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## Appeal Decision

Inquiry opened on 14 November 2017 and re-opened on 23 October 2018

Accompanied site visit made on 17 November 2017

**by Philip J Asquith MA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 December 2018**

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**Appeal Ref: APP/R3650/W/17/3171409**

**Land west of Folly Hill, Folly Hill, Farnham**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Catesby Estates/Bewley Homes PLC against the decision of Waverley Borough Council.
  - The application Ref: WA/2016/1224, dated 14 June 2016, was refused by notice dated 15 September 2016.
  - The proposals are described as the residential development of 102 dwellings, including areas of open space, Suitable Alternative Natural Greenspace, children's play areas SuDS attenuation, highway works and access.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 96 dwellings, including 38 affordable, with areas of open space, Suitable Alternative Natural Greenspace (SANGS); children's play area; SuDS attenuation; highway works and new access from Folly Hill at land west of Folly Hill, Folly Hill, Farnham, in accordance with the terms of the application, Ref: WA/2016/1224, dated 14 June 2016, and the plans submitted with it, subject to the conditions set out in the attached schedule.

### Procedural Matters

2. The inquiry opened and sat for four days in November 2017<sup>1</sup>. At that time a judgement in respect of a claim for judicial review of the Secretary of State's Written Ministerial Statement (WMS) on neighbourhood planning, and consequential amendments to paragraph 083 of the Neighbourhood Planning chapter of the National Planning Practice Guidance (NPPG), were expected shortly. Similarly, adoption of Part 1 of the Waverley Local Plan (Strategic Policies and Sites) (WLPP1) was anticipated during December 2017. Both these events were likely to have considerable bearing on the respective cases of the appellants and the Council and, ultimately, for my decision on this appeal.

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<sup>1</sup> 14 - 17 November 2017

3. In order to allow both parties to comment on the outcome of these two events, and to present any further necessary evidence and final submissions, I ruled that I would adjourn the inquiry to allow this to happen.
4. Matters did not occur quite as quickly as the parties anticipated, judgement on the WMS being handed down on 12 January 2018, with the Council's formal adoption of the WLPP1 occurring on 20 February 2018. Neither the Council nor the appellants provided additional evidence following these events, relying on written closing submissions to summarise their respective cases. The inquiry was closed in writing on 19 March 2018 following receipt of these submissions.
5. However, before I was in a position to issue a decision, the Council drew to my attention three recently-made recovered appeal decisions by the Secretary of State relating to housing developments in the Borough. I sought the views of the appellants on these decisions. They considered that, in light of these decisions, and two further recent appeal decisions which they drew to my attention, I needed to take their implications into account and to examine the most up-to-date evidence on housing land supply.
6. I concluded that to provide an opportunity for the appropriate examination of evidence on housing land supply and the status of the development plan against the background of these appeal decisions and the adoption of the WLLP1, the inquiry should be re-opened. As a consequence, the inquiry sat for a further two days<sup>2</sup> when evidence focussed on the consideration of the up-to-date housing land supply situation and development plan background.
7. Another material change in circumstances since the inquiry originally sat has been the publication of the Government's revised National Planning Policy Framework in July 2018<sup>3</sup> and the subsequent updating of the NPPG. Discussion at the re-opened inquiry took place against this updated background.
8. A further matter to be addressed since the original sitting of the inquiry is the need for appropriate assessment under the terms of the Habitats Regulations<sup>4</sup> stemming from the judgement on 12 April 2018 by the Court of Justice of the European Union<sup>5</sup>. This is necessary to determine whether it can be concluded that there would be no likely significant effect on the European site of the Thames Basin Heath Special Protection Area (SPA)<sup>6</sup>. In light of this judgement, and as the competent authority under these Regulations, I have carried out such an assessment and this is considered further below.
9. Following the close of the inquiry the Government published a Technical Consultation on 'Changes to planning policy and guidance including the standard method for assessing local housing need'. One aspect of the consultation referred to the possible amendment of paragraph 177 of NPPF2018. This relates to the presumption in favour of sustainable

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<sup>2</sup> 23 and 24 October 2018

<sup>3</sup> Hereafter for brevity referred to as NPPF2018

<sup>4</sup> S. 61 of The Conservation of Habitats and Species Regulations 2010 (as amended)

<sup>5</sup> People Over Wind, Peter Sweetman AND Coillte Teoranta, case No. C-323/17

<sup>6</sup> A habitat for the internationally-important bird species of woodlark, nightjar and Dartford warbler

development in cases where appropriate assessment under the Habitats Regulations is required. As this was a matter that was debated at the re-opened inquiry, opportunity was provided for the parties to comment on its implications. I have taken into account the subsequent comments that were made.

10. Opportunity at the re-opened inquiry was provided for further closing submissions from the Council and from the appellants.
11. The application as submitted and determined by the Council was as described in the banner at the head of this decision. Permission was refused for nine reasons following which the appellants undertook discussions with the Council to attempt to resolve some of the reasons for refusal. This culminated in the submission of revised plans and a revised description of the proposed development as: *'the erection of 96 dwellings, including 38 affordable, with areas of open space, Suitable Alternative Natural Greenspace (SANGS)[sic]; children's play area; SuDS attenuation; highway works and new access from Folly Hill'*.
12. The application site remained the same and the small reduction in the number of dwelling units proposed led to some minor modifications to the internal configuration of the development and the design of certain buildings. The revised proposals were subject to consultation with the local community, both by the appellants and by the Council.
13. The appellants and the Council agreed that consideration of the application on the basis of the amended plans and description would not unduly prejudice any third party interests. Given the nature of the modifications, and the consultation that has taken place on them, I agree that no substantial prejudice would arise to any interests from my consideration of them. Accordingly, I have determined the appeal on the basis of the amended scheme as described in paragraph 11 above.
14. Of the original reasons for refusal it is now common ground between the appellants and the Council that the majority have been, or are capable of being, overcome as a result of the proposed modifications, and the submission of obligations under s.106 of the Town and Country Planning Act 1990. The following matters are now agreed, and it is accepted that they accord with NPPF2018, with the original reasons for refusal not being contested:
  - a) the proposals include the provision of a bespoke SANG for use and access for recreation and amenity to offset any potentially adverse impact on the Thames Basin Heaths SPA and the Bourley and Long Valley Site of Special Scientific Interest (SSSI). Natural England had originally expressed concerns regarding SANG delivery and management. However, as a result of the provision of a revised SANG Management Plan, the implementation of which would be secured through the proffered s.106 agreement, Natural England expressed its satisfaction at the time of the original inquiry session that impacts on the SPA and SSSI could be mitigated appropriately;
  - b) the Council is now satisfied that, as a result of the submission of additional information and the withdrawal of the objection of Surrey

County Council as the Lead Local Flood Authority, a feasible drainage strategy for the proposed development can be implemented if permission was to be granted;

- c) the amended plans propose a reduction in the bulk and mass of the originally proposed blocks of flats by replacing the flats block at the east of the site with terraced housing, and separating the central block into two. The Council is of the view that surveillance over the proposed Locally Equipped Area of Play (LEAP) could be improved. Nonetheless, its previous concern was as a result of combined deficiencies in design elements and it does not now contest its original reason for refusal on the basis of reservations about the LEAP alone;
- d) the amended plans provide for a reduced number of units and an increase in separation distances between various dwellings, which overcome the Council's concerns regarding poor outlook and privacy for certain occupiers;
- e) additional information has been provided to the local highway authority, which has now withdrawn its objection on the basis of its original concerns as to the development's impact on the local highway network; and
- f) the provision of various s.106 obligations within an agreement and a separate unilateral undertaking has satisfied the Council regarding the adequate securing of affordable housing on the site. This is similarly the case regarding necessary financial contributions towards recreational and educational facilities, highway works and other matters to offset the development's impact on infrastructure.

### **Main Issues**

15. In light of the above and from all I have seen, read and heard, I consider the main issues in this appeal are:
- i) the impact of the proposals on the character and appearance of the locality; and
  - ii) whether the proposed development provides an adequate mix of housing to meet the identified needs of the district.

### **Reasons**

#### *Planning policy background*

16. A starting point for consideration of proposals is that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF2018 is an important material consideration as it is national policy.
17. With the very recent adoption of the WLPP1 what constitutes the development plan for the area changed during the course of the inquiry. In terms of considering the proposals, the most relevant elements of the statutory development plan are now the WLPP1, and the Farnham

Neighbourhood Plan (FNP) made on 28 July 2017<sup>7</sup>. Having regards to relevant policies to which the Council has drawn attention, WLPP1 Policy RE1 seeks to recognise and safeguard the intrinsic character and beauty of the countryside beyond the Green Belt.

18. The site is within an Area of Great Landscape Value (AGLV) as defined within WLPP1. Policy R3 seeks to retain the AGLV for its own sake and as a buffer to the Area of Outstanding Natural Beauty (AONB) until there is a review of the Surrey Hills AONB, whilst recognising that the protection of the AGLV should be commensurate with its status as a local landscape designation. In regard to this latter element, the policy draws a distinction between the degree of protection that should be afforded to an area covered by a national landscape designation compared with one covered by a more local designation.
19. WLPP1 Policy AHN3 requires housing proposals to make provision for an appropriate range of different types and sizes of housing to meet the needs of the community. This should reflect the most up-to-date evidence in the West Surrey Strategic Housing Market Assessment (SHMA). Work is underway in progressing Part 2 of the Waverley Local Plan (Site Allocations and Development Management Policy (WLPP)), with a Preferred Options Consultation Document having been consulted upon during the summer.
20. FNP Policy FNP1 is permissive of new development subject to it satisfying a range of specified criteria. These include the need for high quality design that is responsive to the heritage and the distinctive character of individual areas of Farnham and is well integrated into the landscape by existing and new landscape buffers. FNP Policy FNP10 gives priority to protecting the countryside from inappropriate development. Development will only be permitted where, amongst other matters, it accords with other relevant FNP policies and retains the landscape character of, and does not have a detrimental impact on, Old Park as having high landscape sensitivity and historic value. Proposals should enhance the landscape value of the countryside.
21. The appeal site lies outside the defined built-up area boundary within the FNP. Under Policy FNP11 proposals outside this boundary will be assessed in terms of their potential impact, amongst other matters, on the visual setting and landscape features of the site and its surroundings, although the policy appears to be geared primarily towards preventing coalescence between settlements. The site is not an allocated housing site under Policy FNP14, whilst Policy FNP15 requires proposals on larger sites (over 0.5ha) to incorporate an element of 1 or 2 bedroomed dwellings.
22. A partial review of the FNP has commenced in recognition of the fact that an additional 450 homes are required to be allocated in Farnham up to 2032 following the adoption of WLPP1. In relation to both the pre-submission WLPP2 and the review of the FNP, it is common ground between the Council and the appellants that, because of the stages reached, limited weight can be attached to the emerging policies and allocations within them.

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<sup>7</sup> The making of the FNP post-dated the Council's decision on the application and as a consequence the Council's reasons for refusal make no reference to policies within the FNP. However, certain policies are clearly relevant in the context of the consideration of the appeal.

*Character and appearance*

23. The appeal site comprises two fields of grazing land sloping southwards from the urban edge of Upper Hale, part of the built-up area of Farnham. There are two principal components of the proposals: residential development and an area of open space on the northernmost field of some 5.9ha; and an area of SANG on the lower southern field, which measures some 4.9ha.
24. Two separate Landscape and Visual Impact Assessments (LVIAs) have been produced to aid assessment of the proposals, one on behalf of the Council and one on behalf of the appellants. Both have followed the Guidelines for Landscape & Visual Impact Assessment, Third Edition. Assessment has been assisted by photographs and photomontages and in making my judgement on impact I have had regard to these and the evidence produced for the inquiry, together with visits to the site and its surroundings both on an accompanied and unaccompanied basis.
25. Within the Surrey Landscape Character Assessment of 2015 the appeal site lies within the Landscape Character Area (LCA) LF6: North Farnham Rolling Clay Farmland, which covers land between Farnham and Upper Hale. The LCA is quite extensive, including arable and pasture land, paddocks, blocks of woodland and tree belts. It includes Farnham Park to the east of Folly Hill (part of the A287) and a swathe of open land to the west, the appeal site occupying an upper element of the central portion of the LCA. The proposed development would represent just over 1% of this LCA.
26. The study notes key considerations for any new development. These include the protection and enhancement of hedgerows and hedgerow trees, provision of planting to integrate development into the adjacent rural character, selection of appropriate building materials and the avoidance of overly intrusive bulky structures.
27. As noted above, the site is within the local landscape designation of an AGLV. An independent Surrey Hills AGLV Review was carried out in 2007. Within this study the site falls within the part of the AGLV that shares some characteristics with the Surrey Hills AONB, but is described as an isolated pocket of AGLV. In my view the site of the proposed housing does represent a somewhat isolated element of the AGLV and, given its location, development on it would have no material impact on the nearby AONB. The area in which the appeal site lies is clearly viewed as a locally valued landscape although it does not fall within a 'Landscape Area of High Value and Sensitivity' within the FNP. However, as also noted, it does fall within the extensive<sup>8</sup> defined Old Park under Policy FNP10 as an area having high landscape sensitivity and historic value. The FNP notes that Old Park was the original deer park for Farnham Castle before the existing (new) park to the east of the A287 and there has been retention of a pastoral landscape character for much of this area.
28. A landscape study in 2014 aimed at informing the preparation of the current WLLP1 suggested that a large swathe of land between Farnham and Upper Hale was of medium landscape value but with high sensitivity, with capacity for development likely to be limited.

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<sup>8</sup> About 785ha

29. Reference has also been made to a Landscape Character Assessment within the FNP area which was commissioned by the Farnham Town Council to feed into the partial review of the FNP. This divides the landscape into Parish Character Areas (PCA) and highlights areas that are considered sensitive, have a high value and where future development would be inappropriate. The appeal site is within the Old Park East PCA, a sizeable block of land which the Character Assessment considers to have a high overall landscape sensitivity and value. It is an agreed position between the Council and the appellants that only limited weight can be accorded this. I agree with the appellants' point that whilst such an assessment may be broadly useful, it should not be used as a substitute for the site-specific analysis carried out in both the LVIAs.
30. There is a difference between the two LVIAs as to assessment of the susceptibility of the landscape to change; that for the Council is that it has a high susceptibility to change whilst the appellant's LVIA concludes that the landscape is of local/district value and has a medium sensitivity to change.
31. As currently open pasture and grazing land it is inevitable that a development of 96 dwellings on the upper portion of the site would render considerable change in its landscape character and appearance, the area becoming new townscape rather than countryside. There will be some harm arising from the development; this is an almost inevitable consequence when open countryside is built on (largely because green fields tend to be perceived as more desirable than built development).
32. Whilst there would be change to the field on which the housing would be located, changes to the wider landscape character would be considerably more muted and would be highly localised. This would be as a result of the site's close relationship with existing urban development to the immediate north and to the east, the impact of boundary and intervening vegetation, and topography, which would contain the site and provide screening from the wider landscape. Any more extensive impact would reduce over time with the maturation of landscaping associated with the development, particularly in the south-eastern corner of the housing site, and that which could take place on site boundaries and in the SANG.
33. I consider the Council's concerns about impacts on relative tranquillity to be over-stated. For those receptors using bridleway 185 along Old Park Lane, which passes to the immediate west of the site, who are likely to be predominantly local people and ones that in LVIA terms could be categorised as of medium sensitivity, there would undoubtedly be some impact. This is because of the presence of new housing alongside, rather than a currently open field. Nonetheless, whilst this may detract to some extent from their experience of passing along this lane, the impact would be largely confined to what is a relatively short section of the bridleway immediately adjacent to the proposed housing element.
34. For those passing along the eastern section of Upper Old Park Lane adjacent to the northern boundary of the site, where there is currently housing only to one side, and with open views across the appeal site, there would also be a marked impact. However, any sense of tranquillity is offset by what I noted on my visits as the prominent noise from traffic passing along the A287. I

similarly consider references to the 'time-depth' and relative 'wildness' of the site to be somewhat over-emphasised. Certainly the site along its northern boundary is flanked by significant mature oak trees, (including an ancient tree known as the Cromwell Oak), which are protected by a Tree Preservation Order. These are to be retained, with development set well back from them so that they would continue to make a substantial beneficial presence along Upper Old Park Lane. Similarly, the mature hedgerow boundaries of the site would be largely retained.

35. 'Time depth', as referred to by the Council, can derive from intactness and continuity of a landscape and clearly as part of Old Park there are aspects of this with its historical connections. Nonetheless, Old Park itself is not fully intact as an open area, with development having taken place within the northern elements. The proposals' built element would represent only about 2% of the area of Old Park. The upper field where the housing would be sited is currently grassed and has been used in part as horse paddocks. The presence of nearby housing, a busy road, and overhead powerlines which intrude into views, all reduce any overt sense of continuity with the past or wildness of the site that is suggested in the Council's LVIA.
36. To balance against the landscape impact of the built development, the laying out, landscaping and subsequent management of the SANG would represent a positive element that could provide enhancement of this general part of Old Park and the AGLV. The site of the SANG is currently open pasture with no public access whereas this would become publically-accessible providing footpaths that would link with bridleway 185. Through the operation of a management plan this area would be likely to become more ecologically diverse and visually attractive. It would have the ability to complement and augment the character of Old Park by providing mixed habitats of woodland, grassland and wetland. In this regard the proposals would provide an opportunity for adding to the recreational value of the area and increasing biodiversity, contributions which the FNP indicates Old Park is noted for. From its upper section there would be views over Farnham and Wrecclesham. The SANG would provide a firm definition of the extent of built development, demarcating the settlement edge.
37. The greatest visual impact of the proposed development would be in views from the unmade Upper Old Park Lane and, in terms of the residential element of the proposals, for those passing along a relatively short stretch of the upper part of the bridleway along Old Park Lane, at this point a sunken track. This is because both these would be immediately alongside the development. From Upper Old Park Lane, for a distance of about 200m, development would interrupt the present panoramic views where there are gaps in boundary hedging across the currently open site towards Farnham and Wrecclesham, and the Surrey Hills AONB beyond, and would therefore detract from the experience of users of this road.
38. Because of topography and existing tree and hedge cover there would be restricted views for those travelling north up Folly Hill along the A287 from Farnham, and for a relatively short stretch along the adjoining footpath for those pedestrians heading north. Only a limited number of dwellings would be likely to be visible because of screening by vegetation, and the proposed additional planting would serve to provide further screening and filtering of



views over time. Furthermore, views of the currently open field from this direction are also tempered by the presence of the high voltage transmission lines which provide a foreground feature in views from a limited section of the separated footpath alongside the road.

39. Other than from the immediately adjacent stretch of Old Park Lane there would be negligible views of the housing site from the west. There would be extremely limited views from the east from within Farnham Park because of existing vegetation. Any views that might be obtained from certain parts of the publicly-accessible battlements of Farnham Castle of the proposed development would be distant, very limited and inconsequential. Similarly, any much longer distance views from limited vantage points in Wrecclesham would be within the context of existing development and would again be negligible. Although views from about eight existing residential properties along Upper Old Park Lane across the site are no doubt considered important by their occupiers, in general terms the loss of a private view is not a material planning consideration.
40. Whilst the built edge of Upper Hale would be extended southwards, the proposed housing would not result in any significant diminution of the present open and separating gap between Upper Hale and Farnham in respect of which there is no extant policy which seeks to specifically protect this. Existing mature boundary landscaping, and that which could supplement this within the SANG, would mean that there would be no actual material or perceived coalescence experienced by those passing through the area, with Farnham Park and the remaining open land to the west of the A287 retaining the sizeable separation.
41. Therefore, overall, the housing element of the development would have a marked visual impact. Nevertheless, this would be highly localised and primarily would be confined to the immediate surroundings of Upper Old Park Lane and a section of Old Park Lane because of its location and existing screening, and despite its sloping topography.
42. Furthermore, whilst change in terms of the upper part of the appeal site would be marked by reason of replacing an open field with housing, the Council now considers the design and layout of the housing proposal itself to be acceptable and I have no reason to come to a contrary conclusion. Landscape mitigation to complement and augment existing peripheral tree and hedgerow cover, which in places is quite marked, would serve to increasingly reduce impact as this matured.
43. There are no issues regarding impact on the significance of heritage assets through changes in their setting, the most notable nearby assets being Farnham Park, a Grade II registered park and garden to the east of the A287, and the Grade I listed Farnham Castle, more remotely sited to the south-east. There are no rights of way crossing the site that would be affected. Nor would development directly impinge on the existing bridleway along Old Park Lane to the west of the site, or along Upper Old Park Lane to the north. Development would not materially impact on the long-distance route of St Swithun's Way to the south and west.
44. All bar one of the 142 trees around the site periphery, including the line of mature oaks along the Upper Old Park Lane, would be retained, along with

the majority of existing hedgerows, which would be supplemented by new planting. Only a very small amount of existing vegetation along and close to the site boundary with the A287 would be lost to create the vehicular access into the site at its north-eastern corner.

45. I therefore conclude on this issue that there would be some inevitable harmful impact on the character and appearance of the locality by rendering change, as there self-evidently would be with any development on what is currently open land. There would be some conflict with Policy FNP 11 in this regard. However, because of the nature of the proposals, their visual containment and the ability to provide complementary and compensating landscape improvements and accessibility within the SANG, I do not consider that they would result in a level of harm such as to offend against the thrust of WLPP1 Policies RE1 or RE3 or FNP Policies FNP1 or FNP10.

#### *Housing mix*

46. Having regards to the Council's reason for refusal in respect of proposed housing mix, this refers to now superseded Policy H4 of the 2002 Waverley Borough Replacement Local Plan. This indicated the percentage of dwellings within a proposal that should be of two or three bedrooms. The now relevant Policy AHN3 makes reference to housing proposals needing to reflect evidence within the SHMA. The need for dwellings of differing sizes within the West Surrey Housing Market Area (HMA), and Waverley, is set out in a table within the supporting text to the policy. There is no dispute that the proposals would deliver a lower provision of one and two-bedroomed dwellings and a greater provision of four-bedroomed properties than the mix set out in the table<sup>9</sup>.
47. The HMA is up-to-date and the West Surrey SHMA – Waverley Sub-Area Addendum disaggregates the need to the Farnham level, which shows a high degree of consistency between the Farnham need and that for the wider HMA.
48. The WLLP1 was found sound and has been adopted against the background of the original NPPF, one of whose aims as set out in paragraph 50 was to ensure the delivery of a wide choice of high quality homes and the creation of sustainable, inclusive and mixed communities. This continues to be reflected in paragraph 61 of NPPF2018. The justification to Policy AHN3 notes that the policy for a mix of homes should be able to react to changing circumstances and ensure that it contributes to the mix of both the wider area, as well as a development site itself, and that therefore the policy should not prescribe the size of homes. It further notes that current housing market policy requirements should not be prescriptive and the market will judge the most appropriate profile of homes to deliver at any point in time, an approach reflected in Policy AHN3.
49. I accept the appellants' point that the development responds to site-specific circumstances of being edge-of-settlement, whereas more centrally-situated proposals might be expected to have a higher proportion of one- and two-bedroomed units. Furthermore, the scheme would result in the provision of

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<sup>9</sup> One-bedroomed 0% (c.f. 10% in the HMA and 9.3% in Waverley), two-bedroomed 14% (c.f. 30% in the HMA and 32.1% in Waverley) and four-bedroomed or more 43% (c.f. 20% in the HMA and 20.4% in Waverley)

38 (40%) of the units as affordable. This is 10% above the required minimum as set out in WLLP1 Policy AHN1. This needs to be viewed against an extremely poor historic delivery of such housing in Farnham in recent years<sup>10</sup>.

50. Such a quantum of affordable housing clearly weighs heavily in favour of the proposals in terms of provision of a development which would assist in supporting a mixed community and against any mathematical shortfall in the mix of units to be provided. Moreover, other than not satisfying on this site the suggested combination that is needed across the HMA and Waverley as a whole, the Council has not clearly or convincingly explained what harm would derive from the proposed mix of dwellings.
51. The Council has drawn attention to an appeal decision where the failure to accord with previous Policy H4 in terms of mix of dwelling size was a determinative factor in the dismissal of the relevant appeal<sup>11</sup>. This decision was taken against a differing policy background to that which now exists, before the testing and eventual adoption of the WLLP1. The relevant scheme was for a much smaller quantum of housing where the proposals would have provided almost 70% of homes as four-bedroomed or more. In the Inspector's view this would not have created a sufficiently varied and mixed community as required by the then paragraph 50 of the original NPPF. Because the circumstances of the present case and the extant policy background are considerably different, I do not consider this earlier appeal decision provides cogent support for the Council's position.
52. I therefore conclude on this issue that the proposals would provide a satisfactory range of housing that would assist in building a mixed and varied community. They would not be contrary to the thrust and intent of WLLP1 Policy AHN3 and, by incorporating an element of two-bedroomed units, would accord with Policy FNP15 of the FNP.

#### *Other matters*

53. In light of the requirement for appropriate assessment, the appellants commissioned a report by the Environmental Dimension Partnership Ltd (EDP)<sup>12</sup>. The report was a document to inform an appropriate assessment. This concluded that, as confirmed by Natural England, the proposed avoidance/mitigation strategy (primarily comprising an on-site SANG and designed in accordance with the Council's own avoidance strategy for the SPA), if implemented in full, would result in the proposed development having no significant effect on the ecological integrity of the SPA. Contributions towards Strategic Access Management and Monitoring would be secured through the concluded s.106 agreement.
54. The proposals have not changed since those seen by Natural England in October 2017. It has confirmed that the EDP report is sufficient to inform an appropriate assessment and that, subject to implementation of the above measures, there would be no adverse effect on the SPA. Having considered

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<sup>10</sup> A 92% shortfall in delivery across Waverley in the past eight years in a district where net average annual affordable housing provision has been 47, where average house prices are amongst the highest in the country outside London and the average house price to income ratio in 2017 was 14.71 to 1

<sup>11</sup> APP/R3650/W/16/3150906, Cranleigh Road, Ewhurst

<sup>12</sup> Entitled 'Appropriate Assessment as agreed with Natural England', dated September 2018

the information before me and having conducted an appropriate assessment, I am also satisfied that, subject to the measures contained in the SANG Management Plan and the securing of the financial contributions via the s.106 agreement, there would be no significant effect on the integrity of the Thames Basin Heath SPA.

55. In the context of appropriate assessment, reference has been drawn to paragraph 177 of NPPF2018. This indicates that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.
56. The Council sees this as a clear indication that in a case such as this, where there is no dispute that appropriate assessment is required, the presumption in favour of sustainable development is dis-applied. The appellants consider in a situation where there is agreement that, subject to the proposed mitigation, there is unlikely to be a significant effect on the SPA and that this would be likely to lead to a similar conclusion within an appropriate assessment, a pragmatic approach in the context of paragraph 177 should be taken. They consider that the presumption in favour of sustainable development should not apply only in cases where the impacts, outcomes and proposed mitigation arising from appropriate assessment are unknown.
57. Following the close of the re-opened inquiry, as referred to in paragraph 9 above, the Government published a Technical Consultation on 'Changes to planning policy and guidance including the standard method for assessing local housing need'. Amongst other matters, the consultation sought views on a proposed change to paragraph 177. This is on the basis that for proposals requiring appropriate assessment it was not the intention of policy to exclude sites from the presumption in favour of sustainable development where there is suitable mitigation.
58. The suggested rewording of paragraph 177 makes this clear and lends weight to the appellants' interpretation of what the Government intended and as now indicated in its consultation. The Council considers that given the consultation status of the document, no weight can be accorded to it at this stage. Whilst I accept this, it is my view that the suggested alteration does provide some backing to the appellants' stance. In the circumstances of this case where, having conducted an appropriate assessment and that this has concluded there would be no significant effect on the integrity of the Thames Basin Heath SPA, I consider the presumption in favour of sustainable development should not be dis-applied simply in relation to the current wording of paragraph 177.
59. I have taken account of all other matters raised, including comments made by interested parties both in the context of the application and the appeal. A matter raised by local residents is the view that the appeal site could not be considered to be a particularly sustainable location for new housing development. This is because of the distance of the site from local facilities and amenities and, principally, because the nature and slope of Folly Hill and distance to Farnham town centre would mean that significant walking and cycling by the development's residents, rather than use of private cars, would be unlikely. I have some sympathy with this view particularly given

the topography and busyness of Folly Hill and the nature of its adjoining footpath.

60. Nonetheless, a residential travel plan and a sustainable transport scheme to encourage the use of more sustainable forms of transport would be secured through the appellants' unilateral undertaking and the site lies close to stops on a bus service along the A287 which links to Farnham. The Council does not disagree with the appellants' assessment that the site is sustainably located in relation to the services, employment and facilities that Farnham has to offer as a principal settlement in the district. This is noted in an agreed Statement of Common Ground (SoCG). Given the various environmental constraints within the district that will no doubt influence future housing allocations, and by comparison with some of the strategic sites within the adopted WLLP1, I consider that the locational characteristics do not point to the site being unsustainably located.
61. Concerns have been raised about the traffic impact generally on Folly Hill because of the increase in traffic that would arise from the development and the location of the proposed roundabout junction to serve the site. However, as agreed within the SoCG, the appellant's Transport Assessment provides a robust and realistic assessment of the traffic that would be generated and that there would be no severe effect on the strategic road network. It is also agreed that there are no identified highway safety problems that would be associated with the proposed access works and that any impacts of off-site highway impacts can be suitably mitigated. The local highway authority does not now object to the proposals.
62. Local concerns have also been expressed about impact on the capacity of the sewerage system and its ability to cater adequately with additional loading that would result from the proposed development. Nevertheless, Thames Water was consulted on the proposals and has not raised objections on the basis of sewerage infrastructure capacity. Similarly, a Flood Risk Assessment submitted with the application confirms that the scheme can be accommodated on the site without giving rise to harmful impacts in terms of flooding or drainage. A proposed attenuation basin in the south-east corner of the housing element of the site would be capable of attenuating flows, including a 1 in 100 year storm event.

### **Planning balance and conclusions**

63. The appellants have advanced a two-pronged argument suggesting why the proposals should be judged having regards to the operation of the 'tilted balance' of paragraph 11 of NPPF2018<sup>13</sup>; where the policies which are most important for determining the application are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Whether policies are out-of-date includes for applications involving the provision of housing situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Considerable evidence was provided during both inquiry sessions on the question of the Council's ability to demonstrate this, with the background clearly shifting over the intervening period.

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<sup>13</sup> Largely similar to its precursor paragraph 14 of the original NPPF.

64. The Council's position is that a five-year supply can be demonstrated. The appellants consider it cannot. Until 31 October 2018 the WLLP1 was regarded as a recently adopted local plan<sup>14</sup>. The Examining Inspector (EI) conducting the examination into the WLLP1 had concluded at the time of writing his final report in late 2017 that the evidence pointed to a five-year housing land supply, with the Council's trajectory showing an improving supply position, with 5.2 years' supply at 1 April 2018. Three recovered appeal decisions by the Secretary of State in March 2018<sup>15</sup>, shortly after the adoption of the WLLP1, noted the Secretary of State's agreement that, based on the EI's final report, there was a five-year housing land supply. However, the EI's report relied upon a five-year supply period based on 1 April 2017 base date and upon assumptions founded on evidence at the time regarding future trajectory. Since then, the Council has recently produced an updated five-year supply position statement using a base date of 1 April 2018.
65. Given that the decision subject to this appeal was likely to post-date 31 October<sup>16</sup>, the Council and the appellants agreed that for the purposes of calculating the assessment of housing land supply the base date should be 1 April 2018. There is also agreement as to: a housing requirement equivalent to 590 dwellings per annum; the volume of completions in the first five years of the plan period (1 April 2013 – 31 March 2018); that any identified shortfall arising against requirements in the plan period from 2013 should be addressed in the short term within the five-year period; and the application of a buffer which includes the shortfall in delivery. The areas of disagreement and on which debate focussed included whether there had been a significant under-delivery of housing over the previous three years and therefore what buffer should be applied (5% or 20%). There was dispute also over what sites could be regarded as deliverable. The Council's position was that there is a 5.8 year supply with a 5% buffer, or a 5.08 year supply applying a 20% buffer. The appellants' assessment was a 3.98 or 3.48 year supply with 5% and 20% respective buffers.
66. Having regards to the application of an appropriate buffer, it was noted that the position would be put beyond doubt when the Government's Housing Delivery Test (HDT) results<sup>17</sup> were published and which were due in November 2018. At the time of writing these results were still awaited. In the absence of such figures the appellants consider that the Council's record of under-delivery in every year to date of the WLLP1 period points to the need to apply a 20% buffer and this would be ultimately borne out with the publication of the HDT. On the other hand, the Council points to the conclusion of the EI that a 5% buffer was justified on the basis of the WLLP1 being a new plan which re-sets the trajectory, that there was an improving supply position in the district, and that there has not been a long-term record of persistent under-delivery.
67. However, in my view even though there has been some uplift in delivery of housing over the past three years, there has still been a considerable

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<sup>14</sup> NPPF2018, footnote 35

<sup>15</sup> APP/R3650/W/16/3152620, APP/R3650/W/15/3132971, APP/R3650/W/15/3139911

<sup>16</sup> In terms of housing land supply footnote 38 of NPPF2018 notes that a plan adopted between 1 November and 30 April (as was the WLLP1) should be considered recently adopted until 31 October.

<sup>17</sup> A measure of net additional dwellings provided in a local authority area against the homes required, using national statistics and local authority data.

shortfall measured against the adopted housing requirement<sup>18</sup>. The Council seeks to characterise the uplift as a 'step-change', no doubt founded on the increase in residential permissions granted. Nonetheless, in advance of the publication of the HDT figures, the actual quantum of delivery would seem to point to the need to apply a 20% buffer in accordance with paragraph 73 of NPPF2018 since the figures represent a significant under-delivery over the past three years.

68. Having regards to supply, detailed evidence has been provided in respect of specific allocated sites and differing components of the supply. This is in the context of matters having moved on since the EI's final report and the adoption of the WLLP1, particularly the April 1 2018 base date, evidence on completions and the NPPF2018 definition of 'deliverable'.
69. Considering the large sites with planning permission component, Dunsfold Park, which has the benefit of a hybrid planning permission, would be the single biggest housing contributor. There is no dispute that there will be delivery in the next five years but the appellants query the quantum based on likely delivery rates and lead-in times, and on their calculations this would thereby reduce delivery by 153 units within the five-year period.
70. In terms of provision on strategic allocation sites, the Council accepts that clear evidence is required to show that housing completions will begin on-site within five years. There is no dispute that the Green Lane, Badshot Lea site will come forwards within five years though the appellants suggest a discount to supply to reflect what they consider to be realistic delivery rates. Regarding Milford Golf Course, the dispute over whether this would be deliverable relates to the position regarding an existing restrictive covenant. In concluding that the allocation of this site was sound, the EI was clearly satisfied that there was a reasonable prospect of overcoming the restrictive covenant issue. A residential planning application had just been received at the time of the re-opened inquiry. However, even if subsequently granted, from the evidence presented the existence of the covenant could nonetheless pose a significant impediment to full delivery.
71. Coxbridge Farm is an allocated site within the FNP. It is apparent that there has been discussion between the FNP Group and potential developers, and contact with the Council with a view to seeking pre-application advice. Nevertheless, I am not convinced that this amounts to the clear evidence of completions commencing within five years and thereby fulfilling the definition of deliverability required by NPPF2018 or the PPG. The appellants suggest a reduction in deliverable supply of 195 units.
72. In its supply calculations the Council has included Land Availability Assessment (LAA) sites outside the urban areas, a component that could contribute some 574 housing units. The EI considered it was reasonable to assume that some of these LAA sites would be capable of making a contribution and would come forward as part of the WLLP2. Although the Council produced a schedule of all the sites it considers would make up this component, I do not concur that this constitutes the clear evidence that housing completions would commence within five years. As such, I am not

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<sup>18</sup> 1175 completions against a requirement of 1770 which is some 66.4%. If measured against housing need (based on household projections) there was a 75% delivery against the requirement.

convinced that Council's suggested level of provision of this component is robust even bearing in mind that it has included only 574 dwellings out of an identified possible 752.

73. Elsewhere, the Council concedes that contributions from small sites with planning permission should be reduced by 43 net dwellings and that 30 dwellings within the FNP Review should not be counted as a source of supply where planning permission has been granted after the 1 April 2018 base date.
74. The above refer to some of the more significant components of supply discussed. On the basis of the evidence before the inquiry, I consider the Council's stance on a five-year housing land supply to be somewhat optimistic based on past performance and assumptions made in respect of the various components that make up the projected supply. If a 20% buffer were to be applied then, according to agreed calculations, the five-year supply would be only marginally exceeded. Bearing in mind the arguable degree of uncertainty regarding some potential delivery on some sites this could tip the scales below a five-year supply, thereby triggering the application of paragraph 11 of NPPF2018.
75. The appellants' second argument in favour of applying the 'tilted balance' is that both the FNP and the WLLP1, the latter despite having been adopted only in February of this year, are out-of-date. In the case of the WLLP1 this is because the plan is predicated on the need for a Part 2 of the plan to provide housing allocations (other than the strategic allocations contained in WLLP1) and this is not yet in place. Also, it relies on historic settlement boundaries defined before the adoption of the Council's current annual housing requirement.
76. The appellants consider the FNP to be out-of-date on the basis that it does not allocate enough housing as now sought by the adopted WLLP1, with its development boundaries drawn to meet a now out-of-date housing requirement. It is clear that there is a requirement for the FNP to allocate sites for an additional 450 units.
77. Both the Council in its preparation and progress of the WLLP Part 2, and the Farnham Neighbourhood Group in progressing its review of the FNP, have moved with a commendable degree of alacrity following the adoption of WLLP1. I do not agree that the WLLP1 should be regarded as out-of-date. The mechanism for the allocation of further housing land is clearly spelt out that this should be within a Part 2. The WLLP1 was found sound on this basis and in my view it is not a reasonable interpretation to suggest that on its adoption it immediately becomes out-of-date.
78. As for the FNP, the three Secretary of State decisions issued after the adoption of WLLP1, already referred to in paragraph 64 above, considered that whilst the FNP did not meet full local need this was a 'neutral matter'. This was given that additional housing in Farnham would be allocated in a Part 2 of the Local Plan unless there was an early review of the FNP. The Inspector in a decision at Farnham Park Hotel<sup>19</sup> acknowledged that whilst the housing allocation for Farnham is changed by the adoption of WLLP1, the

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<sup>19</sup> APP/R3650/W/17/3178819



plan sets out the way forward such that the allocation can be met within the plan period. In terms of housing he considered the development plan was not out-of-date. However, it was also concluded that relevant policies in the FNP cannot carry full weight as the built-up boundary is likely to have to be adjusted to accommodate the necessary additional homes by 2032. I concur with these conclusions.

79. Despite its transformative impact on the site, I have concluded that the degree of change would not result in such a level of harm to the character and appearance of the area that the proposals would be contrary to the thrust of the majority of relevant protective development plan policies. There would be no conflict with policies aimed at securing development that would assist in ensuring mixed and varied communities. As such, there would be no material conflict with the development plan taken as a whole.
80. This being the case, paragraph 11(c) of NPPF 2018 is applicable, namely that development proposals that accord with the development plan should be approved without delay. On this basis, it is not necessary for me to go on to consider the contested arguments as to whether the 'tilted balance' should be applied in considering the proposals.
81. There would be specific benefits of the scheme in terms of its contribution to the provision of market housing. This is at a time when the recently adopted WLLP1 notes the need to secure an increased provision, with 450 more units for Farnham than set out in the FNP, and against the Government's clearly stated imperative to significantly boost the supply of homes<sup>20</sup>. The Council accepts such provision weighs strongly in favour of the scheme, a view with which I concur. The delivery of 40% of the proposed dwellings as affordable units, some 10% more than the current WLLP1 deems necessary as a minimum, is a particularly substantial benefit for the reasons set out above and to which I accord significant weight. This overall housing provision represents a particular social benefit of the scheme.
82. The provision of almost 5ha of SANG, which has the agreement of Natural England as to its quantum and management, is a further benefit. The availability of SANG is a necessary element to ensure no adverse impact on the nearby SPA and SSSI. However, by providing this as an integral element of the development, and not relying on existing SANG capacity at Farnham Park, capacity for other housing development in Farnham would be retained. Also, the potential for landscaping and ecological enhancement, and the provision of public access to an area of the Old Park where none currently exists, are other beneficial considerations of this provision to which I attach considerable weight.
83. Development would result in supporting direct and indirect jobs during construction, with additional contributions to the economy generally through the activity and spending of future occupiers. Although the economic benefits may be ones that would result from any residential development, they are nonetheless ones to which I attach some weight.
84. Irrespective of whether it is correct or appropriate to apply the 'tilted balance' of paragraph 11 of NPPF2018 on the basis that the development

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<sup>20</sup> NPPF2018, paragraph 59

plan is out-of-date, I consider that any conflict with the thrust of extant development plan policies is, on balance, outweighed by the material considerations of the benefits of the scheme.

85. A key theme of NPPF2018 is that planning should be plan-led. The recent adoption of the WLPP1 and progress being made on WLLP2 and the partial review of the FNP are important matters. Nevertheless, in a case where I consider any harm resulting from the present scheme is outweighed by its benefits, and there is general compliance with the development plan, progress on future plan-making does not provide a reason for not positively considering the proposals now.
86. Overall, from the foregoing, the proposals would represent a sustainable form of development in terms of its economic, social and environmental objectives. Accordingly, subject to the suggested conditions and the obligations within the s.106 unilateral undertaking and agreement, discussed below, I conclude that the appeal should succeed.

### **Obligations and conditions**

87. The s.106 agreement between the appellants, site owners and the Council would ensure the provision of the affordable housing element of the proposals in accordance with an agreed affordable housing plan and the tenure mix to be provided. It also secures the provision of a management plan that, amongst other matters, would require the establishment of a management company. This would be responsible for matters such as footpaths, communal car parking spaces, open land within the site, and the proposed Sustainable Urban Drainage System (SuDS).
88. The agreement secures the provision and subsequent management of the SANG. It also provides for financial contributions towards eastern boundary footpath works along the A287, a community facilities contribution (towards the provision of a soft play centre and climbing wall at Farnham Leisure Centre), a contribution towards playing pitch improvement at Farnham Park, and the provision of waste and recycling containers for the application site.
89. The unilateral undertaking on the part of the land owners and appellants would secure various financial contributions to the County Council. These would cover a fee for auditing and monitoring a residential travel plan and provision of a sustainable transport scheme, and transport vouchers for each dwelling in the proposed scheme. There are, additionally, contributions for the provision of bus stop infrastructure, rights of way improvements, and town centre safety improvements.
90. The undertaking would ensure that agreement is reached with the County Council to secure necessary highway works and their completion prior to development starting. Also, the undertaking secures the payment of an education contribution prior to development commencing. This would be to provide necessary classroom extension at Potters Gate Church of England Primary School, an additional classroom at Farnham Heath Secondary School and a contribution towards an 'early years' project.
91. The Council has raised no specific objections to the proposed obligations. I am satisfied that the various obligations are directly related to the

development, necessary to make it acceptable in planning terms and are fairly related in scale and kind. They are compliant with Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010, they meet the tests as set out in paragraph 56 of NPPF2018, and I have taken them into account.

92. In considering conditions that should be imposed, I have had regard to paragraph 55 of NPPF2018, and the NPPG, in respect of their use. A list of suggested conditions was produced at the Inquiry, which had largely been agreed between the appellant and the Council. I have amended certain conditions where necessary for clarity and consistency.
93. In addition to the standard time condition relating to commencement of development, a condition is necessary specifying the plans to which the permission relates, for the avoidance of doubt and in the interests of proper planning. Conditions are necessary requiring the agreement and verification of a SuDS, to ensure adequate drainage of the site, and the construction of the access, roundabout junction, footpath and bus stops, and the provision of parking, in the interests of highway safety and the free flow of traffic.
94. Approval of a Construction, Transport, Environmental and Ecological Management Plan is necessary to ensure no harmful tree, ecological, environmental or highway impacts during construction. A condition is required to ensure no burning of materials on site during construction, in order to protect air quality in the buffer zone to an Air Quality Management Area. To encourage more sustainable modes of transport, conditions are required to ensure the provision of cycle storage, electric vehicle charging points and pedestrian and cycle links. To ensure a satisfactory level of amenity for the occupiers of the site, conditions are required restricting the use of domestic garages, restricting certain permitted development rights, ensuring certain proposed windows are obscure-glazed, and compliance with certain noise levels. To protect the living conditions of nearby residents a condition restricting construction working hours is needed.
95. To ensure adequate play provision is incorporated into the scheme a condition is necessary relating to the proposed Local Area of Play and the Locally Equipped Area of Play. Conditions are necessary to ensure a satisfactory standard of development in the interests of the appearance and character of the area and, where relevant to protect wildlife, relating to approval of materials, bin stores, provision of a tree protection plan, supervision of arboricultural protection measures, agreement of details of existing and proposed finished ground levels, details of earthworks, landscaping, lighting and details of the proposed pumping station.
96. A condition is needed to ensure the recording of any archaeological interest on the site and ones to secure the assessment of any contamination on the site and any necessary remediation.
97. Some of the above are pre-commencement conditions. Having regards to the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the appellants provided at the re-opened inquiry their written agreement to the wording of the relevant conditions.

*Overall conclusion*

98. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should succeed.

*P J Asquith*

INSPECTOR

**Schedule of Conditions**

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: S201, S202, P202, P205, P210, P211, P212, P213, P214, P215, P216, P217, P218, P219, P220, P221, P222, P223, P224, P225, P226, P227, P228, P229, P230, P231, P232, P233, P234, P235, P236, P237, P238, P239, P240, P241B, P242, P243, P244, P245, P246, P247, P248, P249, P250, P251A, P252, P253, C201, C202, P145 and 17156-03 Rev A. No material variation from these plans shall take place unless otherwise first agreed in writing by the local planning authority.
- 3) The development hereby permitted shall not commence until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The details of a scheme shall include:
  - a) a design that satisfies the SuDS Hierarchy;
  - b) a design that is compliant with the national Non Statutory Technical Standards for SuDS, the National Planning Policy Framework and Ministerial Statements on SuDS;
  - c) evidence that the proposed solution will effectively manage the 1 in 30 and 1 in 100 year (plus climate change allowance) storm events during all stages of development (pre, post and during) and will not discharge offsite at a rate greater than the greenfield runoff rate for the site as detailed in the following documents:
    - i) Flood Risk Assessment AAA5254E (20 May 2016): land west of Folly Hill, Farnham, Surrey;
    - ii) Technical Note 1: Surface water drainage and land west of Folly Hill Farm, Farnham, Surrey;
    - iii) Technical Note 2: Surface water drainage for land west of Folly Hill, Farnham, Surrey; and
    - iv) Technical Note 3: Surface water drainage for land west of Folly Hill, Farnham, Surrey.

- d) details of how the surface water drainage system will cater for system failure or exceedance events, both on- and off-site;
- e) details of how the surface water drainage system will be protected and maintained during the construction of the development;
- f) finalised drawings ready for construction to include a finalised drainage layout detailing the location of SuDS elements, pipe diameters and their respective levels and long- and cross-sections of each SuDS element including details of flow restrictions, evidence that the attenuation pond will be able to accommodate a 1 in 100 year (plus climate change) storm event and details of the pond baseline level of water; and
- g) a management and maintenance plan that details maintenance regimes and responsibilities.

The development shall be carried out and maintained in accordance with the approved details.

- 4) Prior to the first occupation of the development, a verification report, carried out by a qualified drainage engineer, must be submitted to and approved in writing by the local planning authority to demonstrate that the sustainable urban drainage system has been constructed as per the agreed scheme.
- 5) Prior to commencement of the development, the proposed site access onto Folly Hill and at least 30 metres of the new access road shall be constructed to a standard suitable for construction vehicles and provided with the maximum achievable visibility splays, in accordance with a drawing to be submitted to and approved in writing by the local planning authority.
- 6) Prior to the first occupation of any dwellings the following shall have been first constructed:
  - i) the final site access roundabout junction with Folly Hill and Drovers Way, in general accordance with Drawing No. 17156-03 Rev A;
  - ii) new pedestrian footways and uncontrolled crossing points, in general accordance with Drawing No. 17156-03 Rev A; and
  - iii) the proposed bus stop on Folly Hill, in general accordance with Drawing No. 17156-03 Rev A.
- 7) The development hereby permitted shall not be first occupied until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in a forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
- 8) The development hereby approved shall not commence until a scheme showing the design of cycle storage facilities for every dwelling, and communal storage for the flats, has been submitted to and approved in writing by the local planning authority. The approved cycle storage facilities shall be provided before the first occupation of the dwellings/flats to which they relate and shall thereafter be retained.

- 9) The development hereby approved shall not commence until details of the electric vehicle charging points for each dwelling and a communal charging point for visitors, including a strategy for their ongoing management and maintenance, have been submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be installed in accordance with the approved details prior to the first occupation of each dwelling to which they relate and the communal charging point shall be installed prior to the occupation of the 60<sup>th</sup> residential dwelling.
- 10) The development hereby approved shall not be first occupied until the pedestrian and cycle links within the site, and between the site and the surrounding area, have been laid out in accordance with the approved plans. They shall thereafter be retained for their designated purpose.
- 11) No construction work shall take place other than between the hours 08:00 and 18:00 Mondays to Fridays and between 08:00 and 13:00 on Saturdays. No works shall take place on Sundays or Bank Holidays.
- 12) Prior to the first occupation of the development hereby permitted, full details of the proposed Local Area of Play (LAP) and Locally Equipped Area of Play (LEAP) to include scaled drawings, play equipment specifications and any means of enclosure, shall be submitted to and approved in writing by the local planning authority. The LAP and LEAP shall be provided within one month prior to the occupation of the 30<sup>th</sup> market dwelling and shall thereafter be retained in accordance with the approved details.
- 13) The garaging hereby permitted shall be used and retained solely for the purpose of the parking of vehicles and domestic storage and at no time shall be used for habitable accommodation without the prior written approval of the local planning authority.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows or other openings other than those expressly authorised by this permission shall be constructed in any side elevation at first floor level or above without the prior written approval of the local planning authority.
- 15) All first floor side-facing windows hereby permitted shall be obscure-glazed and shall be permanently retained thereafter in this form (excluding windows to habitable rooms) to the extent that intervisibility is excluded. The following windows shall be obscure-glazed (excluding windows to habitable rooms) to the extent that intervisibility is excluded, shall be fixed shut and retained as such in perpetuity:
  - first floor window in the eastern elevation of dwelling 15;
  - the ground floor and first floor windows on the south-western elevation of dwelling 23;
  - the ground floor window in the south-eastern elevation of dwelling 27;

- the ground floor window in the north-western elevation of dwelling 28;
  - the ground floor window in the south-western elevation of dwelling 33;
  - the ground floor window in the north-eastern elevation of dwelling 34;
  - the ground floor window in the south-western elevation of dwelling 35;
  - the ground floor window in the north-eastern elevation of dwelling 36;
  - the ground floor window in the southern elevation of dwelling 70; and
  - the ground floor window in the northern elevation of dwelling 71.
- 16) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 17) Prior to the occupation of the development hereby permitted, details of the provision of bin stores shall be submitted to and agreed in writing by the local planning authority. Bin stores shall be provided in accordance with the agreed details and shall thereafter be retained.
- 18) Prior to the occupation of the 60<sup>th</sup> dwelling, a post-development Ecological Management Plan to incorporate the measures set out in paragraph 6.7 of the Ecological Appraisal by Environmental Dimension Partnership Ltd ref no. C\_EDP2850\_01c, dated May 2016, to ensure the continued maintenance of the site for its biodiversity value, shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented as approved.
- 19) No development shall commence, including any groundwork preparation or remediation, until a detailed Tree Protection Plan (TPP) and related Arboricultural Method Statement have been submitted to and approved in writing by the local planning authority. These shall include details of the specification and location of exclusion fencing, ground protection, hardstandings and any development activity, including services, which may take place within the Root Protection Area of trees shown to scale on the TPP. All works shall be carried out in strict accordance with the approved TPP and Arboricultural Method Statement.
- 20) No development, groundworks or site remediation shall be undertaken until an agreed scheme of supervision and monitoring for the arboricultural protection measures has been submitted to and approved in writing by the local planning authority. The scheme shall include details of a pre-commencement meeting between the retained arboricultural consultant, local planning authority tree officer and personnel responsible for the implementation of the approved

development, and timings, frequency and methods of visiting and an agreed reporting process to the local planning authority. The supervision and monitoring shall be undertaken in strict accordance with the approved details. This condition shall only be fully discharged on completion of the development subject to satisfactory written evidence of contemporaneous monitoring and compliance.

- 21) No development shall commence until details, including cross-sections, showing existing and proposed finished ground levels of the site and ground levels of the buildings hereby permitted, along with surface materials including sub-base and depth of construction and methods/materials used for edging, within protected zones around retained trees have been submitted to and approved in writing by the local planning authority. The works shall be carried out in strict accordance with the approved details.
- 22) No development shall take place until details of earthworks have been submitted to and approved in writing by the local planning authority. The details shall include the proposed grading and mounding of land areas, including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform. Development shall be carried out in accordance with the approved details.
- 23) The development hereby permitted shall not be first occupied until a detailed landscaping scheme to include the area of Suitable Alternative Natural Greenspace (SANG) has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include:
  - details of hard and soft landscaping;
  - the hard surfacing details indicating either porous material or the provision of direct run-off from the hard surface to a permeable or porous area;
  - details of all proposed means of enclosure, which should exclude close-boarded fencing or walls;
  - details of information boards for the SANG; and
  - details in accordance with measures relevant to landscaping set out in paragraph 6.5 of the Ecological Appraisal by Environmental Dimension Partnership Ltd ref. no. C\_EDP2850\_01c, dated May 2016.

The landscaping, means of enclosure and hard surfacing shall be carried out in accordance with the agreed details and in accordance with a timetable to be agreed in writing by the local planning authority. The soft landscaping shall be maintained for a period of five years after planting, such maintenance to include the replacement of any trees and shrubs which die or have otherwise become in the opinion of the local planning authority seriously damaged or defective, with trees or shrubs of the same species and size as those originally planted.



- 24) No development shall take place before the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation which shall have been submitted to and approved in writing by the local planning authority.
- 25) No development shall commence until a detailed scheme of external lighting, which shall include details of maintenance, has been submitted to and approved in writing by the local planning authority. The scheme shall include details of wildlife-sensitive lighting to prevent harm to bats. The development shall be carried out in accordance with the approved details.
- 26) All the residential units shall conform to the 'indoor ambient noise levels for dwellings' guideline values specified within BS8233:2014 Guidance on Sound Insulation and Noise Reduction in Buildings and external noise levels within the curtilage of residential units shall conform to the 'design criteria for external noise' upper guideline value of 55 dB LAeq T, as specified within BS 8233:2014. All remediation work as set out in the Noise Assessment prepared by RPS Group, dated 12 May 2016, in order to comply with these standards shall be undertaken prior to the first occupation of the dwellings and retained as such thereafter.
- 27) Prior to commencement of development, other than that required to be carried out as part of an approved scheme of remediation, the following shall be submitted to and approved in writing by the local planning authority:
  - a) an investigation and risk assessment, in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment shall be undertaken by a competent person as defined in Annex 2: Glossary of the National Planning Policy Framework; and
  - b) if identified to be required, a detailed remediation scheme shall be prepared to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings or other property. The scheme shall include:
    - all works to be undertaken;
    - proposed remediation objectives and remediation criteria;
    - timetable of works; and
    - site management procedures.

The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The remediation works shall be carried out in accordance with the approved scheme. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.

- 28) Upon completion of the approved remediation works, a verification report demonstrating the effectiveness of the approved remediation works carried out shall be submitted to the local planning authority for approval prior to occupation of the development.
- 29) Following commencement of the development hereby approved, if unexpected contamination is found on the site at any time, other than that identified in accordance with Condition 27, the local planning authority shall be immediately notified in writing and all works shall be halted on site. The following shall be submitted to and approved in writing by the local planning authority and carried out in accordance with the approved details prior to the recommencement of works:
  - a) an investigation and risk assessment, undertaken in the manner set out in Condition 27 of this permission;
  - b) where required, a remediation scheme in accordance with the requirements as set out in Condition 27; and
  - c) following completion of approved remediation works, a verification report, in accordance with the requirements as set out in Condition 28.
- 30) Prior to commencement of the development, detailed plans of the pumping station, including elevations and sections through the relevant area of the site, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such in perpetuity.
- 31) No burning of any materials on site shall take place during construction of the development.
- 32) No development shall commence until a Construction, Transport, Environmental and Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include the measures set out in paragraphs 6.3 and 6.4 of the Ecological Appraisal by Environmental Dimension Partnership Ltd ref. no C\_EDP2850\_01c, dated May 2016 and the following details:
  - a) parking for vehicles of site personnel, operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) storage of plant and materials and provision of cement mixing areas;
  - d) programme of works (including measures for traffic management);
  - e) provision of boundary hoarding, including decorative displays and facilities for public viewing, where appropriate;
  - f) HGV deliveries, and hours of operation;
  - g) vehicle routeing;
  - h) measures to prevent the deposit of materials on the highway, including wheel washing facilities;

- i) before and after construction condition surveys of the local highway and a commitment to secure the repair of any damage caused as a result of construction works;
- j) measures to prevent deliveries at the beginning and end of the school day;
- k) on-site turning for construction vehicles;
- l) measures to minimise noise (including vibration generated by construction processes) to include hours of work, proposed methods of piling for foundations, the selection of plant and machinery and use of noise mitigation barrier(s);
- m) details of any floodlighting, including the location, height, type and direction of light sources and intensity of illumination;
- n) measures to control the emission of mud, grit, dust and dirt during construction;
- o) a scheme for recycling/disposing of waste resulting from construction works;
- p) confirmation that all plant, machinery and equipment installed or operated in connection with the carrying out of this permission shall be so enclosed and/or attenuated so that the rating level of noise emitted does not exceed the background sound level when measured according to British Standard BS4142:2014 at any adjoining or nearby noise sensitive premises:
- q) confirmation that all vehicles, plant and machinery used on the site that are required to emit reversing warning noise, shall use 'white noise' alarms as opposed to single tone 'bleeping' alarms throughout the development hereby permitted; and
- r) confirmation that areas to accommodate a), b) and c) listed above and the access routes to them (if not existing metalled ones) shall be minimally 8 metres away from mature trees and 4 metres from hedgerows.

Development shall be carried out in accordance with the above approved plan.

*(End of conditions schedule)*

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Clare Parry, of Counsel instructed by Dan Bainbridge, Chief Legal Officer, Waverley Borough Council (WBC)

She called

Charmaine Noel BA MSc CMLI MCIEEM Director, Landvision South East Limited

Ruth Dovey BA MSc MRTPI\* Principal Planning Officer, WBC

Jonathan Goodall MA MSc MRTPI\* Associate Director, Troy Hayes Planning Limited

### FOR THE APPELLANTS:

Sasha White QC instructed by Turley

He called

Simon Packer BA Dip TP MRTPI\* Office Director, Turley

James Stacey BA Dip TP MRTPI Director, Tetlow King

Colin Goodrum BSc Dip LA FLI Managing Director, LDA Design

Matthew Jones BSc Dip TP MRTPI\*

### INTERESTED PERSONS

Max Lyons Local resident

John Fraser WBC Ward Councillor for Upper Hale

Andrew Kemshall Local resident

Peter Day Local resident

Carole Cockburn WBC Ward Councillor for Farnham Bourne

\* These witnesses appeared at the re-opened inquiry

## **DOCUMENTS (handed in at the inquiry)**

*Inquiry sitting, November 2017*

1. Statement of Common Ground on Five Year Housing Land Supply
2. Defendant's skeleton argument regarding Richborough Estates Limited and Others and Secretary of State for Communities and Local Government
3. Court of Appeal judgement regarding St Modwen Developments Ltd v Secretary of State for Communities and Local Government, the East Riding of Yorkshire Council and Save Our Ferriby Action Group [2017] EWCA Civ 1643
4. Case summary of St Albans CC and DC v Hunston Properties Ltd and the Secretary of State for Communities and Local Government, [2013] EWCA Civ 1610, Journal of Planning and Environment Law
5. Erratum sheet for Landvision's Landscape and Visual Impact Assessment
6. Appellant's opening submissions
7. Council's opening submissions
8. Ministerial Written Statement – Neighbourhood Planning, 12 December 2016
9. Community Infrastructure Levy compliance statement, WBC
10. Cllr Cockburn's inquiry statement
11. Appeal decision, Cranleigh, Surrey (APP/R3650/W/17/3179523)
12. Site layout plan for Phase 2.1, Alfold Road, Cranleigh
13. Decision of WBC Joint Planning Committee, land at Sturt Farm, Sturt Road, Haslemere (WA/2017/0512)
14. Copy of s.106 Agreement relating to land at Little Acres Nursery, St Georges Road, Badshot Lea
15. Late letter of representation from Bill McCall, local resident
16. Phasing plan relating to outline application WA/2016/1625, land south of High Street, Cranleigh
17. Suggested viewpoints in Wrecclesham
18. West Surrey SHMA – Waverley Sub-Area Addendum
19. Letter from the Government Legal Department, dated 8 November 2017 regarding Waverley BC v SSCLG and another (CO/4697/2017)
20. S.106 summary note
21. Sajid Javid's speech on the housing market, 16 November 2017
22. WBC Local Development Scheme, October 2017
23. Signed Unilateral Undertaking
24. Signed s.106 Agreement
25. Email of 16 November 2017 from Surrey County Council Principal Highways and Planning Solicitor to Eversheds Sutherland
26. List of suggested conditions
27. Local Plan Inspector's questions for the Council following the consultations on the proposed modifications
28. Waverley Borough Council's response to the Local Plan Inspector's questions for the Council following the consultation on the proposed modifications
29. Appeal decision APP/R3650/W/16/3155714, Springbok Radcliffe Estate, Cranleigh
30. Inspector's Report on the Examination of the Waverley Borough Local Plan Part 1

31. Waverley Borough Council's adoption statement of the Waverley Borough Local Plan Part 1
32. Waverley Borough Local Plan Part 1: Strategic Policies and Sites
33. High Court judgement regarding the Written Ministerial Statement relating to national planning policy concerning housing and neighbourhood planning [2018] EWHC 33 (Admin)
34. Council's closing submissions
35. Appellant's closing submissions

*Inquiry sitting October 2018*

36. Copy of the Council's notification of the re-opened inquiry and list of those notified
37. Updated page 23 to Mr Packer's supplementary proof of evidence on housing land supply
38. Updated page 44 to Mr Packer's supplementary proof of evidence on housing land supply
39. Appeal decision Ref. APP/W3520/W/18/3194926, Woolpit, Suffolk
40. Suggested agenda for the housing round table discussion
41. Appellants' opening submissions
42. Council's opening submissions
43. Statement by Iain Lynch, Town Clerk on behalf of Farnham Town Council and Farnham Neighbourhood Plan Working Group
44. Letter on behalf of the appellants confirming the agreement of pre-commencement conditions in the event of the appeal being allowed
45. Page 131 extract from the Council's WLPP2 report
46. Council's closing submissions
47. Appellants' closing submissions

*Correspondence following the close of the inquiry relating to the Government's Technical Consultation on updates to national planning policy and Guidance*

1. Appellants' response dated 1 November 2018
2. Council's response dated 22 November 2018
3. Appellants' final email response dated 29 November 2018
4. Council's final email response dated 3 December 2018