

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004**

**LAND EAST OF LODGE ROAD, HURST, BERKSHIRE
APPEAL BY MACTAGGART AND MICKEL HOMES ENGLAND LTD**

APP/X0360/W/22/3309202

Inquiry sat 31 January, 1-3, 7-10 February 2023

APPELLANT'S CLOSING SUBMISSIONS

Introduction – the tilted balance and the plan being out of date

1. The proposed development of up to 200 homes in Hurst would be contrary to the adopted development plan, it is agreed. Section 38(6) of the 2004 Act would require it to be refused permission unless there are material considerations which indicate otherwise. Here, there are three key considerations which do indicate that permission should be granted:
 - (1) The Council's plan is out of date and the housing delivery trajectory has crumbled away to a deficit of over 850 units¹, and therefore national policy² provides for an assessment, biased in favour of the grant of permission (ie the so-called 'tilted balance') to be employed now as part of the national drive to ensure consistent housing supply; in other words, it is the right time for permission to be given for the scheme.
 - (2) The location of the development in Hurst allows a high-quality development to come forward – a mix of market housing and affordable housing, with open space and leisure facilities which will fit in well as part of the village's expansion over time and provide many benefits to the borough. The anxieties of existing residents of the village that it will

¹ Mr Church paragraph 2.1: 3.95 years and (as he accepted) 860+ deficit.

² In paragraph 11(d) of the Framework which the parties agree applies.

be ‘destroyed’ or de-natured in some severely adverse way are overstated; in other words, it is the right scheme.

- (3) The scheme would cause a moderate degree of landscape harm but that harm has been very much overstated in the objections. The field which comprises the appeal site, while undoubtedly enjoyed in views and as part of the setting of the village, is not of elevated importance in landscape terms and is certainly not important as any form of gap necessary to prevent the coalescence of Whistley Green and Hurst, something which has already occurred³. It also lies in a location which offers a genuine choice of non-car modes of travel, not just to the good range of village facilities but to schools and mainline stations (especially Twyford). Given the limited weight that should be given to the out of date 2010 plan, and the need for housing, the sustainability credentials of the site are good; in other words, the scheme is in the right place.
2. Hurst is a popular village with a good range of facilities and within striking distance by bus and bicycle of the nearby settlement of Twyford. Residential development in Hurst over the past 10-15 years has been in relatively small increments, partly as a result of the designation of Hurst in the Core Strategy of 2010 as a location for only limited development. As a result, housing in Hurst is very expensive, and there is a severe shortage of affordable units for ownership or rent.
 3. The Core Strategy and its allocations adjunct document of 2014⁴ are both acknowledged to be out of date. Moves to replace them started seven years ago, but due to a variety of reasons, the Council has not even reached the Regulation 18 stage of a draft plan which it intends to take forward⁵. There will not be a local plan replacement for some time⁶.
 4. Added to the fact that there is no up-to-date development plan to guide development in the borough, the historic pattern – interrupted only by a handful of good years - of failure to provide a sufficient amount of deliverable housing sites has reasserted itself. There is only 3.9 years’ supply of housing, a shortfall of over 850 homes.
 5. For these reasons, it is agreed by the main parties that the appeal falls to be determined by reference to paragraph 11(d) of the Framework, a provision which for over a decade now (in one form or another) has been operating to try to ensure continuing housing supply

³ See for instance the findings to that effect in Mr Hannington’s evidence for the Council: page 40.

⁴ The MDD of 2014, CD5.2.

⁵ See Mr Church’s evidence – the previous reg 18 consultation has had to be revised and it is not clear whether another reg 18 will be progressed (XX).

⁶ See the acknowledgement of that in Mrs Jones’ evidence at 5.52 at page 26.

notwithstanding failures to keep plans up to date or to ensure through the plan system that there is a rolling 5 year supply of housing.

6. The Council wishes the Inspector to ‘temper’ the weight to be given to the Tilted Balance in paragraph 11(d) of the Framework, due to what it describes as the ‘over-supply’ of housing against the requirement in several recent years. However, the idea itself is muddled. The Tilted Balance applies as a mechanism in certain circumstances (which are agreed to apply here). It makes no sense to speak of the presumption itself in paragraph 11 being given less “weight”.
7. It is certainly not the case that the current DLUHC consultation, which includes asking whether ‘oversupply’ should be able to be taken into account in setting the housing requirement when plan-making, affects this appeal in any way. No weight can be given to that potential future change in policy; indeed, the consultation merely throws into sharper relief the fact that current national policy does not allow so-called ‘over-supply’ to be taken into account when setting the planned housing requirement, let alone in the context of the rolling 5 year supply calculation. Mr Church for the Council used the expression “direction of travel” to describe the idea which is the subject of consultation, but that is not an appropriate term. There is no indication whether the Government will, in the end, make any change to this aspect of Government policy – after all, they signalled a root-and-branch dismantling and rebuilding of the planning system two and a half years ago and nothing of the kind has occurred.
8. It is not a question, looked at properly, of politicised expressions like Councils being “rewarded” for housing delivery, or “punished” for delivering too quickly:
 - (1) National policy requires, *as a minimum*, a rolling supply to be demonstrated of deliverable housing sites, to ensure that there is a sustained and sustainable increase in the supply of housing. That is plainly in the public interest and has been a cornerstone of national policy since before the NPPF in 2012.
 - (2) To be clear: the requirement for a 5 year housing land supply is not simply a sticking-plaster but a cardinal aspect of the Government’s objective of boosting supply in a sustainable way. If there is no 5 years housing land supply, housing supply is not being boosted in the way that the Government requires.
9. In fact, Wokingham is a perfect example of why national policy is framed as it is. For years the Core Strategy, which relies on a series of very large sites (the ‘SDLs’) for the bulk of its housing delivery, failed to deliver housing to meet the identified needs. Such sites are very slow to start

and therefore the housing delivery they enable over time is unreliable and lumpy. Once permission has been granted for a very large site which is delivered through multiple outlets over many years, the Council loses control over the delivery of the units and housebuilders, driven by market conditions, deliver housing as and when they deem it appropriate. That is precisely why the Framework requires a rolling five year supply *prospectively*.

10. That is clear enough from the policy itself – the circumstances prevailing in 2023 further illustrate why one has to apply the 5 years deliverable sites test properly: the economic conditions affecting home builder and buyers are more uncertain than for many years. Against that background, the Council want to have their cake and eat it, by asking the Inspector to find that although there is no 5 year supply, some large sites ‘may well deliver’ in that period – ie to have regard to the despite them not being judged “deliverable” for the purposes of the 5 year test. That approach should be rejected outright, as it is the perfect recipe for a continued failure to provide sufficient housing. As I say, interest rates, the housing market and the cost of living in 2023 should put the issue beyond question.
11. The Council resolved to grant permission this week for up to 200 units at the Bridge Farm site, citing the absence of a 5 year housing land supply, the benefits of housing and affordable housing delivery and the fact that the out-of-date development plan’s locational policies should be given only limited weight⁷. It is not suggested that there are any other sites than Bridge Farm and this site which are coming forward to meet the shortfall which currently exists.
12. Moreover, the Bridge Farm committee report takes a straightforward approach to the Tilted Balance – it looks at the benefits of the scheme and weighs them against harms, finding that the harms do not significantly and demonstrably outweigh the benefits. There is no question of waiting for any future claimed delivery on other sites, or leaving things to the (yet to emerge) local plan. A similar approach that should be taken here.

⁷ See the Committee Report into the Bridge Farm application – more detailed references below.

Benefits of the proposals

13. The appeal proposals would deliver up to 200 units, up to 80 of which would be affordable (in an agreed mix). Significant weight should be given to both the market and affordable housing which would be provided here.
14. The Council agrees that weight to be given to the affordable housing, and rightly so, given the ongoing unmet need both in the borough as a whole and locally. Ms Jones' figures for affordable need should be used⁸, as the Council's Icen report (using a different methodology) has not been tested in the forum for which it was designed (ie the local plan EiP). But even if the Icen figures for affordable need are used, there is no doubt that significant weight should be given to the provision of this amount of affordable housing. The proof of the pudding as far as affordable housing need is concerned is usually the state of the Council's register – here, as Ms Jones set out in her evidence⁹, the picture is pretty severe and worsening in the economic conditions. Last year, 353 households were threatened with homelessness in the borough, and the Council was accommodating 77 households in temporary accommodation, a figure that had leapt up 57% on the previous year. Affordable housing completions in the borough continue (regardless of the so-called 'over supply') to lag markedly behind the need. The Lodge Road appeal Inspector referred with approval to the Council's evidence that the affordable housing need in the borough was "critical"¹⁰.
15. That chimes with the judgement and recommendation of the officers in the Bridge Farm report¹¹, and with the weight which recent Inspectors have given to affordable housing needs being met in Wokingham borough – the recent Kingfisher decision¹², for instance, contains a notable finding by the Inspector about overall borough unmet need as well as more localised patterns of need¹³. In Hurst there are hardly any dedicated affordable homes (either in the 'settlement' or the wider Parish) and far from a mixed, rural community encompassing all kinds of socio-economic groups, it has moved far along the spectrum towards being a preserve of only a few.
16. The scale of the provision here (80 units) would equate to about 25% of the annual need for affordable units in the borough and should be given significant weight.

⁸ See AJ pages 25-26.

⁹ AJ page 25, paragraphs 5.21ff.

¹⁰ CD9.8, DL42.

¹¹ At paragraph 36 – "significant benefit to which great weight should be given".

¹² CD75.

¹³ Ibid at DL69 – where the affordable was only 6% (as opposed to 25%) of an annual requirement.

17. As for the market housing, the weight to be afforded to it comes from two sources: the 850 plus unit shortfall against deliverable supply in the next five years, and the ongoing national housing crisis. There is no dispute that on the Council's approach, all or the vast majority of the 200 units here would be delivered in the 5 year period. There are no deliverability issues and the scheme, though outline in nature, benefits from a significant amount of pre-existing work to inform the detailed stage. The weigh to be given to 120 market units, in a range of unit sizes but the majority family sized homes, should not be seen as harming Hurst – the additional children and families would guarantee ongoing vitality and vibrancy as far as local facilities like St Nicholas' primary school are concerned, without (as the evidence has shown) bringing any evident harmful consequences with them – a point to which I shall return later in these submissions.
18. In addition to the significant weight to be given to market and affordable housing, the following benefits of the scheme should be given weight:
- (1) The benefits to future and existing residents of Hurst of public accessibility across the site, including towards the Country Park via new and well-designed footpaths and an enhanced crossing of Lodge Road – this accords with the objective of improving public rights of way and encouraging walking for leisure and health.
 - (2) The benefits of publicly-accessible tennis facilities in the village, secured through the s.106 obligation. Whether or not the Parish Council decides to receive the facilities and the commuted maintenance sum¹⁴, or whether it is maintained by a management company, the rules for its use – first come, first served (no pun intended), with an emphasis on the courts as a community facility – would ensure that it plays a far more accessible and realistic village role than the very limited shared use available currently at the Dolphin School.
 - (3) The wider amenity space will also be available for existing as well as new residents, and one can well imagine a new playground being attractive to some families in the village, as well as the trim trail/outdoor gym being of substantive value.
 - (4) The scheme will bring Biodiversity Net Gain beyond that required either to compensate for any habitat lost on site but also beyond any level required in existing policy or future statutory requirement (ie the 10% in the not-in-force Environment Act 2021). The Council

¹⁴ As discussed, the value of the maintenance sum comes from the Council's guidance on such matters, which is based on actual costs of maintaining Council-owned facilities; there is no suggestion that the sum would be too small effectively to manage three tennis courts.

is concerned that the off-site component will not be secure because the landowner or long leaseholder is not a party to the s.106 obligation, but as I said yesterday, that is not necessary. The requirement to implement and maintain the BNG land off-site is enforceable against the owner/developer of this site; they will have contractual arrangements which enable them to ensure that the third party landowner of the off-site BNG land will carry out what is required. The very general point made by the Council – that companies can become insolvent and disappear – is a risk inherent in the whole s.106 statutory scheme. Here there is no evidence that the owner/developer of the appeal site is at any more risk of financial failure so as to make the s.106 unenforceable than any other (indeed, this is not an objection taken by the Council to the rest of the deed, to which it logically also applies).

(5) The scheme will bring some, relatively modest, improvements to footways and road crossings in the village as illustrated in Mr Whittingham's evidence. These are also benefits to the existing residents. The bus stop and My Journey contributions, though necessary for the scheme, would also have knock-on benefit for existing residents.

(6) Quite a substantial package of financial benefits flow from a development of up to 200 units, including the New Homes Bonus, construction jobs and a healthy uplift in Council Tax revenue for the Council.

19. I would make the general point again that the scale of these benefits (and indeed their feasibility at all in some cases, eg the tennis courts) flows from the scale of the site and the development. There is a theme in the Council and r6 objections that the scale of the scheme is too great for the village, but (leaving aside the absence of any real evidence of harm, see later submissions) in fairness the real benefits of a larger housing scheme for the village should also be duly recognised in the planning balance.

The impacts of the scheme

Landscape and visual impacts

20. Mr Friend's evidence was clear and reasonable and (importantly) it was based on a thorough and transparent GLVIA3 assessment of the landscape and visual baseline and impacts of the scheme. Full weight should be given to it.
21. The work assessed the sensitivity of the site in landscape and visual terms as medium, and the effect of the proposals as medium or moderate adverse with a lessening over time due to the establishment of the proposed landscaping.
22. Against that, the Council's witness Mr Hannington argued that the harm would be greater because the site was a Valued Landscape. That contention should be rejected:
 - (1) It was not based on any proper assessment of the relevant criteria for reaching such a judgement¹⁵;
 - (2) There was nothing suggested which took the landscape in question out of the ordinary. The guidance derived from Ouseley J's judgement in the *Stroud* case is that it would be lawful to look for physical aspects which elevated the landscape in question above the normal run of landscapes, rather than simply to rely on the views (or feelings) of those using or regarding the landscape.
23. A couple of points need further development. First, whilst there is no doubt that some members of the existing local community value their experience of the site (as undeveloped or open land visible from neighbouring roads, mainly Tape Lane and to some extent Lodge Road), there is nothing to the proposition that the site has an 'enhanced importance' in landscape terms because of where it lies in the settlement.
24. In that connection some time was spent on the perhaps academic debate about whether Whistley Green and Hurst have "coalesced". Coalesce means 'grow together' and in planning implies the merger of what previously might have been separate identities of different places. The main

¹⁵ Ie, the application of the criteria in Box 5.1 of GLVIA3 or the Technical Note 02/21.

village route within the settlement is along Broadwater Lane, and the two formerly separate places have long ceased to be separate. One passes seamlessly from one to the other. Lodge Road lies outside both settlements, in effect, and it would be wrong to suggest that the open space of the appeal site, as perceived from Lodge Road, supports the continuation of Whistley Green as a different place from Hurst.

25. Indeed, in glimpsed views from Lodge Road, and from multiple viewpoints on Tape Lane, one sees the fringe of mainly residential properties which border the site on three sides. There is no sense that one is seeing a ‘different place’ across the field – it is part of the same settlement, as the Council regarded it in 2010 and as Inspectors have agreed in the past.
26. That takes me to the second point under this head – the role of the site as amenity or setting to the ‘inverted C’ of Hurst housing in which it sits. The site is pleasant pasture land but has no scenic or other notable landscape qualities. It is (particularly in the winter months) markedly an urban fringe site, with the backs of housing and gardens very clearly visible across it in different directions. None of this supports a planning judgement that the site is Valued Landscape or should be treated as more sensitive than Mr Friend’s analysis considers it to be.
27. Moreover, in visual and landscape terms, the site does not form part of a wider landscape compartment. It is visually enclosed by the vegetation along its boundary, and by the much deeper and more substantial vegetation off-site which (as all agree) encloses Lodge Road. In landscape character terms, Lodge Road marks the transition from one landscape character area to another, the Loddon Valley, which is characterised by much more open and longer-distance views and a direct association with the River Loddon.
28. What this means is that the appeal site is not (in landscape or visual terms) an inlet of the wider countryside within Hurst. It is by contrast an enclave of undeveloped pasture land which reads (and has read for many years) with the settlement, as Mr Friend said. It has a ‘horsiculture’ use, as well as direct physical and visual relationships with the housing on three sides and the allotment. It may be useful to refer to the ‘inverted C’ shape but there is no magic to that pattern in Hurst – it did not arise because the site was functionally related to the settlement (like a village green or cricket pitch, or manorial land), and the shape is simply a function of where the roads are and where housing has infilled over the years.

29. So whilst the site is of moderate sensitivity, and provides some visual amenity for the settlement, to give it a really elevated sensitivity would be an overstatement. To call it a Valued Landscape would be entirely unjustified¹⁶.
30. As to effects, Mr Friend acknowledges in his work that the scheme would cause a major adverse impact on the medium sensitivity landscape, and that this would be at the moderate level lessening over time. There would be major change to some close views – from Tape Lane and from Lodge Road; the new access would lead to there being some clear views of part at least of the scheme from Lodge Road, which has a rural character at present.
31. However, the main point is that these impacts, whilst material and adverse, should not be overstated. The setting and the environment of the village will not be “destroyed” as some objectors have claimed:
- (1) The development will not lead to the loss of identity for Hurst or Whistley Green, given the current state of play.
 - (2) There will be some urbanisation of views from Lodge Road, although that would occur to a limited degree over time due to the intended detailed design of the scheme (captured in the Parameter Plans) which contain a substantial buffer of planting south of the new main access within the site. That urbanisation will replace views into or towards the settlement in which one at the moment gets glimpsed views of a pasture ringed to north, west and south by housing; so it will not affect the landscape character in a fundamental way. The way the settlement has developed over the years is by infilling – sometimes in marked way – between the roads. That is what this scheme would in principle do as well and there is no substance to the suggestion that it would represent an alien way for Hurst to expand in settlement pattern terms.
 - (3) The area over which one would perceive the effect of the changes to landscape and visual aspects of the site would be extremely circumscribed. As Mr Hannington identified, it is from Tape Lane, Lodge Road and perhaps (though his photograph as he explained was not from the carriageway but a good way inside private land) in glimpses from Broadwater Lane. There would be no wider landscape or visual effect at all. Indeed, from within and on the edge of the settlement, the change would be relatively minor also – the majority of the village has no visual or functional connection with the appeal site. Nothing about the

¹⁶ Mr Friend recounted the hierarchy, in general terms, of landscape sensitivity, starting with Very High value of AONB or National Parks, and then descending through their settings to high-quality landscapes of other kinds. A medium value/sensitivity ascription is clearly appropriate.

meaning, identity, or essential character of the place would be changed – the effect would be urbanisation on the edge/next to a relatively substantial village.

32. The Council and r6 party allege that the scheme would be harmful to character (beyond the loss of the undeveloped field) because the scheme would be ‘suburban’ in nature. It would, in the sense that Mr Friend explained – neither pretending to be vernacular rural buildings nor relating to a large town or city in terms of building forms and layout. It would be relatively low density and have plenty of open space within it, hence the easiest fit in terms of terminology is ‘suburban’. But that is entirely consistent with the nature of Hurst as it is today.
33. Hurst has a mixed character¹⁷, with a variety of different kinds of development within it, as Mr Hannington acknowledged. There are some much older, vernacular buildings within the old core, but much twentieth and some twenty-first century residential development in which many of the objectors to the scheme live. Martineau Lane, and Tape Lane, closest to the appeal site and therefore a little offset from the historic core of the village, are suburban streets adjoining the open field of the appeal site. The houses which one finds there are not pretending to be ancient or even old vernacular buildings, but are well-designed and pleasant houses of their time. It is not pejorative to describe them as suburban because that in character terms is what they are.
34. So a well designed scheme on the appeal site, as sketched out in principle in the Masterplan and in the Design document accompanying Ms Jones’ proof, would not be out of keeping with Hurst.
35. The idea was floated in cross examination of Mr Friend that the evident scale of the appeal scheme, and the fact that it was developed over a shorter period, would stand in contrast to the gradual evolution of Hurst in general as a place (“revolution not evolution”), but that point rather overlooks that, depending on where one is in the settlement, there are distinct areas of different character which overall show that Hurst has simply evolved to meet needs over time. One cannot assess that kind of point by hovering over an aerial photograph of the village; one has to read the sequence of changes on the ground.
36. If the new homes are well designed and laid out, as they are capable of being, then they will simply signify that Hurst has expanded in this location. They won’t change the character of School Road, or Broadwater Lane, or frankly any area except Tape Lane and (to a limited degree) Lodge Road; the village will continue to exhibit a variety of different sub-areas of

¹⁷ See the finding to that effect by the Inspector in the Sawpit Road decision: CD9.07 DL 30.

character¹⁸. In time the development will cease to be ‘new’ in the same way that the large suburban style homes in Tape Lane have ceased to be new.

37. In policy terms, these landscape and visual points carry some weight (overall, against the proposal). The Framework identifies that countryside in general is not subject to a blanket protection and that should inform the weight to be given to the harm caused; the Core Strategy policies add little to that main policy point.

Sustainability and location

38. The case for the Council and the r6 party is that Hurst is a completely unsustainable location, at least for an additional 200 homes.
39. A large part of the background to this issue lies in the settlement hierarchy within the 2010 Core Strategy, which designates Hurst as a ‘limited growth location’, on the basis of sustainability factors such as proximity to facilities assessed at that time. Of course, there is a connection between the high-level generality of the point as expressed in the Framework (significant development directed towards larger urban areas) and the 2010 Core Strategy, but one has to be very aware of the context for the judgement about sustainability now.
40. The 2010 hierarchy is agreed to be out of date – not just because of the long-overdue objective to recast the development plan to meet current needs, but because the 2010 hierarchy was established before the Framework and before relevant changes in the real world (for instance the opening of the Elizabeth Line at Twyford station). As a result, only limited weight should be given to the hierarchy in the plan, and, therefore, to the ‘formalised’ locational objection to more significant housing in Hurst.
41. Whether the Council will change its overall hierarchy or modify the approach to places within striking distance of Twyford, for instance, is not known or knowable at the moment (as Mrs Jones acknowledged). One should strongly resist the temptation to pre-run or assume anything

¹⁸ There will be no street lighting in the appeal scheme, like the rest of the village (except, I think, in Martineau Close); there would be no change to the overall ‘darkness’ of the environment at night or the general noise level – despite twice as many existing units the environment is relatively quiet.

about the local plan process. An assessment of the sustainability credentials of the site and location should be made as at today's date and applying the principles in the Framework.

42. The Framework does not rule out development (including development of this size or relative scale) either in locations which are currently defined as 'countryside' or are adjacent to villages. It does not require urban and rural areas to have the same sustainability credentials (hence the advice that one needs to take into account the different sustainability characteristics of urban and rural areas).

43. The crux (in terms of the applicable policy at least) is paragraph 105, the operative part of which reads as follows:

The planning system should actively manage patterns of growth in support of these objectives. 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.

44. Sustainability in this (travel/transport context) is defined by reference to two objectives. The first, 'limiting the need to travel' is a high level objective related to carbon emissions – obviously, people are still expected to go to work, the shops, the pub and so on. However, the greater the level of facilities within walking or cycling distance, the fewer trips by car (with the undesirable carbon emission consequences). To an extent that perhaps is not yet readily quantifiable, the association of car trips with unsustainability needs to be seen in the context of the changeover to electrification. This scheme looks to the future with 100% of the homes having an EV charging point, directly in line with what underpins the idea that travel (by carbon emitting car) should be limited. But it is right to acknowledge that there would still be a need to travel for many purposes from the appeal site.

45. The key is the second objective, "offering a genuine choice of travel modes". Mr Adam accepted that for village facilities and as far as most secondary schools and Twyford station are concerned, the scheme would offer a genuine choice. His case was that for some, those modes would not be realistic; but that is always the case. The question is – to what degree?

46. This is a matter of judgement. There is no support for the overstated assertion that the site is completely unsustainable. The Sawpit Road site also just outside the current settlement limit of Hurst, was found to comply with the advice in paragraph 105 of the Framework. The Inspector found:

48. In my view, future residents of the proposed development would benefit from realistic and viable opportunities to reach key local services and facilities on foot and by cycle, including employment, primary education, retail and leisure facilities, without the need to rely on the private car.

49. Taking the above factors into account, I consider that the proposed development would be adequately accessible to local facilities by means of walking and cycling. Paragraph 79 of the Framework supports the sustainable growth of rural areas but it acknowledges that it is not always possible for such areas to provide for the full needs of its community, and in such cases, nearby villages will be likely to support each other.

50. Whilst Hurst village offers a good range of local facilities to address many everyday needs which are accessible by walking and cycling, it is inevitable that there will be demands for travel outside of the village, to higher order settlements in the local area, or to alternative service centres that can offer facilities that Hurst does not. Further essential facilities and services including railway stations, local and supermarket shopping, a GP surgery, and employment, are provided in Twyford, Reading, Winnersh and Wokingham which are accessible from the bus stops in the proximity of the site.

51. As a consequence of the above, I do not consider that the occupants of the proposed dwellings would be wholly reliant on the use of private motorised transport for most of their day-to-day needs.

47. Those findings echo Mr Whittingham's in this case. The village has a "good range" of facilities for a village which address "many everyday needs"; there would be "realistic and viable opportunities" to access employment, primary education, retail and leisure without needing the car. Local facilities would be "adequately accessible" by means of walking and cycling. Further essential facilities further afield are accessible by bus stops in the proximity of the site.

48. Similar views were expressed by the Inspector deciding the Valley Nursery appeal¹⁹, a site in a different part of the settlement compared to Sawpit Road. While others, for instance Mr Major in the first Lodge Road appeal²⁰ reached an overall negative conclusion, reading these three decisions together certainly illustrates how the settlement as a whole cannot be so easily dismissed as unsustainable.

49. Further, one needs to look carefully at Mr Major's reasoning in the Lodge Road appeal. His views include acknowledgement of the range of bus services and the need not to be careful not to apply the Council's definition of "good" public transport in an inappropriate manner²¹ and the need to apply the CIHT guidelines sensibly; his views on walkability to and from that site

¹⁹ CD9.06.

²⁰ CD9.08.

²¹ Ibid DL 29 and 39.

are very specific to that location and the conditions he found at the time²². It could not be said by any means that he would have formed the same view about the appeal site now before this inquiry.

50. As Mr Whittingham's evidence shows, there would be a genuine opportunity to walk, cycle and use the bus to access facilities.
51. Facilities are more than 'basic²³' – they are as Mr Whittingham said, good for a village. They encompass a well used local convenience shop with good opening hours; a local primary school, several religious facilities and village hall, all of which are available for a range of activities; a play area. Unsurprisingly, the village facilities are well regarded and there is no suggestion of imminent closure or loss of any of the relevant facilities.
52. As to mode of travel to the facilities, focussing first on walking, most of the village facilities are within easy walking distance. The quality of the walking environment in the village is variable (along with the pavements) but there are few notable inclines (in the main part of the village). Furthermore, despite the repeated references to 'playing chicken' and 'near misses', there is no evidence at all of pedestrian-related accidents. Of course there are clusters of activity around the school and the shop at various times, but those are well understood and have plainly not led to serious conflict.
53. Improvements would be made to Tape Lane where there might be more hazard at the junction; some improvements to the generality of the School Road pavements seem likely to come forward with the Sawpit Road scheme.
54. Walking would therefore continue to be a primary means of getting about the village, for new residents as well as existing.
55. As to cycling, the range of facilities expands. All of the relevant facilities (including almost all the secondary schools²⁴) and Twyford Station are within easy cycling distance. Cycling is as important in the sustainability hierarchy as walking. The village can be cycled in. Lodge Road is wide enough (all the way to Twyford) to cycle on and for cars to overtake cyclists²⁵. The speed limit is 30 mph; there are no recorded accidents involving cyclists on Lodge Road and none in the village apart from one slight accident at the end of Tape Lane. The evidence does

²² Ibid DL30-32.

²³ Mr Whittingham was asked to agree they were 'basic' and did not.

²⁴ There are particular issues involved in the Waingells College access which ought to be acknowledged and which make cycle access rather more difficult certainly at times of the year.

²⁵ Mr Alan accepted that some would cycle to Twyford; there was 3rd party evidence to the inquiry about cycling to the station as well.

not therefore support any perceptions that it is so dangerous to cycle that it should not be seen as offering a genuine choice of mode.

56. Buses (the 128 and 129) are not plentiful, but they are useable. Mr Whittingham's evidence shows how one can catch the bus to Twyford Station (and back) to suit traditional working hours (though he notes how work patterns have very much changed over the past few years). He also refers to how the bus can be planned for – not just in general terms but by using the live tracking that is available on the internet or on a mobile phone using the app. The letter from the bus company explained that reliability was back to normal. Of course, the bus frequency is not great (especially at the weekend) but it is regular, and aimed at meeting the identified service needs now – it goes to Twyford but also Wokingham and Winnersh (employment as well as a different mainline service) and in relatively close proximity to the secondary schools both north and south of Hurst²⁶.
57. Twyford Station is plainly the focus of trips taken by some of the existing residents of Hurst. Doubt was sought to be cast over the additional utility of the Elizabeth Line, but apparently vacancies in the car park have reduced at peak times markedly since its opening, so some people are presumably using it. If one is going to one of the intermediate stops towards London, the Elizabeth Line is a boon; it also hugely speeds the cross-London trip if one has used the fast mainline to get to Paddington.
58. The question was asked of Ms Jones as to whether the Elizabeth Line had been envisaged by the Council in 2010 (presumably to make the point that if it was in prospect, it had not been used to elevate the locational status of Hurst). As she said, the effects of the Elizabeth Line were unknown at the time and it was simply flagged up that things (including potential revisions to the Green Belt) would be revisited when there was more evidence.
59. It is a surprising aspect of the appeal that objectors seek to diminish the importance of Twyford Station – it is the best rail connection in the borough and it lies 1.5 miles to the north of the site, within easy cycling reach (and walkable by some, if not many); there is a bus service which one can catch to get there and back at either end of a traditional working day, as well as at other times of the day if one is able to be more flexible – the journey time is about 10 minutes. There are many areas of large towns and even cities where much longer trips by cycle and bus are taken to get to such good mainline rail services, and considerable weight should be given to the proximity of, and accessibility to, the station at Twyford when considering this question.

²⁶ His cross examination for instance contains several passages where he explains how children's journeys to school at the Piggott and Emmbrook Schools would feasibly work.

60. For these reasons, the site lies in a sustainable location and offers a genuine choice of modes of transport. There is no capacity issue with regards to walk, cycle or bus²⁷, and therefore the scale of the proposed development is irrelevant to the key question in paragraph 105 of the Framework²⁸. All the residents of the scheme would have the same genuine opportunities to walk, cycle and use the bus to access the local village facilities and those further afield.

Other points - BMV

61. An objection is maintained in relation to the use of BMV agricultural land on the site. The factual position is that nearly half of the site is graded 3A (ie within the BMV category of soils). However, only very limited weight should be given to the loss of that soil for agriculture:

- (1) The site has been used for many years not for agriculture but for keeping horses. There is no sign that would cease if the appeal was dismissed.
- (2) There are considerable issues with waterlogging on the site which, combined with its relatively small area, make it unattractive for arable farming and for livestock other than sheep. Sheep farming is unviable for the reasons set out in the Simmons and Sons report.
- (3) The Council's consultants have not looked at the financial viability of agricultural re-use of the site at all. The suggestion that the site might be used for horticulture or fruit is similarly unsubstantiated – there is no evidence that either would be viable (indeed the same points about waterlogging and overall site size are likely to apply).

62. Loss of BMV land is a point to be considered in paragraph 174(b) of the Framework, but here only limited weight can be given to it. There is no evidence that the BMV would have any other benefit (other than the landscape and visual aspects which I have already covered).

²⁷ There is no indication that the bus service is full at present, or that the single-decker vehicle used is the only type available to the bus company. In short, there is no capacity issue identifiable on the evidence.

²⁸ The question to Mr Whittingham was whether it made a difference in sustainability terms if the scheme was 1 house or 1000 houses. In terms of genuine opportunity to use non-car modes, the answer is no. The point was re-phrased as specifically relating to tonnes of carbon emitted by the private car in the two examples; in the abstract, of course more homes would mean more carbon, but here (a) there is no yardstick or comparator against which to judge carbon emissions from this site and (b) the carbon aspect of the sustainability assessment has to be seen in the light of changing car patterns and the growth of electric car use (and the 100% ev charging points offered in this scheme).

Drainage and flooding

63. As Mr Allum-Rooney's evidence sets out, the site is in Flood Zone 1 and apart from persistent problems of waterlogging due to rainfall, there is no evidence of fluvial flooding. The Environment Agency have requested full modelling of the ditch that runs through the edge of the site but in line with the guidance in the PPG, that would be disproportionate, a point underlined by the absence of any substantive rejoinder by the EA to the technical work submitted by the Appellant's drainage and flooding experts. The Appellant does not consider that a condition regarding further flood-safety design is necessary in these circumstances, but should there be any doubt on the point, a draft condition has been discussed which (suitably re-worded) would give some further oversight of this issue at the detailed stage.
64. Active drainage is required on the site, and the appeal proposals would deliver it. The initial work has shown how SUDS would work, with impermeable attenuation basins (and if necessary additional on-site pipework) allowing controlled discharge to the ditch at a rate less than current greenfield discharge. The work has secured the agreement of the LLFA, and would be worked out in full detail at the reserved matters stage if permission is given. The management company for the site will administer the drainage system, placing no additional burden or flood risk on the off-site channel(s) or on neighbouring landowners.
65. It is clear from representations made at the inquiry that the issue of drainage is a major local concern. Thames Water's obligations under separate legislation are not a matter for this process, but I note that the company has confirmed that capacity for the appeal scheme exists. The active management of Thames' sewers so that they are not surcharged during extreme rainfall will be an ongoing concern not just to the existing residents but to the site's developers. What is clear is that the drainage solution for the proposals themselves will enable it to come forward without additional detriment to neighbours. Final control over details would rest with the Council via conditions.
66. Various other points were raised in the representations of local people. They are all answered in the application documents and consultation responses. To run through the most prominent of them:
- (1) There will be no adverse highway safety implications of the scheme. This had formed part of the Council's reasons for refusal but it is not agreed not to be a concern. Mr Adam

confirmed that the point encompasses not just the safety of the site's main access but safety on the highway generally²⁹.

- (2) No air quality impacts would occur. Even assuming all petrol/diesel cars, the scheme's trip generation and distribution is agreed not to give rise to any detrimental impacts on any AQMA.
- (3) The site is not a Local Green Space. It may be the subject of promotion as such by the Parish Council through the local plan process, but that has not been considered as yet and, in common with the rest of the yet-to-emerge plan, can be given no weight.
- (4) Trees would be protected (draft condition 19 deals with that in the normal way)³⁰. As Mr Hartley said when he gave evidence to the inquiry, there is no need for any incursion into the Root Protection Area of any tree (or into the 15 times diameter buffer for the veteran tree T66), despite the Illustrative Masterplan showing some³¹. The path adjacent the boundary of Tape Lane within the site can easily be moved to a position outside these areas at the detailed stage and that would be the intention. Similarly, Mr Hartley (working with the Appellant's drainage engineers, Motion) show how the indicative SUDS basins can be re-configured to avoid any incursion into RPAs or buffer zones. There would be extensive new tree and hedge planting (including the Lodge Road hedge, which as Mr Hannington said, is capable of being improved if replaced) as a result of the scheme being implemented.
- (5) Concerns over the ecological impact of the scheme have been raised; however the site is not of high ecological value and the Council has withdrawn its original reason for refusal on ecology. Mr Goodwin's text sets out the ecological management plan in more detail and explains why there is no objection to the scheme on ecological grounds.
- (6) The Council has similarly removed its original concern over minerals impacts³².

²⁹ RfR 8 originally alleged not just safety problems with the accesses but as a result of the "overall development" – a position no longer maintained by the highways authority. There is no suggestion that the scheme would give rise to free flow or other safety problems.

³⁰ Reason for Refusal 6 – there is nothing now said about 'insufficient or contradictory information' on trees and hedges and the cross examination of Mr Hartley was confined to RPA issues which can be resolved at the details stage – something not questioned by either the Council or the R6 party.

³¹ In terms of the assessed shape of some RPAs adjacent the road, Mr Hartley described how these had been assessed in detail in line with the British Standard. The Council say that there would need to be special justification for incursion into any RPA but the evidence is that no such incursion would be necessary when the scheme comes forward in detail.

³² RfR 3. See now the SCG.

Policy consequences

67. The Appellant acknowledges that the proposals are not in accordance with the development plan as a whole given the relative importance of Core Strategy policies CP9 and CP11 within it. However, the evidence shows that the proposals accord with: Core Strategy Policies CP1³³ overall with limited non-compliance with criterion 7; Policy CP2 (inclusive development)³⁴; CP3 (General Principles)³⁵; CP5 (mix)³⁶, CP6 (choice of sustainable modes of transport)³⁷; CP7 (ecology)³⁸; and with MDD Policies CC01 (presumption in favour of sustainable development)³⁹ and CC03 (trees)⁴⁰.
68. These policies fall into the category of ‘most important for determining’ the appeal, and are therefore to be deemed out of date due to paragraph 11 and footnote 8 of the Framework. However, they are broadly in accordance with the Framework and have not been overtaken by events locally so as to make them notably out of date for other planning reasons. The scheme would comply with them.
69. Policies CP9 and CP11 of the Core Strategy⁴¹ and Policy CCO2 in the MDD⁴² would not be complied with, but these policies are out of date not just because of the absence of a 5 year Housing Land Supply, but because they have long been superseded or undermined by the change in housing needs. The Council referred a couple of times to the Plan Period for the Core Strategy extending to 2026, but (a) the Council recognised as long ago as 2016 that the plan needed to be reviewed and updated, and (b) the Council acknowledges now that they are out of date for decision-making purposes⁴³.

³³ CD5.1 page 30.

³⁴ Ibid page 37.

³⁵ Ibid page 38.

³⁶ Ibid page 41.

³⁷ Ibid page 43. I bear in mind that it was accepted by Mr Adam that the policy does not require “good” public transport connections in every case – see the comment to that effect also by the Inspector in the Lodge Road appeal, CD9.8 at DL39 (“unrealistic”).

³⁸ Ibid page 48.

³⁹ CD5.2 page 6.

⁴⁰ Ibid page 10.

⁴¹ CD5.1 pages 49 and 53 respectively.

⁴² CD5.2 page 7.

⁴³ See the Committee Report on the Bridge Farm application at page 327 (“the restrictive locational policies in the current local plan are considered to be out of date”); see express reference at page 343 (para 20) to CP9, CP11 and CCO2 being out of date. Mrs Jones’ evidence was consistent with that, see paragraph 7.1 and XX on the point.

70. As a consequence, the weight to be given to non-compliance with CP9, CP11 and CCO2 is limited. Due weight should be given to the moderate (reducing to minor) adverse landscape and visual impact that the scheme would cause, however.

Application of the tilted balance and conclusion

71. Putting those points into the Tilted Balance:

- (1) The benefits (particularly housing and affordable housing, but seen in the round) are of significant weight; that is inevitable given that what is proposed is up to 200 units with 40% affordable against a background of a large deficit in 5 year housing land supply and ongoing affordable need.
- (2) Due weight must be given to the landscape and visual harm but this is nothing like as extensive as the Council and r6 party argues – the land is not designated or Valued Landscape, and the effects, whilst negative, are extremely localised and circumscribed. The village will be notably expanded in size, but will retain its essential character because of the way one experiences it – as a series of streets and lanes with a varied character.
- (3) There is little by way of additional negative weight to be added – some small increment for loss of BMV only.
- (4) The tilted balance requires permission to be granted in these circumstances unless the harms outweigh the benefits, not just narrowly but *significantly and demonstrably*. In other words, there is a really notable imbalance between them. In this case, the principal point, landscape and visual harm, does not fall into that category and the tilted balance clearly indicates that permission should be granted.
- (5) The case of the recent Kingfisher decision⁴⁴ is interesting as it is an example of the tilted balance leading to the grant of permission even where landscape harm and ‘poor accessibility’ were found. That is not the case here, as the evidence shows.

⁴⁴ CD75 at DL70-71.

72. Unsurprisingly, the less tangible aspects of the case advanced against the development involve stressing the degree of change as a harm, overstating landscape harm, claiming serious potential safety issues on the village roads, and damning the village as effectively cut off from civilisation other than by use of the private car.
73. The inquiry evidence has cast doubt on all of those points, however keenly and genuinely they may be felt by current residents. The scheme would be a material change in Hurst, but the village would remain a wonderful place to live – it would just be that up to 200 more households, including 80 who at the moment would stand no chance of being able to live in Hurst, would also be able to enjoy the place.
74. Ms Jones was asked whether she had taken into account the degree of harm that would be felt by existing local residents, but no specific harm was put to her. There is no evidence that village facilities would be over-burdened or harmed⁴⁵ as a result of the scheme, despite the fears of local people.
75. The first reason for refusal describes the development proposed as “unplanned”, but that is not a valid criticism: the Framework is intended precisely to enable schemes such as this to be consented and built when the local plan system is failing, and there should be no doubt that it is failing in Wokingham, despite the Council’s protestations.
76. There has been persistent failure to review the plan and bring it up to date to meet current needs, and we are effectively nowhere – no reg 18 even that will be carried forward. Large sites allocated in 2010 have delivered housing in a lumpy and unstructured way according to market conditions and that has left a big gap of over 20% of the needed prospective housing. Mr Church was unwilling to accept that this represented a significant shortfall, but on any reasonable assessment it surely does.
77. For these reasons, a really well-designed development on the appeal site, as an extension to a village with a good range of local facilities, and within striking distance of schools and mainline rail services by a choice of modes of transport, represents an excellent way to ensure that housing continues to be delivered in a sustainable way in the borough.

⁴⁵ Ms Jones’ evidence on primary and secondary education places was not challenged.

78. For these reasons, and subject to the conditions and s.106 obligation as submitted, the Appellant respectfully requests that the appeal is allowed and permission is granted.

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10 February 2023