

APPEAL UNDER
SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PLANNING APPLICATION BY
CLAYGATE HOUSE INVESTMENTS LTD
& MJS INVESTMENTS LTD

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)

AT LAND NORTH OF RALEIGH DRIVE, CLAYGATE

Application Reference 2023/0962
PINS Reference APP/K3605/W/23/3334391

Inquiry Sitting Days: 16-18, 23 April 2024

CLOSING SUBMISSIONS OF
THE COUNCIL

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Footnote References

CDx: Core Document number x

PoE: Proof of Evidence

All page numbers references in footnotes are to the original page number, save where the PDF number is expressly identified

1) INTRODUCTION

- 1.1. The Council's position remains that the single lead reason for refusal attached to the Decision Notice (22 September 2023), correctly reflects the basis upon which the Appeal Scheme should be refused (all underlining and bold emphasis added both here and below):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."

- 1.2. In closing, we shall briefly address the development plan, housing land supply and then Main Issues 1-3 in turn.

2) DEVELOPMENT PLAN & THE PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

The Development Plan

- 2.1. The starting point for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, is that the Appeal Proposal is in agreed conflict with Policies CS1 and CS2 on account of being located outside the built up area /settlement boundaries.² Mr Brown further identifies a conflict with Policy CS11, on a similar basis.³ The Council concurs, given that there is continuous thread through CS11's second paragraph, supporting development within the urban area.⁴

¹ CDB.1

² Trendall PoE, p8-9, [3.4]

³ Brown PoE, p18, [4.8]

⁴ CDE.1, p23: Policy CS11: "Residential development will generally be supported within the built up area, through redevelopment of previously developed land"

- 2.2. The Council has, however, consistently made clear from the Officer's Report onwards that the lead conflict is with Policy DM17,⁵ (alongside NPPF 152/153) given that the Appeal Proposal is inappropriate development within the Green Belt.

Presumption in Favour of Sustainable Development

- 2.3. As set out in opening, the Council considers that the presumption in favour of sustainable development is not engaged in this case, approaching the matter in two consecutive stages.⁶

Housing Land Supply

- 2.4. First, the Council considers that it is able to demonstrate a housing land supply in excess of 4 years (specifically 4.13 years)⁷ for the purposes of NPPF footnote 8, and paragraphs 77 and 226.⁸ The housing land supply components shall be addressed in Section 3 below.

Wavendon Properties and the Most Important Policies

- 2.5. Second, the Council then considers that given the 4+ years supply, the most important policies for the determination of the application should be considered up-to-date as a whole applying the structured approach in *Wavendon Properties Ltd v SSHCLG* [2019] EWHC 1524 (Admin); [2019] P.T.S.R. 2077, [56]-[58]:⁹

To answer the question posed by paragraph 11(d) it is necessary, having identified those policies which are most important for the determination of the application, to examine them individually and then consider whether taken in the round, bearing in mind some may be consistent and some in-consistent with the Framework, and some may have been overtaken by events and others not, whether the overall assessment is that the basket of policies is rightly to be considered out-of-date.

⁵ CDE.2, p59

⁶ Trendall PoE, pp9-11 [3.11]-[3.20]

⁷ ID4: Agreed SoCG Addendum in respect of Housing Land Supply

⁸ CDJ.3 contains the full NPPF

⁹ CDG.9

2.6. The parties have agreed the category of most important policies in the SoCG and the dispute on datedness is narrow:¹⁰

(1) CS1 and CS11 (disputed)

(2) DM1, DM9, DM17, CS15, CS21, CS25, CS26 (agreed to be up to date)

2.7. In respect of Policy CS1 and CS11, the position has altered since the original Officer's Report through the publication of the NPPF. The Council is now able to demonstrate a 4+ year supply, and has therefore complied with the target set by Government under current national policy. The text of the policies therefore remains consistent with national policy for the purposes of NPPF 225-226), notably promoting the protection of the Green Belt (consistent with NPPF 142 and the broader NPPF Chapter 13 objectives, plus NPPF 123 promoting the re-use of previously developed land). As a Borough with an estimated 57% of land within the Green Belt, the strategy remains up-to-date in its protection of the Green Belt and promotion of the use of previously developed land.

NPPF 11d(i)

2.8. At the point of determination (prior to NPPF 2023), the Council considered the Appeal Proposal in the context of the presumption and refused permission in the context of NPPF 11d(i).¹¹

2.9. The outcome of the appeal therefore ultimately turns on whether very special circumstances have been demonstrated, for the purposes of Policy DM17 and NPPF 152/153, and whether or not NPPF 11d(i) is engaged. For the reasons set out below, the Claimant has not surmounted the very special circumstances threshold and accordingly permission must be refused.¹²

¹⁰ CD D.1, pp15-16, [5.10]-[5.12] and p16 [5.14]-[5.15]

¹¹ CDB.2, Officer's Report, p6, [28]

¹² CDG.22 Monkhill Ltd v SSHCLG [2021] EWCA Civ 74 endorsing CDG.21 Monkhill v SCLG [2019] EWHC 1993 (Admin) [39], (12): "12) *The application of some "Footnote 6" policies (e.g. Green Belt) requires all relevant planning considerations to be weighed in the balance. In those cases because the outcome of that assessment determines whether planning should be granted or refused, there is no justification for applying limb (ii) in addition to limb (i).*"

3) HOUSING LAND SUPPLY

- 3.1. The Housing Land Supply SoCG confirms common ground in respect of (1) the five year period (1 April 2023 to 31 March 2028); (2) the use of the local housing need figure and the four-year requirement (2600 dwellings).¹³ The SoCG also confirms the Council's most recent Housing Delivery Test (HDT) figure for 2022 is 90%.¹⁴
- 3.2. The Addendum Note confirms dispute in respect of a total of 7 sites, which shall be numbered 1-7 below, with Ikona Court and 63 Bridge Road removed:

Table (A) - Sundial House

	Site	Elmbridge Borough Council's Position	Appellants' Position
1	Sundial House	56	38

Table (B) - Sites without planning permission on 1 April 2023, not included in the AMR or the LAA.

	Site	Elmbridge Borough Council's Position	Appellants' Position
2	Brooklands College	235	0
3	Members Hill	119	0
4	Copsem Manor	13	0
5	A C Court	18	0
6	142 High Street	1	0
7	103 Ashley Road	5	0
	Total	391	0

- 3.3. As per Table C, the Appellant's figure situates the supply just 321 units below the 4 year mark and thus the inclusion of Sites 2 and 3 alone (354 units) would result in a supply in excess of 4 years.

¹³ CD D.4

¹⁴ CD D.4, p2: Table 1

1) Sundial House (56 units)¹⁵

- 3.4. The sole dispute in relation to this Site is whether the total deliverable number should reflect the planning application figure of 56 units, in light of the brownfield register recording 38 units.¹⁶ The Council's position, is that the key consideration is the application itself, as the brownfield register does not reflect events on site.
- 3.5. The Applicant (Charity (Sons of Divine Providence) working with Lifestyle Residences Ltd) will build and occupy the development. They are an experienced developer within the local area.
- 3.6. As Mr Falconer and Mr Trendall both explained, the Planning Application continues to progress well, with the issues identified by the Environment Agency being resolved. The FRA is being updated, with an amendment to the design likely to address the flood risk issues, including raising of the ground level of buildings. There are no other outstanding issues with the application.
- 3.7. The Council therefore anticipate resolution of this sole issue within 3-6 months (following re-consultation and Committee). Whilst there are residents on site, they will be rehoused until completion and then would return to the development.
- 3.8. Whilst a viability review had indicated that the scheme is not viable, the applicant has agreed to the delivery of 20 affordable homes on site.
- 3.9. In summary, there is clear evidence from the pending application that there is a realistic prospect of the full 56 additional units being delivered on Site.

Sites 2-7 and the LAA

¹⁵ HLS RTS Agenda, Section 2; Falconer PoE, p16, [3.18]

¹⁶ Brown HLS PoE, p28, [3,52]

- 3.10. The Appellant has maintained blanket opposition to Sites 2-7 on the bases that (1) none were included in the LAA and (2) permission was granted in each case after the base date. This stance is not justified.
- 3.11. *East Northamptonshire Council Consent Order*¹⁷ and the further Bedford Consent Order ¹⁸ both confirm that the definition of a “deliverable site” is not a closed list.¹⁹ It is important to note three further factors:
- 3.12. First, at least 4 of the 7 addresses/locations were referred to in the LAA (albeit with a different red line boundary) (Site 3: Members Hill; Site 4: Copsem Manor; Site 5: A C Court; Site 6: 142 High St, Esher (as listed below)). The Council’s position on deliverability expressly and correctly takes into account events and applications closely related to those permissions.
- 3.13. Second, in the case of the largest permission under challenge: Site 2: Brooklands College (with a Resolution to grant), there had been consultation and discussion in relation to this Site stretching back to 2021 and extensive pre-application discussions. There are bespoke/site-specific reasons for the exclusion of this site from the LAA, namely its Green Belt status. This Site therefore now has to be assessed afresh irrespective of the LAA.
- 3.14. Third, a whole year of the 5 year period elapsed and this operates both ways as much in the Appellant’s favour as the Council’s. The Council has carefully considered the LAA sites, and removed a number of Sites which were refused permission after the base date.²⁰ In the very specific examples that have been identified for inclusion, there are site-specific reasons for inclusion of the figures, reflecting the position at the base date and the events subsequent to this.

¹⁷ CDG.15

¹⁸ CDG.16

¹⁹ Falconer PoE, p7, [2.7]

²⁰ CDD.4 HLS SoCG, for example Site US472 – 40 Fairmile Lane (deduction of 13 units to reflect refusal on 11 August 2023)

- 3.15. The Council’s position therefore reflects the Secretary of State’s position in the Woburn Sands decision,²¹ that evidence can post-date the base date, where the Site is capable of being considered deliverable at that point. The PPG (paragraph 68-007)²² is clear that a Site does not even have to have permission as at the base date, given that regard may be had to “current planning status” and “firm progress being made towards the submission of an application” and even “firm progress with site assessment work”. A Site that secures full permission within the first year can therefore be considered significantly far advanced towards delivery, depending of course upon scale, developer identity and other matters.

2) Brooklands College, Weybridge: 235 units²³

Application and Resolution to Grant

- 3.16. Brooklands College and Cala Homes applied for planning permission on 10 May 2023 and secured a resolution to grant for 320 units (including 128 affordable housing units) on 5 December 2023. It is understood that the Section 106 Agreement has now been signed by all parties and will be sealed by the Council today (23 April 2024) with permission then following immediately thereafter.
- 3.17. The Council had been aware of the proposals for the Site since pre-application discussions from 25 October 2021.²⁴ The first public consultation then took place as early as 12 July 2022.²⁵ Therefore at the base date, pre-application discussions were being undertaken with the Council and were very far advanced, given the submission date just over one month later.

²¹ CDH.42 APP/Y0435/W/17/3169314 Land To The East Of Newport Road And To The East And West Of Cranfield Road, Woburn Sands, Buckinghamshire MK17 8UH (25 June 2020) (CDH.42)

²² CDI.2, PDF p4: PPG 68-007

²³ HLS RTS Agenda, Site 3(f); Falconer PoE, pp17-18 [3.23]-[3.29]: Original Site 5

²⁴ Falconer PoE, p17 [3.27]

²⁵ Falconer PoE Appx 5.5

- 3.18. The landowner, Brooklands College (a school), submitted the application to make up for a significant funding shortfall – and it was this specific financial imperative which meant that very special circumstances were identified.

The LAA

- 3.19. The sole reason for exclusion from the LAA was the location of the Site within the Green Belt, thereby meaning that the Site was considered subject to an absolute constraint at that stage, and thus did not fall within the category of urban sites identified in LAA 2022.

Delivery Figures

- 3.20. The developer, Cala Homes, is obviously a very significant national housebuilder, with every commercial incentive to progress this scheme rapidly following final resolution to grant. The e-mail from their Planning Manager (dated 15 March 2024) provides clear evidence of a build-out rate of 235 units up to 2027/28. That is an entirely realistic timescale for a Site of this scale. Save for its objection on the principle, the Appellant has not presented any significant evidence to doubt this delivery timescale.

3) Members Hill, Weybridge: 119 units²⁶

Application and Grant of Permission

- 3.21. This site was included in the LAA's Appendix 2: sites with permission for 57 units.²⁷ That entry recorded the prior approval granted under Application References 2020/3345 and 2021/2626.
- 3.22. The Application for 205 units (Reference 2022/2746 for 205 C2 units (self-contained)) had been submitted and was pending at the base date. Permission was then granted on 18 July 2023, just a few months after the date date.

²⁶ HLS RTS Agenda, Site 3(c); Falconer PoE, p18, [3.30]-[3.33] Original Site 6

²⁷ CD E.14 LAA, p35: Reference 2020/3345; 2021/2626

- 3.23. A further Planning Application 2023/3294 (S73) has now proposed the reduction of the 205 number to 176 due to new Building Regulations requirement for additional lifts. A delegated decision is likely given the existing support for development on Site.
- 3.24. The position is therefore that an uplift of 119 units correctly reflects increasing intensification of the development on Site, and thus represents the latest data.
- 3.25. It should be noted that Appellant has accepted the principle of increases in respect of certain LAA figures (albeit at a smaller scale).²⁸

4) Copsem Manor, 50 Copsem Lane, Esher: 13 units²⁹

- 3.26. This site was also identified in LAA Appendix 1 (Sites under Construction) for 6 dwellings in relation to application 2021/2254.³⁰
- 3.27. Planning Application Reference 2023/0324 was submitted for three pairs of semi-detached houses at the rear of the site on 2 February 2023, but not registered until 6 April 2023. Permission was then granted on 24 November 2023.
- 3.28. It was therefore omitted from the LAA solely on the basis of the registration date, less than a week following the base date.
- 3.29. The permission is for the conversion and extension of the existing house at the front of the site to provide 14 flats, therefore a net addition of 13 units.³¹

5) AC Court, Thames Ditton: 18 units³²

²⁸ CD D.4 p16: US524: Torrington, 18-20 St Marys Road increased from 9 to 11 units due to resolution to grant (January 2024; US127: 30 Copsem Lane: increased from 21 to 25 units to reflect a pending application (submitted before the base date)

²⁹ HLS RTS Agenda Site 3(d); Falconer PoE, p18, [3.34]-[3.36]; Original Site 7

³⁰ CD E.14, LAA, p29, Reference 2016/3908

³¹ NB Appendix 7.1 relates to 2021/2254 – different six units elsewhere within the Site, however the fact of the permission and its quantum is not contested

³² HLS Agenda 3(h); Falconer PoE, pp18-19, [3.37]-[3.42]

- 3.30. This site is also included in the LAA, Appendix 1 (Sites under Construction) referring to Unit 2 and 6, for a total of 38 units.³³ 13 units were under construction at 31 March 2023. Subsequent prior approvals have been granted for 18 flats, giving a total of 31 on the site.
- 3.31. Application Reference 2023/1791 was granted for the conversion of Unit 7 to 6 flats on 17 August 2023. This application was received on 26 June 2023, shortly after the base date. The Council then received Application Reference 2023/3355 on 6 December 2023 and granted permission for the conversion of Unit 1 to 12 flats on 17 January 2024.
- 3.32. The LAA had considered the potential for the conversion of the whole site when identifying potential for housing delivery and therefore at the base date there was a reasonable expectation that the conversion of the other blocks would come forward and be deliverable within a short timescale and well inside the 5 year period.
- 3.33. Therefore the additional figure should have been included in the LAA Sites Years 1-5 (Appendix 3). In effect, this addition simply updates/corrects for a potential omission in the LAA. It is not in the Appellant's sense a new site altogether.

6) 142 High Street, Esher: 1 unit³⁴

- 3.34. The site was included within Appendix 1 of the LAA: Sites under construction at 31 March 2023 for 5 units with reference to application 2021/4194.
- 3.35. Application 2023/0491 was registered on 10 March 2023, prior to the base date.
- 3.36. The proposal is for the conversion of the former social club building into 6 flats and was granted on 28 April 2023. This amounts to an uplift of 1 unit from the LAA figures.

³³ CD E.14, p30 Reference 2021/3595

³⁴ HLS RTS Agenda 3(h)

7): 103 Ashley Road: 5 units³⁵

- 3.37. This site was not identified within the LAA.
- 3.38. On 21 November 2022, planning permission had been granted for the same number of units under 2022/3532 which was received on 21 November 2022, and granted on 28 April 2023 (i.e. less than one month after the base date). Planning Application 2023/2091 (received 24 July 2023) is for a pair of semi-detached houses and conversion of the existing house into 4 flats, therefore a net increase of 5.

4) MAIN ISSUE 1: GREEN BELT IMPACTS

Main Issue 1: The effect of the proposal on the openness of the Green Belt and the purposes of including the land within it

Harm to the Green Belt Generally

- 4.1. NPPF 142 and 152/153 record the great importance attached to the Green Belt. They require that substantial weight be given to any Green Belt harm, reflecting the importance of its protection and of keeping all such land permanently open (save in recognised exceptions, none of which is applicable in this case).
- 4.2. As the High Court observed in *Sefton MBC v SSHCLG* [2021] EWHC 1082 (Admin); [2021] PTSR 1662, 1663, [34]

*“When paragraphs 143 and 144 are read together they can be seen as explaining that very special circumstances are needed before inappropriate development in the Green Belt can be permitted. In setting out that explanation **they emphasise the seriousness of harm to the Green Belt** in order to ensure that the decision-maker understands and has in mind the nature of the very special circumstances requirement. They require the decision-maker to have **real regard to the importance of the Green Belt and the seriousness of any harm to it...**”*

³⁵ HLS RTS Agenda 3(e)

- 4.3. A consistent theme in the Appellant’s evidence has been a downplaying of the harm to the Green Belt, crystallized in Mr Brown’s conclusion: “*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.*”³⁶
- 4.4. As Mr Brown accepted, the analysis of harm must be undertaken on a rigorous basis.³⁷ That should begin with a proper assessment of the impacts at site level.
- 4.5. The Appellant’s approach (at least in their application material and written evidence) did not properly reflect the impact of placing 60 units on a circa 1.1 hectare area. Instead, they have constantly sought to bring in wider Green Belt issues and even the need for housing itself – a distraction that not even Mr Self was immune from, although it formed no part of his role.³⁸ When the harms are considered individually and systematically, it is clear that they should have been graded far higher at this first stage of the overall Green Belt exercise before considering the VSC test.

Definitional Harm

- 4.6. The starting point is that the Appeal Scheme is inappropriate development, which is harmful by definition. It is agreed that this must attract substantial weight.³⁹

Harm to Openness

- 4.7. The PPG makes clear that openness must be assessed in both its spatial and visual aspects, including both volume and visual impact.⁴⁰

Spatial Harm

³⁶ Brown PoE, p54, [7.17]

³⁷ Brown XX

³⁸ Self PoE, p11, [4.13] and p20, [6.5]; Self XX

³⁹ Trendall PoE, p28, [7.30] and Brown PoE, p29, [4.70]; p54, [7.16]-[7.17]

⁴⁰ PPG 64-001

- 4.8. The Council's consistent position has been that the Appeal Scheme will give rise to substantial harm to the openness of the Appeal Site in spatial terms. The Appeal Proposal will place a considerable volume of built form within the Appeal Site: 60 residential units, in buildings of up to 3 storeys, over 1.1 out of 1.95ha of the Site within the Green Belt.⁴¹
- 4.9. In that context, it was surprising (and ultimately telling) that Mr Self's Proof of Evidence initially declined to quantify the level of harm in spatial terms at the site level, simply stating that it "would have a direct impact on the openness of the Site".⁴² This plainly influenced the Brown position of "minor harm".
- 4.10. Mr Self accepted in XX that the harm would be substantial in spatial terms at the Site level.⁴³ The Appellant maintains a broader argument that there will be "no indirect physical impact on the openness of the neighbouring Green Belt". However, the spatial aspect of the test does not work on the basis that one can dilute substantial harms at the site level by reference to an absence of harm beyond the Site. The proposition that there will be only minor harm to openness in spatial terms is therefore wrong, and quite seriously so, given its importance to the Appellant's overall assessment of harms.

Visual Harm

- 4.11. The Appeal Scheme will also give rise to substantial harm to the openness of the Appeal Site in visual terms.
- 4.12. The Appellant accepts that visual harm is not solely to be assessed from public vantage points.⁴⁴
- 4.13. The development will be prominently visible from the residential properties to the West at the new Esher Park Gardens. As Mr Withycombe noted,⁴⁵ the entry for Properties at Esher Park Gardens (reciprocal views at Photographs 2, 4, 7-

⁴¹ Trendall PoE, p40, [9.6]-[9.8]

⁴² Self PoE, p25, [6.34]

⁴³ Self XX

⁴⁴ Self PoE, p25, [6.37] and Self XX

⁴⁵ Withycombe PoE, p11, [5.6] noting Photographs 2, 4, 7 to 10 and 20

10 & 20)) records a Substantial Adverse effect at Year 1 declining to Substantial/Moderate Adverse at Year 15.⁴⁶ Those terms are defined in the LVIA :

*“Substantial: The proposals would have significant impact on a view from a receptor of medium sensitivity, or less damage (or improvement) to a view from a highly sensitive receptor, and would be an **obvious or dominant element in the view.**”*

*Moderate: The proposals would impact on a view from a medium sensitive receptor, or less harm (or improvement) to a view from a more sensitive receptor, and would be a **readily discernible element in the view.**”*

- 4.14. Whilst views are more filtered from properties to the East and South (and from the access), there will still be a marked change in the appearance of the Site, recorded at Moderate Adverse at Year 1 and then Moderate/Slight at Year 15.⁴⁷
- 4.15. As Mr Trendall also noted, the Site would also remain in the Green Belt post-permission, as it is not designated for removal.⁴⁸ Therefore the views within the Site, and any outwards views and visual connectivity to the Green Belt land to the North would be entirely lost. This would amount to a substantial visual impact from within the Site itself.
- 4.16. In short, Mr Self’s assertion of merely “a degree of visual harm to the openness of the Green Belt, [but] this would be extremely limited”⁴⁹ significantly understates the position. This in turn further reveals that Mr Brown’s overall assessment of “minor” harm to openness does not properly reflect the seriousness of the harm to the Green Belt.

Green Belt Purposes

- 4.17. The Council considers that there will be conflict with each of Purposes (a), (b) and (c) at a moderate level, plus (e) which operates generally for any Green Belt

⁴⁶ CD A.7, PDF p88 (Appx J, Tables pages v

⁴⁷ Trendall PoE, pp41-42, [9.9]-[9.21]; Withycombe, p18, [7.1]-[7.3]

⁴⁸ Trendall PoE, p42, [9.20]

⁴⁹ Self PoE, p26, [6.40]

Site.⁵⁰ The Appellant's submission of no conflict with any purposes save (c), again further significantly under-assesses the extent of the Green Belt harm in this respect. It is well-established (and fully agreed by the Appellant) that there is no hierarchy between the purposes and all are therefore of equal importance.⁵¹

Introductory Points on Green Belt Purposes

Site Features

- 4.18. Merely to describe the Site as surrounded by development on three sides is not a full description. Both the Southern boundary⁵² and Eastern boundary,⁵³ have a thick band of vegetation (including high trees on the East), which obscures a significant number of the houses for over 6 months of the year.⁵⁴ They also have relatively long gardens, thereby placing the houses at some distance from the Appeal Site and providing an obvious buffer. Collectively, this presents as a well-defined boundary to the Green Belt, clearly containing the built form.
- 4.19. The position is similar on the Western Side, notwithstanding the height of the Esher Park Gardens buildings. This development is still under construction, but the finished position can still be discerned from the Masterplan.⁵⁵ Over two thirds of that boundary will have vegetation, which will grow above the height of the fence above. Only a small portion, circa 25-30 metres in distance will have no boundary vegetation, but will be contained by the fence. When one considers the total site perimeter, this is a very small amount, just part of one side.

The Arup 2016 and 2018 Green Belt Boundary Review Assessments

⁵⁰ Trendall PoE, Ch8, pp30-37; Withycombe, Ch 6 pp13-15

⁵¹ CD A.7 Appx K, p90: The NPPF does not attach a hierarchy to the Green Belt purposes and it is assumed that each purpose is of equal importance; Self XX and Brown XX

⁵² Self PoE, Appx C p11, Photograph 3a

⁵³ Self PoE, Appx C, p14, Photograph 6a

⁵⁴ Self PoE, p14, [4.37] *"There are some heavily filtered views from a handful of these properties, although these are generally limited to winter months when the intervening tree cover is out of leaf."*

⁵⁵ CD A.31 Claygate House Masterplan

4.20. Both Mr Trendall and Mr Withycombe have explained how the original Local Area 45 assessment⁵⁶ far better reflects the impact on purposes than the narrower Sub Area 59 assessment undertaken later by Arup.⁵⁷ The 2018 work was undertaken on the basis of a larger area, stretching up to the edge of the then Claygate House and passing over the car parking areas and through a section of the Pavilion building.⁵⁸ The photographs at ground level show that the tennis court and golf course were still maintained at this point. It is therefore clear why these areas were considered at that time to relate far more strongly to the un-partitioned area to the west. However, that link was decisively broken once the Esher Park Gardens site was divided by a fence and the Appeal Site then left unmaintained to become, in effect, a grass field. As Mr Self fairly recognised, the golf course features have largely been absorbed into the landscape.⁵⁹

The 2019 Minor Boundary Assessment

4.21. The Tile 99 description confirms the above:⁶⁰

*“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 treebelt at its northern edge.”*

4.22. Not only are the car park and part of the building outside the Appeal Site, the Site no longer reads as the curtilage of what is now Esher Park Gardens, on account of the division within the Site, the evident separation in ownership and the removal of the associated recreation use.

The 2022 Assessment

⁵⁶ CD E.32

⁵⁷ CD E.40

⁵⁸ Withycombe PoE, Appx 2, Google Earth Aerial Photograph May 2018

⁵⁹ Self XC

⁶⁰ CD E.43, p24

- 4.23. The 2022 Assessment identified the wider purposes of the Site and recognised that the original Local Area 45 findings remained valid to the Site, and exercising a fresh judgement that the Arup work had “undervalued” the Site.

Site-Specific Assessment

- 4.24. Ultimately, this Appeal must look to the Appeal Site itself, in its current form and with many of the earlier features removed and the Site no longer in use. It will also have been apparent on the Site visit the extent of the connection to the fields to the North, to which the Appeal Site now reads as a natural extension/continuation (and not as a separate “indentation” as per Mr Self’s preferred term).

Purpose (a): To check the unrestricted sprawl of large built-up areas

- 4.25. The Appeal Proposal will significantly extend the large built-up area of Esher eastwards over 100m into the Site itself and thereby give rise to sprawl, in conflict with this purpose.

Large Built Up Area

- 4.26. Mr Trendall has correctly analysed the qualifying geographical term: “large built-up area”,⁶¹ noting the Arup Assessment’s identification of “*correspond to the Tier 1 settlements (or equivalent) identified in the respective Local Plans for each local authority, both within and outside Elmbridge*”. Esher is recognised in the emerging Local Plan as a Town Centre (at the top level alongside Walton-on-Thames, Cobham and Weybridge).⁶² It is a settlement approaching a population of 10,000, but more importantly, it can be seen in plan form how far it already extends, bounded by the Green Belt.⁶³

⁶¹ Trendall PoE, pp32, [8.16]-[8.20]

⁶² CD E.16, p79, [7.16]

⁶³ Self PoE, Appx A: Site Location Plan

- 4.27. The original Arup findings were in the context of the settlement at 2016, following a discussion in 2015.⁶⁴ As Mr Trendall notes, Map 4.5 of the 2016 Green Belt Review shows very similar-scale settlements such as Chertsey falling within this category.⁶⁵ Esher should therefore now be recognised as a large built-up area.
- 4.28. Notwithstanding the Appellant's attempts to place weight purely on the Claygate ward boundary, the Appeal Scheme would read as an extension of the eastern boundary of Esher (albeit in effect up to the boundary of Claygate). The Appellant's insistence that the entire location be considered Claygate is nonetheless telling as to the impact in respect of Purpose (b) and the merger of the two.

Sprawl

- 4.29. Arup defined "sprawl" as "the outward spread of a large built-up area at its periphery in a sporadic, dispersed or irregular way". At the site/proposal level, it is important to consider the role that the Site provides, as each example of extending the line of built development can contribute to sprawl.
- 4.30. It is notable that CSA's own methodology's Moderate criterion so closely matches the features of this Site. It is necessary first to consider the question of whether the parcel associates with the wider countryside (as well as the existing urban area) and with a well-defined boundary to the Green Belt, which provides clear containment, logically before one considers whether a new alternative boundary could be put in place to contain potential urban expansion.
- 4.31. Applying that methodology,⁶⁶ reveals how a finding of "no contribution" at all significantly under-values the Site's contribution. The boundary to the Site needs only to provide "some containment" to the urban area (Criterion 1),

⁶⁴ CD E.31 p36 and footnote 15: "These were confirmed with officers from the respective neighbouring authorities at a workshop held on 19th May 2015."

⁶⁵ CD

⁶⁶ CD A.7, Appx K, p93

following the logical landscape/physical feature (i.e. the combined vegetation and fence). The Site need only have some relationship with the established pattern of development which may have a visible presence along one or more sides (Criterion 2) and the landform or land cover (i.e. vegetation) need only play little role in separating the urban edge and the wider countryside (Criterion 3). As to alternative boundaries, even if they could provide a redefined edge to the Green Belt with additional strategic landscaping as part of a planned extension (Criterion 4), then again a Moderate contribution is merited. Finally, where expansion would only result in some intrusion on the wider countryside but would be better related to the existing urban area a Moderate contribution is merited.

- 4.32. The lower level of Weak/No Contribution is therefore very hard to understand in that context, and is quite clearly wrong. It appears to rely heavily on the introduction of the term “indented” (or indentation). It is readily apparent from Arup’s original Local Area 45 map that the Site itself is not “indented” in this way, but reads as the southern extent of the whole wider Local Area 45 Parcel,⁶⁷ simply acting as one end of the gap between the wider settlements.
- 4.33. Mr Trendall has explained the Arup (2016) scoring of 3/5 for the wider Parcel 45, was replaced by a 2018 finding which incorrectly excluded the Site for not having passed the gateway test. Once the Site is correctly found to have passed the gateway: “large built-up area”, its development would both “*preven[t] the outward, irregular spread of a large built-up area and serves as a barrier at the edge of a large built-up area in the absence of another durable boundary*”, it is apparent that a Moderate finding is appropriate, given the same well-established boundaries referred to above.⁶⁸
- 4.34. For all these reasons, the Site makes a moderate contribution to Purpose (a) and its loss to the development accordingly can be considered a moderate harm in Green Belt terms, to which substantial weight must attach.

Purpose (b) To prevent neighbouring towns merging into one another

⁶⁷ CD E.32

⁶⁸ Trendall PoE, pp32-33, [8.25]

- 4.35. Purpose (b) reflects the original 1955 wording of Circular 42/55.⁶⁹ The term “neighbouring towns” should therefore be interpreted purposively and flexibly, incorporating larger settlements that may not formally have been labelled a “town”, but are nonetheless at a significant scale. Both Esher and Claygate qualify.
- 4.36. Arup recognised correctly that the term “towns” could not be fixed and required a more flexible approach. This is reflected in their observations later in the report.⁷⁰ Both Esher and Claygate were therefore recorded in Table 4.3 and noted “*Given the general concentration of development outside of the Green Belt in Elmbridge, the assessment of Local Areas considered gaps between all non-Green Belt settlements.*”⁷¹ The study also defined ‘Essential gaps’ as “*those where development would significantly reduce the perceived or actual distance between settlements.*”
- 4.37. The finding for Local Area 45 was clear that Claygate should be included, noting “*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*”
- 4.38. The CSA Methodology adopted a similar flexible approach and it is notable that the Appellant did not pursue an objection on the basis of “towns” until the event itself.⁷²
- 4.39. Again applying the CSA Methodology, the Site need only form part of a wider gap between neighbouring settlements to qualify for Moderate Contribution (Criterion 1). Even if there is only limited intervisibility between settlements, and landform and land cover play some role in maintaining a sense of separation (Criterion 2). Criterion 3 is unusually focussed on sections of the

⁶⁹ CD E.31, p5

⁷⁰ CD E.31, p13, [3.3.1] and p23

⁷¹ CD E.31, p41

⁷² This point was not raised in CD A.2 Planning Statement, CD A.7 the LVIA (p19, [5.21]), nor in Self PoE, p22, [6.13]-[6.15], and therefore not raised in Brown PoE, p53 [7.12]

“intervening highway network”, but in any event the Site is visible from Raleigh Drive albeit partially. Moreover, development need only result in some reduction in the gap between “a main settlement” and “smaller settlements” to qualify as Moderate. A finding of “No Contribution” therefore plainly under-assesses this purpose.

- 4.40. As Mr Trendall has explained, the 2018 work evidently under-valued the contribution of the Site.⁷³ The fact that the gap measures just 170m (vs 300m in the area to the north) renders it even more important in preserving separation of the settlements.
- 4.41. In plan form, it is readily apparent how there will be further merger of Esher and Claygate in this location. The purpose does not refer to “coalescence” but maintains a broader, ongoing protection, whereby the purpose does not lose all relevance if a single connection point has been established. The purpose seeks to prevent the progressive merger of settlements over time.
- 4.42. On the ground, the effect would be such that if one entered the Site to the top of the access corridor, one would lose the sense of separation that is readily apparent between the new Esher Park Gardens development to the west and the Rythe Road houses to the east. As observed in XX of Mr Self, in this location, it would be impossible to tell where Esher ends and Claygate begins.
- 4.43. For all these reasons, Arup’s cautionary words in 2016 remain very pertinent: the very narrow gap would be entirely lost through this development, rendering it ever harder to distinguish between Esher and Claygate. The Site performs at least a Moderate contribution to the second purpose and this would be lost through this development, again a matter to be reflected as a moderate Green Belt harm, to which substantial weight must attach.

Purpose c) To assist in safeguarding the countryside from encroachment

- 4.44. Both parties agree that there will be conflict with this purpose. Mr Trendall’s assessment of “Moderate” is to be preferred to Mr Self’s “Minor”.

⁷³ Trendall PoE, p24, [8.28]-[8.34]

4.45. As Mr Trendall and Mr Withycombe observe, the Site now reads as a grassed field. The 2018 Arup review was evidently steered by the larger parcel “Contains more than 15% built form and/or possesses an urban character”. Of the two, the higher grading of “largely rural” (a grading of 3/5) would appear to fit the Appeal Site better than “semi-urban” (2/5), especially given the exclusion of the areas to the west.⁷⁴

4.46. The Council’s Green Belt Site Assessment Proformas – Sites no longer considered suitable for release document (2022 and updated 2023) referred to the Landscape Sensitivity Assessment:⁷⁵

The Council’s Landscape Sensitivity Assessment, 2023 (LSA 2023) places SA-59 within Landscape Character Area LF2 - Claygate Rolling Clay Farmland, which is defined as predominantly consisting of arable fields. Limited settlement and land use give the area a rural feel, particularly to the south. However, the A3, adjoining roads, and surrounding Built Up Areas, reduce the sense of remoteness and tranquillity in surrounding areas. The LSA concludes that 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.

4.47. Again applying the CSA Methodology, the Site is separated from the urban edge by the vegetation described above. It has a semi-rural character, given the limitation of the urban influences. It is not in any urban land-use, and relates to the wider rural landscape, presenting now as a greenfield site (Criterion 2), with significant containment (Criterion 3).

4.48. The Appellant has therefore again significantly under-valued the contribution that the Site makes to this Green Belt purpose and its grading of “minor” is not accurate. There will be moderate harm to this purpose, to which substantial weight must attach.

Purpose (e): to assist in urban regeneration, by encouraging the recycling of derelict and other urban land

⁷⁴ CD E.33, p24, Table 6: Purpose 3 Assessment Criteria

⁷⁵ CD E.50, p5 and

4.49. As Mr Trendall explained, the Green Belt performs this role strongly in this Borough – encouraging all development activity to focus on urban land, and to ensure that brownfield sites come forward. The release of sites such as the Appeal Site would inevitably have an impact in disincentivising development industry focus on such Sites, offering greenfield sites without urban constraints. There would therefore be further significant harm to this purpose, which again must be accorded substantial weight.

Conclusion on Green Belt Harms

4.50. For all these reasons, when one considers collectively (a) the definitional harm, (b) the substantial harm to openness in spatial terms; (c) the substantial harm to openness in visual terms and (d) the moderate harm to the Green Belt purposes, this amounts to a much higher level of harm than the Appellant has ever fully appreciated or accounted for. In summary, the Appeal Proposal would give rise to harm to the Green Belt in all respects, amounting to substantial harm overall, in a context where any harm must be accorded substantial weight, consistent with NPPF 142 and 153.

4.51. The Appellant’s approach has failed to correctly calibrate the seriousness of the harms to the Green Belt. It is against this flawed backdrop of under-assessment of harm, that the Appellant’s case on the benefits and other considerations is thrown in ever sharper relief. It has not approached the case with a full understanding of the very demanding nature of the VSC test.

5) MAIN ISSUE 2: CONTRIBUTIONS

Main Issue 2: Whether the proposal would make adequate provision for biodiversity net gain, affordable housing, highway improvement schemes, and a car club; and

5.1. The Appellant and the Council have concluded a s106 agreement which covers:
(a) biodiversity net gain, (b) affordable housing, (c) highway improvement

schemes, and (d) a car club. The Council therefore considers RfR2, RfR3 and RfR4 addressed.

6) MAIN ISSUE 3: VERY SPECIAL CIRCUMSTANCES

Main Issue 3: Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development

Other Harm

- 6.1. Mr Brown accepts that there will be limited harm to the character and appearance of the area.⁷⁶ The Council has confirmed that this does not amount to any reason for refusal on this basis. However, in the light of this observation/grading by the Apellant, this limited harm should be considered in the overall VSC balance.

Other Considerations

- 6.2. The courts have observed the openness of the “other considerations” category.⁷⁷ However the plain words: “very special circumstances” must be given their proper effect. This is a higher test than “exceptional circumstances”.⁷⁸
- 6.3. NPPF 153 makes clear that the “other considerations” must clearly outweigh the harms. It is not sufficient for the benefits of a scheme merely to “tip the balance”. Something decisive is required.
- 6.4. National policy therefore places significant expectations and demands upon Appellants who bring forward residential schemes of this kind. The clear message from contemporary cases is that the Appeal Scheme must

⁷⁶ Brown PoE, p57, [8.16] and p63, [8.53]

⁷⁷ CDG.13 Brentwood BC v Secretary of State for the Environment and Gray [1996] 72 P & CR; CDG.14 Wychavon DC v SoS & Butler [2008] EWCA Civ 692

⁷⁸ CDG.17 Compton Parish Council v Guildford BC [2019] EWHC 3242 (Admin), [70]

demonstrate something extra, something that is genuinely “very special”. An absence of other harms is definitionally not applicable (nor indeed could it ever be sufficient), as the “other considerations” are distinct from “other harms”. Equally, housing need alone cannot be considered sufficient. A single residential proposal capable of meeting a small portion of that need cannot logically or rationally amount to an “other consideration” capable of displacing the Green Belt harms.

- 6.5. Both parties have sought to take on board the repeated advice of various Inspectors that all appeal decisions turn on their own facts.⁷⁹ Mr Brown’s principal focus was on the weight to be accorded housing in various decisions.⁸⁰ However, the Appeal Decisions that he has chosen illustrate importantly what this Appeal lacks, both (1) situationally and (2) individually, in respect of its offer.
- 6.6. First, this is not a previously developed land case i.e. where the majority, or indeed any significant part of the Site qualifies as PDL.⁸¹
- 6.7. Second, this is not a case where the Site has been allocated for development in a plan that is still at examination.⁸²
- 6.8. Third, the Appeal Site was not previously allocated in a plan that has now been withdrawn.⁸³

⁷⁹ CD H.2 APP/B1930/W/20/3265925 Roundhouse Farm, Land Off Bullens Green Lane, Colney Heath 14 June 2021) (“Colney Heath”) p13, DL55-56; CDH.3 APP/X1925/W/21/3273701 Land south of Heath Lane, Codicote SG4 8YL (28 September 2021), DL98

⁸⁰ Brown PoE, p1[1.33]

⁸¹ CDH.15 APP/Q3115/W/19/3230827 Wheatley Campus Oxford Brookes University (23 April 2020): DL21: 86% of the Site found to be PDL; CD H.27 APP/V1505/W/22/3296116 Land at Maitland Lodge, Southend Road, Billericay CM11 2PT (11 November 2022), DL9: all land within the Green Belt PDL

⁸² CD H.12 APP/C2741/W/19/3227359 North of Boroughbridge Road, South of Millfield Lane, York YO26 6QB (23 October 2019); CD H.3 Codicote, DL31-35; CD H.14

APP/C2741/W/21/3282969 Site to the West Of The A1237 And South Of North Lane, Huntington, York (14 December 2022), DL10-DL13; CD H.13 APP/C3620/W/23/3324631 Land at Sondes Place Farm, Westcott Road, Dorking RH4 3EF (28 November 2023), DL47;

⁸³ CD H.1 APP/V1505/W/22/3298599 Land North of Kennel Lane, Billericay CM12 9RR (9 December 2022), DL25 and DL54; CD H4 APP/X0415/W/22/3303868 Land between Lodge Lane and Burtons Lane, Little Chalfont, Amersham, HP4 4AJ, DL18

- 6.9. Fourth, this is not a case where the Local Plan process has stalled - as in the well-known cross-boundary position in Colney Heath, where the Site sat between one authority (St Albans BC) which had abandoned its replacement plan and another (Welwyn Hatfield) that had been at examination for over 4 years.⁸⁴
- 6.10. Fifth, there has been no attempt to over-provide or diversify the housing offer. The Appellant has chosen not to increase the percentage of affordable housing.⁸⁵ There are no self-build plots.⁸⁶ There is no older persons housing, or indeed housing to meet the needs of any identified group under NPPF 60.⁸⁷
- 6.11. Sixth, there are no significant benefits in respect of open space or recreation. The Appeal Scheme does not provide any significant public open space area, beyond the small 0.8ha area described above. This is to be sharply contrasted with those cases where a large amount of open space or recreation space was preserved.⁸⁸
- 6.12. Finally, there has been no attempt to guarantee design quality, let alone exceptional design.⁸⁹
- 6.13. The inevitable question arises: what has the Appellant actually done to increase the benefits that will arise from this proposal? Mr Brown was clear that nothing additional has been provided.⁹⁰ This is simply a 60 dwelling scheme, with a policy-compliant level of affordable housing and circa 0.8ha of open space, located in a flood zone area which cannot be built upon.

⁸⁴ CD H.2, Colney Heath, DL61-62

⁸⁵ CD H.29 APP/M1520/W/22/3310483, DL44: 100% affordable housing
Land Rear of 248 Hart Road, Thundersley, Benfleet SS7 3UQ

⁸⁶ CD H.4 Little Chalfont DL139; CD H.2 Colney Heath, DL50

⁸⁷ NPPF 63

⁸⁸ CD H.15 Oxford Brookes IR4.1; CD H.13 Sondes Place Farm, DL23

⁸⁹ CD H.41 APP/G5180/W/18/3206569

Land to the rear of the former Dylon International Premises, Station Approach, Lower Sydenham, London SE26 5BQ (26 June 2019), DL37

⁹⁰ Brown XX

- 6.14. Before one considers the individual weighting, it is readily apparent that this is a case that falls well short of the Appellant having even attempted to surmount the very special circumstances threshold through additional benefits.

The Appellant's Three Categories

- 6.15. Mr Brown's final table⁹¹ somewhat obscured the individual weight to the non-housing benefits and therefore requires some re-ordering. In effect, the final position amounts to Market Housing and Affordable Housing and lower weights each of Economic and Social.

Market Housing

- 6.16. The Council submits that significant weight should be accorded to market housing (rather than "very substantial" as argued by the Appellant).⁹² This is irrespective of whether the housing land supply figure is at 4.13 years on the Council's case or at 3.51 years on the Appellant's case (a distance of -321 or +93 dwellings either side of the 4 year mark).
- 6.17. For the reasons set out earlier, the Council considers that the Appellant's deductions are not warranted. However, even if the Appellant's entire shortfall of 321 units were to be accepted, this would be a far smaller deficit than explored in a significant number of the appeals that the Appellant has cited as examples. That is both in respect of the HLS figure and the total number of units. It is also notable that all of those appeals (save for Hartfield Avenue) were assessed against the previous 5 year requirement, thus increasing the shortfalls:⁹³

- CDH.2 Colney Heath: WHBC 2.58 years and SADC at 2.4 years⁹⁴

⁹¹ Brown PoE, p71, [9.30]

⁹² Trendall, p46, [11.6]

⁹³ Brown PoE, p9 [1.33]

⁹⁴ CD H.2, DL48

- CDH.3 Codicote: 1.47 years⁹⁵
- CD H.12: South of Millfield Lane: either 3.28 or 3.82 years;⁹⁶
- CD H.13 Sondes Place Farm: 2.9 years – “a shortfall of roughly 1,152 dwellings against the LHN figure”⁹⁷
- CDH.27 Kennel Lane, DL: Between 1.76-1.89 years⁹⁸
- CDH.41: Dylon: below 4.25 (NB further deductions were expressly not calculated)⁹⁹
- Stacey Rebuttal:¹⁰⁰ Hartfield Avenue: 1.36 years – “a shortfall of 3,173 dwellings”

6.18. As Mr Trendall observes, there are many cases of dismissals on the basis of even lower figures (again assessed against the previous 5 year requirement and thus with greater overall shortfalls):

- CD H.28 Little Bushey Lane: 1.23-2.25 years a shortfall “between 2,104 and 2,875 homes”¹⁰¹
- CD H.32: Beckenham: 3.38 years¹⁰²
- CD H.34 Lingfield, Tandridge: 1.54 years¹⁰³
- CD H.36 Bugle Nurseries between 2.79 and 3.52 years.¹⁰⁴

6.19. This sample of 11 decisions (not including several more where the figure was un-stated) includes a majority of HLS figures below 3 years, with the only post-

⁹⁵ CD H.3, DL36

⁹⁶ CDH.12

⁹⁷ CD H.13, DL70

⁹⁸ CD H.1, DL55

⁹⁹ CD H.41, DL18

¹⁰⁰ Stacey RPoE, APP/N1920/W/23/3329947 Land lying to the east of Hartfield Avenue and fronting on to Barnet Lane, Elstree, Hertfordshire

¹⁰¹ CDH.28: APP/N1920/W/23/3314268 - Land at Little Bushey Lane in Bushey – Hertsmere Borough Council (19 July 2023)

¹⁰² CDH.32: APP/G5180/W/23/3315293 - Former Sports Ground, Worsley Bridge Road in Beckenham – Council of the London Borough of Bromley (11 August 2023), DL86

¹⁰³ CDH.34: APP/M3645/W/23/3319149 - Land at The Old Cottage, Station Road in Lingfield – Tandridge District Council (17 October 2023), DL22

¹⁰⁴ CD H.36 APP/Z3635/W/23/3325635

Bugle Nurseries, Upper Halliford Road, Shepperton, Surrey TW17 8SN, DL84

December 2023 decision being Hartfield Avenue which concerned a massive shortfall.

- 6.20. Put simply, the Council fully recognise the benefits of delivering 60 units to the overall supply and accords this “significant” weight – i.e. the same that the Secretary of State attached in the Sandown Park decision.¹⁰⁵
- 6.21. The Council does not agree with the Appellant’s elevated weighting of “very substantial”. This would be to place the Council in the same context as authorities with significantly greater shortfalls, which does not correctly reflect the present position, nor the evident work being done (recorded through the housing land supply evidence) actively to progress applications and secure consents.¹⁰⁶ The Borough have been extremely active in their efforts to promote significant amounts of housing on urban sites.

Affordable Housing

- 6.22. The position on affordable housing has been explored in the round-table session. The Council accords this substantial weight, again fully recognising the benefits of providing this. However, it does not consider that 30 affordable units alone and at a policy compliant level should be accorded the “very substantial” highest grading that the Appellants seek.¹⁰⁷ As identified above, the Appellant chose to make no greater contribution.
- 6.23. The figure set out in the HLS Agreed Statement is provided on a strictly precautionary basis, and does not include other existing sites or LAA sites, recognising that viability may be a matter for discussion on those sites.

Non-Housing Benefits

¹⁰⁵ CD H.38 APP/K3605/W/20/3249790 (12 May 2021), DL24

¹⁰⁶ CDG.3 Hallam land management v SSCLG [2018] EWCA Civ 1808

¹⁰⁷ Trendall PoE, pp47-48, [11.13]-[11.16]

- 6.24. The Appellant's other asserted benefits within the three pillars were initially exaggerated through double-counting. Once one sifts out the housing components, Mr Brown accepts that deductions in weight are necessary. However, these do not go far enough.

Economic Benefits

- 6.25. Mr Brown's list from [9.13] (i) to (xi)¹⁰⁸ requires significant paring down in light of his acceptance that one cannot merge housing and economic benefits. Points (ii), (iii), (iv) must therefore be removed.
- 6.26. Points (i) and (vi) relate essentially to construction jobs. These will be largely temporary for the duration of the development alone and could be taken up on any site within the Borough or indeed the wider region. They are not bespoke to this scheme, and that must therefore moderate the weight to be accorded this.
- 6.27. Point (v) is simply a reference to the location of the Site. It is not an economic benefit at all, simply a feature.
- 6.28. Points (viii) and (ix) relate to increased expenditure which need to be considered in the context of the local economy. The local economy is strong, with no significant issues in respect of vitality, closures or unemployment. The FTE jobs have not been quantified. Point (viii) refers to first occupation expenditure which is not clearly connected to the local economy. The reliance on current economic challenges under (ix) fails to reflect that none of the houses will be delivered before 2027.¹⁰⁹
- 6.29. Points (x) and (xi) refer to Council Tax and CIL which are all legal requirements, not bespoke to this scheme. These cannot be more than neutral in the planning balance.

¹⁰⁸ Brown PoE, p66-67, [9.13]

¹⁰⁹ Brown XX

- 6.30. For all these reasons, Mr Trendall's assessment of limited weight more accurately reflects what will arise from the Appeal Scheme.¹¹⁰
- 6.31. In the Sandown Park decision (DL36 recorded "*For the reasons given in IR432, the Secretary of State agrees with the Inspector that moderate weight should be attached to the economic benefits related to housing.*" As IR 432 noted: "*The housing sites would generate an estimated 986 direct, indirect and induced jobs during the construction phase. Jobs created during the construction phase would be temporary. The expenditure by new residents is estimated to be £9.4 million per year. Overall, I attach moderate weight to the economic benefits related to housing.*"¹¹¹
- 6.32. This was for a scheme which include 318 units (Use Class C3). For a scheme of 60 units, such moderate weight must be tempered still further.

Social Benefits

- 6.33. Mr Brown's list of social benefits at [9.18] (1)-(5) also requires considerable reduction, once one excludes housing factors, notably Point (2).¹¹²
- 6.34. Point (1) concerning location is a feature of the Site not a benefit. If it is a benefit, it cannot attract more than limited weight.
- 6.35. Point (3) cites high-quality design, but none is provided for. This must be removed from the list.
- 6.36. Point (4) refers to the publicly accessible recreation area, but this is relatively small at just 0.8ha and no wider deficit of open space has been referred to. It is also notable that this site could not be built on in any event.
- 6.37. Point (5) refers to the pedestrian crossing, but this is more in the nature of a mitigation than a benefit. No safety issues have been identified in this location.
- 6.38. Again for all these reasons, Mr Trendall's assessment should be preferred: all should be weighed as limited benefits.

¹¹⁰ Trendall PoE, p48, [11.18]-[11.19]

¹¹¹ CD H.38, p5 DL36 and IR, p103 (PDF p114, IR432)

¹¹² Brown PoE, p68, [9.18]

Environmental Benefits

- 6.39. Mr Brown's list at [9.21]-[9.24]¹¹³ is ultimately revealed as not a free-standing list of benefits at all. [9.21], [9.23] are not benefits but features of the Site and can attract no weight.
- 6.40. [9.22] concerns biodiversity net gain, however, there will be no BNG over-provision on Site. The Appellant points to the metric, but this is largely to achieve compliance and thereby secure an off-site net gain. This is again a factor that cannot be accorded more than limited weight overall.
- 6.41. [9.24] is a reference to low carbon development which will not be guaranteed by the scheme in any way. Again, this should not have been included on this list.
- 6.42. Mr Trendall's assessment of limited weight should be preferred.¹¹⁴

Very Special Circumstances

- 6.43. Bringing together all the above points, the Appeal Proposal will give rise to significant benefits in market housing and substantial benefits in affordable housing, but all other matters fall far lower on scale, no more than limited weight. A number of factors that can be accorded no weight must be removed from consideration.

7) CONCLUSION

- 7.1. The Appeal Proposal is a medium-sized proposal of 60 residential units, offering a policy-compliant level of affordable housing and a small area of open space (0.8ha).

¹¹³ Brown PoE, p69, [9.21]-[9.24]

¹¹⁴ Trendall PoE, p49, [11.24]-[11.26]

- 7.2. The NPPF 153 Very Special Circumstances is intentionally a demanding test. It requires applicants (and appellants) to make the effort to provide a level of benefits capable of clearly outweighing the substantial weight accorded to any Green Belt harm. In many cases, including examples referred to in this appeal, this has ensured a significant and diverse package of benefits, bringing substantial benefits for future residents and to the wider community. The Appellant has refused to take that course in this case.
- 7.3. The Appellant has been clear that it has offered nothing extra, either by way of type (e.g. different forms of housing or economic development) or degree (e.g. additional provision of housing).¹¹⁵
- 7.4. It is wholly insufficient for an applicant or appellant to point simply to the broader context and argue that that can form the entirety of the “other considerations”: here, a purported housing land supply shortfall (3.51 years or 321 units on its best case) and broader affordable housing need.
- 7.5. The Appellant makes much of the Local Plan position. However, the Council has submitted a Local Plan which is presently mid-examination. This is not a case where the Local Plan either allocates the Site, or has been withdrawn, or has been suspended. The Appellant has objected and has exercised its right to participate in that separate statutory process. The position is qualitatively different from situations where LPAs have either failed to engage at all with the Local Plan process, or indeed withdrawn from it.
- 7.6. For all these reasons, the Council submits that the appeal proposal is in conflict with Policy DM17 and with NPPF 152/153 (in addition to the conflict with CS1, CS2 and CS11) and should be dismissed.

JAMES CORBET BURCHER
No5 Chambers

23 April 2024

¹¹⁵ Brown XX