

**APPEAL BY MACTAGGART AND
MICKEL HOMES ENGLAND LTD**

**OUTLINE PLANNING PERMISSION FOR THE
DEVELOPMENT OF APPROXIMATELY 200 HOMES,
OPEN SPACE, PEDESTRIAN AND CYCLE LINKS,
RECREATIONAL FACILITIES (CLASS E) AND
OTHER ASSOCIATED INFRASTRUCTURE
INCLUDING THE FORMATION OF A NEW HIGHWAY
ACCESS ROAD FROM LODGE ROAD LOCATED
ADJACENT TO THE EXISTING FIELD ACCESS TO
BE CLOSED (ALL MATTERS RESERVED EXCEPT
FOR ACCESS)**

APP/X0360/W/22/3309202

**LOCAL PLANNING AUTHORITY
CLOSING SUBMISSIONS**

Introduction

1. This inquiry has considered an appeal by Mactaggart and Mickel Homes England Ltd (“the Appellant”) against a refusal by the Local Planning Authority (“the Council”) of outline planning permission for the following development:

Outline planning permission for the development of approximately 200 homes, open space, pedestrian and cycle links, recreational facilities (Class E) and other associated infrastructure including the formation of a new highway access road from Lodge Road located adjacent to the existing field access to be closed (all matters reserved except for access).

2. The Council’s case – in summary – in relation to each of the main issues is set out below:

(a) The extent to which the proposal is consistent with the development plan.

The proposal is plainly inconsistent with the development plan, in seeking to locate a large-scale housing estate in the countryside, outside the settlement boundary of the Limited Development Location of Hurst. That much is accepted by the Appellant. Its harmful impact on landscape character and appearance, and its unsustainable location, mean that it is not sustainable development. The Council cannot demonstrate a five-year housing land supply, meaning that the “tilted balance” in paragraph 11(d) of the NPPF applies. However, that is entirely down to the fact that large numbers of houses have been built in the borough earlier than anticipated. That oversupply is a vital consideration in this appeal

and shows that the development plan is “working” to significantly boost the supply of housing in Wokingham Borough. It should increase the weight to be given to the policies of the development plan, such that significant weight should be attached to the conflict between the proposal and the development plan in the overall planning balance.

(b) The effect of the proposal on landscape character and visual matters.

The proposal would have an unacceptable adverse impact on the character and appearance of the landscape and visual amenity. As Inspectors in a series of appeal decisions going back more than 30 years have observed, the appeal site forms the major part of a large area of undeveloped, agricultural land which provides an attractive rural setting for the villages of Whistley Green and Hurst. “Infilling” this “void”, as the Appellant rather unattractively puts it, would seriously harm a number of valuable landscape characteristics of the area, undermining the settlement’s rural character. Significant harm should be given to this factor in the planning balance.

(c) The effect of the proposal on trees and hedgerows.

The Council was rightly concerned that the plans prepared by the Appellant prior to the inquiry showed incursions into the root protection areas of protected trees, including veteran trees without justification. Evidence subsequently presented to the inquiry have demonstrated that, in principle, the proposal can be designed to avoid unjustified incursions and that this objection can be resolved by condition. Nonetheless, the failure to resolve these issues until shortly before the inquiry is a clear indication of the excessive scale of the proposal.

(d) The effect of the proposal on the best and most versatile agricultural land.

The appeal site (“the Site”) has been in agricultural use for 40 years, most recently and currently for grazing horses – a use which inevitably has some, albeit modest, economic value, as well as non-financial value in its contribution to landscape character and visual amenity. Just over 50% of the land is Grade 3(a), meaning that it is “best and most versatile” (“BMV”) agricultural land. Although subject to a number of limitations, the Council’s position (supported by its agricultural consultant) is that the appeal site could be used for agriculture, particularly horticultural or fruit crops. Its loss for housing development is a matter which should attract some, albeit modest, weight in the planning balance.

(e) The effect of the proposal on highways and transport.

The proposal constitutes “significant development” which, according to paragraph 105 of the NPPF, should not be located in a rural area such as Hurst, with only a limited range of facilities and services and poor public transport connections. Residents of the proposed development will be forced to travel out for most of their day-to-day needs and will have little practical to alternative to their private cars for doing so. As such the proposal will not promote a “modal shift” to more sustainable modes of transport. Given the large scale of the development, this is a matter which should attract significant weight in the planning balance.

(f) Whether planning conditions and obligations would address the impacts of development.

Planning conditions and obligations would not adequately compensate for the harmful impacts of the proposal and there is a real risk that the promised biodiversity net gains are have not been adequately secured by the unilateral undertaking. Overall the Council submits that these harms significantly and demonstrably outweigh the benefits of the proposal, meaning that planning permission should be refused and this appeal dismissed.

The main issues

Consistency with the development plan

3. The starting point for determining this appeal is, of course, the development plan. The proposal is, as the Appellant now acknowledges, clearly in conflict with the development plan:
 - (a) the appeal site is located outside the settlement boundary of Hurst (as defined by CS Policy CP11 and MDD Policy CC02) in the countryside;
 - (b) the appeal site has never been allocated for housing;
 - (c) developing the appeal site would more or less completely fill the area between the loose-knit areas of housing on the edge of the settlement, projecting development well into the countryside and eroding what remains of the visual gap separating Whistley Green and Hurst. That would undermine a key spatial aim of the development plan which is to protect separate settlement identity; and
 - (d) Hurst is a Limited Development Location which, under the Core Strategy, can generally be expected to accommodate developments within the settlement boundaries of no more than 25 dwellings (CS Policy CP17). Indeed, the Core Strategy planned for the nine Limited

Development Locations in the borough to accommodate just 100 dwellings over a 20-year plan period. The proposal to locate 200 dwellings on this site (a 45.5% increase in the number of houses in the settlement) runs completely contrary to that spatial strategy.

4. It is common ground that the Council cannot currently demonstrate a five-year supply of housing land and therefore, pursuant to footnote 8 of the NPPF, the policies which are most important for determining the application are deemed to be out of date. In these circumstances, it is also agreed that the “tilted balance” in paragraph 11(d) of the NPPF applies.
5. However, the application of the titled balance is not a mechanical exercise. In *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808 [CD 9.16], Lindblom LJ held that there is a need for an exercise of planning judgment in assessing how much weight should be given to the policies that (by virtue of the housing land supply shortfall) are deemed to be out of date:

“The NPPF does not state that the decision-maker must reduce the weight to be given to restrictive policies according to some notional scale derived from the extent of the shortfall against the five-year supply of housing land. The policy in the NPPF para.[11] requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight.”

6. Therefore it is a matter of planning judgment for the Inspector how much weight should be given to the restrictive policies in the development plan and to the conflict between them and the proposal. This is perhaps a better way of expressing the correct approach to the overall planning balance than the concept of “tempering” the weight to the presumption in favour of the development, as had been suggested in Mr Church’s and Mrs Jones’ written proofs of evidence.
7. The Council submits that the Inspector can and should attach significant weight to that conflict, for the following reasons.
8. Firstly, the “most important” policies¹ for determining the application are – in substance – consistent with the NPPF, notwithstanding that some were adopted prior to the publication of the NPPF. This was essentially the conclusion of the Inspectors considering the Diana Close² and Parklands appeals³ (the latter of which was upheld by the High Court⁴).

¹ It is agreed that the “most important” policies, in this appeal, are the policies cited in the reasons for refusal.

² Fiona Jones, Appendix B

³ Fiona Jones, Appendix C

⁴ Fiona Jones, Appendix D

9. Ms Jones, in cross-examination, accepted that Core Strategy Policy CP3 was, in substance, up-to-date. As for Core Strategy Policy CP6, in requiring development to “*provide for sustainable forms of transport to allow choice*” and to be located “*where there are or will be at the time of development choices in the mode of transport available and which minimise the distance people choose to travel*”, it closely follows the approach of NPPF paragraph 105 and so is, again, broadly up-to-date.
10. Secondly (and leaving aside, for the moment, the operation of footnote 8 of the NPPF), the development plan is only out of date in the sense that it seeks to provide for a housing requirement which has since been superseded, meaning that the settlement boundaries (which were drawn up on the basis of that superseded requirement) are out of date. Mrs Jones, for the Council, fairly accepted that that inevitably means that something less than full weight must be given to the conflict with the development plan in this appeal. Again this was the conclusion of the Diana Close and Parklands Inspectors.
11. Thirdly, notwithstanding that the Core Strategy housing requirement is out-of-date, it an incontestable fact that the development plan has not restricted the delivery of new housing in the borough. The Core Strategy housing requirement was expressed as a minimum rather than a maximum and, to that end, Mr Church gave compelling evidence which showed – against every relevant measure – that the Council has far exceeded its housing requirement. It has – as Ms Jones accepted in cross-examination – made good on the government’s instruction to significantly boost the supply of housing in the borough.
12. Therefore the fact that the Council has a 3.95 year supply of housing is not due to a “failure” of its development plan; quite the opposite. It is due to housing delivery occurring at an earlier stage in the plan period than had been anticipated. The Appellant has no other explanation for the current shortfall. As Mr Church ably explained in his evidence, if that oversupply was taken into account when calculating the Council’s current housing land supply, there would be more than 7 years’ supply. That exercise – though hypothetical in this appeal – is illuminating because the NPPF is silent on whether past over-supply can be taken into account when considering a local planning authority’s forward-looking housing land supply and therefore it is a matter of planning judgment whether or not to do so: *Tewkesbury BC v SSHCLG* [2021] EWHC 2782 (Admin) [CD44]. This is a strong indication that a common-sense approach to applying the titled balance is required, one which acknowledges the underlying reason for the shortfall in housing land supply.
13. Looking ahead, the Council is able to point to more than 3,000 new dwellings which – although not currently “deliverable” and therefore not included within the five-year supply – can

reasonably be expected to come forward in the short-medium term.⁵ In the meantime, the current development plan has three years left to run and work is underway to adopt a replacement Local Plan in due course.

14. The Council acknowledges that the requirement to maintain a five-year housing supply and the “tilted balance” are (at least for now) important tools in national planning policy for boosting the supply of housing. However, the Council emphasises that they should not be applied inflexibly and without regard to context. For these reasons, the Council submits that, when applying the tilted balance in this appeal, significant weight should be given to the conflict between the proposal and the development plan.

Landscape character and visual matters

15. The appeal site has no formal landscape designation. However, its significance in landscape terms is a consistent theme in appeal decisions for proposals on or near this site going back to the 1980s:

- (a) in an appeal decision from 1988 [CD 9.1], the Secretary of State refused permission for a substantial mixed-use scheme (including 177 houses), finding that it would be unacceptable in landscape and visual terms:

15. *The [Secretary of State] agrees with the Inspector that development of the appeal site would project development into the open countryside. ... He shares the Inspector’s view that the proposal would represent an intrusion into the countryside and would, by substantially filling in the inside area of what was described at the inquiry as an inverted ‘C’, completely alter the form and visual character of the village. He further agrees with the Inspector that extension westwards of development would tend to visually close the gap between the development to the north and south to the detriment of the visual amenity of the area.*

- (b) subsequent appeal decisions in the early 2000s described the Site as forming “*an integral part of the village’s rural setting*” [CD 9.2] and maintaining the “*rural character of the wider area*” [CD 9.5], which “*retains a particularly attractive pastoral appearance and provides visual separation between loose knit areas of housing which surround it to the north, east and south*” [CD 9.5];

⁵ Ian Church proof of evidence, paras 3.26-3.27

- (c) more recently, on land adjacent to the Site's western boundary, two Inspectors have noted "*enhanced significance*" of the open land of which the Site forms the major part [CD9.8.2] and that it provides a "*rural open space*" with a "*clear character [as] that of a rural and largely undeveloped tract of land*" which serves the purpose of "*retaining the rural character along Lodge Road*" [CD9.8].
16. Mr Hannington has put forward persuasive reasons why, in his professional assessment, the Site has features which elevate it above the ordinary and therefore that it could form part of a "valued landscape" for the purposes of paragraph 170 of the NPPF. Whether the Inspector agrees with that assessment or not, it is that the Site plays a vital role in contributing to the rural character of Whistley Green and Hurst. The Appellant's suggestion that the settlement is suburban in character, simply due to the presence of houses, is not tenable.
17. As Mr Hannington's evidence demonstrates, the Site and its surroundings exhibit a number of the key and valuable landscape characteristics of the C2 (Hurst River Terrace) Landscape Character Area [CD5.1]. The proposal would harm those characteristics, to the detriment of landscape character.
18. Firstly, the proposal would result in the loss of a substantial area of undeveloped agricultural land adjoining the settlement. As previous Inspectors have found, the Site provides an important rural setting for the villages of Whistley Green and Hurst. Open views from Lodge Lane to the east, Martineau Lane to the south and from Tape Lane to the west would be lost and with it the peaceful and open character of the landscape.
19. Secondly, the villages of Whistley Green and Hurst have historically developed along the north-south axis of Wokingham Road/Broadwater Lane (A321). The proposal would significantly expand the settlement boundary to the west, away from that historic axis. This would result in a noticeable protrusion into the countryside, eroding the villages' rural setting and giving rise to a more suburban character. As Mrs Jones noted in her evidence (para 6.21), the development of around 200 homes in this location would result in an expansion in the size of the existing settlement of nearly 50%, resulting in a "*[dramatic] impact on the existing rural villages which are traditional rural English villages which have allowed for limited development over the years.*"
20. This contrasts with the gradual evolution of the settlements of Whistley Green, Ward's Cross and Hurst which have, over a period of several centuries, begun to coalesce. However, the pattern of development – particularly along Broadwater Lane – is low density and the gap between Whistley Green and Hurst remains faintly legible, particularly in views across the Site from the west and south. As Mr Hannington put it in his oral evidence, the villages have "*lightly*

touched” rather than “*fully embraced*”, a point surely echoed in Mr Friend’s proof of evidence (para 2.1.2) when he described how the villages had “*largely coalesced along Broadwater Lane*”. Development of the Site at this scale would more or less completely close that gap and result in the permanent merger of these historically distinct settlements, contrary to the overall spatial strategy for the borough. The fact that two sites north of Broadwater Lane have been proposed as allocations in the emerging Local Plan is, for the purposes of this appeal, of no relevance as it is agreed between the parties that the draft plan carries no weight.

21. Thirdly, the proposed vehicle access on Lodge Road would have a particularly damaging impact. Lodge Road currently has a strong rural character, with mature trees and hedgerows enclosing the edge of the highway and a noticeable absence of urbanising elements such as footways or street lighting. The proposed access would require the widening of the highway in order to accommodate the ghosted right turn lane into the Site. It would also require the removal of the existing hedgerow to allow for the required visibility splays which, even if reinstated, would be further into the Site and separated from the highway by a new pedestrian footway, making them essentially ornamental rather than positively rural in character. Given that this is the only vehicle access for a development which can be expected to accommodate more than 400 cars and around 500 people, it is likely to be a significant locus of activity. All of these factors combine to make this a particularly urbanising and therefore discordant element in the landscape. Similar points would also apply to the emergency access proposed at the north east corner of the Site on Tape Lane and the two pedestrian accesses further south along Tape Lane.
22. In design terms, the proposal does not relate well to the existing pattern of development. The indicative net density is 32.5 dph, substantially in excess of surrounding development, much of which dates from the late 20th/early 21st centuries.⁶ Despite a few examples of modest infilling between roads during since the 1960s, there is no precedent for infilling of the scale and nature proposed here. Notwithstanding the proposed pedestrian accesses on Tape Lane, the proposed houses would be enclosed within the Site boundary with no direct relationship to the settlement. The proposal would, as Mrs Jones describes in her evidence, “turn its back” on neighbouring development.
23. In visual terms, it is clear from the Appellant’s Accurate Visual Representations [CD8.4] that there will be permanent and long-lasting harm to visual amenity as a result of the proposal. The mitigation planting as shown on these images does surprisingly little to screen the development and they show that in views from Lodge Road, Martineau Lane and Tape Lane it will be a dominant feature, even after 15 years. The use of wire frames, the uneven selection

⁶ Alyson Jones, Appendix 1 (para 7C.4)

of viewpoints and the failure to show other important details of the development (particularly the accesses) mean that the AVRs understate the harm to visual amenity that the proposal will cause. While the Appellant is correct that, due to the essentially flat topography of the Landscape Character Area, the Site is not visible in longer views, it is wrong to characterise the visual envelope as “*extremely limited geographically*”.⁷ The Site is currently visible at multiple points along several hundred metres of road to the west, south, east and (to a lesser extent) north west. This means, as Inspector Philip Major said in relation to a site adjacent to this one, “*the impact in the immediate locality would be more keenly felt*” [CD9.8].

24. In his LVIA, Mr Friend accepts that the Site has a medium landscape sensitivity (bearing in mind that, as he noted in his oral evidence, only National Parks and AONBs and land in their settings are of higher landscape sensitivity) and will be subject to a medium magnitude landscape impact as a result of the proposal. He also accepts that the visual baseline will be subject to material adverse visual effects. Both he and Ms Jones accepted that the weight to be attached to that harm is entirely a matter of planning judgment. In the land at Lodge Road appeal [CD9.8], Inspector Major attached significant weight to landscape and visual impacts which he assessed (in LVIA terms) as being “*at the upper end of the moderate scale*”. That conclusion applies with even greater force to this Site, given that the scale of development proposed here is 40 times greater and that it forms the major part of the open space separating the northern and southern “arms” of the settlement. It follows that significant weight should be attached to the proposal’s failure to maintain or enhance the quality of the environment and the harm it causes to the condition, character and features that contribute to the landscape, in conflict with Core Strategy Policies CP1, CP3 and MDD Policy TB21.

Effect on trees and hedgerows

25. The Council acknowledges that the application is for outline planning permission, with most of the detail of the proposal to be agreed at reserved matters stage. The Council was rightly concerned to see from the plans submitted before the opening of the inquiry that the illustrative scheme would result in incursions into the root protection areas (“RPAs”) of protected trees, including veteran trees, without justification. However, during the course of the appeal, it has been demonstrated sufficiently that the proposal can be designed in a way that acknowledges the likely extent of the RPAs and which will ensure no unjustified intrusions. In these circumstances, the Council is satisfied that this objection can be resolved by condition. Nonetheless, the failure to resolve this objection until a late stage in this appeal is indicative of the excessive scale of the proposal.

⁷ e.g. John-Paul Friend proof of evidence, para 2.1.2

Loss of BMV agricultural land

26. It is common ground that just over 50% of the appeal site comprises Grade 3a agricultural land and is therefore BMV agricultural land for the purposes of the NPPF.
27. The Council's position is that the Site could, in principle, remain in agricultural use. It has been used for many decades for grazing which, although unlikely to be lucrative, indicates that its current use has some economic value. Although small by modern agricultural standards, and undoubtedly subject to constraints, it is possible to farm a Site of this size for fruit and horticultural crops, as is the case on other farmland surrounding Hurst.
28. In any event, paragraph 174(b) of the NPPF is not limited to a consideration of the "economic benefits" of BMV land. Its "other benefits" must also be accounted for. As agreed by Ms Jones in cross-examination, these include its contribution to landscape character and visual amenity in this rural location.
29. Therefore the Council submits that, although clearly modest, the Site retains some value as BMV agricultural land. Its permanent loss should attract modest weight in the planning balance.

Sustainable transport

30. Read together, Policies CP1, CP3 and (in particular) CP6 require new developments to promote a modal shift away from travel by private car. According to the most recent census data, 91% of households in the borough own a car, the second-highest rate in the country.⁸ Therefore the imperative to reduce journeys by car is a key aim of the Core Strategy.
31. That is also clearly the aim of national policy. Paragraph 104(c) of the NPPF includes as a key objective that "*opportunities to promote walking, cycling and public transport use are identified and pursued*". Paragraph 105 requires the planning system to "*actively manage patterns of growth in support of these objectives*". Crucially, it provides that:

"Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes." *(emphasis added)*

⁸ Fiona Jones proof of evidence, para 6.25 and Appendix D

32. This proposal is, on any view, significant development. 200 homes would increase the size of the settlement by close to 50% and develop a greenfield site of 11ha. Although reluctant to accept that characterisation of the proposal, Ms Jones did in cross-examination implicitly concede as much in acknowledging its “*large scale*”. Capable of accommodating close to 500 residents, the proposal is likely to generate significant demand for services and facilities – to meet basic living requirements, as well as school, work and leisure trips – and therefore it is especially important to ensure that it is sustainably located.⁹
33. The instruction to “focus” significant development on locations which are or can be made sustainable necessarily influences the interpretation of the final sentence of paragraph 105, which requires decision-makers to acknowledge that “*opportunities to maximise sustainable transport solutions will vary between urban and rural areas*”. As Mr Whittingham accepted in cross-examination, this sentence does not grant a “free pass” for development in the countryside regardless of sustainability considerations. When read as a whole, the paragraph clearly indicates that “significant” development should be located in locations closer to the “urban” end of the spectrum, given that rural locations are unlikely to have sufficient quality or quantity of facilities and services to accommodate the demands of large numbers of residents.
34. The Council submits that the Site is not in a sustainable location. The reality is that for most day-to-day needs of residents of the proposal, they will be forced to travel out of the settlement.
35. It can reasonably be expected that a majority of the residents will be of working-age which makes it highly significant that there are very few employment opportunities within the settlement. Around 69 primary school-aged children and 54 secondary school-aged children are likely to live in the development.¹⁰ Again, it is highly significant that there are no secondary schools within the settlement. As for the one local primary school, while it can be expected to have capacity over time as current pupils move through to secondary education, it would not be able to immediately accommodate the proposal’s first generation of children and, as a faith school, would not be an option for all families.
36. There is a single shop in the settlement offering opportunities for no more than “top-up shopping” which regularly closes by 5.30pm. For regular family shopping, or for workers who cannot use the shop during trading hours, residents would be forced to go elsewhere. The remaining facilities – principally, the village hall, church and Gospel Hall, the cricket club and pubs, typical of a rural village – are unlikely to feature significantly in the lives of most residents,

⁹ It appears to be agreed that there is no immediate prospect of any improvement in the quality or quantity of local services and facilities, including the quality of public transport connections to and from Hurst, and therefore there is no question in this appeal that this location “*will*” be made sustainable.

¹⁰ Fiona Jones proof of evidence, para 6.28

other than on an occasional or ad hoc basis. Mr Whittingham's point that the range of facilities and services is "*good for a village*" is no answer: the relevant question is whether what Whistley Green and Hurst offers residents "*limits the need to travel*". The answer to that question is plainly "no".

37. That leads to the next question, which is whether the villages offer a "*genuine choice of transport modes*" when residents need to leave the settlement for their day-to-day needs. Again, the Council submits, the answer is clearly "no":

(a) several facilities within the settlement are accessible on foot within the "acceptable" (800m) or "preferred maximum" (1200m) walking distances [CD15]. However, it is now common ground that services and facilities beyond the settlement (e.g. Colleton Primary School and Twyford Station) are beyond the preferred maximum walking distance and therefore should be regarded as inaccessible on foot;

(b) as for services and facilities accessible by cycle, only Twyford Station was positively promoted by Mr Whittingham. While an acceptable distance away for cycling, Mr Whittingham acknowledged in cross-examination that he had not addressed secure cycle storage in his proof of evidence and had nothing to contradict Cllr Smith's evidence that "*Twyford Station is notorious for bike theft with very few lockers available.*"¹¹ The risk of a valuable bike being stolen while left unsupervised for hours at a time is clearly a very important consideration when assessing the attractiveness of commuting by cycle. In any case, cycling will not be an option for everyone, including those put off by traffic conditions on the A321, children and less physically-able residents. In cross-examination, Mr Whittingham accepted that neither of the two secondary schools (Piggott and Waingel's) mentioned in his proof of evidence as potentially accessible by cycle were, in reality, viable cycle destinations for children;¹²

(c) on any view, the quality of the 128/129 bus service – the only route serving the settlement – is poor:

(i) for time-critical journeys such as commuting to work or school, there is only a single service during the weekday peak. For journeys north of the settlement (including journeys to Twyford Station), the bus leaves so early (0725) that working parents would be unable to drop off their children at St Nicholas Primary School before

¹¹ Cllr Wayne Smith proof of evidence, para 6.15

¹² The route to Waingel's College is mostly along Whistley Mill Lane, a narrow, winding country road with a 60mph speed limit and a ford. The route to Piggott School follows the A321 through Twyford and would require crossing the busy roundabout junction with the A4.

leaving for work and children travelling to school would arrive long before the school day starts. Anyone who misses that service, or waits for a cancelled service¹³, will be stranded or forced into unsustainable modes of transport;

- (ii) the closest secondary schools are not well-served by the route. Piggott School and Waingel's College are more than a 20 minute walk from the nearest bus stop. Similarly for the return journey back from Emmbrook School and the Holt School, the nearest bus stop is 20 minutes' and 30 minutes' walk (respectively). The timetable does not align well with most of the schools' finishing times, with the potential for children to endure a long wait at the bus stop;
- (iii) the service is very limited at the weekend. On Saturdays the service operates at two-hourly intervals and finishes so early in the evening (1712 outbound and 1809 inbound) to be of no use to anyone wanting to spend the evening out. There is no service at all on a Sunday, meaning that any journey out of the settlement would have to be by car;
- (iv) the bus service contribution, secured by the unilateral undertaking, would only serve to maintain the status quo. As Mr Adam confirmed in his evidence, it would reduce the funding gap but would not make the service financially self-sustaining. There is no evidence to suggest that the addition of the new residents of the proposal would provide sufficient critical mass to financially sustain the service or to bring about any improvements in the timetable;
- (v) it must of course be remembered that for every outbound journey, a return journey will be required. The long intervals between services have the potential to cause real inconvenience, with careful timing required to avoid long waits at the bus stop to get home;
- (vi) all of these factors, both individually and in combination, would not make the bus an attractive alternative to the private car and therefore would not offer residents a genuine choice of transport modes. The fact that the route is currently heavily subsidised by the Council implies that it is not well-used by existing residents of the settlement, who have presumably made the calculation that the bus is an inadequate alternative to the car. With the obvious convenience of having an average of 1.7 allocated car parking spaces per household, residents of this proposal are likely to make the same calculation;

¹³ An average of 32.5 scheduled journeys per month were cancelled in 2022 (5% of the monthly average of 706 journeys) [CD72].

(d) the arrival of the Elizabeth Line at Twyford Station is by no means a “game-changer” for the Site’s sustainability. For one thing, it depends on there being a viable, sustainable connection between the proposal and the station (there is none). Furthermore, as Mr Whittingham accepted in his oral evidence, the real benefit of the Elizabeth Line is primarily the improved connections for journeys into central London beyond Paddington Station. His evidence was that commuters from Twyford are more likely to opt for the pre-existing GWR services through Maidenhead and Slough for journeys east, which are significantly quicker than the Elizabeth Line’s stopping service. In other words, Twyford commuters are effectively little better off as a result of the Elizabeth Line than anyone else travelling through London. In any case, despite having been on the Council’s radar since 2008, and despite the extension of the Elizabeth Line through Twyford having been confirmed almost a decade ago, there have been little if any improvements to the public transport links between Hurst and Twyford, with none currently in contemplation.

38. For these reasons, the Council submits that the proposal is not sustainably located, in that its location does not minimise the need for travel or offer a genuine choice of transport modes. Therefore it conflicts with Policies CP1, CP3, CP6 and CP11 of the Core Strategy and Policies CC01 and CC02 of the MDD Local Plan. Given the scale of the development, this is a matter which should attract significant weight in the overall planning balance.

39. As was confirmed prior to the opening of the inquiry, the Council’s highway safety objection has been resolved and therefore that issue does not form part of the Council’s case in this appeal.

Planning conditions and obligations

40. The Council’s position is that neither the planning conditions nor the obligations secured by the unilateral undertaking would be sufficient to mitigate the harmful impacts in terms of landscape and appearance, sustainability and loss of BMV agricultural land.

41. As explained during the round-table session, the Council is concerned that the unilateral undertaking does not adequately secure the proposed off-site habitat mitigation. According to the Appellant’s BNG calculations,¹⁴ without off-site mitigation, the proposal would result in a net loss of area biodiversity of 45.5%. That means off-site compensation is required to make this proposal acceptable in ecological and biodiversity terms.

¹⁴ Tim Goodwin proof of evidence, Table 2

42. The Council's concern arises due to the risk that the Appellant's lease of the off-site land could be brought to an end within the 30-year monitoring period set out in paragraph 2.3.1 of the Sixth Schedule to the unilateral undertaking. The surrender of the lease or the Appellant going into administration or liquidation – all foreseeable and plausible scenarios – would result in there being no one to enforce this obligation against, because the freehold owner of the off-site land is not a party to the unilateral undertaking. The covenant would not be enforceable against the freeholder, whose title is superior to the leaseholder (see section 106(3) of the Town and Country Planning Act 1990).
43. In these circumstances, the Council submits that the unilateral undertaking fails to adequately secure the off-site mitigation, meaning that the Appellant cannot demonstrate that the proposal will have an acceptable impact on ecology and biodiversity, in conflict with Policies CP1, CP3 and CP7 of the Core Strategy and CC01 and TB23 of the MDD Local Plan.

Conclusion and overall planning balance

44. Overall the Council submits that the harms which this proposal would cause significantly and demonstrably outweigh its benefits.
45. Of course, the Council acknowledges the benefits of the scheme. 200 homes equates to around 25% of the Council's annual housing requirement and should therefore attract moderate weight in the planning balance. However, that importance of that benefit is tempered by the technical nature of the Council's shortfall in housing land supply and the context of very strong housing delivery over the plan period. The provision of (no more than policy-compliant) 40% affordable housing, equating to around 20% of the Council's annual affordable housing requirement should also attract moderate weight. The remaining social benefits – such as the provision of new amenity space – should be given limited weight.
46. The economic benefits of the proposal would follow from any development and therefore these should be given only modest weight, not least because Wokingham borough, and Hurst in particular, are not economically-deprived areas.
47. The environmental benefits are limited (particularly if the proposal fails to adequately secure biodiversity net gains) and are more than offset by the harm to landscape character and visual amenity. This is not a borough which is heavily constrained by Green Belt and the Appellant has put forward no evidence to support the claim that there is pressure on Wokingham's Green Belt for development to meet housing needs.

48. Set against these benefits are significant harms to the Council's overall spatial strategy, landscape character and visual amenity and sustainable transport, modest harm arising from the loss of BMV agricultural land and a failure to demonstrate that the proposal will have an acceptable impact on ecology and biodiversity (to which moderate weight should be given).
49. On balance, therefore, the harms significantly and demonstrably outweigh the benefits meaning that planning permission should be refused and this appeal dismissed.

Matt Lewin
Cornerstone Barristers

10 February 2023