



Appeal Decision

Site visit made on 14 October 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2019

Appeal Ref: APP/N1730/W/19/3231930

Dorneys, Chequers Lane, Eversley, Hook RG27 0NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Bird against the decision of Hart District Council.
 - The application Ref 18/00917/FUL, dated 19 April 2018, was refused by notice dated 11 January 2019.
 - The development proposed is the erection of 3 detached dwellings, new access, associated landscaping, parking and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for three detached dwellings, new access, associated landscaping, parking and associated works at Dorneys, Chequers Lane, Eversley, Hook RG27 0NT in accordance with the terms of the application Ref 18/00917/FUL, dated 19 April 2018, subject to the conditions and obligations set out below.

Preliminary matters

2. The Hart Local Plan Strategy and Sites 2016- 2032 (the 'emerging plan') has now reached a relatively advanced stage of examination; consultation on potential main modifications to the submitted plan ('MMs') took place recently. In line with paragraph 48 of the National Planning Policy Framework ('NPPF') I have taken account of policies in the emerging plan in so far as relevant. I understand that work is not presently progressing in respect of preparing a neighbourhood plan in this location.
3. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. The NPPF, a material consideration, does not alter that statutory basis for decision-taking. Here the development plan includes saved policies of the Hart District Local Plan 1996-2006 (adopted June and December 2006, in the latter instance with alterations, the 'LP'), and unrevoked policy NRM6 of the Regional Spatial Strategy for the South East (published initially May 2009, the 'RSS'). I have had regard to various material considerations including the NPPF, the Planning Practice Guidance ('PPG'), relevant statute, and other Council documents.

Main issues

4. Based on all I have read and seen the main issues in this case are:

- i. the effect of the proposal on the character and appearance of the area, including that of the Eversley Cross Conservation Area and the setting of nearby Listed Buildings,
 - ii. whether or not the proposal would suitably safeguard ecology, and
 - iii. whether or not the proposal would be acceptable in respect of the vulnerability of the appeal site to flooding.
5. Reaching a judgement in respect of those issues involves first establishing the status of saved LP policy RUR 2 'Development in the open countryside - general' in current circumstances, and also the nature of the appeal site and its relationship to Grade II Listed Dorneys. In the event that I find that harm would result in respect of any of the main issues, I will then gauge whether the benefits of the proposal nevertheless justify allowing the appeal.
6. The appellant raises concern with the robustness of the long-term pipeline of prospective housing delivery in the District, and in relation to potential changes to the housing requirement arising at examination (notably in relation to the unmet needs of Surrey Heath Borough Council). Nevertheless there is no robust evidence before me to indicate that the Council are unable to demonstrate well in excess of a five year housing land supply of deliverable sites relative to needs, ('5YHLS', with regard to NPPF paragraphs 67 and 73), nor that the aforementioned concerns would meaningfully alter that position.
7. Albeit reliance in the emerging plan is to some extent placed on windfall delivery, a figure of 9.7 years' housing supply was cited in respect of an appeal in 2018 at land north of Warbrook Lane,¹ with the Council giving a figure of 9.92 years as of 1 April 2018. Housing Delivery Test Data also indicates delivery of 278% relative to the number of homes required, within the terms of that data, over the last three years.

Reasons

8. Dorneys is a substantial dwelling set within a generous plot. It occupies a corner position of Reading Road to the north (B3727), and Chequers Lane to the west. To the south the appeal site extends to public footpath No 22 running between those roads. Beyond that is a tract of open land associated with Parfitt's Farm, formerly Paul's Farm, and thereafter further southwards a collection of detached, relatively modern dwellings. Dorneys falls within the irregular settlement boundary set via the development plan for the village of Eversley Cross & Up Green. The appeal site is outside that boundary.
9. Broadly the settlement boundary for Eversley Cross has a north-south linear form. A notable exception is a ribbon of properties protruding eastwards beyond Dorneys curving around Reading Road, ending where footpath 22 comes out by Grade II Listed Green Cottage and Peggeth. The settlement boundary is drawn along the western side of Chequers Lane, encompassing suburban housing beyond. To the south of footpath 22 and Parfitt's Farm land

¹ Ref APP/N1730/W/18/3198552.

described above, it again extends eastwards to encompass residential properties. Consequently the appeal site abuts the settlement boundary to the north and west. There is also contextual residential development a short distance to the south and north-eastwards.

10. Historic List Entry Number 1092343 describes Dorneys as originating in the seventeenth century. It now appears an amalgamation of different historic eras, as expanded upon in the appellant's Heritage Statement. The property includes timber framing, a granary towards Reading Road, and a symmetrical eighteenth century elevation facing Chequers Lane by the Chequers Inn, also Grade II Listed. Just to the south of the Inn, near access to the appeal site, are Parfitt's Farmhouse and Barn, again both Grade II Listed.
11. The Eversley Cross Conservation Area ('ECCA') encompasses a different area to the settlement boundary. It is instead focussed on Cross Green and buildings of historic significance dotted around that space. Paragraph 5.3 of the Council's Church Farm, Eversley Street, Eversley Cross and Up Green Conservation Area Proposal Statement (March 2002, the 'CAPS') explains how 'this area has a classic rural village centre character with its crossroads location and cricket green overlooked by the remains of its original farmsteads and groups of small cottages.'
12. I note that, in contrast to the settlement boundary, which is tightly drawn around built development, the ECCA covers much open land. That is particularly the case along the B3016 northwards, in which direction the CAPS notes that there is a rural setting, 'with the hills of Berkshire in the background'. The ECCA covers the appeal site, extending to footpath 22. Parfitt's Farmhouse and Barn, the Chequers Inn, Mead House and Rosedene on the opposite side of Reading Road to the Inn, Dorneys, Green Cottage and Peggeth are identified in the CAPS as 'notable groups' of buildings.

The status of LP policy RUR 2

13. At a strategic level, the LP seeks to guide growth broadly in line with the scale of settlements; policies with an RUR, or rural, prefix do not apply to the principal settlements in the District of Fleet, Yateley, Blackwater or Hook. As set out above the appeal site abuts the settlement boundary here. Policy RUR 2, however, states that 'development in the open countryside, outside the defined settlement boundaries, will not be permitted unless the local planning authority is satisfied that it is specifically provided for by other policies in the local plan, and that it does not have a significant detrimental effect on the character and setting of the countryside by virtue of its siting, size and prominence in the landscape' (my emphases).
14. There are a number of angles to RUR 2, albeit that no argument has been made that the proposal benefits from support via other development plan policies, such as representing a rural exception site. Nevertheless NPPF paragraph 213 explains that the age of a policy is not, in itself, determinative of its currency. Rather 'due weight' should be given according to a policy's degree of consistency with the approach in the NPPF. The weight accorded to

older policies, or rather the extent of any harm arising by virtue of conflict therewith, is a matter of planning judgement.²

15. The appellant contends that RUR 2, at least in so far as it reads so as to define open countryside as that which falls outside of defined settlement boundaries, should carry little weight. I note the Inspector who determined the appeal at Broden Stables in 2018 reasoned in that respect, and in the light of the policy context then applicable, that he could accord 'at best' only moderate weight to negatively-worded policies seeking to restrict development outside of settlement boundaries.³
16. That reasoning aligns with another Inspector who determined an appeal at Netherhouse Copse in 2017.⁴ In that latter case the Inspector was of the view that RUR 2 was premised on a superseded housing requirement, and that it had been necessary for the Council to depart from that approach on various occasions in order to demonstrate a 5YHLS (thereby undermining the rationale upon which settlement boundaries were established).
17. The housing requirement for the District has increased from the RSS or Structure Plan context in which the LP was formulated. Conversely, the appellant states that the settlement boundary in this particular location has remained unchanged and unreviewed since 1996 or earlier, and that no substantive change is proposed in emerging policy NBE1 despite changes in policy and on the ground during that time. That appears to be the case.
18. I also understand that in an appeal at Bramshill House the Council accepted that RUR 2 was, in some respects, out of date.⁵ A further appeal at Gomshall in Guildford Borough Council's administrative area, where a dwelling was allowed by virtue of representing limited infilling in the Green Belt and also AONB, however, serves only to reiterate the principle that the appropriateness of development is a matter of judgement.⁶
19. Nonetheless, as noted by the Inspector in a 2019 appeal in respect of land at Southwood, the NPPF does not prevent the use of settlement boundaries.⁷ In my view also settlement boundaries, applied flexibly, are a logical approach to guiding development towards appropriate strategic locations on one hand and preserving landscape character on the other. Those aims, in broad terms, are shared with NPPF paragraphs 103, 104 and 170. However the thrust of the NPPF is more permissive than a rigid 'yes' inside, and 'no' outside boundaries, and the Council do not contradict the point made by the Inspector in the Netherhouse Copse appeal that development has been allowed outside of

² As set out in the judgement handed down on 10 May 2017 in *Suffolk Coastal District Council v Hopkins Homes Ltd & Anor* [2017] UKSC 37.

³ Appeal Ref APP/N1730/W/17/3185513, paragraph 43, albeit I understand now quashed.

⁴ Appeal Ref APP/N1730/W/17/3167135.

⁵ Lead case Ref APP/N1730/C/17/3171113, paragraph 42, albeit I understand subject to litigation since.

⁶ Ref APP/Y3615/W/19/3223975, given that the nature, design and relationship of the proposal differs from the scheme before me.

⁷ Ref APP/N1730/W/18/3203638.

settlement boundaries in order to establish a 5YHLS. I therefore accord moderate weight to the first element of RUR 2.

20. More pressingly, however, in this instance, the substance of the dispute between the main parties is over the second objective or element of RUR 2, namely the effect of the proposal on what the Council's decision notice sets out as 'the character and setting of the countryside...'. Falling adjacent to the settlement boundary for Eversley Cross, with the periphery of the built form of Yateley a few fields over, in terms of accessibility to nearby services and facilities, no substantive harm would arise from the proposal by virtue of travel patterns, for example. Moreover, notwithstanding my reasoning above regarding the first element of policy RUR 2, the central aim of that policy is the protection of landscape character.⁸
21. RUR 2 is negatively worded, in that it seeks to limit that development which may legitimately come forward outside of defined settlements. However that aim may also be 'positively' phrased, reflecting NPPF paragraph 170(b), which seeks to recognise the intrinsic character and beauty of the countryside. That sensibly exists as a planning objective regardless of lines on a map. Whilst 'recognise' in NPPF paragraph 170 is more flexible than 'protect' in the explanatory text to policy RUR 2, the policy wording in RUR 2 itself contains the phrase that development should not have a 'significant detrimental effect', which amounts to broadly the same test. The second element of policy RUR 2 may therefore fairly be accorded substantial weight.

The nature of the appeal site and its relationship to Dorneys

22. Beyond a brick boundary wall, identified in the CAPS in part as a 'notable wall', and separate rear access to the plot of Dorneys, the appeal site is accessed via an existing break in the vegetation and trees flanking Chequers Lane. It is the intention to use that access to create a close serving three detached dwellings. Those dwellings would be substantial in scale and reflect a whimsical vernacular common to the wider area. Plan 488 P07 shows close-boarded boundary fencing proposed as boundary features, post and rail fencing to south, with the majority of trees and hedgerows around retained (or replaced or augmented, which could be secured via appropriately-worded conditions).
23. Presently a significant proportion of the appeal site is maintained as lawn with patches of planting, much of the area of plots two and three as shown on plan 488 P02. Some of the land within the same ownership as Dorneys is wilder, being taken up it appeared by self-seeded trees, a shallow pond, and otherwise generally left to its own devices. However, as shown on the supporting Tree Retention/ Loss and Protection Plan, that latter area falls mainly outside of the appeal site and would be essentially unaffected by the development proposed.

⁸ Text supporting LP policy RUR 1 explains how settlement boundaries have been drawn so as 'to enclose the built fabric of the settlement... [and in part] to avoid opening too widely the opportunities for further development'. The supporting text to LP policy RUR 2 and CON 22 also explains how 'the Council's aim is to protect this countryside for its own sake by minimising the impact of new development...' and that 'land immediately outside settlement boundaries may be important to the form and character of a settlement...'.

24. Land closer to the rear of Dorneys is also lawn, contains some formal landscaping, and additionally a swimming pool and tennis court. Three mature oak trees arranged in a line demarcate the area of garden closer to Dorneys from the appeal site, referenced as specimens T1, T4, and T6 in the Arboricultural Survey and Impact Assessment of varying, albeit generally significant, value (the 'AIA').
25. Judging by their age, the identification of at least one specimen in the CAPS, and the limits of the curtilage to Dorneys previously,⁹ they reflect an historic boundary between land closer to Dorneys and the appeal site. However those two areas of land lead directly to one another in several places without intervening boundary features or level change. On the basis that, in all probability, land beyond the three mature oaks had been used in connection with Dorneys for in excess of ten years, via decision dated 30 July 2010 the Council accepted that it represented residential garden.¹⁰
26. Against that context the main parties disagree as to whether the appeal site may reasonably be defined in planning terms as 'curtilage'. However that is not significant. I understand that Dorneys was first listed, albeit as Meade House, in 1952. I also understand that the area of land beyond the three oaks came into the same ownership as Dorneys around a decade later, its use being formalised only in 2010. That is corroborated by the historic map regression shown in the Heritage Statement. It therefore appears that historically, irrespective of whether it may accurately be termed as such currently, the appeal site did not form part of the curtilage to Dorneys.
27. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, sets out that special regard should be given to the desirability of preserving a listed building 'or its setting'. Whilst curtilage implies a closer connection than land elsewhere, that is not to say that development within the curtilage of a Listed Building would automatically entail greater effects than development in other locations. My reasoning in respect of the first main issue therefore focusses on the implications of the development proposed on the significance, setting and historic integrity of Dorneys, other Listed Buildings, and the ECCA more broadly, rather than terminologically whether or not the appeal site represents curtilage now or previously.

Character and appearance

28. As set out above LP policy RUR 2 seeks to ensure that development does not entail significant detrimental effects to the character of the countryside, an approach broadly aligned with NPPF paragraph 170(c). I have also noted earlier the provisions of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended. Similarly Section 72(1) of that Act places a duty upon me to pay special attention to the desirability of preserving or enhancing the character and appearance of Conservation Areas, an approach reflected in LP policy CON 13. The NPPF sets out that, when considering the

⁹ The appellant explains that the appeal site did not fall within the same ownership as Dorneys until around 1961.

¹⁰ Ref 10/01224/LDCEX.

impact of a proposal on the significance of a designated heritage asset, great weight should be given to its conservation, and that any harm should require clear and convincing justification with regard to any public benefits.

29. Paragraphs 23 and 24 above are relevant here. Whilst in part domestic in appearance, the site and area of land between it and Chequers Lane are nevertheless essentially natural. As detailed subsequently in respect of vulnerability to flooding, the appeal site is broadly level. Aside from by the site access, and by the shared boundary with the plots of Eversley Hall next to Dorneys and neighbouring Willow House where there is little in the way of planting, the appeal site is largely enclosed by mature native trees and established vegetation. By consequence there are glimpsed views into the appeal site from Chequers Lane and along footpath 22.
30. On occasion, notably between the granary at Dorneys and neighbouring Eversley Hall, the canopy of trees within and around the appeal site are visible from Reading Road by Cross Green as a rural backdrop to the settlement. Trees within and bounding the appeal site are also visible, depending on the vantage point, in conjunction with the Chequers Inn and Parfitt's Farmhouse and Barn. However Reading Road provides a clear visual break with Mead House and Rosedene, and there is no appreciable visibility on account of the level topography and separation distance from Green Cottage and Peggeth. In that context the appeal site in its present state has some value to the rural context to Eversley Cross, the ECCA and setting of certain Listed Buildings.
31. The CAPS describes Eversley Cross as a small hamlet set around a village green. Section 5.3 also notes both that modern development may divert the eye from historic buildings, and that Eversley Cross has lost some of its vitality over the last century. The CAPS identifies, within the ribbon of properties to the south of the Green, that Eversley Hall is a 'well mannered newish detached dwelling'. Neighbouring Willow House appears newer still. Reference in the CAPS is made to trees within land to the rear of Dorneys, in particular apparently willow T52 as identified in the AIA. Parfitt's Farmhouse and Barn are referenced as a traditional farmstead cluster, albeit that modern barns to the north have since been created (and are now in diverse uses).
32. Views towards the Green are identified in section 4.3.8 of the CAPS as significant, which also states that 'there are views over the countryside and back towards the settlement from the footpaths out from the Green and across from Chequers Lane to the bottom of Marsh Lane [footpath 22]'. That latter phrase points to the transitional character of the appeal site, which, as set out above, is surrounded relatively nearby by other residential development in most directions, relative to the strongly rural landscape immediately to the south. Notwithstanding that reference, however, there are no significant viewpoints mapped along footpath 22 in the CAPS. Whilst the appeal site and land between it and Chequers Lane within the ownership of Dorneys has some contribution to the character of the ECCA, the CAPS notes the relatively greater significance of views towards Cross Green and of views northwards of it to rural surroundings.

33. The proposal would inevitably result in some change. Along with fencing, domestic finishes and associated paraphernalia, the Council explains that the proposal amounts to some 920 square metres of floorspace, with the dwellings proposed reaching a maximum height of around 8.4 metres. That would, I accept, be out of keeping with the single-plot depth ribbon of properties projecting eastwards along Reading Road. There would also be glimpsed views of the proposed dwellings from various surrounding vantage points, which are likely to be greater during winter months when leaf cover is reduced. By virtue of introducing substantial built development in a site that is presently essentially natural, the proposal would have some adverse effect. However, in my view that would, in actuality, be highly limited.
34. As set out above, the principal contribution of the appeal site and land to the south of Dorneys is by virtue of mature trees and established planting. Subject to securing appropriate safeguards and landscaping through suitably-worded conditions, the proposal would have very little appreciable effect in that respect given the siting and low density of the development proposed. The appellants' AIA indicates that there would be no loss of trees of high quality, category A with reference to British Standard 5837:2012, nor adverse effects to those identified in the CAPS as of local significance.¹¹
35. Consequently, and given the screening resulting from the form of properties fronting Reading Road, the dwellings proposed would be barely perceptible from vantage points next to Cross Green. As also set out above, a natural buffer of land between the appeal site and Chequers Lane next to Parfitt's Farmhouse and Barn would be maintained. That, in my view, would preserve the most visually sensitive element of land around Dorneys, relative to views approaching Cross Green and in the context of the setting of nearby Listed Buildings. Combined with the level topography, the effects of the development proposed would be highly localised.
36. I have explained above how the appeal site came to be owned in conjunction with Dorneys around 1961. There is no substantive evidence of a prior functional connection of the appeal site therewith, other than geographic proximity. The Heritage Statement indicates that in 1898 the appeal site comprised elements of two fields to the rear of Dorneys, annotated as related to Parfitt's Farm. However evidence of an historic associative link in that latter respect is not clear; Parfitt's Farmhouse looks southwards away from Cross Green. Moreover the 1932 map of the area shows a significant number of barns or outbuildings associated with Parfitt's Farm westwards of it, rather than eastwards (as is the location of the appeal site).
37. As evidenced by the granary at Dorneys, and also that at Venn Place Farm nearby, Eversley Cross has agrarian origins, albeit that I understand much land was wooded heathland habitat historically subject to enclosure following legislation in 1868. As also shown in the Heritage Statement, certainly by

¹¹ The AIA furthermore indicates that only 1 'category B' tree would be lost and a further 10 in 'category C', therefore of 55 identified specimens only 13 would be lost (less than a quarter).

1966, any agricultural, grazing or forestry use of the appeal site had ceased. Any active use with some historic significance to the evolution of Eversley Cross has therefore long since elapsed, as has any semblance of the appeal site representing fields. As reasoned above, the appeal site is essentially maintained as residential garden, thereby reflecting at best only a semi-rural element of the setting to the settlement.

38. That, in my view, tallies with the implied reference to the transitional character of this area in section 4.3.8 of the CAPS cited earlier. Moreover I have noted that two properties nearby fronting Reading Road, Eversley Hall and Willow House, are recent additions to the Village. Therefore the Conservation Area and setting of Listed Buildings have become increasingly residential over time. Evidently at some point in time the barns shown in the early twentieth century maps west of Parfitt's Farm have given way to residential development (Sparvells and Grensell Close). Elements of those dwellings are visible when proceeding along Chequers Lane. Similarly, looking southwards along footpath 22 beyond the tract of land still associated with Parfitt's Farm, the rooftops of dwellings along Chequers Lane parallel to Marsh Lane are visible.
39. There is therefore much contextual development to the appeal site. I also saw, when walking along footpath 22, the eye is naturally drawn to the south where the landscape is relatively open, as opposed to towards the appeal site through vegetation and trees by the appeal site. Strategic views in the CAPS are also looking towards the Green as the focus of the ECCA and to the broader area to the north of Cross Green and distant vistas; those views are, relatively, of greater significance than around the appeal site.
40. As the proposal would have some effect on the semi-natural context to Eversley Cross, the character of the ECCA and in respect of the setting of nearby Listed Buildings of Dorneys, Parfitt's Farm and Barn, and the Chequers Inn, *de facto* that results in a conflict with the relevant provisions of LP policies RUR 2, CON 13 and the relevant elements of statute and the NPPF cited above. However given the nature of the development proposed, its effects relative to the characteristics of the appeal site, and the value of the appeal site to local character and historic integrity as reasoned above, any such effects would be less than substantial, and furthermore so limited as to approach negligible.

Safeguarding ecology

41. The appeal site falls within five kilometres of the Heath Brow and Bourley and Long Valley Sites of Special Scientific Interest ('SSSIs'), elements of the Thames Basin Heaths Special Protection Area ('TBHSPA') established on account of their geological and habitat value. SPA protection is via the Birds and the Habitats Directives,¹² the latter incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 (the 'Regulations'). The TBHSPA is designated in order to safeguard various bird species and the habitat upon which they are reliant. Birds may be disturbed by recreational

¹² 79/409/EEC, 92/43/EEC.

activities and predation from domestic pets. Whilst not a precise correlation, the potential for adverse effects increases with the number of dwellings nearby.

42. In that context LP policy CON 1 'European Designations' sets out that development that would adversely affect ecological integrity will not be permitted unless there are 'no alternative solutions and there are imperative reasons of over-riding public interest...'. LP policy CON 2 'National Designations' sets out that development that would adversely affect the nature conservation of an SSSI, whether directly or indirectly, will only be permitted if subject to conditions preventing 'damaging impacts' from arising (or if other material factors are sufficient justification relative to any harm). Likewise, RSS policy NRM6 establishes a five kilometre zone of influence around the TBHPSA. In that zone, based on patterns of recreational use, development is likely to result in additional recreational pressure (and thereby likely significant effects cannot be ruled out, taking into account the in combination effect of many instances of smaller development).
43. I am statutorily required to take appropriate steps to conserve biodiversity.¹³ The application of a precautionary approach to avoiding likely effects is the appropriate basis on which to proceed (aligned with the approach in policy NRM6). NPPF paragraph 170(a) sets out that planning should contribute to and enhance the natural environment by protecting and enhancing sites of biodiversity or geological value in a manner commensurate with their status.
44. However, at a strategic level, the Habitats Regulations Assessment ('HRA') supporting the emerging plan and the levels of growth that it intends to enable, indicates that the recreational impacts of proposed development on European sites can be avoided or mitigated. Emerging policy SS1 'Spatial Strategy and Distribution of Growth' presently notes that delivery of plan requirements, subject to potential MM19/ MM10 of at least 7,914 homes over the plan period, is contingent on the availability of avoidance and mitigation measures in respect of the TBHSPA in line with policy NBE4 'Thames Basin Heaths Special Protection Area'.
45. Mitigation of ecological effects is envisaged through the provision of Suitable Alternative Natural Greenspace to encourage recreation in areas of lesser ecological sensitivity ('SANG'), and also contributions towards Strategic Access Management and Monitoring ('SAMM'). Presently, and subject to MM86, paragraph 288 of the emerging plan would read that if provision in those respects is made 'in accordance with policy NBE4 and the Thames Basin Heaths Special Protection Area Avoidance and Mitigation Strategy it is likely that it can be concluded that no adverse effects on the integrity of the SPA will occur...'.
46. However, Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an

¹³ Section 28(G) of the Wildlife and Countryside Act 1981, section 40 of the Natural Environment and Rural Communities Act 2000 as amended.

appropriate assessment'.¹⁴ I have sought to apply that requirement reasonably and proportionately, relative to the nature and context of the development proposed. In this instance Natural England, the appropriate nature conservation body under Regulation 63(3), who must be consulted in respect of undertaking an Appropriate Assessment, explain that 'subject to the financial contributions as required through the LPA Local Policies/ Strategies/ SPDs you have in place, Natural England is satisfied that the applicant has mitigated against the potential adverse effects of the development on the integrity of the European site(s), and has no objection to this aspect of the application'.

47. Appendix 10 to the Council's appeal statement is the 'Interim Avoidance Strategy for the Thames Basin Heaths Special Protection Area' (First Revision adopted November 2010, 'IAS'). That document was produced in collaboration with Natural England. It is not clear how the IAS will morph into, or be replaced with, the document referred to in emerging policy NBE4. Nevertheless the Natural England response refers to the policies and strategies 'in place' not in prospect or forthcoming.
48. In respect of a scheme of this size IAS paragraph 4.3.1 is relevant to the approach to SANG. Bullet iii. to that paragraph sets out that 'SANG provision should be funded by developer contributions...', albeit that direct provision may also be made. Paragraph 4.3.2 sets out that should be on the basis of the tariff in Annex 1. IAS paragraph 4.3.1, bullet vi. further clarifies that, for schemes of fewer than 10 dwellings, there is no necessity for a proposal to be within 'the catchment of a SANG provided there is available SANG capacity'. IAS section 4.4 relates to SAMM provision, again with the tariff to be collected defined in Annex 1.
49. I understand that in October 2017 the Council endorsed a document entitled 'Criteria to access Council owned or controlled Suitable Alternative Natural Green Space (SANG)' (dated 6 December 2018, the 'Criteria document'). The Criteria document relates to the Council's approach in practice, rather than appearing to have formal status. It sets out that the allocation of Council controlled SANG provision will be discretionary and that various eligibility requirements must be met; criterion 4 is that the development proposed would not represent 'a material departure from the Development Plan'.
50. There is logic in the appellant's argument, however, that the Council's third reason for refusal given in their decision notice is somewhat artificial. In other respects the Council considered that the scheme departed from the approach in the LP, thereby rendering it ineligible with the terms of the Criteria document set out above. The Council's third reason for refusal was that the scheme would, in the absence of alternatives or over-riding public interest, be unacceptable. That is a somewhat circular argument that puts the appellant in a tough spot (who has no objection to the principle of making appropriate provision in this respect). That is setting aside that, in order to demonstrate in excess of a 5YHLS as reasoned above that development outside of settlement

¹⁴ With reference to recent case law, *People Over Wind and Sweetman v Coillte Teoranta*, Environment – Conservation of natural habitats [2018] EUECJ C-323/17.

boundaries in RUR 2 has been granted, thereby departing from the approach in the plan.

51. Conversely the Council argue, in a letter of 10 October 2019 submitted at examination, that there is effectively a local market for SANG provision and that 'the appellant could have brought SANG from a third party or they could have worked (either on their own or in partnership with others) to deliver their own SANG.' That is true. However within the terms of the Criteria document there is no express requirement to deliver SANG provision individually. Furthermore, section 2 of the IAS explains how 'there are currently two SANGs available to developers in Hart' (my emphasis).
52. There is no indication that either of those SANGs is fully accounted for: paragraph 4.10 of the HRA states, in summary, that 'even after the allocation of housing provided by the [emerging] Plan... SANG sites under the Council's control have remaining capacity for 916 units...'. Moreover the required tariff appears to have been calculated on the basis of the costs necessary to provide Hitches Lane and Hawley Meadows and Blackwater Park SANGs, and the emerging plan makes some allowance for windfall provision on small sites (subject to potential MM23, some 276 homes). I also note that footnote 3 of the Criteria document sets out that 'A SANG allocation will not normally be withheld where on appeal it has been determined that the development proposal would otherwise have been acceptable if it had not been for the absence of a SANG allocation.'
53. Therefore in respect of SANG provision to satisfy LP policies CON 1 and CON 2, the approach in the IAS and also emerging policy NBE4, as endorsed by Natural England, financial contributions are required. In this instance, again within the terms of the IAS, that need not relate to a SANG within catchment, and is calculated on the basis of Council-owned SANGs which yet have some capacity. It is difficult to see how a developer could negotiate SANG provision with an alternative provider, including as the HRA is premised on existing capacity sufficient to meet future needs with some flexibility. I acknowledge, albeit that there is little evidence as to its justification, that 0.008ha is given in the IAS as the per capita area of land that should be given over to SANG. However it would be challenging for a developer to negotiate SANG provision with an alternative provider in a market transaction and comply with IAS paragraph 4.3.1(iii) where developer contributions to a standard tariff appear to be the primary determinant of compliance.
54. A signed unilateral undertaking dated 25 June 2019 was submitted at appeal, and thereafter an updated version dated 1 November 2019 (the latter referred to as the 'UU'). The UU contains obligations for contributions of £66,744.92 towards SANG provision and £2,998.20 towards SAMM provision. That is based on the tariff necessary for three five bedroom dwellings, likely to be occupied by 11.4 persons (sic.), in line with the Council's August 2019 SANG update document and Appendix 3 of the IAS.

55. UU section 2(D) specifies that in the event that the appeal is allowed it is anticipated that one condition will be 'subject to the prior completion of this Deed'. However a condition to that effect is unnecessary within the terms of NPPF paragraph 55 as that would merely serve to duplicate what is required in any event. In commenting on the UU at appeal, the Council do not specifically object to the sums proposed or the methodology by which they have been calculated (albeit they maintain their position, as above, that allocating SANG provision within their gift is discretionary and requires bi-lateral agreement).
56. As set out above at present the appeal site is in large part an area of broadly level lawn. Relatively few trees would be directly affected, and an untended area between the appeal site and Chequers Lane retained. The Phase 1 Habitat Survey identified that the appeal site is not of 'high ecological interest' and that no evidence of protected species was observed during the survey supporting that study.¹⁵ Compliance with the recommendations for mitigation and enhancement in the ecological surveys, for protecting trees, and for enhanced landscaping offering associated biodiversity benefits could be secured via appropriately-worded conditions. I note there are also separate legislative provisions regarding species protection.¹⁶
57. In that context, and with regard to the requirements for obligations in NPPF paragraph 56 and relevant statute regarding appropriate assessment, I am satisfied that the proposal would suitably safeguard ecology directly and indirectly. No conflict therefore arises with the relevant provisions of LP policies CON 1 or CON 2, RSS policy NRM6, NPPF paragraph 170(a) or relevant statutory provisions.

Vulnerability to flooding

58. LP policy GEN 11 'Areas affected by flooding or poor drainage' sets out that development in areas liable to flood, or that which would unacceptably increase the risk of flooding elsewhere, will not be permitted (unless suitable alleviation or mitigation is included). The NPPF similarly sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk of flooding, and, as appropriate, via the application of the sequential and exception tests set out principally in NPPF paragraphs 158 and 159. Residential development is categorised in the PPG as 'more vulnerable' to flooding.¹⁷
59. Based on the Environment Agency's JFLOW modelling, the north-eastern part of the appeal site is identified as within flood zones 2 and 3, i.e. areas with a medium and high probability of flooding respectively. The Council cites work in relation to their Strategic Housing Land Availability Assessment, which I understand identifies several comparably-sized sites within flood zone 1 which are, by consequence, sequentially preferable. I have also taken account of the representations of a nearby resident, who expresses concern that the proposal

¹⁵ Corroborated by the findings of the Reptile Survey of May 2018, which found no substantive potential for adverse effect to grass snakes.

¹⁶ Notably via the Wildlife and Countryside Act 1981 as amended.

¹⁷ Reference ID: 7-066-20140306

may lead to adverse surface water run off elsewhere, noting that the topography of the site declines around 1.5 metres broadly north to south (based on LIDAR data, from around 57.25m AOD to around 55.75m AOD).

60. However the vulnerability of part of the site to flooding, the basis on which the Environment Agency initially objected to the proposal, is based on what the appellant's Flood Hydrology Study (November 2018, 'FHS') aptly describes as 'coarse' data rather than precise on-site modelling. That modelling is undertaken in the FHS, regarding the main potential source of flooding from, and effect of the development proposed to, the Castle Bottom Stream. The FHS includes details of catchment characteristics (figure 2.1) and an allowance, or freeboard, for the implications of climate change.
61. The Castle Bottom Stream runs along the east side of nearby Marsh Lane, beyond footpath 22 relative to the appeal site. It is culverted as it runs beneath Reading Road and tracks northwards, which may not be reflected in JFLOW modelling. In addition to that culvert, the FHS explains that there is a tree-lined bank along the west side of Marsh Lane of around 600mm in height, and also a 400mm or so embankment along the northern side of footpath 22 by the appeal site.
62. Applying various parameters detailed in the Centre for Ecology & Hydrology's Flood Estimation Handbook via the Hydrological Engineering Centre's River Analysis System, with sections taken at 10 metres intervals (HECRAS, figure 3.2), that detailed modelling indicates a 1 in 100 year flood event of approximately 57.15m AOD. Whilst that exceeds the level of a proportion of the site, owing to the culvert and embankments referred to above channelling or diverting flow, section 3.2.2 of the FHS explains how the site should be considered as fully within flood zone 1.¹⁸
63. On the basis of the FHS, the Environment Agency revised their initial position, as now set out in a letter of 16 August 2019. That states that 'this [FHS] modelling has shown that the site is entirely within Flood Zone 1 and addressed our previous concerns with regards to flood risk to this site. We consider that the applicant has now submitted an adequate assessment... we do not wish to recommend any planning conditions'.
64. I note, in any event, that development must comply with the relevant provisions of Building Regulations in respect of drainage and waste disposal, and there is no evidence that compliance therewith could not be achieved.¹⁹ Consequently I conclude that the proposal is acceptable with regard to the vulnerability of the appeal site to flooding, in accordance with the relevant provisions of LP policy GEN11 and NPPF paragraph 158.

Planning balance and conclusion

¹⁸ On the not unreasonable assumption that surroundings features are maintained broadly in their current state.

¹⁹ Noting that the supporting Flood Risk Assessment & Drainage Strategy indicates that a surface water strategy of some form in accordance with CIRIA C753 could be achieved which 'mimics the existing run-off regime'.

65. I have set out above that the proposal would be acceptable in respect of safeguarding ecology (directly and indirectly) and in respect of flooding implications. I have also dealt with the status of LP policy RUR 2, which continues to have some currency in the present, and set out that based on the evidence before me there is nothing to indicate that the Council are unable to demonstrate in excess of a 5YHLS. I have also reasoned that, the scheme would adversely affect the surrounding natural character to Eversley Cross, and by consequence the character of the ECCA and setting of certain Listed Buildings, albeit that the extent of any harm arising in that respect would be approaching negligible.
66. Set against that harm are the benefits of the proposal. The scheme would enable the provision of three dwellings, resulting in a small addition to housing stock. That would also entail benefits in terms of supporting employment during construction, and as future occupants would bring trade to nearby services and facilities. I acknowledge that the benefits of three new dwellings would be modest, nevertheless that is against the context of a declining vibrancy to Eversley Cross (as acknowledged in the CAPS), where NPPF paragraph 78 in particular supports housing that 'will enhance or maintain the vitality of rural communities'. The NPPF is also more permissive towards enabling sustainable development compared to the first element of LP policy RUR 2 (as reasoned in paragraph 19).
67. I have also set out above that at present, subject to potential main modifications, the emerging plan seeks to provide at least 7,914 homes over the plan period. Again subject to potential MM23, that includes some provision for windfall, i.e. unplanned for opportunities. Whilst those MMs may not come to pass, NPPF paragraph 68 is strongly supportive of supply derived from small and medium sized sites, including windfall, and more broadly sets out that planning should seek to boost significantly the supply of home via enabling sustainable development where such opportunities arise. In my view, whilst the benefits of three new homes would be modest, they are nevertheless sufficient to outweigh the near negligible harm that would result.²⁰
68. For the above reasons, having taken account of the development plan as a whole, the approach in the NPPF and all relevant other material considerations, I conclude that the appeal should be allowed subject to the conditions below and to the UU referred to above.

Conditions

69. Given the limited availability of SANG, the Council has recommended that commencement within one year be required in the event that the appeal is allowed (as opposed to a three year period as set out in Section 91 of the Town and Country Planning Act as amended, the '1990 Act'). I accept that non-commencement within an expedited time frame may result in negative effects in that respect,²¹ as does the appellant. There is, however, little substantive

²⁰ Including providing clear and convincing justification within the terms of NPPF paragraph 194.

²¹ An example of where a short period may be acceptable as set out in PPG Reference ID: 21a-027-20140306.

evidence to indicate that SANG supply within the Council's gift is at such a critical level to justify that timeframe (with regard to NPPF paragraph 55). Consequently, and given the time likely to be involved in discharging conditions and practicalities involved in making a start on site, I have imposed a condition requiring that development be instead commenced within two years of this decision.

70. I have imposed conditions requiring compliance with the supporting plans, that agreed external materials are used, and that an agreed landscaping scheme is implemented to ensure that the development is undertaken as assessed above, integrates appropriately with its surrounding context, and in the interests of certainty (conditions 2, 3 and 4). Likewise, and with regard to the duty placed upon me via Section 197 of the 1990 Act, I have imposed condition 5 in order to ensure adequate safeguards for trees that may be affected by development. Given the approach in the AIA the appellant disputes the need for a 'finalised' Tree Protection Plan ('TPP') and Arboricultural Method Statement ('AMS') as the Council have proposed in their suggested condition No 15. However section 11 of the AIA related to the AMS indicates that it is in draft, and that a detailed approach would be a reasonable basis for a planning condition.
71. In order to secure compliance with LP policy T14(iii) and NPPF paragraph 108(b) and to avoid adverse effects resulting from vehicular movements to and from Chequers Lane in association with the use of the development proposed conditions 6 and 7 are necessary. The former makes provision for vehicular access and manoeuvring space, and the latter for an appropriate approach to refuse storage and collection to be made. Similarly, and with regard to LP policy GEN 1 and NPPF paragraph 127(f), in order to minimise disruption resulting from undertaking the development proposed to those nearby, I have imposed conditions 8 and 9 regarding compliance with an agreed traffic management scheme and specifying working hours.
72. I accept that, were the first floor north-facing windows proposed for 'unit 3' to be obscure-glazed, that would reduce any perceived reduction of privacy to the occupants of Willow House. Nevertheless there would be a relatively generous separation distance between the two, and it is also the intention to increase the boundary screening by the common boundary of the appeal site and Willow House (as would be secured via condition 4). In that context I am not of the view that requiring obscure glazing via condition is necessary to ensure a satisfactory level of privacy to the occupants of Willow House or reciprocally future occupants of unit 3.
73. As set out in paragraphs 64 and 56 above there is detailed information supporting the proposal related to drainage and ecology. Nevertheless conditions remain necessary to ensure an appropriate approach in those respects (conditions 10 and 11), albeit given the drainage evidence such a condition need not contain the level of specificity that the Council has suggested. Similarly in my view, provided the recommendations of ecological studies to be adhered to during construction and mitigation provided before

any dwelling is first occupied, that would satisfy the provisions of LP policy CON 5 and NPPF paragraph 170 regarding ecological mitigation and enhancement.

74. Conditions 5 and 8, or elements thereof, must necessarily apply before any relevant development is undertaken to ensure adequate safeguards for trees or to manage construction traffic respectively. In imposing conditions I have had regard to the tests in the NPPF, the PPG and relevant statutory requirements.²² Accordingly I have amended certain conditions proposed by the Council, and combined others where they cover similar issues, without altering their aims.

Thomas Bristow

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 488 L01, 488 P02, 488 P03, 488 P04, 488 P05, 488 P06, 488 P07, 488 P101, 488 P102, 488 P103, 488 P104.
- 3) Notwithstanding condition 2, before their installation in the development hereby permitted, details of the external materials to be used shall have been submitted to and agreed in writing by the local planning authority. The external materials shall be installed as approved, and thereafter retained.
- 4) No dwelling hereby permitted shall be occupied until details of hard and soft landscaping have been submitted to, agreed in writing by the local planning authority, and carried out as agreed in line with an approved implementation programme.

Details of hard landscaping shall include, as appropriate, finished levels and/or contours, means of enclosure of all areas, car parking layouts, other vehicular and pedestrian access and manoeuvring/ circulation areas, hard surfacing materials and details/ structures (such as furniture, refuse, other storage units, signage, lighting, external services, manholes, etc.).

Details of soft landscaping shall include a schedule of proposed plants and written specifications thereof (including in respect species, sizes, proposed densities along with means of planting and cultivation). Any specimens that, within a period of five years after implementation, are removed, die or become seriously damaged or defective shall be replaced as soon as is reasonably practicable with others of similar species, size and number as originally agreed.

²² Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306, Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, and section 100ZA of the 1990 Act.

- 5) The development hereby permitted shall be undertaken in accordance with the Arboricultural Survey and Impact Assessment prepared by West Waddy ADP LLP, dated 20 April 2018, including adhering to the Tree Retention/Removal and Protection Plan in Appendix 5 (plan 488 02) and a finalised Arboricultural Method Statement pursuant to the draft terms in section 11 of that document (as submitted to, and agreed in writing by, the local planning authority before any works that have the potential to affect trees identified in the AIA are undertaken in association with the development hereby permitted).
- 6) No other development hereby permitted shall be undertaken until vehicular access from Chequers Lane has been provided in line with the approved details on plan '20059-01, revision a' contained within the supporting Transport Assessment undertaken by David Tucker Associates, dated 16 April 2018.

Once implemented, the access shall thereafter be retained as such. Nothing that may cause an obstruction to visibility above a height exceeding 0.6m from the immediately adjacent ground level/ public highway shall be placed or permitted to remain within the visibility splays shown on plan '20059-01, revision a'.

In addition any gates related to vehicular access to be provided shall be set back a distance of at least six metres from the nearside of the adjacent edge of the carriageway of the adjoining highway and shall be installed so as to open away from the highway.

Any parking and manoeuvring space shown on the approved plans (whether specified in this condition, condition 2, or agreed via condition 4) shall be provided before any dwelling hereby permitted is first occupied, and thereafter retained as such only for those purposes.

- 7) No dwelling hereby permitted shall be occupied until a scheme for refuse and recycling storage has been submitted to, approved in writing by the local planning authority, and implemented. Once implemented the approved scheme shall thereafter be retained.
- 8) No development hereby permitted shall be undertaken until a Construction Method Statement ('CMS') has been submitted to and agreed in writing by the local planning authority.

The CMS shall include details of (i) the parking of site operatives' vehicles and those of visitors, (ii) the loading and unloading of plant and materials, (iii) the storage of plant and materials to be used in the construction of the development hereby permitted, (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate, (v) wheel washing facilities, (vi) measures to control the emission of dust and dirt during construction, and (vii) a scheme for recycling and or disposing of waste resulting from construction. The development hereby permitted shall be undertaken in accordance with the details of the CMS thus agreed.

- 9) No demolition or construction work, or ancillary activities such as deliveries, related to the development hereby permitted shall take place outside of the following hours: 0730 to 1800 Mondays to Fridays inclusive, 0800 to 1300 on Saturdays. No demolition or construction work, or ancillary activities such as deliveries, related to the development hereby permitted shall take place at any time on Sundays or on Bank or Public Holidays.
- 10) No development hereby permitted other than site preparation and groundworks shall be undertaken until a surface water drainage scheme ('SWDS') has been submitted to and approved in writing by the local planning authority.

The SWDS shall accord with the recommendations of the supporting Flood Risk Assessment & Drainage Strategy, prepared by Opus International Consultants, dated 10 April 2018, which sets out at paragraph 11.6 that such a strategy, in compliance with CIRIA C753 or subsequent iteration, could be achieved which 'mimics the existing run-off regime'.

No dwelling hereby permitted shall be occupied until the agreed SWDS has been implemented. Once implemented, the agreed SWDS shall thereafter be maintained as such.

- 11) The development hereby permitted shall be undertaken in accordance with the recommendations in section nine of the supporting Phase 1 Habitat Survey (April 2018) and section six of the Reptile Survey (May 2018). No dwelling hereby permitted shall be occupied until details of the location and nature of the habitat enhancement measures described in those sections have been submitted to, agreed in writing by, the local planning authority, and implemented. Once implemented the agreed enhancement measures shall thereafter be retained.