8.8. As recorded in the Ecology Technical Note prepared by the Appellants' ecologists (July 2023), such an approach will in many cases undoubtedly deliver better outcomes for wildlife, by focusing resources on consolidated habitat creation in more strategically desirable locations than development edge.
- 8.9. For those reasons, the Officer's Report is wrong to consider that a Grampian condition could not be imposed to secure biodiversity net gain.
- 8.10. The Report is also wrong to suggest (at paragraphs 60 and 94) that a planning obligation to secure off-site biodiversity net gain would not be "directly related to the development" for the purposes of Regulations 122(2)(b) of the CIL Regulations and paragraph 57(b) of the NPPF. A planning obligation would plainly be directly related to the development, since it would provide compensation for biodiversity losses caused by the development.
- 8.11. For those reasons, Reason for Refusal 2 is misconceived and the Officer's Report was wrong (at paragraph 61) to attribute "significant negative weight" to the environmental impacts of the Scheme. On the contrary, the securing of 10% biodiversity net gain (at a time when the provisions of the Environment Act 2021

are not yet in force so as to require any net gain at all, and when policy CS15 only requires an unspecified contribution to net gain “where feasible”) is a clear benefit of the Scheme to which moderate positive weight should be applied.

- 8.12. The Appellants will work with the Council to agree the wording of a Grampian condition and/or a mechanism to be included in the S106 agreement to secure an overall 10% biodiversity net gain.

9. Planning Obligations and Conditions

Planning Obligations

- 9.1. The Appellants will negotiate with the Council an appropriate planning obligation mechanism under the provisions of Section 106 of the Town and Country Planning Act 1990 to secure 50% affordable housing provision on site, so as to resolve Reason for Refusal 3, and to secure a car club vehicle on site and off site highway improvements, so as to address Reason for Refusal 4.

Conditions

- 9.2. The Appellants will work with the Council to agree a suitable list of conditions in advance of the inquiry.

10. Third Party Representations

10.1. The first two pages of the Officer's Delegated Report for the Appeal Application summarise the local resident concerns/objections and these are then addressed later in the Report. They may be summarised as relating to the following themes:

- Highway and traffic impacts
- Impact on local infrastructure (including amenities such as education and GP)
- Impact of ecology and biodiversity
- Flooding and drainage
- Green Belt impact
- Design (including amenity and trees)

10.2. The issues raised by interested parties (beyond those raised in the Reasons for Refusal, which are addressed above) have been addressed by the various statutory consultee responses (e.g. County Highways, the LLFA and EA) and/or by the Officer's Delegated Report. In addition, the impact of the Appeal Scheme upon local services and facilities will be mitigated through the package of measures to be secured through the s106 agreement and through the financial sum to be secured through CIL. The Appellants will address issues raised by interested parties as necessary in evidence, but do not consider that any of them would constitute reasons for dismissing the Appeal.

11. Planning Balance

- 11.1. As in all cases, the Appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. However, as set out above, the development plan is out of date in terms of the spatial application of its housing policies, whilst, in addition, the Council is not able to demonstrate a five year supply of deliverable housing land, and the latest HDT results confirm that Elmbridge only achieved 70% of its housing target.
- 11.2. Accordingly, although there is a degree of conflict with the settlement boundaries established under policies CS1 and CS2 of the Core Strategy, this can only be accorded limited weight. Moreover, the “most important policies” are out-of-date for the purposes of paragraph 11(d) of the NPPF, and permission should therefore be granted unless: (i) the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 11.3. The Appellants will demonstrate that no policies in the NPPF provide a “clear reason” for refusing the Appeal Scheme. The Council disagrees solely on the basis of Green Belt policy, but it is wrong to do so, since although the Appeal Scheme constitutes “inappropriate development” in the Green Belt, it is justified by very special circumstances, as set out below.

Very special circumstances - Harms

- 11.4. As with any proposal for inappropriate development in the Green Belt, there is definitional harm (i.e. harm “by reason of inappropriateness”). There is minor harm to openness, through the change in physical and visual openness at a site level, and the limited change (given the level of visual containment of the Site) to visual openness of the wider Green Belt to the north of Claygate. And there is some minor conflict with the third purpose of the Green Belt (safeguarding the countryside from encroachment).

- 11.5. Any harm to the Green Belt must be given substantial weight under paragraph 148 of the NPPF. However, in this case the overall harm to the Green Belt is minor. It is also relevant to note that land that is currently Green Belt will inevitably be required to meet the Council's needs for market and affordable housing.
- 11.6. Assuming execution of a suitable Section 106 Agreement, the only non-Green Belt harm comes from the loss of countryside and landscape and visual issues. However, as set out above, the loss of countryside and landscape change to the Site itself, with limited and immaterial landscape and visual impacts beyond the Site itself, carry limited weight.

Very special circumstances - Benefits

- 11.7. This section assesses the very substantial benefits of the Scheme in relation to the three sustainability tests set out at paragraph 8 of the NPPF. It should be read in conjunction with section 8 above (which addresses environmental benefits, to which moderate weight should be given) and sections 4 and 5 above (which address the benefits, both economic and social, of market housing and affordable housing, benefits which in each case command very substantial weight). These benefits are factored into the assessment below (avoiding double counting).

Economic

- 11.8. The Appeal Scheme satisfies the economic role of sustainability including through the provision of housing to support growth and the associated provision of infrastructure, to be secured through preparation of the S106 agreement and by on-site provision of affordable housing.
- 11.9. The Appeal Scheme generates a series of local and Borough-wide economic benefits including through (i) construction of the scheme and the range of employment generated as a result; and (ii) the on-going expenditure from the households purchasing and occupying the new homes.

11.10. The principal economic benefits arising from the scheme are summarised below:

- (i) Increased house building in an area where there is a demand for new housing that in turn drives economic growth further and faster than any industry. In this regard the proposals will contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is being made available in the right place and at the right time to support growth.
- (ii) The economic benefits associated with provision of up to 60 new homes in the Borough where there is an established need for housing given the demonstrable shortfall in the five year housing land supply position.
- (iii) The economic benefits associated with delivery of much needed affordable homes (up to 30 dwellings) that will meet the acute need for affordable housing within the Borough.
- (iv) Meeting general housing needs is a substantial economic benefit, consistent with the Government's objective of significantly boosting the supply of housing.
- (v) In order for the economy to function, sufficient housing is required in the right locations and at the right time. This Site represents a location where there would be no significant adverse effect upon the landscape nor on the amenity of neighbouring properties.
- (vi) Based upon a multiplier of 2.3 jobs per new home¹¹, then up to 60 dwellings are estimated to create approximately 138 new jobs.
- (vii) Increased expenditure in the local area will support local FTE jobs.
- (viii) Helping to deliver a significant boost to the local economy through 'first occupation' expenditure of £327,720¹². This is expenditure on new furniture and other household goods that residents spend as 'one-offs' when moving into a new home.
- (ix) In terms of household expenditure, data from the ONS Family Expenditure Survey 2021-22¹³ shows that the 'average UK household spend' is £532.70 per week (Table A33) (or £27,777 per year), whereas in South East England it is 17.2% higher than the UK average (Table A33). This means average weekly spend per household is £624.20 (or £32,548 per annum).

¹¹ See page 13 of the Homes Builders Federation "Economic Footprint of UK Housebuilding " (July 2018) -

[https://www.hbf.co.uk/documents/7876/The Economic Footprint of UK House Building July 2018LR.pdf](https://www.hbf.co.uk/documents/7876/The_Economic_Footprint_of_UK_House_Building_July_2018LR.pdf)

¹² Research carried out by OnePoll on behalf of Barratt Homes (August 2014); <https://www.barratthomes.co.uk/the-buying-process/home-buying-advice/> which shows an average of £5,462 per dwelling.

¹³ [Family spending workbook 3: expenditure by region - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/people-in-work/family-expenditure/family-spending-workbook-3-expenditure-by-region).

For the Appeal proposal, the total gross expenditure is estimated to be £1.9m per year to the economy. A proportion of this household expenditure is anticipated to be spent in local shops and services and will help sustain the existing services in Elmbridge Borough including those local to the Appeal Site which includes the centres at Esher and Claygate. The expenditure will include a proportion of that spent on areas including food & non-alcoholic drinks (£71.60 per week); alcoholic drinks (£14 per week); recreation and culture (£73.90 per week), household goods and services (£41.20) and miscellaneous goods and services i.e. hairdressing & beauty treatments (£47.70 per week).¹⁴ Given the current economic challenges facing the UK these are significant economic benefits.

- (x) Increase in Council Tax receipts¹⁵ annually to the Borough Council of around £14,600 and to Claygate Parish Council by around £850; and
- (xi) Contribution towards Community Infrastructure Levy of around £500,000.¹⁶

11.11. By providing land of the right type, in the right place, and at the right time to support economic growth, the development of up to 60 no. dwellings on the Appeal Site fully accords with the objectives at paragraph 8 of the NPPF and assists in the aims of the NPPF in helping to build a strong and competitive economy.

11.12. This is further emphasised in the Government's November 2011 Paper 'Laying the Foundations: A Housing Strategy for England' where paragraph 11 states *"getting house building moving again is crucial for economic growth – housing has a direct impact on economic output, averaging 3 per cent of GDP in the last decade. For every new home built up to two new jobs are created for a year"*.

11.13. The economic benefits are to be accorded substantial weight in the planning balance.

¹⁴ Figures based upon SE Regional data in Table A33

¹⁵ Assumes all 60 dwellings proposed are within Council Tax Band D and the tax rates for the 2023/24 financial year as indicated at [Council Tax 2023 to 2024 | Elmbridge Borough Council](#). For sites like the Appeal Site, this indicates that for Band D dwellings, the Borough Council receives £243.35 per dwelling and Claygate Parish £14.15 per dwelling.

¹⁶ Assumes 30 market homes each with floor area of 84m² paying £198.10/m². 100m² is minimum internal space standards for a 2 storey 3 bedroom home - [Technical housing standards – nationally described space standard - GOV.UK \(www.gov.uk\)](#). CIL rates are those including indexation at 2023 as shown at [CIL charges and payments | Elmbridge Borough Council](#)

Social

11.14. The Appeal Scheme more than satisfies the social role, in helping to support strong, vibrant and healthy communities, including through providing the supply of housing required to meet identified needs in open market and affordable sectors. This is a very substantial benefit. In addition:

- 1) Future residents will be in an easy walking and cycling distance to local and higher order services and facilities in Claygate with bus services to Esher;
- 2) The Appeal Scheme will provide a range of housing types and sizes, including up to 30 affordable dwellings (50%);
- 3) The Appeal Scheme secures a high quality form of development consistent with the development management policies of the NPPF and the approach to high quality design set out in the NPPF;
- 4) Publicly accessible open space will be provided on the Appeal Site; and
- 5) A pedestrian crossing will be provided on Hare Lane to the benefit of existing residents, creating a safer environment for pedestrians seeking to access local services and facilities.

11.15. The details of the layout and house type design are to be agreed through the determination of a subsequent reserved matters application, with the detailed scheme to reflect the particular need for housing at that time.

11.16. Overall, the social benefits of the scheme can be afforded very substantial weight in the overall planning balance.

Environmental

11.17. In terms of the environmental role, the Appeal Site is not located on land designated for its landscape value.

11.18. The Appeal Scheme will not have any material impact on existing ecology and will in fact lead to an overall biodiversity net gain through securing off-site enhancements.

- 11.19. The proposals would deliver sustainable homes allowing the fulfilment of this important objective whilst at the same time moving to a low carbon economy and securing an environmentally sustainable form of new residential development, with the Scheme securing an overall 10% biodiversity net gain.
- 11.20. On the basis of the above, there are environmental benefits which would arise from the proposals, to which, on balance, moderate positive weight should be attached in the overall planning balance.

Overall position on benefits

- 11.21. Overall, the benefits of the Appeal Scheme should be accorded very substantial weight.

Applying the Very Special Circumstances Test

- 11.22. The Appellants' case is that the Appeal Scheme satisfies the test at paragraph 148 of the NPPF on account of many and wide-ranging benefits of the Scheme clearly outweighing the potential harm to the Green Belt by reason of inappropriateness and all other harm resulting from the Appeal Scheme.

Overall Planning Balance

- 11.23. Since the very special circumstances test under paragraph 148 of the NPPF is passed, it follows that there is no "clear reason" for refusing the Appeal Scheme under paragraph 11(d)(i) to the NPPF. It is therefore necessary to turn to the tilted balance under paragraph 11(d)(ii).
- 11.24. Applying this test, the identified adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole (quite the opposite). As such, the Appeal Scheme benefits from the presumption in favour of sustainable development.

11.25. Whilst the Appeal Scheme conflicts to an extent with the settlement policy boundaries identified under Policies CS1 and CS2, and the Appeal Site is not allocated for development in the Development Management Plan, it nevertheless accords with the policy DM1 (presumption in favour of sustainable development) and DM17 (Green Belt), and it also accords with all other applicable development management policies. Policies DM1 and DM17 operate as an exception to the restrictive and out of date approach to settlement policy boundaries under the CS. In the circumstances, therefore, the Appeal Scheme accords with the development plan overall.

11.26. For those reasons, the Appeal Scheme accords with the development plan taken as a whole and material considerations (including the tilted balance under NPPF policy) lend further support for the grant of planning permission.

11.27. The Appellants therefore consider that the Appeal should be allowed.

12. The Justification for the Inquiry Procedure

12.1. In accordance with the provisions set out in the PINS Guidance 'Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals' (April 2022), an Inquiry will be the most appropriate procedure in this instance because:

- There is a need for the evidence on Green Belt (including associated landscape and visual issues), ecology, and the application of planning policy to be tested through formal questioning by an advocate;
- The issues are complex; and
- The Appeal has generated substantial local interest, sufficient to warrant an inquiry.

12.2. The issues which need to be assessed in the determination of the Appeal are complex and evidence will need to be presented by professional witnesses, particularly in dealing with matters relating to:

- The application of **local and national policy**.
- The extent and materiality of the shortfall in the **five year housing land supply position** having regard to the overall planning balance.
- The need for and benefits of **affordable housing**.
- The **green belt** impacts of the Appeal Scheme.
- The acceptability of the Scheme in **ecology and biodiversity** terms.
- The suitability of the Appeal Scheme in **highway and accessibility terms**¹⁷.
- The judgment to be taken in carrying out the overall **planning balance**.

¹⁷ Having regard to local resident objections.

- 12.3. The Appellants and the Council are both expected to call up to 3-4 witnesses to deal with the issues above. There is also significant local public interest – with 185 objections submitted. As such, it is envisaged that the Appeal is likely to require 4-5 days for the evidence to be considered in full.
- 12.4. Material facts and matters of opinion are in dispute on a wide range of technical issues, such that evidence will need to be tested through formal questioning by an advocate.
- 12.5. Finally, legal submissions will need to be made in relation to a range of matters, including the application of the NPPF, the section 38(6) test, the proper approach to Green Belt policy, and legal issues surrounding the securing of off-site biodiversity net gain.
