Appeal APP/X0360/W/22/3309202

Land East of Lodge Road, Hurst, Wokingham

CLOSING SUBMISSIONS

ON BEHALF OF

St. NICHOLAS HURST PARISH COUNCIL

Introduction

1. Over the course of the Inquiry you have heard from a large number of residents. You heard from Aisling Humphries-Griffiths, a young graduate starting her career in London. You heard from Frances Davis, a pensioner who has lived in Hurst since 1974 and has attended every inquiry concerning this appeal site since then. You heard from city professionals,[1] academics,[2] retirees,[3] a medical doctor,[4] a teacher,[5] many parents,[6] and even one developer.[7] You heard from a variety of residents from different stages of life and different walks of life. What united them all was their opposition to a proposal to increase the size of their small community by 45.5%, virtually overnight, through a large unplanned scheme that the Appellant now concedes is not in accordance with the Development Plan as a whole.

2. As I said in opening, paragraph 15 of the NPPF provides that "*the planning system should be genuinely plan-led*." It is trite that a plan-led system should direct large developments such as this one to areas capable of supporting them, through a deliberative and consultative plan-making and allocation process. The government did not intend, when it introduced the tilted balance, to undermine this essential feature of our plan-led system. If the government had so intended, it would have amended the statutory requirement that appeals should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.[8] It did not make that

[1] E.g. Victor Boardman, Katherine Howe and Jessica Lake.

[2] John Vimpany and Dr Gemma Moore.

[3] E.g. Frances Davis and John Edwards.

[4] Heidi Hamer.

[5] Sarah Barnard.

[6] E.g. Claire Woodward, Dr Gemma Moore, Victor Boardman.

[7] Mr Griffiths.

[8] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

amendment. Accordingly, this statutory requirement is unaffected, as a matter of law, by the age of the plan or what the NPPF states about the weight to be given to Development Plan policies.[9] The Development Plan has primacy. Anything less would not be a plan-led system.

3. However, this scheme is a proposal which says plans don't matter. It is just the kind of *ad hoc* development which a plan-led system seeks to avoid. In accepting that the Appeal scheme does not accord with the Development Plan *as a whole,* the Appellant has tacitly accepted that the scheme inflicts direct harm on the Development Plan's central objectives. Plainly it does. This scheme would impose eight times the maximum number of new dwellings permissible for Limited Development Locations such as Hurst and Whistley Green (25), as set out in Core Strategy Policy CP17- Housing Delivery. This is not just an arbitrary designation: Limited Development Locations are limited for good reasons. They are defined in the Core Strategy as those areas "*containing a <u>basic</u> range of services and facilities*" (emphasis added).[10]

4. The purpose of any plan is to direct the right development to the right place. The Appellant seeks to impose a large scheme on an area that the Development Plan tells us is the most inappropriate place for such a scheme.

5. As I said in opening, the Appellant's only answer to this criticism is to wave the tilted balance as a trump card, and to invite you to apply it here in a simplistic and robotic way, devoid of nuance and context. But the context here is crucial. The plan-led system in Wokingham is working. Wokingham is doing very well at building the homes it needs. As Ms Jones accepted in cross-examination ("XX"), Wokingham <u>has</u> significantly boosted the supply of homes, in line with the government's objectives. Large sites are coming forward in appropriate places, in accordance with the spatial hierarchy in the Development Plan and indeed the draft allocations in the emerging Plan. To give just one example of this, two days before the Inquiry closed, the Bridge Farm scheme for 200 homes in Twyford (a major development location) was consented by WBC.[11] The tilted balance applies in this

[9] While the NPPF is an important material consideration, it does not have a higher legal status than the Development Plan, as the NPPF itself recognises. See NPPF paragraph 2: it is "*a material consideration in planning decisions*."

[10] Core Strategy Glossary, p 122 [CD 5.01].

[11] LPA Ref 212720.

appeal precisely because Wokingham has overdelivered in the past, its early completions eating into its housing supply pipeline.

6. The Appellant's response to this point during this Inquiry was not to dispute the reason for the Council's failure to demonstrate a five year housing land supply, but to effectively invite you to ignore it. In the Appellant's worldview, a 5 year housing land supply is a policy end in and of itself, rather than a means of significantly boosting the supply of homes. The Appellant therefore invites you to accept its proposition that delivering the required number of homes within 3 years is worse than delivering the same number within 5 years: it is the pipeline itself that matters, says the Appellant, not what flows through it. The Parish Council invites you to reject this contorted logic, and instead, when you apply the tilted balance, properly consider and give weight to the reasons why the Council cannot currently demonstrate a 5 year housing land supply: reasons which are not disputed by the Appellant.

7. As I said in opening, the government has recently acknowledged the policy problems that face overdelivering planning authorities such as Wokingham, and has promised reform to the tilted balance. In the latest consultation on the NPPF (dated 22 December 2022), the government's position could not be clearer:

> *"Our proposed changes to the operation of the Housing Delivery Test are similarly designed to support a plan-led system, by preventing local authorities who are granting sufficient permissions from being exposed to speculative development, which can undermine community trust in plan-making."*

8. This proposal is exactly the sort of speculative development that the government has firmly in mind and wants to discourage. If allowed, this proposal would undermine this community's trust in plan-making.

9. I now turn to each reason for refusal that the Parish Council defends.

Reason for Refusal 1 (unsustainable pattern of development) and 5 (unsustainable location)

<u>The approach to sustainable locations in the NPPF</u>

10. Paragraph 105 of the NPPF tells us that significant development should be directed to sustainable locations. Surprisingly, in XX Ms Jones was unable to accept that this scheme

of 200 houses should be categorised as significant for the purposes of paragraph 105, although she did agree it was "large scale."

11. Mr Whittingham's comment that paragraph 105 of the NPPF tells us we should not expect the same level of sustainability from a rural location as we do an urban or suburban location is correct in the abstract, but it ignores the reality of this proposal, which is described by the Appellant itself as "suburban" in character.[12] Applying Mr Whittingham's logic, one would have a license to put large urban or suburban developments in any rural location, as long as the transport links were appropriate to the existing settlement, however great the increase in settlement size might be as a result of the development. That is a deeply flawed approach. Substantial developments require good transport connections, whether they are in the countryside, or towns, or cities. One might not need good transport links for a more modest development proposal (e.g the *Sawpit Road* appeal,[13] concerning only 4 dwellings), but for a proposal for 200 houses a sustainable location is absolutely essential. Paragraph 105 of the NPPF is clear that "*Significant development should be focused on locations which are or can be made sustainable.*" It is an endorsement of the very concept of a spatial hierarchy, a concept which the Appellant invites you to ignore.

12. The fact that the NPPF uses the term "significant development" rather than simply "development" is also an important indication that the government recognises that the greater the scale of the development, the more sustainable its location needs to be. Scale is important when we consider sustainability.

13. However, in XX Ms Jones refused to concede that the scale of a development had any impact on the sustainability requirements of that development's location. When it was put to her that a location could be sustainable for 1 new dwelling but not 1000 new dwellings, her response was "*it's either sustainable or it's not*." This is contrary to the clear wording of paragraph 105 of the NPPF.

14. Put another way, if the location of a development does not encourage modes of travel other than the motor car, or only does so to a limited extent, the harm in sustainability

[12] Mr Friend's Proof, 5.2.3.

[13] CD 9.7.

terms will plainly scale up depending on the size of the development. This is because a larger development will add more cars to the road.

15. Overall, the Parish Council rejects the Appellant's "one size fits all" approach to sustainability.

Travel options for residents

16. Paragraph 105 of the NPPF also requires that there should be a genuine choice of transport modes. As the evidence shows, in Hurst and Whistley Green, for many people the choice is theoretical rather than genuine. The only realistic option is the motor car.

Bus services

17. The Inquiry heard about the local bus services in no small amount of detail. The 128 and 129 bus routes must now be indelibly imprinted in all our minds: but just in case, you have all the timetables before you in written evidence.[14] The bottom line is Hurst and Whistley Green have poor bus services. It is surprising that the Appellant still refuses to accept this, in the face of all the evidence.

18. Taking the route to Twyford as an example, the first bus to Twyford from the appeal site is the 07:22 from School Road (Route 128). The next service is 09:23. Then it is roughly every hour. The last bus from Twyford Station to Hurst is at 19:10. On Saturdays, the earliest service is 08:35 and the last is 17:12; the last return bus is at 18:09. There is no service on Sundays.

19. Only Route 129 goes directly to the GP surgery in Twyford on Loddon Hall Road. You must catch the 15:46 bus. There is no other service, and no return journey.[15]

20. This cannot sensibly be described as anything better than a poor bus service.[16] It is inadequate for anything other than non-essential journeys.

[14] Cllr Smith's Sustainability Proof, Appendix 13, p 1.

[15] Cllr Smith's Sustainability Proof, Appendix 13, p 2.

[16] Indeed, the Council's definition of a 'good' bus service is at least a thirty minute service frequency during peak times (7:00 to 9:00 and 16:00 to 19:00 Monday to Saturday); and at least an hourly service frequency during off-peak hours (9:00 to 16:00 and 19:00 to 22:00 Monday to Saturday and between 7:00 and 22:00 on Sundays); Core Strategy Policy CP6, supporting text paragraph 4.37 (CD 5.01).

21. On bus travel to school specifically, Mr Whittingham suggests that a primary-school-age child attending Colleton School in Twyford can catch the 7.22 bus to get to school.[17] This is an unattractive proposition:

    a) The child would arrive, presumably with a parent, just after 7.30. The earliest they could access the school building is 8am, if their parents have paid for a place in the early start club.

    b) The parent would have to leave them 10 minutes before gates open[18] or else wait roughly an hour for another bus back.[19]

    c) Regarding the way back home from that school, given that school finishes at 15.15, a parent would need to pick up their child and wait 53 minutes for the next bus back to Hurst (16:08).

22. It is therefore fanciful to suggest that the bus would be a realistic travel option for parents of primary school children attending Colleton School.

23. Public transport option for secondary schools in the area are similarly unrealistic. As is clear from the table produced by Mr Whittingham in his evidence in chief, all of these various options involve after school wait times of between half an hour and over an hour, and in some cases considerable walks to and from the bus stop. Mr Whittingham's suggestion in evidence in chief ("XiC") that there were "*all manner of things*" children can do before or after school does not address the inflexibility of the limited bus service which means it would not a realistic travel option for most schoolchildren in this development.

24. This limited bus service is also unreliable. Thames Valley Buses have confirmed that "*unpredictable traffic conditions along the A329, and more particularly in Reading and Sonning, does make this route susceptible to being less reliable than many others which we operate, and perhaps more noticeable given it operates broadly hourly*."[20] As Mr Whittingham confirmed in XX, the Appellant does not challenge the bus operator's assessment of their own services.

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[17] Mr Whittingham's Proof, 5.19.

[18] Note that they would not be able to get a return bus ticket for the 128, as it would be the 129 going back.

[19] The next return bus is at 08.56 from Colleton Drive.

[20] CD 72.

25. Mr Whittingham suggested that new demand for bus services "may" result in improving the bus services' operations.[21] This is mere speculation. No weight should be given to this suggestion. Nor should any weight be given to the similar suggestion that the M9 bus route to the Piggot School, last in place 9 years ago, might be restarted as a result of this proposal.

Walking

26. Twyford is not easily accessible on foot. The route is partly unlit and has no footway for large sections. It is not realistic to suggest that residents will regularly walk to and from the station or the necessary services further afield, particularly in winter months. And indeed Mr Whittingham rightly conceded this during the Inquiry (contrary to what he said at 5.19 of his Proof).[22]

27. Walking to any of the schools other than St. Nicholas Primary School is outside acceptable walking distances and not a viable option, particularly given the quality of the roads, lack of pavements and the number of vehicles travelling through Hurst and Whistley Green and the surrounding area.

The Elizabeth Line

28. The Elizabeth line is a convenient way directly into east London, particularly once you are already in London. But it is by no means the best way into London for Twyford commuters. As Mr Whittingham accepted in XX, the fastest way into London from Hurst and Whistley Green is not the Elizabeth Line but still the previous train route (a route which Twyford has benefited from for many years, and which was in place for many of the previous appeal decisions concerning sites in Hurst and Whistley Green). It has certainly not transformed the longstanding sustainability problems of Hurst and Whistley Green.

[21] Travel Plan (CD 11), 5.6.

[22] "*There is an additional nearby option for primary school children to attend Colleton School in Twyford. The route to this school is shown on Plan AW5. This school is 2.1km from the centre of the site and accessible by walking (24 minutes).*"

Cycling

29. You heard from local residents that cycling is not for the faint hearted in Hurst and Whistley Green. Cars on the roads are fast and regularly break the speed limit. The roads are poorly lit and often icy or flooded in winter.

30. As Mr Adam notes in his evidence, Broadwater Lane and Lodge Road are arterial routes in and out of Wokingham, which are heavily trafficked. The Manual for Streets notes that that cyclists are particularly sensitive to traffic conditions, and high speeds or high volumes of traffic tend to discourage cycling.[23]

31. It can be expected that experienced cyclists might travel to Twyford or indeed Wokingham by bike from the development: but it cannot be reasonably expected that less experienced cyclists and/or children and elderly persons could do the same at any time of year, let alone in all seasons.[24] Overall, it might be a viable option for some residents, but for most it will not offer a genuine alternative choice to the motor car.

Services

32. It is clear from the evidence that Hurst and Whistley Green have a basic range of services, and therefore their designation as a limited development location remains apt. There is a "top up" shop, a bakery that rarely opens, a village primary school, three pubs (one of which is currently closed), and some sports and worship facilities. That is essentially it. There is no doctor, dentist, or large retail shop.

33. It is not disputed that to visit a doctor or do a large weekly shop, residents would need to go further afield. They would almost always do so by car.

Other developments and whether they are comparable to this proposal

34. Many of Ms Jones' comparisons between this scheme and other developments and/or proposals were not apt:

[23] Quoted in Mr Adam's Proof, 6.31 and 6.33.

[24] It also cannot be presumed that everyone living in the proposed development would want to or would be able to ride a bike.

a) Bridge Farm, Twyford.[25] This scheme was consented by WBC in the second week of the Inquiry. The site for this proposal (up to 200 homes) is adjacent to the settlement boundary of Twyford (a major development location) and the railway line. Twyford station is a short walk away.

b) The *Sawpit Road* development.[26] This is discussed further below: however, the key point is this was a proposal for 4 homes, not 200.

c) Greenfield edge of settlement sites in Hurst proposed in the emerging Plan.[27] Again, these proposals were for much smaller developments. And in any event, Ms Jones' evidence was that the emerging Plan should be given no weight.[28]

The framework travel plan

35. No weight can be given to the Appellant's framework travel plan.[29] Aside from its vagueness, there is no mechanism to ensure its monitoring, updating, implementation or enforcement. Mr Whittingham confirmed that it was produced at a time when the Appellant proposed to implement the plan itself, with appropriate monitoring and enforcement secured by condition or in the section 106 agreement (now unilateral undertaking).[30] But as he told the Inquiry, things have now moved on, and the Appellant only proposes to make a contribution to WBC, who will carry out unspecified measures to encourage modal shift themselves.

36. In XX Mr Whittingham took umbrage with what he perceived to be the Parish Council criticising him for going along with WBC's strong preference for the contribution rather than the Appellant implementing the travel plan itself. But Mr Whittingham misunderstood the Parish Council's point. The point was, he made numerous claims in XiC about the benefits of the various measures in the travel plan. But ultimately the Appellant has no control over those matters, and as Mr Whittingham had to accept, the Appellant is unable to make any claims on WBC's behalf about what WBC may or may

[25] Ms Jones' Proof, 4.13.

[26] CD 9.7.

[27] Ms Jones' Proof, 4.12.

[28] Ms Jones' Proof, 4.13.

[29] CD 11.

[30] CD 11, 1.4.

not do with the money. WBC may follow Mr Whittingham's framework travel plan; they may amend it; they may throw it away and start again. The simple point is that no weight can be given to the proposed measures within the framework travel plan in the absence of any mechanism to ensure those measures are carried out.

Conclusion on sustainability

37. Overall, it is clear that residents of the development would be highly reliant on the motor car, in a borough which has one of the highest car ownership rates of any English local authority.[31] This is particularly important in the context of a Development Plan which actively seeks to reverse this and encourage modal shift.[32] There is significant conflict with CP1, CP6 and CP11 of the Development Plan, as well as paragraph 105 of the NPPF. The conflict with the Development Plan is rightly recognised by the Appellant and it is not in dispute in this appeal. It should be given significant weight.

Reason for Refusal 4 (impact on character and appearance of the area)

The character of the settlements

38. Imposing such a large development on Hurst and Whistley Green would fundamentally change the character and appearance of these two small settlements, through incongruous suburban features.

39. Mr Friend struggled in XX to agree that it would be a reasonable opinion that Hurst and Whistley Green are rural settlements. There was a similar exchange with Ms Jones where she described Hurst and Whistley Green as suburban: when it was put to her that the mere presence of houses doesn't make development suburban, she said she disagreed.

40. Contrary to these strained arguments, plainly we are dealing with rural settlements, with distinctly rural features such a low population, poor roads, limited road signage, a lack of

[31] Fiona Jones' Proof, 5.23. See also Core Strategy paragraph 2.16: "*The borough has one of the highest car ownership rates of any English authority (in 2001, it was 1.6 per household compared to 1.1 in England). It is important that the authority ensures adequate accessible public transport is available to reduce vehicle use, thus assisting the achievement of national and international targets for minimising the risk of climate change. A lack of accessible public transport is an issue, especially for the parts of the borough outside settlements as it increases the likelihood that private cars will be used for more trips.*"

[32] See Policy CP1 which states that development should "*demonstrate how they support opportunities for reducing the need to travel, particularly by private car.*" [CD 5.1]. See also Policy CP6.

pedestrian footways, historic cottages, a small number of services, surrounding fields and farms, dark skies, rich wildlife, trees and hedgerows, etc.

41. Hurst and Whistley Green will be very different places to live if this appeal is allowed. Mr Friend's own evidence is that "*the character on site will be permanently changed to a more suburban character*."[33] The Parish Council firmly agrees. But it is hard to see how the addition of 200 suburban houses could not affect the overall rural perception of the area which total only 439 dwellings.[34]

<u>The separation between the two settlements</u>

42. As was put to Mr Friend in XX, the Appellant's evidence is inconsistent on this point:

    a) In the Appellant's Landscape Statement of Case, authored by Mr Friend, the Appellant said "*The site will not cause Hurst and Whistley Green to appear as a single settlement and* ***they will both physically and visually separate from one another***" (emphasis added).

    b) In Mr Friend's Proof he says the settlements have "largely coalesced along Broadwater Lane."[35]

    c) His position changed yet again in his XiC, where he maintained the two settlements had *completely* coalesced, and that in his view it was not possible to talk about different degrees of coalescence (despite him having used the phrase "largely coalesced" in his Proof).[36]

43. When the inconsistency between the Statement of Case and his Proof of Evidence was put to Mr Friend in XX, he described the wording in the Statement of Case as "*an error on my part*" and said that he had consistently held the view that both settlements had already coalesced. If that were correct, this opinion might have been mentioned in passing in the

[33] Mr Friend's Proof, 5.2.3.

[34] See Mrs Jones' Proof, 6.20.

[35] Mr Friend's Proof, 2.1.2. See also 2.1.12: "The site will not cause Hurst and Whistley Green to appear further as a single settlement as the two settlements have largely coalesced along Broadwater Lane."

[36] In XiC.

LVIA. However, tellingly, an analysis about the separation or not between the two settlements does not feature in the LVIA at all.

44. Contrary to Mr Friend's recollection, it is more likely that:

a) This point was simply overlooked in the LVIA, which has a distinctly more visual focus. That would explain why it is not mentioned at all in that document.

b) Once the landscape reason for refusal was received from the Council, the Appeal Statement of Case merely refuted the allegation in the reason for refusal.[37] That is why the Statement of Case states in terms that Hurst and Whistley Green "*will both physically and visually separate from one another*."

c) However, presumably, once it became clear that this argument was hopeless, the Appellant's position on coalescence changed. The new argument was that any further amalgamation would not matter, in effect because the damage has already been done: it was said that the settlements had "*largely coalesced*". This position of course changed again to "*fully coalesced*" as at the date of the Inquiry.

45. There has however been no acceptance or acknowledgement on the Appellant's part that its appeal case has changed so fundamentally.

46. However, taking the Appellant's position on coalescence as at the date of the Inquiry: it is clear that the two historic settlements have not fully coalesced already. As the Inquiry heard, the two settlements are perceived as separate by residents, and used distinctly on their mailing addresses. Mr Hannington put it well when he described the settlements as touching but not firmly embracing. On a map, they are clearly separate clusters of dwellings, with the appeal site forming an important gap between them. It is hard to see how they can be said to have "fully coalesced."

47. The proposal would however result in the removal of the last remaining green space separating the two settlements, effectively turning them into one larger settlement. This would be a significant and irreversible change (and would amount to full coalescence).

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[37] i.e. addressing whether the proposal *"would erode of [sic] the separation between existing villages and their rural setting*".

Valued Landscape

48. The Parish Council agrees with Mr Hannington's view that the site could be considered a valued landscape. The Appeal site has been nominated in the Council's Local Plan Update to be a Local Green Space as it is recognised as being demonstrably special to local residents.[38] It has been an important part of these two settlements for many years.[39]

49. Mr Friend's Summary of the *Stroud* case is incorrect.[40] The judgment in that case does not set out any binding guidance on the correct approach to valued landscape. The allegation in the case was that an Inspector had incorrectly taken "valued landscape" to mean "designated landscape". In finding that he had not, the Judge did not object to the Inspector's approach that a valued landscape needed some special physical characteristic. But the Judge did not purport to set out any guidelines on whether this was the sole permissible approach Inspectors could take: nor did he suggest that community value can never be relevant to the assessment, or could not be a basis for finding a landscape is valued. The *Foxley Lane* decision is a good example of this.[41]

50. In any event, aside from the fact that the local community are deeply attached to this site, it does exhibit special physical characteristics. It is an important green gap between two historic settlements; it has attractive hedgerows and trees; one can often see grazing ponies and a variety of other wildlife such as hedgehogs and bats, and a variety of birds that use the surface water to drink.[42]

[38] See Cllr Smith's Landscape & Locality Proof (Appendix 2).

[39] See the images in Section 4 of Mr Hannington's Proof.

[40] CD 77.

[41] CD 76, Land south of Foxley Lane, Binfield APP/R0335/W/17/3177088, paragraph 28: "*Even so, the attractive and available views over the land, the presence of woodland, trees and hedgerows, rolling topography and fieldscape, the walks adjacent to the land along country lanes which are designated as part of a Ramblers Route, the absence of built development, and the perception of the land as quintessential English countryside, provide significant reasons to enable me to make the judgement that this location is rightly assessed as a valued landscape* ***by the local population.*** *The landscape has sufficient features and characteristics of quality which set it above the ordinary. I accept that it should be regarded as valued in the terms set out in the NPPF.*" (emphasis added)

[42] See the Parish Council's initial objection to the planning application for photos: CD8.3.2 Rule 6 P of E Hurst PC objection to Lodge Road 220458 (Appendix 15).

51. The site is also intrinsically linked to the "reversed C" of Hurst and Whistley Green that previous Inspectors have acknowledged.[43] The "reversed C" is a distinctive and notable feature of Hurst and Whistley Green. Mr Friend in XX accepted that the "reversed C" was at least relevant to the appeal. Certainly, it has been commented upon by the Appellant's urban design statement, Mr Hannington, numerous local residents, the Secretary of State, and indeed Mr Friend himself.[44]

Pattern of development

52. Hurst and Whistley Green have grown organically over time. They contain a variety of buildings, from old listed cottages to 21st century houses, and everything in between. It is the variety of building types among these 439 dwellings that tells the story of the settlements' slow and steady development. This proposal will, however, interrupt that natural progression with 200 dwellings of a similar look and feel, all obviously built at the same time, and changing the organic character of the settlements virtually overnight. As Mr Hannington put it, this would not be evolution but revolution.

53. On the subject of infilling, it is plainly wrong to seek to compare the infilling of a small number of dwellings here and there within the settlements with the addition of a new housing estate between them. Only by stretching language to its breaking point can this be described as "infilling."

Conclusion on landscape

54. The Landscape impacts of this proposal, including its effect on Hurst and Whistley Green in visual, spatial and amenity terms, represent a weighty harm in the planning balance.

Reason for Refusal 8 (highway safety)

55. To the extent the Appellant is able to demonstrate some modal shift, the local road network is not sufficiently safe for pedestrians and cyclists. The Appellant has provided insufficient evidence to demonstrate that the addition of further cars, cyclists and pedestrians into the local road network is safe.

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[43] See e.g. *Land at Lodge Road*, [23] ("*In my judgement the site is an important component of the open space which separates the northern and southern arms of the identified settlement of Hurst/Whistley Green.*")

[44] Mr Friend's Proof, 3.1.1.

56. The Appellant does not challenge Cllr Smith's detailed evidence that speed limits are regularly breached in the area. Cllr Smith described speeding as the number one issue he deals with as a Parish Councillor.[45] The Parish Council's speed checks have shown 1 in 3 cars speed along Lodge Road. Surprisingly, however, Mr Whittingham denied speeding was a problem in Hurst and Whistley Green.

57. Local roads in this area are rural, narrow, winding and dark at night, without continuous separated footways. Local residents have provided evidence of near misses they have experienced.[46]

58. The Appellant's case on road safety can be easily summarised:

    a) WBC no longer objects on road safety grounds,

    b) There have been a limited number of reported accidents in the local area,

    c) Accordingly, the area is safe for residents of the development.

59. This represents a perfunctory and insufficiently precautionary approach to road safety. Despite being well aware of the Parish Council's appeal case, Mr Whittingham's Proof and the Appellant's Transport Assessment say very little on the subject of highway safety (the TA dedicating a mere 4 paragraphs out of 137 pages to the subject[47]), presumably because the Appellant considered that it had the agreement of WBC and so didn't need to properly deal with the issue during the Inquiry. But it should have done so. When the concerns were raised by the Parish Council in its Statement of Case, the Appellant should have updated its Transport Assessment to deal with the issue. In fact Mr Whittingham's Proof claimed to have updated the Transport Assessment to deal with the Parish Council's concerns[48]: in XX he conceded that despite what he said in his Proof, he had not in fact done this.

[45] Mr Smith explained he had been a Parish Councillor since 2004.

[46] See Clare Woodward's slides and her video of fast cars; Graham Welch's slides; Aisling H-G's statement ("*I am a keen runner and cyclist, and I have experienced many near misses from speeding and inconsiderate drivers.*")

[47] CD10, 3.17-3.20.

[48] Mr Whittingham's Proof, 6.12.

60. As a result of the failure to deal with this issue in any amount of detail, the sum total of the Appellant's evidence on highway safety before the Inquiry (as Mr Whittingham accepted) is:

a) What little Mr Whittingham says about road safety in his Proof,[49]

b) Paras 3.18-3.21 of the Transport Assessment,[50]

c) The Road Safety Audit (CD 68), which only considers the safety of the proposed access.

61. Mr Whittingham also stated in XX he had also considered highway safety around the settlements more generally, albeit he "*hadn't written anything down.*"[51] If he had indeed given the safety of pedestrians around the settlements the required thought, he failed to show his workings. Limited weight should be given to an unwritten assessment that is incapable of being tested.

62. Accordingly, while we know what the highway safety improvements are that are being put forward by the Appellant on a 'take it or leave it' basis, we don't know:

a) why they are considered to be necessary,

b) why they are considered to be adequate,

c) why the Appellant considers that no other measures are needed.

63. The Appellant's transport evidence is striking in its absence of detail on highway safety.

64. Irrespective of the tilted balance applying, a lack of sufficient evidence on highway safety alone entitles you to dismiss the appeal under paragraph 111 of the NPPF, as recognised in *Satnam Millenium Ltd v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 2631 (Admin) [CD 9.17]. In that case the Court rejected an argument that the Secretary of State was not entitled to dismiss the appeal on the grounds that insufficient evidence had been provided on highways matters: it was argued that he

[49] Largely in 6.9 - 6.23.

[50] Which note only existing accident data and the RSA concerning the junction. There is no assessment of the safety of the nearby roads more generally.

[51] Mr Whittingham in XX.

needed to make a finding on impact and weigh it in the tilted balance instead. The Court rejected this argument.

65. The Court held at [58] that "*Both the Framework and the development plan start from the same premise, that the developer must have produced a sound and reliable transport assessment.*" The Court concluded at [60] that:

> *"…the Inspector and Secretary of State were entitled to conclude that there was too much risk of a severe unacceptable impact, in the light of the unreliable transport assessment."*

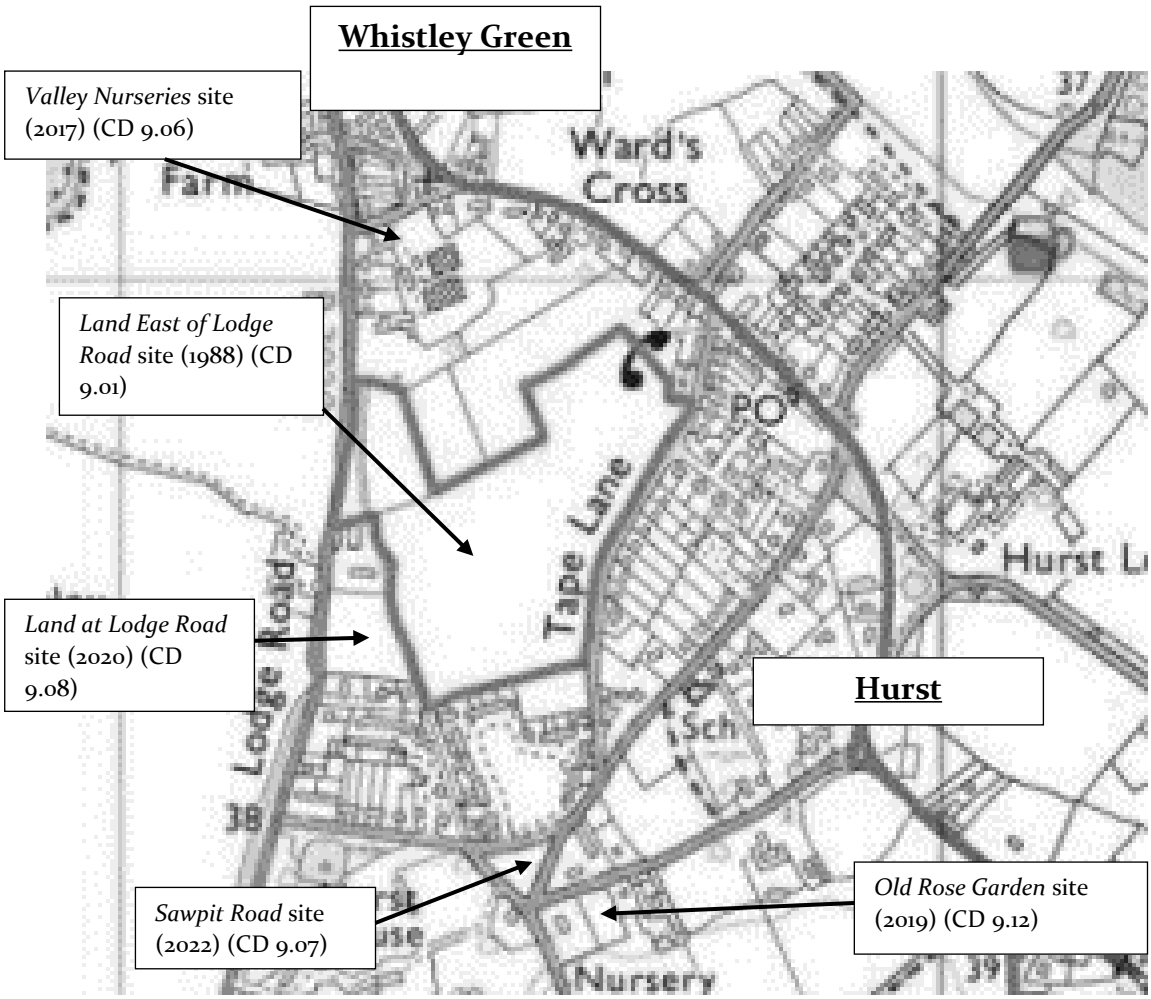
66. This judgment is clear that irrespective of the tilted balance, the burden is on the Appellant to provide sufficient evidence that the proposals will be safe. It has not discharged this burden. Highway safety alone is a reason to dismiss this appeal.

The Parish Council's Position on the previous appeal decisions

67. The previous appeal decisions put in evidence are important material considerations in this appeal. The courts have also said that Planning Inspectors should have regard to the importance of consistency, and must a clear explanation for departing from a previous decision.[52]

68. A map of the key nearby decisions is provided here for ease:

[52] *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137 (CD 9.14).



69. Clearly there are relevant appeal decisions that support the Council's case, and some which support the Appellant's case. Given the fact that these decisions pull in different directions, you will likely need to depart from the conclusions of at least some of your Inspectorate colleagues, and give clear reasons for doing so.

70. The Parish Council's position on the above appeal decisions and other relevant appeal decisions is as follows.

Land East of Lodge Road (1988) (CD 9.01)

71. This was a 1988 decision of the Secretary of State dismissing an appeal against a refusal of planning permission for 177 on the same appeal site as this appeal. Although decided in a very different policy context, the Secretary of State's conclusions on both (1) the importance of the "reversed C" for maintaining the gap between settlements, and (2) the impact on Hurst and Whistley Green of such rapid expansion, are not policy-dependent, and are still highly relevant today: "*[the SoS] 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" (paragraph 15)*; "the SOS does not doubt that the proposal, because of its size in comparison with the main built-up part of Hurst, would have a major effect both in relation to the character of the village itself and on the existing community*" (paragraph 19). Ms Jones accepted in XX that the physical context of the appeal site at least had not changed significantly in the past 30 years.

Land at Lodge Road (2020) (CD 9.08)

72. This was an appeal decision following a public inquiry and a quashed decision the previous year. The proposal was for 5 dwellings adjacent to the current appeal site. The Inspector described the site as "*an important component of the rural open space between northern and southern arms of the village*" (i.e. the present appeal site) (paragraph 25). The Inspector considered accessibility and local services in detail at paragraphs 29-40. His key findings included:

    a) Given the nature of the pedestrian walks available, the Inspector did not consider "*that there is any strong likelihood of any person employed locally choosing to walk to work from the appeal site*" (paragraph 34).

    b) The Inspector said that *"I do not rule out the use of cycles for access to and from the appeal site, but this must be tempered by the fact that Lodge Road has the potential to be an intimidating route*" (paragraph 35)

    c) The bus service through Hurst "*is simply not convenient enough to be able to replace the reliance on private vehicles*" (paragraph 39)

    d) The Inspector concluded that "*the location of the appeal site would not follow sustainable principles. Residents of the site would not be likely to take advantage of walking, cycling or public transport to any significant degree*" (paragraph 40)

73. Overall, the Inspector found that "*there is conflict with the sustainable principles of both the NPPF and the development plan*" (paragraph 49) and "Put simply, this would be the wrong development in the wrong place" (paragraph 51).

74. The tilted balance did not apply in this appeal. However, the Inspector said that even if it had applied, he considered the harm he identified significantly and demonstrably outweighed the benefits (paragraph 51).

75. The Parish Council's position is that if this Inspector's conclusions were correct in respect of 5 dwellings adjacent to the appeal site, these conclusions only apply with more force to the current proposal for 200 dwellings.

Old Rose Garden (2019) (CD 9.12)

76. This Appeal concerned an application for the change of use of brownfield land from storage and distribution to residential for the proposed erection of a 5 bedroom dwelling and garage in Hurst. The normal planning balance applied. The Inspector dismissed the appeal.

77. The Inspector held that the development detracted from the character of what he considered to be a rural lane (paragraph 9). In terms of sustainability, he noted that "s*ervices such as food shops, train stations, medical surgeries and secondary schools are located further afield and not within an acceptable walking distance*" (paragraph 17); "*Access to the limited local services within Hurst would be, for part of the distance, along unlit highways which do not provide a pedestrian footway*" (paragraph 18); "*the evidence indicates that access to other settlements by bicycle would be via main roads, where relatively high vehicle speeds would make travelling by bicycle unattractive to most users*." He noted the infrequency of the bus service (paragraph 19). At paragraph 20 he concluded that future occupants of the proposed dwelling would be reliant on private motor vehicles in order to access basic services, and that accordingly the proposal would "*contribute to a pattern of development that would be likely to cause environmental harm as a result of increased car journeys and hence carbon emissions*."

78. All of these observations continue to apply in the present case. The limited pedestrian improvements offered by the Appellant do not address the overarching difficulties of shared surfaces and unlit roads in and around Hurst and Whistley Green.

Sawpit Road (2022) (CD 9.07)

79. This was a written representations appeal regarding 4 dwellings at the Junction of Sawpit Road and School Road. The Inspector allowed the appeal, in part because he did not

consider "*the site is so unsustainably located of an extent to dismiss this appeal on those grounds*" (paragraph 52). In making his decision he considered transport issues and access to local services. The tilted balance was engaged.

80. There are clear reasons for departing from the Inspector's comments on sustainability:

a) The proposal was for significantly fewer homes than this appeal. What is acceptable in sustainability terms of 4 homes might not be acceptable for 200. The harms associated with 4 dwellings are also considerably less than those associated with 200.

b) It is not clear that the Inspector had the benefit of the detailed oral evidence of residents or detailed bus timetabling information in reaching his conclusions. There is no reference in the decision to the frequency of the bus service, which (in contrast) you have heard detailed evidence on.

c) The Inspector in *Sawpit Road* focused very much on distances to services rather than considering in detail the accessibility of the route residents will be required to take to get to those services.

<u>Valley Nurseries (2017) (CD 9.07)</u>

81. This was a proposal to demolish derelict greenhouses in Whistley Green and replace them with 16 dwellings. The appeal was allowed. During the course of the inquiry the Council accepted the principle of the proposed development and resolved to release the land for development (paragraph 8). As a result, there were no main issues in the appeal (paragraph 11) and the decision was given without a hearing or inquiry. Notwithstanding that, the Inspector offered some comments on the compatibility of the proposal with maintaining a separation between Hurst and Whistley Green (paragraph 14) and some comments on sustainability that suggested there was an acceptable level of access to local services and the bus service provided reasonable alternatives to the use of a private motor vehicle (paragraph 17).

82. There are clear reasons for departing from the Inspector's comments on sustainability:

a) The comments were made in the context of an effectively conceded appeal, with no main issues remaining and no live evidence.

b) The proposal was for significantly fewer homes than this appeal. What is acceptable in sustainability terms for 16 homes might not be acceptable for 200.

c) This was a reserve brownfield site within the settlement limit.

d) It is not clear that the Inspector had the benefit of the detailed oral evidence of residents or detailed bus timetabling information in making his comments.

Kingfisher Grove, Three Mile Cross (2023) (CD 75)

83. During the course of the Inquiry the recent decision in Kingfisher Grove was brought to the parties' attention. This was an application for 49 affordable dwellings in a different part of the borough. In that appeal the Council argued that its previous strong delivery should be taken into account despite the tilted balance applying. The Inspector held that despite the poor accessibility of the proposal and the proposal conflicting with the development plan as a whole, applying the tilted balance the granting of planning permission would not significantly and demonstrably outweigh the benefits.

84. To the extent that this appeal is relevant to this case, there are clear reasons for reaching a different view in this case:

a) The proposals in that appeal were for just under a quarter of the number of houses proposed in the present appeal.

b) The proposal was a different site in a different part of the borough, on the outskirts of Reading. [53] Relatively little information is before this Inquiry regarding the detail of the locational and sustainability issues discussed during the inquiry.

c) What is known is that in that case there was a bus service with "a good frequency, with services into the evening" (paragraph 40). There is no mention of flooded, icy or dark conditions on the routes to services.[54] There did not appear to be any issues with lack of pedestrian footways (paragraph 37). It can be inferred that the sustainability harms in that appeal were lesser than the present case.

[53] Para 26: referring to the "*…urbanising influence of its proximity to Reading.*"

[54] Para 38 suggests a lack of lighting beyond the closest services.

d) An argument regarding coalescence of settlements was rejected in that appeal, on the basis that there would still be a settlement gap following the development (paragraph 32).

e) It is unclear how much evidence on past housing delivery was provided in that case, and exactly what the Council's argument on this was. The Inspector seemed to consider the argument only in terms of whether the tilted balance applied or not. After concluding that the Council's strong housing record did not affect whether the balance applied, he did not ask himself the further question as to whether the record of strong delivery affected the weight to be given to the development plan conflict in the balance. Which is no criticism, as it is not clear if he was ever asked to do this. But you are being asked to reach a view on whether the Council's strong housing record should affect the weight given to the development plan conflicts in this appeal.

Planning balance and conclusion

<u>The approach to the tilted balance</u>

85. The tilted balance applies, meaning that for planning permission to be refused the harms must significantly and demonstrably outweigh the benefits. The most relevant policies are also deemed out of date.

86. However, as was accepted by Ms Jones in XX:

a) The weight you give to policy that is deemed out of date is a matter of your planning judgment.

b) Even if development plan policies are deemed out-of-date, those policies may still command decisive weight in the planning balance.[55]

87. Moreover, as Ms Jones appeared to accept in XX, the Council's strong housing performance is a factor that entitles you to give more weight to the conflict with the development plan: it is a matter of your planning judgement. The Council's record of over

[55] *Suffolk Coastal DC v Hopkins Homes* [2017] 1 W.L.R. 1865 at [55]-[56] [CD 9.13].

delivery should properly be characterised as a factor that can add weight to the harms, or else temper the benefits, when the tilted balance is applied.[56]

The harms

88. As set out above, there are significant conflicts with the development plan (including CP1, CP6, and CP11).

89. Despite several attempts in XX to understand her position, Ms Jones was unable to convincingly explain how her view that there was only limited development plan conflict[57] was consistent with her acceptance that the scheme did not accord with the development plan read as a whole.[58]

90. By contrast, Mrs Jones' assessment of the extent of the conflict with the development plan is logical, consistent and should be preferred.[59]

91. As Mrs Jones sets out in her planning balance,[60] there are harms in terms of sustainability, spatial hierarchy and landscape harm. There is also the impact of the scale of the development on Hurst and Whistley Green (which Ms Jones accepted in XX she had not considered in her planning balance).

92. The Appellant has also failed to provide adequate information on highway safety.

93. Finally, very late in the day, it became clear that there is in fact no security that the claimed biodiversity net gain can actually be delivered, seemingly because the offsite landowner refuses to commit to an enforceable obligation to secure its site for what is offered by the Appellant. The Appellant's suggestion that there are contracts behind the scenes that provide more of a guarantee should be given no weight at all. Accepting that assertion without any evidence to support it would not represent the required precautionary approach to potential environmental harm. The offsite provision is not an optional extra, it is necessary to make the development acceptable in planning terms precisely because

[56] For the avoidance of doubt, the Parish Council does not consider this factor is something that affects the extent to which the tilted balance mechanism applies or not. It either applies or it doesn't.

[57] Ms Jones' Proof, 5.121.

[58] Ms Jones' Proof, 5.4.

[59] Mrs Jones' Proof, 7.17.

[60] Mrs Jones' Proof, 7.17.

of the onsite loss of habitats (-44.07%) this proposal would result in. That is why any guarantee should be cast iron. The failure to provide a cast iron guarantee, with no valid explanation being provided for this failure, is another serious flaw in this scheme.

94. All of these harms should be given substantial weight.

The benefits

95. Weighed against those harms are the benefits. Of course there are benefits to this scheme, particularly the housing and affordable housing contribution. But many of the claimed additional benefits suggested by the Appellant are overstated and should properly be given little or no weight:

a) The claim that there will be greater accessibility to Dinton Country Park.[61] The Country Park is already accessible via permissive footpaths off Lodge Road and Whistley Mill Lane. Ms Jones confirmed in XX that the only additional access to the Country Park offered by this scheme is a route across the site itself to reach these existing footpaths, plus a pedestrian crossing. This should be given no weight.

b) The bus contribution. Ms Jones described the bus subsidy contribution as an "improvement" which can deliver "significant benefits."[62] But as we heard from Mr Adam, the contribution is only to maintain the existing level of service. The bus service will not be improved as a result of the contribution. Little weight should therefore be given to it.

c) The claim that the scheme would sustain local schools.[63] As Ms Jones accepted in XX, there is no evidence that any school would close if this scheme does not go ahead. This suggestion is speculation and should be given no weight.

d) The economic benefits arising from construction. These should be given some weight, but they are benefits that any scheme would attract and are not particular to this one.

[61] Ms Jones's Proof, 5.88.

[62] Ms Jones's Proof, 5.109.

[63] Ms Jones' Proof, 5.104.

e) A site-wide sustainable urban drainage system.[64] This is a requirement of any development of this scale. It is not a benefit.

f) The tennis courts. This is a benefit that should be given some weight. However:

i. There is little proven demand for tennis courts. The offer was based on a very limited consultation of residents of the settlements to which few responded.

ii. There are a number of other sports facilities nearby (sports facilities being one of the very few services the settlements have a reasonable amount of).

iii. There are obvious community cohesion problems caused by the Appellant's maintenance funding arrangement in the event that the Parish Council is unable to take on the tennis courts, whereby the tennis courts will be paid for by the residents of the development rather than a developer contribution. This means the tennis courts will be perceived as a service for residents of the development, not the wider community. The Parish Council cannot yet say if it would take on the management of the tennis courts if offered: it has calculated the payment it would receive as £215 a year based on 39p per square metre, and so it would likely have to run the tennis courts at a substantial loss.

g) Biodiversity net gain. The appellant is only able to offer this on the basis of offsite mitigation. This will provide no immediate benefit to residents of Hurst and Whistley Green: Arborfield's gain is their loss. But in any event, in the absence of the offsite landowner agreeing to sign a section 106 agreement, it is hard to see how this is a realistic, deliverable benefit (or indeed how the scheme is acceptable in ecology terms).

Does the balance fall in favour of the scheme?

96. In the final analysis, the only meaningful benefits to this scheme are the housing and affordable housing contributions. The other purported benefits are significantly

[64] Ms Jones' Proof, 5.88.

overstated and should be given little weight. Taking all the benefits together cumulatively, they are still significantly and demonstrably outweighed by the harms, which include the extent of the development plan conflict, the harm to the spatial hierarchy, the sustainability harms, the landscape harms, and – importantly – the impact of such a large population increase on the settlements of Hurst and Whistley Green. There is also a lack of sufficient information to demonstrate the proposals will be safe in highways terms, or that a biodiversity net gain will actually be secured.

Conclusion

97. In conclusion, it is the Parish Council's case that this is an ill-thought-out proposal that should never have come forward. Plans do matter. In a plan-led system, it is an essential principle that large developments should be situated in sustainable locations with the services, infrastructure and transport connections to cope with them. That is what paragraph 105 of the NPPF tells us. The Appellant invites you to ignore this basic principle. But ignoring it would undermine trust in the plan-led system, as the government has recently recognised.

98. For all the reasons given by the Council and the Parish Council, the benefits of this scheme are significantly and demonstrably outweighed by the substantial number of harms. On that basis you are respectfully invited to dismiss this appeal.

ALEX SHATTOCK

Landmark Chambers

10.2.23