

**Tunbridge Wells Local Plan
Examination – Stage 3
Response to Matter 6, Issue 1:
Cranbrook and Sissinghurst**

Berkeley Homes (Eastern Counties) Ltd

29 May 2024

LICHFIELDS

63404/01/SSL/ITL
20863124v2

1.0 Introduction

1.1 This Statement for Matter 6 (Strategy for Cranbrook and Sissinghurst) of the examination of the Tunbridge Wells Local Plan ('the Plan') Part 3 is submitted by Lichfields on behalf of Berkeley Homes (Eastern Counties) Ltd ("Berkeley Homes"). It follows the submission of representations to the EiP Part 2 and the Regulation 19 Draft Local Plan (March to June 2021) in respect of land at Turnden, Land adjacent to Hartley Road, Cranbrook (allocation AL/CRS 3), in which Berkeley Homes owns.

1.2 To the east of the site lies Brick Kiln Farm (BKF), for which outline planning permission for up to 180 dwellings was granted on 17 February 2020 (16/502860/OUT). Reserved matters haven been approved (21/03299/REM) and the site is being built out.

1.3 Incorporated within draft allocation AL/CRS 3 is Turnden Farmstead, for which planning permission has been granted for 39 dwellings and the reconstruction of a former farmhouse (a scheme comprising a total of 40 new homes - Refs 18/02571/FULL and 21/01379/FULL). This development is now fully built out. See photograph below:



1.4 As the Local Plan Inspector will be aware, the remaining land at Turnden has been subject to a Call-in Inquiry (ref. 20/00815/FULL, APP/M2270/V/21/3273015) seeking permission for the construction of 165 new dwellings and associated landscape management works, with the remaining 14.5 ha given over to landscaping, enhanced green and blue infrastructure and ecological works.

1.5 The following relevant documents are appended to this Statement:

1. The sealed consent order quashing the Secretary of State's decision;
2. Applicant's correspondence on the re-determination;
3. *Compton Parish Council v Guildford BC* High Court Decision 2019.

Strategy for Cranbrook and Sissinghurst

Issue 1: Turnden Farm, Cranbrook – Policy AL/CRS3

Q1. What is the latest position regarding development proposals for the site - planning application Ref 20/00815/FULL?

1.6

Following the closing of the call-in Inquiry on the application proposals for this site Inquiry, the Inspector's report was issued to the Secretary of State for consideration on 4 April 2022. The Inspector recommended that the application should be approved, and planning permission granted, subject to conditions and planning obligations. His main findings (paragraphs 837 – 839 of the Inspector's Report. **Document Ref: TWLP-108**) were that:

- 1 The proposed development would cause limited harm to the HWAONB, very limited harm to air quality and would conflict with the currently adopted spatial development strategy however this attracts limited weight.
- 2 The Inspector records that on HWAONB issues that *"[t]here is a very substantial amount of evidence concerning the effect of the proposed development on the HWAONB, with four witnesses having had their evidence tested at the Inquiry"* (IR 708). The Inspector found the evidence of the Council's landscape witness [Mr Duckett] the most reliable;
- 3 The Inspector noted that the Phase 1 and BKF developments were likely to be built out (as has proved to be the case) and that *"Given their respective nature and position adjacent to the application site, both the BKF and TF developments would have a strong influence on the proposed Development Area part of the site"* (IR 709);
- 4 *"The site's character and appearance has been affected by the most recent, but now ceased, equestrian use, including the continued presence of rather dilapidated and prominent timber fencing and structures, as well as the artificially flat landform associated with what was a manège"* (IR 712);
- 5 Previous landscape studies identified the site as having a lower sensitivity than other areas (IR 713 – 714);
- 6 *"Any development of the scale and kind here-proposed would have an impact on any undeveloped site, especially within an AONB. Nonetheless, the proposed development responds positively to the five HWAONB components of character. For instance, in line with Objectives G1-G3 of the HWAONB Management Plan, ditches and water courses would be restored, surface water run off rates would be comparable with the existing situation, and the LEMP would respond to climate change and provide adaptable land management"* (IR 718);
- 7 *"I broadly agree with Mr Duckett that the relationship between Cranbrook and the neighbouring hamlet of Hartley would remain largely unaffected taking into account the development that is already consented, and that the proposed development would align with significant aspects of HWAONB Objectives S1-S3 ..."* (IR 721).
- 8 *"Broadly for the reasons Mr Duckett has identified, I consider that in respect to the Development Area at completion the magnitude of change would be high / medium leading to substantial / moderate adverse effects, which would reduce to no greater*

than moderate adverse after 15 years. I also broadly agree that for the rest of the site the effects would be moderate / minor beneficial on completion and moderate beneficial after 15 years given the range and quality of benefits proposed. Taking the site as a whole, I also agree with his conclusion that the overall effects of the application proposals on the HWAONB within the site would be moderate adverse at completion and minor adverse / neutral after the 15 year establishment period. I also agree that the effects on the wider HWAONB would be largely Neutral.” (IR 729)

- 9 Overall *“while the application proposals would affect the HWAONB, any harm arising would be limited, particularly in the longer term.” (IR 732).*
- 10 On heritage matters the Inspector found no harm: see IR 784.
- 11 The Inspector found that the development would promote sustainable transport: see IR 794.
- 12 The scheme would deliver ‘substantial benefits’ in the context of local housing needs. *“The evidence also indicates that the Housing Register, which covers need that is presented to the Council as housing authority, fluctuates between 870 and 970 households, included some 918 households in August 2021 and that of those households 175 applicants have specified they want to live in Cranbrook whilst 62 households have a local connection to Cranbrook. There is, therefore, a clear need for both market and affordable housing in the Borough. The proposed development would make a significant contribution to the delivery of both’ (IR 763 and 764).*

1.7 The Inspector’s conclusions at IR 810 – 813 are important:

“810. There is, therefore, a very compelling case for the need for development of this type and in Cranbrook. Given the absence of evidence to support the existence of realistic genuine alternatives, it is also reasonable to conclude that this particular proposed development is needed. In addition to the considerable benefits associated with delivering market and affordable housing, the proposed development would also bring a number of other benefits. NE and CPRE Kent both acknowledge that there would be benefits associated with the development, as summarised in their respective SoCG.

811. The benefits include that the scheme would provide additional footpaths connecting to the existing network and to those planned at the TF and BKF sites. It would also provide substantial new publicly accessible amenity space. These measures would enhance recreational opportunities. There would be significant BNG. Hedgerows and field boundaries would be reinstated. There would also be new woodland planting and management of existing woodland. All of which would be to the benefit of the environment and the landscape. Consequently, I see no reason why BNG should not be included within the assessment of exceptional circumstances. Indeed, while I have focussed on the matters most directly related to para 177 and the HWAONB, and as outlined above, all of the benefits of the development can be taken into account.

812. I have found that the development would cause some harm to the landscape and scenic beauty of the HWAONB, which attracts great weight. There would also be very limited harm to air quality. However, given the limited extent of harm, including to the HWAONB, in the context of the area’s particular housing needs and constraints

alongside the wider benefits that would be delivered, these HWAONB in this location and the development would be in the public interest.

813. I would stress that this conclusion is not just a consequence of unmet housing need. Rather it is a unique combination of factors including market and affordable housing need, there being no adopted strategy to fully address current and on-going housing need, uncertainty over when, if and in what form the eLP might be adopted, the constrained nature of the Borough and the apparent lack of available alternative sites, and the limited extent and degree of harm that would arise from the proposed development. It is these matters, combined with the other identified benefits that would be delivered, that come together to form the exceptional circumstances required to justify this proposed development in the terms of para 177 of the Framework.

826. To draw this section to a close I refer back to the points the Council puts by way of introduction to its case, which neatly summarise some of the key considerations that make this not only an acceptable development but a good development. It is not an overstatement to say that it is rare for a scheme to deliver such a package of exceptional benefits, on a site located adjacent to a second tier settlement, delivering much needed housing, including affordable housing above the rate required by the development plan, in a highly constrained area, and which delivers landscape enhancements with limited associated harm, as well as biodiversity enhancements, while developing only a small proportion of the overall site and in doing so provides a strong long term settlement edge.” (undelining is our emphasis).

1.8 He therefore recommended that planning permission be granted, subject to conditions.

Secretary of State Decision

1.9 On 6 April 2023, the Secretary of State issued his decision (“the quashed Decision”) (**Document Ref: TWLP-108**). He disagreed with the Inspector’s recommendation and decided to refuse planning permission.

1.10 The Secretary of State considered that the application was not in accordance with Policies LBD1 of the Local Plan, Core Policies 1 and 14 of the Core Strategy, and Policy AL/STR 1 of the Site Allocations LP and was not fully in accordance with Policy EN25 of the Local Plan or Core Policy 12. Therefore, the Secretary of State concluded that the application was not in accordance with the development plan overall.

1.11 The Secretary of State agreed that weighing in favour of the development are the need for and delivery of housing, the significant Biodiversity Net Gain, enhanced recreation opportunities, improvements in highway safety, heritage benefits to the historic landscape and landscape benefits by way of woodland planting and management, which collectively carry substantial weight.

1.12 For the reasons given at IR705-731, with the exception of the Inspector’s conclusions on the quality of the design at IR723 which he dealt with at paragraph 16 of the quashed Decision, the Secretary of State agrees with the Inspector’s analysis of the effect of the proposals on the HWAONB and consideration of landscape and visual impacts, and further agreed that while the application proposals would affect the HWAONB, any harm arising would be limited, particularly in the longer term (IR 732). However, weighing against the proposal was the harm to the landscape and the scenic beauty of the HWAONB which attracts great weight.

Successful Legal Challenge by Berkeley Homes

- 1.13 In determining the application the Secretary of State had regard to the housing land supply position when the Inspector considered the application in November 2021. However, by the time of the quashed Decision, the housing land supply had since worsened with the five-year land supply deficit now much greater than it had been at the time of the Inquiry or at the time when the Inspector issued his report.
- 1.14 The Secretary of State has accepted that his conclusion that there were no exceptional circumstances for the purposes of paragraph 177 of the NPPF (DL38) could not stand because that conclusion was predicated, in part, on his finding that there was a 4.89 year housing land supply and he failed to adequately explain why he considered the housing land supply position at the Inquiry to remain valid at the date of the quashed Decision. The Secretary of State accepted that this was central to his quashed Decision. The Secretary of State therefore consented to judgment on this ground.
- 1.15 There were a number of other grounds of challenge which the Secretary of State did not formally concede to judgment on but which the Applicant maintains also rendered the quashed Decision unlawful. In order to avoid any further legal challenges, the Secretary of State in redetermining these matters will need to give further careful consideration to these issues.
- 1.16 On 6th October 2023 the Secretary of State's Decision was formally quashed by the issue of a Consent Order (**Appendix 1**). To date there is, therefore, no re-determination on the application. The application is currently being reviewed again by the Secretary of State, having considered additional and updated comments from all parties (**Appendix 2**), but no date for a decision has been given. TWBC maintained their robust support for the application. The calling of the General Election and the commencement of the pre-election period along with the likelihood of a new Secretary of State being in place after the General Election means that no decision is likely to be forthcoming for many months.
- 1.17 It is submitted that no weight can be given to the quashed Decision now that it has been quashed.
- 1.18 The Local Plan Inspector notes that in the Council's letter dated 4 May 2023, it was concluded that the site remained justified as an allocation following the Secretary of State's decision on a planning application for 165 dwellings and associated works. Notwithstanding that the decision has been quashed, it is our view that the Council's decision is entirely the correct approach to take. The Secretary of State took a decision on an application at the time and determined that the shortfall in 5 year housing land supply could be described as slight and that housing delivery in the Borough appears to have improved in recent times (IR760). Given that there was only a slight shortfall, and in the circumstances of this case, the Secretary of State considered that the policies in this respect should carry moderate weight, and that the harm arising from conflict with the policies should also attract moderate weight. He therefore disagreed with the Inspector's assessment that both the policies and the conflict with them carry limited weight.
- 1.19 However, this is not the case for the consideration of an allocation and in the context of the Local Plan as a whole, where the position on housing needs is significantly different and more

significant. It therefore now falls to the Local Plan Inspector to determine whether the need for new homes would outweigh the accepted limited harm to the AONB at this location.

- 1.20 It should also be noted that the exceptional circumstances test in relation to major development in the AONB is a development control test not a test directly applicable in plan making: see *Compton Parish Council v Guildford BC* per Ouseley J at [212] (Appendix 3).

Q2: Have there been any material changes in circumstances since the Stage 2 Hearings to suggest that the allocation is unsound?

- 1.21 While there have been changes in circumstance since the Stage 2 Hearings, as set out below, these have not been material and would not suggest that the allocation is unsound. Most notably the permitted developments either side of the site are either completed or under construction. It remains the position that Berkeley Homes Southern, a well-established housebuilder which delivers homes within the Borough and across the South East, own the site and still intend to deliver new homes on the site, once planning permission is granted.

Call-in Application:

- 1.22 An independent Inspector has found that the application for development at this site was acceptable with limited harm to the AONB. There is no formal decision from the Secretary of State on this, with the first decision being unlawful and quashed.

NPPF 2023

- 1.23 Changes to the NPPF will be discussed elsewhere at the EiP, in particular with regard to paragraph 23 that states that strategic policies should provide a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development. This should include planning for and allocating sufficient sites to deliver the strategic priorities of the area.
- 1.24 Plans should still be positively prepared which means – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs.
- 1.25 There is nothing in the new NPPF that specifically relates to a decision on this allocation.

Neighbourhood Plan

- 1.26 On 18 July 2022 the Parish Council submitted the Cranbrook and Sissinghurst Neighbourhood Development Plan to TWBC in accordance with Regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended). Consultation was held between September and November 2022.
- 1.27 The draft Neighbourhood Plan as submitted included two policies which conflicted with TWBC Draft Local Plan Policy AL/CRS3:

- Draft Policy LN3.5 (Local Protection and Enhancement of the Crane Valley) sought to protect and enhance the Crane Valley, stating that proposals for major development would not be supported. This was inconsistent with the draft site allocation at Turnden;

· Policy HD4.4 (Protection of Key Views) sought to protect key views included a view from Mount Ephraim looking west, south and southeast, and a view from Hartley Road looking east, northeast and southeast. The draft policy stated that new proposals should not harm these key views. The site at Turnden fell within the key views. This policy did not reflect the ability of new development to be located in the vicinity of key views without conflict, and that the policy was inconsistent with the draft site allocation.

1.28 The Examiner’s Report on the Neighbourhood Plan was published on 25 May 2023. The Examiner recommended the deletion of Policy LN3.5, which he determined was in conflict with the adopted and emerging Local Plans. He also recommended deletion of Policy HD4.4 which he considered was not sufficiently justified with evidence of detailed analysis and took no account of allocated sites in the adopted and emerging Local Plan.

1.29 Policy LN3.8 of the Neighbourhood Plan (Green Gaps & Preventing Settlement Coalescence) requires development proposals to preserve the integrity of green gaps between the historic settlements of Cranbrook, Wilsley Green, Sissinghurst and Hartley. The policy sets out that proposals which are of a scale or scope that would result in the coalescence of the historic hamlet and farmstead settlements will not be supported. The Examiner confirmed that this policy does not conflict with the draft allocation at Turnden (paragraph 7.38 of his report):

‘I am satisfied that the general nature of the policy is appropriate. There is no suggestion in the emerging Local Plan that the development of the two sites [Corn Hall AL/CS2 and Turnden AL/CS3] would lead to the coalescence of Cranbrook and Hartley and the policies map shows a buffer area/open space around the two allocations.’

1.30 This also reflects the conclusion of the Inspector at the application Inquiry:

‘Accordingly, I broadly agree with Mr Duckett that the relationship between Cranbrook and the neighbouring hamlet of Hartley would remain largely unaffected taking into account the development that is already consented, ...’ (IR 721).

1.31 Following amendments as set out by the Examiner, a referendum was held in September 2023 and the Cranbrook and Sissinghurst Neighbourhood Plan was ‘made’ by TWBC at Full Council on 4 October 2023. Therefore, this is no longer an emerging document, but forms part of the statutory development plan for the site at Turnden.

1.32 It is considered that the allocation at Turnden is not inconsistent with the policies set out in the Cranbrook and Sissinghurst Neighbourhood Plan and that, therefore, there is no conflict with this document. The elements of the Neighbourhood Plan which previously conflicted with the Local Plan have since been removed on the Examiner’s recommendations. Further, it is important to note that the Neighbourhood Plan does not contain policies and allocations to meet an identified housing requirement, as it is reliant on the policies and allocations of the emerging Local Plan to meet the local needs of the area.

1.33 **Q3. Are Main Modifications necessary to Policy AL/CRS3 to rectify any soundness matters?**

1.34 In light of the above, the allocation remains sound and there are no main modifications necessary to Policy AL/CRS3.

Appendix 1 Consent Order 6 October 2023

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT**



AG-2023-LON-001510
CO/1785/2023

AC-2023-LON-001510

In the matter of an application for Planning Statutory Review

BETWEEN:

**BERKELEY HOMES (EASTERN COUNTIES)
LIMITED**

Claimant

and

**(1) SECRETARY OF STATE FOR LEVELLING UP,
HOUSING AND COMMUNITIES
(2) TUNBRIDGE WELLS BOROUGH COUNCIL**

Defendants

The Honourable Mr Justice Eyre

UPON the Claimant's application for statutory review of the First Defendant's decision dated 6th April 2023 to refuse the Claimant's application for planning permission under reference APP.M2270/V/21/3273015 ("the Decision").

AND UPON the parties agreeing terms

AND UPON the Court being satisfied that it is appropriate to quash the Decision for the reasons set out in the Statement of Reasons

IT IS ORDERED BY CONSENT:

1. Permission is granted for the Claimant to bring planning statutory review proceedings pursuant to s.288 Town and Country Planning Act 1990.

2. The Claim with reference CO/1785/2023 is hereby allowed such that the Decision is quashed.

3. The Claimant's planning application, called in pursuant to s.77 of the Town and Country Planning Act 1990, is remitted for reconsideration by the First Defendant.

4. The First Defendant shall pay the Claimant's costs of and incidental to the Claim incurred since the date of the Decision by the First Defendant and up to the date of this consent order, to be assessed on the standard basis if not agreed.

STATEMENT OF REASONS

1. The Claimant applied to the Second Defendant for planning permission for "the construction of 165 new dwellings with associated access, car parking, refuse/recycling storage, landscaping, earthworks and other associated works" ("the Proposed Development") on land adjacent to Turnden, Hartley Road, Cranbrook, TN17 3QX.

2. That application was called-in by the First Defendant for determination on 12 April 2021. A public inquiry was held between 21 September 2021 and 5 November 2021. The Inspector's report was issued on 4 April 2022 and the First Defendant's decision was issued on 6 April 2023 ("the Decision"). The First Defendant disagreed with the Inspector's recommendation to grant planning permission and instead refused planning permission.

3. Central to the First Defendant's Decision was his finding that the Second Defendant could demonstrate a 4.89 year supply of deliverable housing land (equating to a shortfall of 77 homes over the five-year period). This figure had been agreed at the inquiry. However, by the time of the First Defendant's decision, that figure was almost 18 months old. In the meantime, two inspectors appointed by the First Defendant to hear appeals elsewhere in the Second Defendant's area had come to different conclusions on housing land supply (Hawkhurst Golf Club (APP/M2270/W/21/3273022) and Highgate Hill (APP/M2270/W/21/3282908)). These appeal decisions were expressly drawn to the First Defendant's attention in a letter sent on behalf of the Claimant dated 22 April 2022.

4. The First Defendant accepts that these inspectors' findings on housing land supply were, in the circumstances of this case, material considerations for the purpose of his Decision: *DLA Delivery Ltd v Baroness Cumberledge of Newick*

[2018] EWCA Civ 1305. The First Defendant has stated to the Claimant that he had regard to these decisions and concluded that they did not affect his decision (DL6-7), albeit it is not accepted by the Claimant that due regard was paid to those decisions. However, the First Defendant accepts that, in the particular circumstances of this case, it was incumbent on him to grapple with the detail of those decisions in relation to matters of housing land supply and to provide reasons as to why he came to a different conclusion. He accepts that the reasons given in paragraphs 6-7 of his Decision letter did not meet the standard set out in *South Bucks District Council v Porter* [2004] UKHL 33, in that he did not adequately explain why, notwithstanding the inspectors' findings in the interim, he considered that the housing land supply position at the inquiry remained valid 18 months after the close of the inquiry.

5. The First Defendant also accepts that his assessment– for the purposes of paragraph 177 of the NPPF – that “exceptional circumstances” did not exist for granting planning permission for the Proposed Development was premised in part on his finding that the Second Defendant’s housing land supply was 4.89 years. In light of the concession in paragraph 4 above, the First Defendant accepts that his conclusion that there were no exceptional circumstances for the purposes of paragraph 177 of the NPPF (DL38) cannot stand because that conclusion was predicated, in part, on his finding that there was a 4.89 year housing land supply.

6. In these circumstances, the First Defendant has agreed to his Decision being quashed on grounds 1B and 4A as set out in the Claimant’s Statement of Facts and Grounds only (as summarised in paragraphs 41(b) and 69(a)).

7. For the avoidance of doubt:

a the First Defendant does not accept that there is merit in any of the grounds of challenge advanced within the Claimant’s Statement of Facts and Grounds, other than those grounds which raise the issues identified above (namely Grounds 1B and 4A)

b the Claimant maintains that all the grounds of challenge, including those not the subject of this order, are grounds that would have succeeded had this matter proceeded to Court.

APPROVED BY MR JUSTICE EYRE

06/10/2023.

BY THE COURT

Appendix 2 Additional and Updated Comments to Planning Casework Unit

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22 March 2024

By email to PCU@levellingup.gov.uk and phil.barber@levellingup.gov.uk

Planning Casework Unit
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Dear Sir/Madam

Town and Country Planning Act 1990 – Section 77
Application made by Berkeley Homes (Eastern Counties) Limited
Land Adjacent to Turnden, Hartley Road, Cranbrook
Application Ref: 20/00815/FULL (the "Application")

1. **Introduction**

1.1 We write on behalf of Berkeley Homes (Eastern Counties) Limited (the "**Applicant**") further to our letters of 21 November 2023, 28 November 2023 and 11 January 2024 and in response to the letters circulated by the Secretary of State (SoS) on 15th March 2024 and the timeline set in Para. 7 of the SoS' earlier letter of the 2nd February 2024 for final comments from the point of circulation of those letters. Those letters for which we provide a response include:

- (a) the SoS dated 2 February 2024 (inc. Para 7 of the SoS' letter of the 2nd February 2024);
- (b) Cranbrook and Sissinghurst Parish Council (the "**Parish Council**") dated 12 February 2024
- (c) Natural England dated 13 February 2024;
- (d) CPRE Kent dated 14 February 2024; and
- (e) HWAONB Unit dated 16 February 2024.

- 1.2 We deal in this letter with those parties' representations on:
- (a) The emerging Local Plan progress;
 - (b) Housing Land Supply, the Housing Delivery Test and revisions to the NPPF;
 - (c) Design, Beauty and Section 245 of the Levelling Up and Regeneration Act 2023 ("**LURA**");
 - (d) Compliance with the Neighbourhood Plan; and
 - (e) The miscellaneous matters raised by the Parish Council.

1.3 This letter has been reviewed and its contents corroborated by Lichfields, in their capacity as the Applicant's planning - advisers.

2. **Emerging Local Plan Progress**

2.1 CPRE Kent asserts that the emerging Local Plan "remains procedurally at a less advanced state than it was on the date of the Decision" and both CPRE Kent and the HWAONB Unit have stated that little weight can be attached to it.

2.2 However, it is clear that the emerging Local Plan is at a more advanced position than it was at the time of the Inquiry. The Inspector has now issued Initial Findings on the draft Plan following an EiP (when the Turnden allocation was considered), TWBC has fully responded to these with proposed changes to address the Inspector's concerns and the proposed changes are now out for consultation.

2.3 TWBC fully recognise the need for housing in this location and fully support the allocation of this site, and none of the changes put forward by the Inspector or TWBC concern the Turnden site, which remains as a housing allocation in the emerging Plan and, therefore, this will not be a matter for any further consideration through the EiP process. As such, in line with paragraph 48 of the NPPF, TWBC and the Secretary of State may give weight to the emerging plan, and given there are no unresolved objections to the allocation following the EiP and in light of the Local Plan Inspector's Initial Findings significant weight can be given to draft site allocation AL/CRS3 the emerging Local Plan. The NPPF states that 'the less significant the unresolved objections, the greater the weight that may be given'.¹

2.4 TWBC have undertaken significant work to progress their Local Plan towards adoption and the recently published TWBC LDS (December 2023), sets out that the Inspectors final Report on the draft Local Plan is expected by September 2024, with final adoption sometime between October and December 2024.

¹ National Planning Policy Framework, paragraph 48(b).

2.5 It is our view that the Local Plan is at an advanced stage, close to adoption and significant weight should be afforded to the emerging Local Plan's site allocation policy.

3. **Housing Land Supply, the Housing Delivery Test and revisions to the NPPF**

3.1 After the Applicant's representations were submitted to the Secretary of State on 11 January 2024, clarificatory guidance was published on behalf of the Secretary of State as to the basis on which the four year housing land supply requirement should be calculated² (the "**Guidance**").

3.2 Tunbridge Wells Borough Council ("**TWBC**") has published a revised housing land supply figure of 4.50 years. Now that the Guidance has been published, the Applicant accepts this updated housing land supply position as being correct, notwithstanding the calculations set out in our letter of 11 January 2024. Crucially, the reason that TWBC's figure has increased to 4.50 years is that the need to include a 5% buffer no longer applies, as TWBC scored 96% in the most recent Housing Delivery Test. The latest published figures demonstrate a shortfall of 347 homes against the assessed need. This shortfall greatly exceeds the shortfall identified at the time of the Inquiry of 77 homes (which was described as being a "very compelling" need by the Inspector (IR810)). Therefore, the need to deliver housing in the borough has increased since the Inquiry notwithstanding that the figure appears lower as a result of the change to the calculation methodology.

3.3 The reasoning contained within our letter dated 11 January 2024 still stands. It is therefore the Applicant's position that the revised housing land supply figures do not alter the conclusion which ought to be drawn in respect of the Application (and which has been drawn by TWBC's officers and members and by the Inspector) that there is a very compelling need for housing, such that TWBC intend to allocate the site for housing and moreover exceptional circumstances exist (combined with the total sum of planning benefits) to justify the grant of planning permission pursuant to the Application.

4. **Design, Beauty and Section 245 LURA**

4.1 The Applicant maintains the position on these matters set out in our letter of 11 January 2024, having had regard to the further representations made to the Secretary of State.

4.2 The Applicant notes that Natural England does not allege that granting the Application would breach Section 245 of the Levelling Up and Regeneration Act 2023.

² <https://www.gov.uk/guidance/housing-supply-and-delivery> as updated on 5 February 2024

- 4.3 CPRE Kent state in their letter that the Rule 6 parties share the view that the scheme has not been sensitively designed, having regard to its High Weald AONB Setting. That is not correct. Natural England have not at any stage made representations regarding the design of the scheme.
- 4.4 Further, none of the Rule 6 Parties called an expert design witness at the Inquiry and no party has carried out a detailed review of the scheme's design against the applicable design guides other than the Applicant and TWBC (both of whom conclude that the Scheme is well-designed, and that conclusion was supported by the Inspector). Please refer to the Urban Design Proof of Evidence and the Urban Design Proof of Evidence Addendum appended to our letter dated 21 November 2023 which demonstrates that the development is of a high quality and well considered in full compliance with the relevant design guidance, including the more recently adopted Neighbourhood Plan, which cross refers to HWAONB guidance documents.
- 4.5 By contrast, there is no evidence before the Secretary of State which assesses the Application against the applicable design guidance which finds that the Application is not in compliance with that guidance. At the Inquiry, Tim Kemp, who gave evidence on behalf of CPRE Kent confirmed that he had not read Mr Pullan's evidence on behalf of the Applicant and Natural England made no criticisms of the design of the scheme. In evidence and in closing, the HWAONB Unit did not take issue with the detail of Mr Pullan's analysis.

5. **Compliance with the Neighbourhood Plan**

- 5.1 The letter from the Parish Council referenced a number of policies within the newly adopted Cranbrook & Sissinghurst Neighbourhood Development Plan. It makes a general proposition that those policies are not complied with but does not provide any reasoning or justification for that statement.
- 5.2 The Applicant's position, as set out in the Planning Proof of Evidence Addendum and Urban Design Proof of Evidence Addendum appended to our letter dated 21 November 2023 is that the Application does comply with the adopted Neighbourhood Development Plan.
- 5.3 It is relevant to note that the Neighbourhood Development Plan was specifically amended following the recommendation of the Neighbourhood Plan Examiner so that it did not conflict with the draft site allocation (with which the Application is consistent).

6. **Secondary education, water supply and medical centre**

- 6.1 The Parish Council's letter restated the points made in their previous letter dated 23 November 2022 regarding the lack of non-selective secondary education facilities, insufficiency of water supply and a need for a new medical centre.
- 6.2 The Applicant's position on those matters remains as stated in our letter of 28 November 2023.

7. **Conclusion**

- 7.1 The Applicant maintains the position set out in its letter dated 11 January 2024 and requests that the Secretary of State grants the Application without delay.

Yours faithfully

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11 January 2024

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Dear Sir/Madam

**Town and Country Planning Act 1990 - Section 77
Application made by Berkeley Homes (Eastern Counties) Limited
Land Adjacent to Turnden, Hartley Road, Cranbrook
Application Ref: 20/00815/FULL (the "Application")**

1. **Introduction**

1.1 We write on behalf of Berkeley Homes (Eastern Counties) Limited (the "**Applicant**") further to our letters of 21 November 2023 and 28 November 2023 in order to deal with three matters which have arisen since our previous letters and which are relevant to the determination of the Application.

1.2 Those matters are:

- (a) Further progress which has been made in relation to Tunbridge Wells Borough Council's ("**TWBC**") emerging Local Plan (the "**Emerging Local Plan**");
- (b) Publication on 19 December 2023 of the amended National Planning Policy Framework ("**NPPF**"); and
- (c) Publication of a statement made by the Secretary of State on 19 December 2023 entitled 'The Next Stage in Our Long Term Plan for Housing Update' (the "**December Statement**").

- 1.3 Please note that the content of this letter has been endorsed by Mr Simon Slatford and should be read as being supplemental to his Planning Proof of Evidence Addendum dated 21 November 2023.
- 1.4 We are aware that the Secretary of State has not requested a further update at this time, but in a letter dated 16 May 2023 in response to the Applicant's pre-action letter, those acting for the Secretary of State insisted that it is reasonable for the Secretary of State to expect that the parties would draw any relevant information to his attention and therefore that he was not obliged to have regard to information not drawn to his attention in this way. We therefore request that the Secretary of State takes the contents of this letter into consideration when forming his decision.

2. **Emerging Local Plan Progress**

- 2.1 On 13 December 2023, members of TWBC's Full Council voted in favour¹ of progressing the Emerging Local Plan with the following main modifications, which had been proposed by the Emerging Local Plan Inspector as 'Option 3'²:
- (a) Tudeley Village allocation (2,800 dwellings) be removed for the Plan (STR/SS3);
 - (b) housing in Paddock Wood and East Capel be reduced with all housing being on Flood Zone 1 and employment land on Flood Zone 2 (STR/SS1);
 - (c) changes to the development strategy at Hawkhurst to revise site AL/HA 5 in accordance with the planning committee resolution on application reference 22/02664/HYBRID, and to remove site AL/HA 8 Limes Grove; and
 - (d) To progress a 10 year housing land supply ("**YHLS**") position including the requirement for an immediate review of the Plan, as a result of there being no 15 YHLS.
- 2.2 These changes, together with a Sustainability Appraisal will be the subject of public consultation in January 2024. The Local Development Scheme paper dated December 2023 (appended to this letter) states that TWBC anticipates the publication of the ELP Inspector's report in August/September 2024 and adoption of the ELP in October – December 2024.
- 2.3 No modifications have been proposed to the Applicant's site allocation (AL/CRS3). The Officer's report to Full Council repeated the assurance previously given by TWBC officers (as set out in paragraph 3.14 of the Planning Proof of Evidence Addendum prepared by Simon Slatford) that:

¹ 33 votes in favour, 6 votes against, and 3 abstentions.

² Emerging Local Plan Inspector's Initial Findings (see Appendix 1 to the Planning Proof of Evidence Addendum prepared by Simon Slatford).

"Although not raised by the Inspector in his letter, the Council has previously advised about the appeal decision in relation to a planning application at Turnden Farm, Hartley Road, Cranbrook. It advised (see document TWLP_109) that it is the Council's view that the implications of the SoS's decision on application 20/00815/FULL are not such as to preclude the proposed allocation of the site for housing in the SLP. This remains the officer position."

- 2.4 No concerns with this approach to AL/CRS3 were raised by members of the Full Council and the allocation will therefore not be subject to further consultation.
- 2.5 Overall, the modifications proposed to the Emerging Local Plan result in up to 3,926 fewer dwellings being allocated for development during the Emerging Local Plan period.³ The reduction in dwellings allocated within the Emerging Local Plan therefore further increases the need for the development proposed by the Application and means that an immediate review of the plan will be required.

3. Publication of the NPPF

- 3.1 The revised NPPF contains a number of amendments which are relevant to the determination of the Application. We deal with these in turn below.

Housing Land Supply

- 3.2 Paragraphs 77 and 226 of the revised NPPF mean that TWBC is only required to demonstrate a 4YHLS. TWBC has published a trajectory alongside their 5YHLS statement,⁴ which allows their 4YHLS to be assessed as follows:

TWBC 4YHLS (2023/4 2026/7)	4YHLS –
Annual Requirement	667
Four-Year Requirement	2,668
Deliverable Supply (as identified from the trajectory included in the Oct 23 5YHLS Statement)	2,749

³ Table 4 of TWBC's Development Strategy Topic Paper Addendum dated November 2023: https://democracy.tunbridgewells.gov.uk/documents/s70050/Appendix%20B%20-%20PS_054%20Development%20Strategy%20Topic%20Paper%20Addendum%2028.11.23.pdf

⁴ [Five-Year Housing Land Supply Statement 2022/2023 \(tunbridgewells.gov.uk\)](https://democracy.tunbridgewells.gov.uk/documents/s70050/Five-Year%20Housing%20Land%20Supply%20Statement%202022%202023.pdf).

TWBC (2023/4 2026/7)	4YHLS -	
Four-Year Housing Supply	Land	4.12 years
Shortfall/Surplus		+81

- 3.3 Using this to assess their four-year housing land supply position, Lichfields, the Applicant's planning consultants, have calculated that TWBC can demonstrate a 4YHLS with a position of 4.12 years and a narrow surplus of 81 dwellings, based on TWBC's latest published five year housing land supply position of 4.29 YHLS.
- 3.4 It is evident from the Secretary of State's consultation published on 22 December 2022⁵ and the subsequent Government response to the consultation published on 19 December 2023 (see Question 16) that the amendments to paragraphs 77 and 226 were introduced in order to allow time for local authorities to amend emerging plans in response to the new NPPF and legislative changes without leaving them exposed to speculative development. The less stringent 4YHLS is effectively a one-off softening of the 5YHLS requirement to address the fact that an unusual amount of change has been introduced into national policy and planning legislation in a short period of time. The changes only apply for a period of two years from the date of publication of this revision of the Framework. The Secretary of State has been clear that the purpose of weakening of the 5YHLS requirement in these circumstances was to "reward" local authorities who are at advanced stages of plan making.⁶
- 3.5 TWBC has always maintained its support of the Application at both officer and member level, having voted 7-2 in favour of granting the Application, supported it during the inquiry, and maintains its support notwithstanding the Secretary of State's refusal. The site allocation – with which the Application complies - remains a key component of TWBC's Emerging Local Plan (which has been considered at examination and is at final modification stage), and required in order to meet the Emerging Local Plan's housing requirements. It would be paradoxical to penalise TWBC by refusing an application which it supports, and which is key to its Emerging Local Plan, based on the 4YHLS requirement which is intended to be its 'reward' for progressing that Plan. A Plan that has always included the Application Site as a housing allocation.
- 3.6 Moreover, while the Emerging local Plan has proposed allocations towards meeting housing need on a 5 and 10 YHLS basis (and the Application site is one such allocation), it does not have proposed allocations towards meeting need on a

⁵ Levelling-up and Regeneration Bill: reforms to national planning policy.

⁶ December Statement: <https://questions-statements.parliament.uk/written-statements/detail/2023-12-19/hcws161>.

15YHLS basis. This would emphasise the importance for all housing allocations in the Emerging Local Plan to be brought forward, to ensure that the first 10 years of delivery is met and so as not to exacerbate the 15YHLS shortfall.

- 3.7 In any event as identified by Inspector G D Jones BSC(Hons) DipTP DNMS MRTPI (the "**Application Inspector**") there is a "very compelling case for the need for development of this type in Cranbrook" (IR810) particularly given the highly constrained nature of the borough and "given the absence of evidence to support the existence of realistic genuine alternatives, it is also reasonable to conclude that this particular proposed development is needed."
- 3.8 The amendment to the NPPF requirement for TWBC to show a 4YHLS does not in any way reduce the need for housing, particularly as fewer housing units are now allocated within the Emerging Local Plan. This is especially pertinent as the Application includes 40% affordable housing which is in excess of policy requirements and which is in short supply both in the borough and specifically in Cranbrook.⁷ Mr Slatford's Planning Proof of Evidence set out the case for the 'need' for the development in paragraphs 6.59 – 6.91. Aside from the national and local need to deliver housing, he considered the 'need' for the development from a socio-economic perspective, concluding that the scheme would deliver significant socio-economic benefits for the local economy.

Beauty and Design

- 3.9 The NPPF includes additional references to 'beauty' and 'beautiful', but does not include any new 'test' or 'requirement' with regards to beauty. As set out in the Design Proof of Evidence Addendum prepared by Mr Colin Pullan and dated 21 November 2023 the development incorporates beautiful architecture (see Table 1), and the beauty of the Application site is also enhanced given that 80% of the site will consist of landscaping, in accordance with an approved LEMP.
- 3.10 New wording inserted into paragraph 138 of the NPPF states that the primary means of assessing and improving the design of development should be through the preparation and use of design codes. A detailed assessment of the proposals against the National Design Guide, HWAONB Management Plan, Housing Design Guide, Kent Design Guide, Cranbrook and Sissinghurst Neighbourhood Plan requirements and Policy Exchange Matrix is contained within the Design Proof of Evidence and Design Proof of Evidence Addendum, both prepared by Colin Pullan who concluded the scheme to be 'very, very well designed' and 'with distinctive and appropriately beautiful architecture (having regard to its surrounding built and natural context'.
- 3.11 TWBC assessed the scheme proposals against the applicable design guides when resolving to grant planning permission (see paragraphs 7.43 and 7.44 of the Updated

⁷ Planning Proof of Evidence of Mr Simon Slatford, paragraph 14.3.

Statement of Common Ground dated November 2023). Brian Duckett's (TWBC's landscape witness) professional view was that *'the housing proposed has been designed to reflect the character and appearance of local settlement within Cranbrook and neighbouring settlements such that it would contribute positively to the built environment of the town, in itself a part of the AONB'* and *'The detailed design of the landscape proposals and the layout and material choices of the built development would reflect the local traditional vernacular, and locally distinctive forms of housing development.'*⁸ He found the scheme to be in accordance with Tunbridge Wells Borough Core Strategy 2010 Policy EN19 which requires development within the High Weald AONB to 'seek to conserve and enhance its landscape and scenic beauty, having particular regard to the impacts on its character components, as set out in the High Weald AONB Management Plan.'

- 3.12 This assessment was accepted by the Application Inspector who confirmed that he considered that the proposals accorded with the design guide (IR 826 and 827). He agreed that 'the design of the proposed development is of a high standard that has evolved having thoughtful regard to its context' (IR 723). The scheme also scored 'outstanding' when assessed by Mr Pullan against the Policy Exchange Placemaking Matrix endorsed by the Secretary of State.

AONB Policies

- 3.13 For completeness, the NPPF does not contain any new requirements or tests relevant to the determination of applications which fall within Areas of Outstanding Natural Beauty.
- 3.14 This is relevant because as noted in previous submissions s. 245 of the Levelling Up and Regeneration Act 2023 changed the duty on public authorities in s. 85 of the Countryside and Rights of Way Act 2000. This came into force recently, but s. 245 further provides that "the Secretary of State may by regulations make provision about how a relevant authority is to comply with the duty under Levelling-up and Regeneration Act 2023 (including provision about things that the authority may, must or must not do to comply with the duty)." No such regulations have been published yet.
- 3.15 We would note that the new version of the NPPF has maintained precisely the same provisions in relation to AONBs, notwithstanding the revision to the statutory duties. This is a powerful indication that the Secretary of State's view must be that those policies provide just as an effective route to compliance with the new duty as with the old – and it should be remembered that the duty applies to a much wider range of decisions and functions than planning. Thus the position is that, if the policies in the NPPF on AONBs are judged to be complied with in respect of a particular development there would also be compliance with the new duty imposed by section

⁸ Landscape Proof of Evidence of Mr Brian Duckett, paragraph 11.2.9.

245. This seems to me to be similar to the position in relation to heritage policy and law as recognised by the Court of Appeal in ***Mordue v Secretary of State for Communities and Local Government*** [2015] EWCA Civ 1243.

4. **December Statement**

4.1 In the December Statement, the Secretary of State said:

"this Government is committed to building more homes; more quickly, more beautifully and more sustainably" and "it is only through up-to-date local plans that local authorities can deliver for communities, protect the land and assets that matter most, and create the conditions for more homes to be delivered [...] too many reject proposals which are in line with their policies, and officers' recommendations, and too many fail to ensure a proper pipeline of housing delivery [...]" and

"where plans are not in place, or not working effectively, communities are unprotected from speculative development. Houses still get built. But too often in inappropriate locations. Too slowly. And without the right infrastructure or community assets in place.

That serves no-one well. Communities do not have control. Developers do not have certainty. Homes for the next generation do not get built at the rate, or in the locations, we need."

4.2 The December Statement references the *"responsibility on local government to deliver"*, *"expectations for faster delivery"*, the fact that the Government is *"taking further steps to enforce effective delivery of new housing"* and the intention that the *"planning reforms will accelerate the delivery of new homes... The next generation need those homes built."*

4.3 As set out in section 2, TWBC is at an advanced stage of working to secure the adoption of the Emerging Local Plan and is supportive of this Application, which is consistent with a defined draft allocation policy. Granting the Application is required to address local housing need.

4.4 In the December Statement the Secretary of State also claimed that *"the overturning of a recommendation made by a professional and specialist officer should be rare and infrequent"* and that he supports *"transferring power to local areas so decisions are taken as close as possible to the areas and people most affected by them"*. In this instance, the Application was recommended for approval by TWBC's planning officer, supported 7-2 by TWBC's planning committee and recommended for approval by the Secretary of State's professional and specialist Inspector.

5. **Conclusion**

- 5.1 The Secretary of State is taking an increasingly interventionist approach to councils which are not putting local plans in place. TWBC is working hard to ensure that its Emerging Local Plan is adopted. The Emerging Local Plan has now been rigorously scrutinised, including by an Inspector appointed on behalf of the Secretary of State. The Applicant's site allocation has stood up to all scrutiny, and TWBC's local plan is progressing towards and now very close to adoption, with the allocation remaining unchallenged and this remains a significant material consideration to be weighed in decision making.
- 5.2 The changes introduced in paragraphs 77 and 226 of the NPPF were brought in to 'reward' authorities such as TWBC. It should not now be used to penalise them and justify refusal on a site which is integral to their Emerging Local Plan, and which benefits from an unchallenged allocation and the TWBC's unwavering support. In any event, that policy change does not detract from the "very compelling case for the need for development of this type in Cranbrook" (IR810), *particularly* as there will be fewer housing units now allocated in the Emerging Local Plan. This is especially pertinent as the Application includes 40% affordable housing which is in excess of policy requirements. It remains the case that the package of benefits delivered by the scheme (and set out in evidence) when viewed in light of the limited impact to the AONB caused by the proposals mean that there are exceptional circumstances which justify grant of the Application, as required by paragraph 183 of the NPPF.
- 5.3 In relation to design and beauty, the NPPF amendments support the grant of the Application. As set out in paragraph 3.9-3.12 above, the Application has been assessed to comply with relevant national and local design guides by Mr Pullan, TWBC and the Application Inspector, and is 'outstanding' when judged against the Policy Exchange Placemaking Matrix endorsed by the Secretary of State. By contrast, the Secretary of State's refusal of the application made no reference to the detailed provisions of design guide criteria whatsoever and did not state which elements of the High Weald Housing Design Guide were not complied with or the basis on which he had reached a differing conclusion.
- 5.4 The December Statement emphasises the importance of securing delivery of housing in a timely manner, and the importance of decisions being taken as close as possible to the areas and people most affected by them. We request that the Secretary of State considers the above representations when redetermining the Application.

Yours faithfully

Ashurst LLP

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Town and Country Planning Act 1990 - Section 77
Application made by Berkeley Homes (Eastern Counties) Limited
Land Adjacent to Turnden, Hartley Road, Cranbrook
Application Ref: 20/00815/FULL

11 January 2024

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28 November 2023

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Dear Sir/Madam

**Town and Country Planning Act 1990 - Section 77
Application made by Berkeley Homes (Eastern Counties) Limited
Land Adjacent to Turnden, Hartley Road, Cranbrook
Application Ref: 20/00815/FULL**

1. **Introduction**

- 1.1 We refer to our letter dated 21 November 2023 relating to the above Application. Defined terms in this letter have the same meanings as given in our previous letter.
- 1.2 This letter briefly addresses the matters raised by the other parties which responded to the Secretary of State's letter dated 31 October 2023 (the "**Representations**") and should be read alongside our previous letter. Having reviewed the Representations, we consider that all matters set out in our previous letter and its enclosures remain valid and correct.

2. **Design**

- 2.1 The High Weald Area of Outstanding Natural Beauty Unit ("**HWAONB Unit**") and Natural England are silent on the issue of design within their Representations, which aligns with the position taken by those parties at the inquiry. The Cranbrook and Sissinghurst Parish Council ("**CSPC**") and CPRE Kent have alleged that the scheme is not compliant with design policies but have not substantiated this with any analysis whatsoever. Mr Pullan's Urban Design Proof of Evidence Addendum, by contrast, contains detailed analysis of the scheme's design against the relevant policies and design codes.

3. **Education**

3.1 CSPC's Representations identify a lack of non-selective secondary education as being a 'material change' since the issue of the Decision because of the conversion of the High Weald Academy to a special educational needs school in 2022.

3.2 The potential closure of the High Weald Academy was considered at the inquiry and was addressed by the Inspector in his report, specifically at paragraphs 371, 792 and 793.

3.3 The impact of closure has nevertheless been considered by the Inspector, who recognised the sustainability credentials of the Site. Notably, the High Weald Academy does remain in educational use operating as Snowfields Academy.

4. **Water Supply**

4.1 CSPC's Representations state that South East Water are unable to guarantee water supplies.

4.2 South East Water is a "water undertaker" within the meaning of the Water Industry Act 1991. Section 37(1) of that act therefore imposes a duty upon South East Water to develop and maintain an efficient and economical system of water supply within its area and to ensure that arrangements have been made for providing supplies of water to premises in the area and to make such supplies available to persons who demand them. Section 37(2) provides that this duty is enforceable under section 18 of the act by the Secretary of State for Environment, Food and Rural Affairs. Paragraph 188 of the National Planning Policy Framework requires the Secretary of State to assume this regime will operate effectively.

4.3 Importantly, South East Water did not object to the Application nor did they give evidence at the inquiry. South East Water also did not object to the adjacent Tannersbrook Farmstead (previously Turnden Phase 1) development, which is now built and occupied. They have also not objected to the emerging allocation in the draft Local Plan.

4.4 In extreme cases, planning conditions can be imposed to deal with water supply issues. However we do not consider this to be necessary in the circumstances. If the Secretary of State is so minded, we would invite him to revert the parties on this.

5. **Medical Centre**

5.1 CSPC's Representation states that a new medical centre is required within Cranbrook & Sissinghurst Parish.

5.2 The Section 106 Agreement entered into on 30 March 2021 between TWBC, Kent County Council and the Applicant secures a £157,932 (index linked) contribution towards the provision of new facilities in the vicinity of the development and the relocation of Orchard End Surgery, Crane Surgery and Old School Surgery (and in the event that any of the above beneficiaries cease to exist or have merged practices into a primary health care facility, or a new surgery is established, the contribution may be applied towards that primary healthcare facility or new surgery).

5.3 CSPC's concerns are therefore adequately addressed by the contribution contained within the Section 106 Agreement.

6. **Cranbrook and Sissinghurst Neighbourhood Plan**

6.1 The Representations submitted by the HWAONB Unit, CPRE Kent and Natural England allege that the development proposed pursuant to the Application conflicts with the Neighbourhood Plan. As set out in our previous letter and its enclosures, that is strongly disputed by the Applicant who has provided a detailed assessment of the scheme against the Neighbourhood Plan policies.

6.2 The Secretary of State is requested to note that the Neighbourhood Plan was amended at the specific recommendation of the Neighbourhood Plan Examiner so as not to conflict with our development proposals given they have an emerging allocation. Please refer in particular to paragraph 3.23 of the Planning Proof of Evidence Addendum and paragraph 6.9 of the Updated Statement of Common Ground between the Applicant and TWBC.

7. **Section 245 of LURA**

7.1 The Representations submitted by the HWAONB Unit, Natural England and CPRE Kent each draw the Secretary of State's attention to section 245 of LURA.

7.2 As set out in our previous letter, when this provision comes into effect (on 26 December 2023) it will amend section 85 of the Countryside and Rights of Way Act 2000 ("**the 2000 Act**") to impose a duty on relevant public authorities to "*seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty*".

7.3 Having regard to the conclusions in the Inspector's report (see for example paragraphs 796 to 813) and the fact that the exceptional circumstances test is met, the granting of planning permission would be in compliance with the amended duty in section 85 of the 2000 Act.

7.4 LURA also seeks to give greater emphasis to AONB Management Plans. In this case the Inspector outlined fully how the design responded to the requirements of

the wider AONB Management Plan (see paragraphs 715-727 of the Inspector's report).

8. **Procedure**

- 8.1 We note that no party is seeking that the inquiry be reopened.

Yours faithfully

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21 November 2023

By email to PCC@communities.gsi.gov.uk

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Dear Sir/Madam

**Town and Country Planning Act 1990 - Section 77
Application made by Berkeley Homes (Eastern Counties) Limited
Land Adjacent to Turnden, Hartley Road, Cranbrook
Application Ref: 20/00815/FULL**

1. **Introduction**

We refer to the letter dated 31 October relating to the above application. We write in respect of the application with reference 20/00815/FULL (the "**Application**") and represent Berkeley Homes (Eastern Counties) Limited (the "**Applicant**") who is part of the Berkeley Group, a multi award winning dynamic and innovative FTSE 250 company, committed to building high quality homes. Berkeley work on a wide range of projects from small and medium size developments to regeneration schemes, but always produce sustainable communities with a real sense of place and a high design quality that is bespoke to the area.

1.1 We enclose:

- (a) An Planning Proof of Evidence Addendum prepared by Simon Slafford BA (Hons), MRTPI, BPI;
- (b) An Urban Design Proof of Evidence Addendum prepared by Colin Pullan BA(Hons) DipUD; and
- (c) An Updated Statement of Common Ground between the Applicant and Tunbridge Wells Borough Council ("**TWBC**").

- 1.2 This letter and its enclosures address the items identified by the Secretary of State for Levelling Up, Housing & Communities (the "**Secretary of State**") as being relevant to the redetermination of the Application in paragraph 3 of his letter dated 31 October.

2. **Re-opening of Inquiry**

- 2.1 In response to paragraph 5 of the Secretary of State's letter, the Applicant's view is that the inquiry should not be re-opened. There are two reasons for this. First, the Applicant considers the reopening of the inquiry to be unnecessary, and second, the Applicant should not be subject to yet further cost and delay.

Necessity

- 2.2 Inspector GD Jones BSc(Hons) DipTP DMS MRTPI (the "**Inspector**") wrote a long, detailed and comprehensive report, having listened to 18 days of evidence from all of the parties. Despite the time that has lapsed since the date of the report (4 April 2022), the Inspector's conclusions on the main issues considered at the inquiry remain extant and relevant other than the limited number of items addressed by the enclosed representations.

The issues upon which the Secretary of State has now requested representations relate to largely to matters which the Applicant has addressed in its attached written evidence namely the changes in circumstances, fact and policy which have arisen since 4 April 2022 and set out why these factors are supportive of the Inspector's recommendation to grant. The Applicant does not consider that any of these matters necessitate further interrogation at a public inquiry and are not matters which would merit being tested by cross-examination. Similarly, other parties are well able to address these matters in writing.

Cost and Delay

- 2.3 As set out in the Applicant's statutory challenge to the Secretary of State's refusal letter ("**the Decision**"), the Applicant has been prejudiced by unacceptable cost and delay as a result of the calling-in of the Application by the Secretary of State. Briefly, the timescales are as follows:

- (a) The Application was submitted to TWBC on 12 March 2020;
- (b) TWBC resolved to grant the Application on 27 January 2021;
- (c) The Applicant was advised on 12 April 2021 that the Secretary of State had decided to call-in the Application;
- (d) A very expensive, 18 day public inquiry was held between September and November 2021;

- (e) An experienced planning inspector, appointed by the Secretary of State, issued his report on 4 April 2022 which recommended that the Application should be granted, and on each of the issues which were considered at the inquiry endorsed the position advanced either by the Applicant or by TWBC (who has always remained supportive of the Application);
- (f) Rachel MacLean MP (on behalf of the Secretary of State) did not issue a decision until 6 April 2023, 12 months after the inspector's report was received;
- (g) The Secretary of State consented to judgment on 16 May 2023, conceding that the decision was unlawful;
- (h) Following due process in the High Court the decision was formally on quashed on 6th October 2023; and
- (i) The Application still remains to be lawfully determined.

2.4 Three years and eight months have now passed since the date on which the Application was submitted to TWBC, and two years and ten months have passed since TWBC resolved to grant planning permission. The Applicant has been significantly prejudiced by the delay caused by the call-in of the Application at such a late stage by the Secretary of State, the delay in issuing the Decision following receipt by the Secretary of State of the Inspector's report and the fact that the Decision, when eventually made, was unlawful as a result of errors made by the Secretary of State.

2.5 As the Secretary of State is aware, Ground 5 of the statutory challenge brought against the Decision alleges that the delay associated with the Application has violated the Applicant's right to a decision within a reasonable time (both at common law and pursuant to Article 6 of the European Convention on Human Rights).

2.6 The Applicant has never received any justification or explanation for the delay between the issue of the Inspector's report and the refusal of the Application by the Secretary of State. As set out in the claim, if in due course the Applicant considers it necessary to pursue a further claim, the Applicant will seek disclosure of all of correspondence relating to the Application.

3. **Representations**

The matters upon which the Secretary of State has requested representations are addressed as set out below.

3.1 The progress of the emerging Local Plan

- (a) The emerging Local Plan was submitted to the Secretary of State for examination on 1 November 2021 (the examination section of TWBC's

website is available here: <https://tunbridgewells.gov.uk/planning/planning-policy/local-plan/examination-of-the-local-plan>);

- (b) The Local Plan Inspector published his Initial Findings that raised no issues with the allocation of this site under Policy AL/CRS 3. The Application is fully in compliance with the draft site allocation;
- (c) TWBC's Planning and Transportation Cabinet Advisory Board accepted the Officers' recommendations on 13 November 2023, which will now be considered by Cabinet on 7 December 2023 and Full Council on 13 December 2023. Should the recommendations be approved, the proposed modifications to the Plan will be subject to public consultation for a six-week period starting in January 2024; and
- (d) The above matters are addressed in detail in paragraphs 3.2-3.19 of the Planning Proof of Evidence Addendum. Mr Slatford's evidence on this matter is, briefly, that greater weight is now attributable to the allocation of the Site in the emerging Local Plan than was attributable to the allocation at the time of the Inquiry or issue of the Inspector's Report.

3.2 The progress of the Neighbourhood Plan

- (a) The Neighbourhood Plan was made on 4 October 2023 (available at: https://tunbridgewells.gov.uk/_data/assets/pdf_file/0005/452345/Cranbrook-and-Sissinghurst-NDP-Made-Version-cover-update-Accessible.pdf) .
- (b) The Planning Proof of Evidence Addendum sets out the implications of the making of the Neighbourhood Plan in paragraphs 3.20 to 3.28. In summary, although at the time of the Inquiry there were some inconsistencies between the development proposed by the Application and the Neighbourhood Plan, those inconsistencies have since been removed and therefore the Application is consistent with the Neighbourhood Plan as made.
- (c) By reason of the Neighbourhood Plan having been made, Mr Pullan has prepared an Urban Design Proof of Evidence Addendum which makes representations on the design of the scheme. This is required because:
 - (i) The Neighbourhood Plan sets a number of design policies which are relevant to the Application including a Design Checklist to the supporting policies.
 - (ii) The conclusions reached by the Secretary of State in the now quashed decision suggest that there was no proper consideration given to the Applicant's landscape and design evidence. Mr Pullan's Urban Design Proof of Evidence Addendum therefore includes a detailed analysis of the scheme against the HWAONB Design Guide,

the principles of which are now directly referred to within the policies of the Neighbourhood Plan, as made. An assessment of the scheme against the HWAONB Design Guide was carried out by Mr Pullan in his evidence to the Inquiry [CD 23.1] and this is therefore not new information. However the Applicant is hopeful that it will assist the Secretary of State in forming his decision on the Application, whilst directly responding in detail, by cross-reference, to the requirements of the made Neighbourhood Plan.

- (iii) As referenced in paragraph 1.16 of Mr Pullan's Urban Design Proof of Evidence Addendum, the Applicant is sending hard copies of the following documents to the Department for Levelling Up, Housing & Communities:
- (A) Proof of evidence of Mr Colin Pullan;
 - (B) Proof of evidence of Mr Andrew Cook;
 - (C) Landscape and Visual Impact Assessment;
 - (D) Design and Access Statement; and
 - (E) Design and Access Statement Addendum.

3.3 The current housing land supply position

- (a) The latest published position regarding the Council's five-year housing land supply is set out in the Five-Year Housing Land Supply Statement 2022/2023 published by TWBC in October 2023 (and appended to the Planning Proof of Evidence Addendum). This sets out that the up-to-date position is a land supply of only 4.29 years which represents a shortfall of 522 dwellings.
- (b) The Secretary of State stated in his Decision that the housing land supply was 4.89 years (a shortfall of 77 dwellings) and improving. The Applicant's position is that that was incorrect at the time of the Decision and remains incorrect now.
- (c) Mr Slatford's Proof of Evidence addresses this matter in detail in section 4.

3.4 Material changes in circumstances, fact or policy that have arisen since the Inspector's Report of 4 April 2022 and which are material to the Secretary of State's further consideration of the Application:

- (a) The Levelling-up and Regeneration Act 2023 ("**LURA**") was enacted on 3 November 2023. The majority of the provisions are not relevant to the Application and in any event are not yet in force. However, there are two

provisions which we wish to address briefly in this letter on behalf of the Applicant. We do so in section 4 below.

- (b) Changes to the Biodiversity Net Gain requirements under the Environment Act 2021 are expected to come into force in January 2024. We address those requirements in section 5 below and these are also addressed by Mr Slatford in paragraphs 3.29 to 3.31.
- (c) The Secretary of State's letter of 8 September 2023 to Council Leaders Chief Executives and other Local Planning Authorities in England is addressed in Mr Slatford's Planning Proof of Evidence Addendum at paragraph 3.32-3.33.
- (d) The Secretary of State's recent Office for Place or Policy Exchange design criteria/matrix is addressed in Mr Pullan's Urban Design Proof of Evidence Addendum at paragraphs 2.63 and in Mr Slatford's Planning Proof of Evidence Addendum at paragraphs 3.34 to 3.35.
- (e) Given the length of time since the Inspector's Report, Mr Pullan's Urban Design Proof of Evidence Addendum also addresses the fact that the position on the ground has changed in relation to Turnden Phase 1 (Tannersbrook Farmstead) which is now complete and has won awards. Brick Kiln Farm has now obtained reserved matters approval and is being built, with the first homes substantially complete. Please refer to paragraphs 2.3 to 2.8 of and Appendix 2 of Mr Pullan's Urban Design Proof of Evidence Addendum. This is also set out in Mr Slatford's Planning Proof of Evidence Addendum in section 5 who also explains that a Traffic Regulation Order has now been made, reducing the speed limit on Hartley Road (see paragraph 5.4).

4. **Levelling up and Regeneration Act 2023**

Section 93

- 4.1 Section 93 of the LURA has not yet come into force as the enabling regulations have not yet been made. On that basis, we deal with it only very briefly. Section 93 (once in force) amends Section 38 of the Planning and Compulsory Purchase Act 2004 so that applications must be determined in accordance with the development plan and any national development management policies (taken together) unless material considerations strongly indicate otherwise.
- 4.2 First, as this provision is not yet in effect it does not affect the Applicant's position.
- 4.3 Second, if regulations are made prior to the determination of the Application such that section 93 is effective, as set out in Mr Slatford's Planning Proof of Evidence Addendum, the draft Local Plan is post examination and far advanced. It is a

material consideration which strongly indicates that the Application should be granted.

Section 245

4.4 Section 245 of the LURA comes into force on 26 December 2023. It is relevant to Areas of Outstanding Natural Beauty and functions so as to amend section 85 of The Countryside and Rights of Way Act 2000 to require a relevant authority (other than a devolved Welsh authority) to seek to further the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty. Section 245 further provides that "the Secretary of State may by regulations make provision about how a relevant authority is to comply with the duty under Levelling-up and Regeneration Act 2023 (c. 55) 297 Part 12—Miscellaneous subsection (A1) (including provision about things that the authority may, must or must not do to comply with the duty)." No such regulations have been published as at the date of this letter.

4.5 We consider that granting the Application would meet this statutory objective given the conclusions of the Inspector (in particular in paragraphs 729 – 733 of his report) that the effects of the proposals on the HWAONB within the Site would be minor adverse/neutral after the 15 year establishment period for the landscaping and ecological enhancements proposed by the LEMP, and that the effects on the wider HWAONB would be largely neutral. Every effort has been made by the Applicant to conserve and enhance the natural beauty of the area.

5. **Environment Act 2021**

5.1 The Environment Act 2021 was enacted on 9 November 2021 (prior to the issue of the Inspector's Report). Section 98 and Schedule 14 insert a new Section 90A and a new Schedule 7A into the Town and Country Planning Act 1990. These provisions have not yet come into force, as secondary legislation is awaited. Our understanding is that this legislation is expected in January 2024 and therefore the provisions may be in force at the time of any redetermination (depending upon the speed with which a decision is issued).

5.2 Once the relevant provisions of the Environment Act 2021 have come into force, the effect of Section 98 is that a minimum of 10% biodiversity net gain will be required to be provided on any site for which planning permission is granted, or (where this is not achievable) compensatory off-site provision will need to be provided instead.

5.3 The Application proposes a biodiversity net gain well in excess of 10%. This was identified in paragraphs 734 to 747 of the Inspector's Report and no issue was taken with this by the Secretary of State who identified that "the proposed development would be very likely to comfortably exceed 10% BNG".

5.4 The Applicant does not intend to submit further evidence relating to biodiversity net gain unless this is necessary as a result of representations issued by other parties.

6. **Miscellaneous**

6.1 There are references within the Urban Design Proof of Evidence Addendum and Planning Proof of Evidence Addendum to the core documents which were before the Inquiry and the Inquiry documents. If it would assist the Secretary of State, we are happy to provide copies of the relevant documents in a digital link.

6.2 We look forward to receiving any representations submitted by TWBC, Natural England, the High Weald AONB Unit and CPRE Kent in due course.

6.3 Finally, as widely reported in the national media, the Decision which has now been quashed attracted considerable criticism from the house building industry and planning professionals generally. The grant of long awaited planning permission is not only important for the provision of much needed housing within the borough but also important to the house building industry as a whole. We urge the Secretary of State to finally grant planning permission

Yours faithfully

Ashurst LLP

Ashurst LLP

Encs.:

1. Planning Proof of Evidence Addendum prepared by Simon Slatford BA (Hons), MRTPI, BPI,
2. Urban Design Proof of Evidence Addendum prepared by Colin Pullan BA(Hons) DipUD; and
3. Updated Statement of Common Ground between the Applicant and TWBC.

Appendix 3 Compton Parish Council v Guildford Borough Council High Court Decision



Neutral Citation Number: [2019] EWHC 3242 (Admin)

Case Nos: CO/2173,2174,2175/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/12/2019

Before :

SIR DUNCAN OUSELEY
Sitting as a High Court Judge

Between :

COMPTON PARISH COUNCIL (2173)
JULIAN CRANWELL (2174)
OCKHAM PARISH COUNCIL (2175)

Claimants

- and -

GUILDFORD BOROUGH COUNCIL
SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT

Defendants

-and-

WISLEY PROPERTY INVESTMENTS LTD
BLACKWELL PARK LTD
MARTIN GRANT HOMES LTD
CATESBY ESTATES PLC

Interested
Parties

Richard Kimblin QC (instructed by **Richard Buxton & Co**) for **Compton Parish Council**
Richard Kimblin QC and **Richard Harwood QC** (instructed by **Richard Buxton & Co**) for

Julian Cranwell

Richard Harwood QC (instructed by **Richard Buxton & Co**) for **Ockham Parish Council**

James Findlay QC and **Robert Williams** (instructed by the solicitor to Guildford Borough
Council) for the **First Defendant**

Richard Honey (instructed by the Government Legal Department) for the **Second Defendant**

James Maurici QC and Heather Sargent (instructed by Herbert Smith Freehills LLP) for the
First Interested Party
Richard Turney (instructed by Mills & Reeve LLP) for the **Second Interested Party**
Andrew Parkinson (instructed by Cripps Pemberton Greenish LLP) for the **Third Interested**
Party
Christopher Young QC and James Corbet Burcher (instructed by Eversheds Sutherland
LLP) for the **Fourth Interested Party (in 2174)**

Hearing dates: 5,6 and 7 November 2019

Approved Judgment

Sir Duncan Ouseley:

1. Guildford Borough Council submitted its amended proposed “Local Plan: Strategy and Sites (2015-2034)” to the Secretary of State for Housing, Communities and Local Government on 13 December 2017. It did so after public consultation on the 2016 version of the Plan and later on the amendments to it in the 2017 version, as eventually submitted. This submission was for the purpose of a Public Examination, PE, of the Plan, pursuant to s20 of the Planning and Compulsory Purchase Act 2004, by an Inspector appointed by the Secretary of State. The Inspector held the PE in June and July 2018. Guildford BC published the Main Modifications which it proposed asking the Inspector to make to the submitted Plan to make it sound; there was public consultation upon those proposed Main Modifications in September to October 2018. The publication in September 2018 of revised household projections, and the effect which that also had in reducing the need for housing in Guildford BC’s area to meet needs from the neighbouring Woking BC area, caused Guildford BC to make representations to the Inspector about the housing requirements in the submitted Plan and its Proposed Modifications. In February 2019, the Inspector resumed the PE for two days to consider this issue. On 28 March 2019, the Inspector published his report. The Plan, with the Main Modifications he required, was adopted by Guildford BC on 25 April 2019. I shall refer to the adopted Local Plan as the LPSS.
2. The Claimants were all participants in the PE, Mr Cranwell as a member of Guildford Green Belt Group. They opposed the principle and extent of land which the submitted Plan proposed to release from the Green Belt, as well as the allocation for development of specific sites proposed for release from the Green Belt. The four Interested Parties were also participants at the PE, supporting the release of Green Belt sites in which they were interested, as well as contending that Guildford BC was proposing to make insufficient provision for housing needs.
3. The three Claimants have brought these challenges to the adoption of the LPSS, under s113 of the 2004 Act. The language of s113(3) is in familiar terms; a challenge can be brought on the grounds that the local plan is not within the appropriate powers or that a procedural requirement has not been complied with. The three claims were heard together, with argument and evidence produced for one being admissible and applicable in all three.
4. All Claimants challenge, with degrees of difference but on wide bases, the release of sites from the Green Belt and their allocation for development, with Mr Cranwell’s contentions ranging the widest. His case was argued by Mr Kimblin QC and Mr Harwood QC in conjunction with the various points they were making on behalf of the Parish Council each represented; Mr Cranwell’s advocate of choice was not available on the dates fixed for the hearing, but he was not let down by his substitutes. Compton Parish Council, represented by Mr Kimblin, in addition to the general arguments about the release of land from the Green Belt, focused on the removal from the Green Belt of the site known as Blackwell Farm, just west of Guildford town. Mr Harwood for Ockham Parish Council, likewise, focused on the former Wisley airfield site, its removal from the Green Belt and its allocation for a new settlement.
5. Mr Findlay QC for Guildford BC defended the LPSS from the challenges, supported by Mr Honey for the Secretary of State, taking a more active role than is common. They were supported by Mr Maurici QC for Wisley Property Investments Ltd which

was promoting the allocation of the former Wisley airfield for development, Mr Turney for Blackwell Park Ltd, a company owned by the University of Surrey which was promoting the allocation of the Blackwell Farm site for residential and research park use, Mr Parkinson for Martin Grant Homes Ltd which was promoting the allocation of a site at Gosden Hill Farm for residential purposes, and Mr Young QC for Catesby Estates Ltd which was promoting the allocation of a site for residential purposes north of Horsley railway station. The site specific oral arguments focussed on Wisley and Blackwell Farm. The Interested Parties' advocates adopted the submissions of Mr Findlay and Mr Honey, which were themselves in harmony if not unison, with limited additions.

6. I am grateful to all the parties for the way in which they agreed the statement of facts, and in effect agreed chronologies, and legal propositions, and in argument adhered to the case timetable so that it was completed within the allotted three days. The various grounds of claim were usefully distilled into issues.
7. The main general issue (numbered 2 in the list used by the parties) was whether the Inspector had erred in law in his approach to what constituted the "exceptional circumstances" required for the redrawing of Green Belt boundaries on a local plan review. This had a number of aspects, including whether he had treated the normal as exceptional, and had failed to consider rationally, or with adequate reasons, why Green Belt boundaries should be redrawn so as to allow for some 4000 more houses to be built than Guildford BC objectively needed. The scale of the buffer did not result, it was said, from any consideration of why a buffer of such a scale was required but was simply the sum of the site capacities of the previously allocated sites. There were two other general issues (1) and (7): (1) had the Inspector considered lawfully or provided adequate reasoning for not reducing the housing requirement, leaving some needs unmet to reflect the Green Belt policy constraints faced by Guildford BC? (7) Did Guildford BC breach the Environmental Assessment of Plans and Programmes Regulations 2004 SI No.1633, in deciding not to reconsider what might be reasonable alternatives to the proposed Plan when, in 2018, the objectively assessed housing needs figure was reduced from 12,426 to 10,678, with housing land supply allocations totalling 14,602. It was submitted that it ought to have considered alternatives such as removing the development allocation in the Green Belt from one or more of the contentious large sites.
8. The site specific considerations at the former Wisley airfield and at Blackwell Farm formed part of the attack on the Inspector's general approach to the release of land from the Green Belt.
9. But there were also site specific grounds of challenge. The first site specific issue, (4), relating to the former Wisley airfield, was the adequacy of reasons given by the Inspector in his report on the PE for reaching conclusions which, it was said, were inconsistent with the views expressed by an Inspector, accepted by the Secretary of State, on an appeal against the refusal of planning permission for a major residential development at the former Wisley airfield, taking up most of the Local Plan allocation there. The appeal Inquiry began before the PE and the decision emerged in the course of the PE. The second site specific issue at Wisley, (5a), concerned the extent of land removed from the Green Belt yet not allocated for development, termed "white land"; issue (5b) concerned the lawfulness and effect of the submission of the 2017 version of the Plan, when the further consultation on it was restricted to the 2017 changes, and

did not encompass unchanged aspects of the 2016 version, upon which there had already been consultation in 2016. The third issue, (8), concerned the lawfulness of the approach by the Inspector to the air quality impact of the Wisley allocation on the Thames Basin Heaths Special Protection Area, the SPA. It was initially said that the Conservation of Habitats and Species Regulations 2017 SI No.2012 required the decision-maker to leave mitigation and avoidance measures out of account; but the argument was refined so that it attacked the assessment that there would be no adverse effects, on the basis that there would still be exceedances of critical thresholds, even though the baseline levels of pollution would have reduced.

10. The site-specific issues raised in respect of the Blackwell Farm allocation were, (3), that the local exceptional circumstances relied on by the Inspector were not legally capable of being regarded as “exceptional”, and that strategic and local “exceptional circumstances” overlapped, leading to double counting of exceptional circumstances. The other issue at Blackwell Farm was, (6), whether the Inspector erred in law in the way he considered the new access road. This would have to climb the escarpment to link to the A31, and a section of which would pass through the part of the Surrey Hills Area of Outstanding Natural Beauty, the AONB, which lay to the north of the A31. Should he have concluded that this would be “major development” in the AONB and so face a policy obstacle to its approval which could put the allocation at risk, or even prevent its being delivered? He should at least have taken this risk into account.

The legal framework for the public examination

11. The statutory functions of the PE, Inspector and plan-making authority are set out in s20 of the 2004 Act. The lawfulness of the steps taken before the PE were not generally at issue, but one earlier provision became relevant to issue (5b) and another to issue 7. I shall pick up those provisions when I come to those issues, and including the Town and Country Planning (Local Planning) (England) Regulations 2012 SI No.767, the 2012 Regulations.
12. S20(1) requires the local planning authority to submit every development plan document for examination, but (2), not to do so unless it considers that the relevant requirements have been complied with and that the document is ready for independent examination. That has a bearing on issue 5(b).
13. By s20(5), the purpose of the independent examination is to determine (a) whether the submitted Plan satisfies various statutory requirements, including having regard to national planning policies, (b) whether it is “sound”, a term which has no statutory definition, but which is explained in the National Planning Policy Framework, NPPF, as set out later, and (c) whether any duty in s33A had been complied with. This is the duty of co-operation between local planning authorities “in maximising the effectiveness” with which local plans are prepared in relation to “strategic matters”, that is “sustainable development... of land...which would have a significant impact on at least two planning areas...” This duty has superseded the provision of housing numbers for planning authorities through regional strategies.
14. There are provisions for those who make representations to be heard, and enabling the Secretary of State to consider particular matters and to control procedure. S20(7) requires the Inspector, if satisfied that the Plan is sound and that legal requirements have been met, to recommend that the Plan is adopted and “to give reasons for the

recommendation.” If not so satisfied, he must recommend that the Plan is not adopted and give reasons for the recommendation; s20 (7A). S20(7B and C) applied here. If the Inspector does not consider that the Plan is “sound”, as it stands, or that the various legal requirements of s20(5)(a) have been met, but that the duty to co-operate has been complied with by the local planning authority, he must recommend modifications to the document which would make it sound, and satisfy the requirements of s20(5)(a), if the submitting authority asks him to do so. These are known as Main Modifications.

15. If that course is followed, the reasons obligation in s20(7) applies to the final recommendation. The recommendation and reasons must be published. Minor modifications can be made by the submitting authority; they do not need to go through that Main Modifications process.
16. In fact, after the initial 12 days of hearings, Guildford BC prepared a schedule of Main Modifications which it was to ask the Inspector to recommend to it. These were the subject of public consultation; the responses were provided to the Inspector, before the resumed PE hearing in February 2019.
17. The NPPF provides an explanation of soundness, which Inspectors routinely apply. I set it out from [182] of the applicable 2012 version, in view of the debate before the Inspector, and before me about the release of Green Belt land to meet Guildford BC’s own housing needs, and a portion of those from Woking BC’s area:

“Positively prepared - the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

Justified - the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportional evidence;

Effective - the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

Consistent with national policy - the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.”

18. The judgment as to whether a plan is sound or not is plainly a planning judgment, unlawful only on the basis of general public law principles. A plan is not to be judged unsound by an Inspector simply because there might be a better way of dealing with an issue, or because the Inspector would have preferred a different approach, after hearing representations.
19. I described the inquisitorial nature of the process of the public examination, and its significance for the reasons which an Inspector has to give, in *Cooper Estates Strategic Land Ltd v Royal Tonbridge Wells BC* [2017] EWHC 224 (Admin) at [26-

29]. A similar issue on reasons was also considered in *CPRE Surrey v Waverley BC* [2019] EWCA Civ 1826 in [71-72], observing the distinction between the task of an Inspector on a public examination, considering soundness, the duty to co-operate and legal compliance, and on an appeal.

20. The conduct of this PE, including the number of participants and the preparation by the Inspector of question papers and agendas, amply bear out these different functions.
21. Before turning to the issues before me, it is necessary to set out some of the Inspector's Report.

The Inspector's Report

22. The first issue addressed in the Inspector's Report, IR, was whether the Plan made adequate provision for new housing, an issue which was at the heart of the need for Green Belt releases and of almost all the issues before me. The calculation of the objectively assessed housing need, the first topic under that heading, was not itself controversial before me. The variations in those figures over time were more relevant to the justification for the degree of "headroom" between the need figure and the capacity of the sites allocated to meet the need.
23. The Inspector's task was to judge the soundness of the Guildford BC's calculation of its Objectively Assessed Housing Needs, the OAN or OAHN. The outcome, after allowing for the change in September 2018 through the 2016-based household projections, was a requirement of 562 dwellings per annum, dpa, or 10678 dwellings during the Plan period; IR24. He decided not to make a further upwards adjustment for affordability, though recognising that there was a pressing affordability problem, as the figure of 562 dpa was already a 79% uplift over the demographic starting point of 313 dpa, and a significant increase above historic delivery rates. That uplift could be expected to improve affordability and to boost the supply of housing; IR 30.
24. He also decided not to increase the 562 dpa figure further by way of allowance for further affordable housing. Meeting the need for such housing of 517 dpa would require 1300 dpa, if 40% of every site were affordable housing. That level of housing would not be practicable, nor would an increase above 562 dpa be appropriate, IR31, "but it is further evidence of a pressing housing need and it lends strong support to the figure of 562 dpa rather than a lower requirement." The wider context supported 562 dpa; he referred to the importance of Guildford, its University, the successful science park and the "significant incursion" of students into the housing market, IR 33: "These factors, together with a seriously poor and deteriorating housing affordability and the very high level of need for affordable housing make a compelling case for a supply of housing significantly above historic rates."
25. The Inspector also saw 562 dpa as realistic in comparison with the housing requirements of the two other authorities in the West Surrey Strategic Housing Market Area, SHMA, Woking and Waverley BCs. He was well aware of their circumstances, having been the Inspector in the Waverley Local Plan PE, which found its way to the Court of Appeal on the challenge by CPRE Surrey, above.

26. He continued in IR 35, that the 562 dpa OAN figure was consistent with the characteristics of Guildford, its district and the wider context. A lower housing requirement, such as the 361 dpa put forward by some local participants:

“would not have regard to the reality of Guildford’s characteristics or its context, would pose a risk to local economic prospects and plans, would not adequately address housing affordability or the availability of affordable housing, would potentially increase the rate of commuting, and would be inconsistent with the assessed housing need of the other authorities in the housing market area. A higher requirement would imply a scale of uplift which would start to become divorced from the demographic starting point and from the context of the housing market area described above.”

27. Although the Inspector is here considering the first stage in the assessment of the housing requirement, that is what the need figure is before the application of any policy constraints, the so-called “policy-off” figure, and is using those factors to support the soundness of 562 dpa, those factors are also relevant when he comes to consider whether a policy constraint should be applied, the so-called “policy-on” stage, to reduce the housing requirement figure, leaving an unmet need.

28. Finally, the Inspector analysed the unmet need from Woking BC’s area. Various allowances had been made for it over the evolution of the Plan, including an allowance of 42 dpa in a proposed Main Modification. Although, after September 2018, Woking BC no longer claimed an unmet need, the Inspector considered that there probably was still an ongoing unmet need from Woking, not all of which would be accommodated by the allowance in Waverley. But it was unnecessary to make a specific allowance in Guildford’s housing requirement on that account because the likely residual amount of unmet need could be accommodated within the Plan’s “headroom”, that is the difference between the requirement of 562 dpa, (10,678), and the number of dwellings that could be delivered from all sources over the life of the Plan, (14602).

29. The second topic which the Inspector had to consider in his Issue 1 concerned the delivery of an adequate supply of homes, providing a rolling five-year housing land supply throughout the Plan period. Guildford BC had accumulated a significant shortfall, amounting to some 66 dpa if spread evenly over the Plan period. This had to be met. NPPF [47], seeking to “boost significantly the supply of housing”, required local planning authorities to:

“use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period.”

30. The housing trajectory is important; it is required by NPPF [47] to illustrate the expected rate of housing delivery, showing when sites may come on stream, how much each is expected to produce each year of production, and when they are

expected to cease production. This enables a planning authority to show whether it has or lacks a five-year housing land supply, what sites may be brought forward to cope with any shortfall, and how the rolling 5 year supply can be maintained over the plan period. This is concerned therefore with the delivery of the housing requirement. In the case of Guildford BC, its persistent shortfall in meeting housing needs meant that its five-year housing land requirement, together with the accumulated shortfall of 66 dpa, was increased by 20%, under the NPPF, for the purposes of calculating whether it had a five-year housing land supply.

31. The difference between the OAN of 10,678 homes over the plan period, and the potential to deliver 14,602 homes over that period was a central topic which the Inspector addressed under his Issue 5. But he introduced the need for that level of housing in IR 42-46. I set it out:

“42. The housing trajectory indicates that there is potential to deliver 14,602 homes over the plan period. The difference between this and the total housing requirement of 10,678 homes has been raised during the examination in the context of whether there are exceptional circumstances to release land from the Green Belt. This is dealt with in more detail under Issue 5. But purely in terms of housing supply, there is enough headroom to ensure that the Plan remains robust in the event that there is slippage in the delivery of housing from the allocated or committed sites, avoiding the need to allocate reserve sites; and enough headroom to provide for the anticipated level of unmet need from Woking, bearing in mind that there would be a continuing level of undersupply over the period of Woking’s newly reviewed plan. The overall plan provision would also provide more affordable housing and go further to address serious and deteriorating housing affordability.

43. The reduced housing requirement in MM2 enables the plan to proceed without the [4] additional sites allocated by [Main Modifications], but it is not of an order that would justify the deletion of any of the strategic sites which, in addition to their substantial housing contributions, bring other significant benefits to the Borough through their critical mass and well-chosen locations. Again, this is discussed in more detail under Issue 5.

44. No further sustainability appraisal is required in respect of the requirement of 562 dpa because the overall housing delivery figure of 14,602 homes falls within the range of eight delivery scenarios that were considered as reasonable alternatives, ranging from 13,600 homes to 15,680 homes and the housing allocations remain the same as in the submitted Plan except for [one].

45. The trajectory indicates a 5 year housing land supply on adoption of 5.93 years rising to 6.74 years in year 5. The 5 year

supply calculation includes a 20% buffer for past persistent under-delivery and uses the Liverpool method [spreading the catchup evenly over the plan period] in recognition of the contribution made by the strategic locations which typically have a longer lead-in time. These are the Council's figures and it is recognised that slippage could reduce this supply, but there is enough flexibility built in to the trajectory to maintain a rolling 5 year housing land supply.

46. In conclusion, whilst the submitted plan's figure of 654 dpa is not sound because it does not reflect the most recent evidence, the Council's calculated housing requirement of 562 dpa, or 10,678 dwellings over the life of the plan, as set out in the revised version of MM 2 is sound. It reflects the latest evidence and is based on sound analysis. The overall level of housing delivery, currently calculated at 14,602 homes, will ensure that an adequate 5 year supply of land will be maintained and will ensure that the plan is robust; it will deliver sufficient housing to help address the pressing issues of affordability and affordable housing need, and contribute towards addressing unmet housing need in the housing market area."

32. Mr Findlay put considerable weight upon the housing trajectory, appended to the IR. This showed that the sequentially less preferred housing allocations around villages, to the north and west of West Horsley, near to Horsley Railway Station, at Send, Send Marsh/Burnt Common, and amounting to 945 dwellings, were required in the early part of the Plan period, in the first five years from adoption. They could not be omitted without Guildford BC failing to provide for the five year housing supply with the 20% buffer for past underperformance, and the 66 dpa contribution to meeting the shortfall. The larger contentious Green Belt sites, at the former Wisley airfield, Gosden Hill Farm and Blackwell Farm, were all required for their contribution to supply after the initial 3 or so years from adoption. They came on stream together, at a low rate, building up over the next five years, and increasing markedly in years 11-15, i.e.2029/30-2033/34, and continuing beyond the plan period in the case of the latter two.
33. The reasoned justification to Policy S2, the spatial strategy for 562 dpa and "at least" 10678 new homes, as modified, states at 4.1.11, in the language of the Inspector's Main Modifications:

"National policies require that we meet objectively assessed housing needs, including any unmet needs from neighbouring authorities, where it is practical to do so and consistent with achieving sustainable development. Guildford's objectively assessed housing need has been based on a consideration of the latest 2016-based population and household projections. Applied to this demographic housing need is a necessary uplift to take account of market signals and affordable housing need, assumptions of future economic growth, and an increase growth in student population."

34. The total supply over the plan period amounted to 14,602 dwellings. The reasoned justification at 4.1.14, as modified, identified the national policy requirement for a demonstrable rolling 5 year housing land supply from the date of adoption, taking account of the accrued deficit with a 20% buffer. The expected phasing of sites was set out in the housing trajectory, in the form in which it had been appended to the IR.
35. The Inspector's Issue 2 concerned whether the Plan adequately addressed the identified housing needs "of all the community." The strategic housing allocation policies mattered in this context because the needs of gypsies, travellers and travelling showmen was to be addressed on sites of 500 homes or more.
36. His Issue 3 dealt with employment and business. This issue is relevant to these challenges because the Inspector said, IR60, that the larger residential-led allocated sites in the Green Belt "make substantial contributions towards meeting employment needs," including Gosden Hill Farm (10,000 sq.ms), Blackwell Farm (about 30,000 sq.ms of B1 use as an extension to the Surrey Research Park), and the former Wisley airfield (4,300 sq.ms). For some, including Gosden Hill Farm and former Wisley airfield, "the amounts of employment floorspace are an integral part of these residential-led mixed schemes. They are necessary to create balanced, sustainable development." Blackwell Farm contained a much larger business component, of a nature encouraged by the NPPF, and, he said at IR61: "Building on the success of the existing Research Park by allocating further land close to it for similar uses represents the best opportunity in the Borough to meet these objectives."
37. I have referred to those two issues because Mr Findlay was at pains to emphasise that the exceptional circumstances for the contentious Green Belt allocations included not just the provision of housing but provision for other uses as well, and that that was how the Inspector saw them, as I shall come to.
38. Issue 5 raised by the Inspector is critical to the challenges. It was entitled "Whether at the strategic level there are exceptional circumstances which justify altering Green Belt boundaries to meet development needs and whether the Plan's Green Belt policy is sound."
39. Before turning to the IR, I need to set out what the NPPF said about this subject since it provides the frame of reference for the Inspector's approach. NPPF [14] contains the presumption in favour of "sustainable development." This means that, in plan-making, authorities: "should positively seek opportunities to meet the development needs of their area; Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:...specific policies in this Framework indicate development should be restricted." Designated Green Belt is one such restricting policy, in footnote 9. It is a core planning principle, NPPF [17], that planning should make every effort objectively to identify:

"and then meet the housing, business and other development needs of an area....Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities."

40. The NPPF in section 9 set out the Green Belt policies. The fundamental aim was to prevent urban sprawl by keeping land permanently open; “the essential characteristics of Green Belts are their openness and their permanence.” It identified in [80] the familiar five purposes of the Green Belt, pointing out that their general extent was already established. At [83] and following, it said:

“83. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to the intended permanence in the long term, so that they should be capable of enduring beyond the plan period.

84. When... reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt boundary or towards locations beyond the outer Green Belt boundary.

85. When defining boundaries, local planning authorities should ... define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.”

41. The Inspector set his consideration of his Issue 5 firmly in the context of whether exceptional circumstances existed, as required. Under the subheading “The need for housing” he said at IR79:

“This has already been discussed under Issues 1 and 2. Guildford has a pressing housing need, severe and deteriorating housing affordability and a very serious shortfall in the provision of affordable homes. There is additional unmet housing need from Woking. There is no scope to export Guildford’s housing need to another district; the neighbouring authorities in the housing market area are significantly constrained in terms of Green Belt and other designations and both have their own significant development needs. The overall level of provision will address serious and deteriorating housing affordability and will provide more affordable homes. The headroom can also accommodate the likely residual level of unmet need from Woking.”

42. Likewise, at IR80, the Inspector found that land available for additional business development in the Guildford urban area was very limited, and it was unrealistic that much extra capacity could be obtained on existing sites such as the existing Surrey Research Park:

“The ability to meet the identified business needs therefore depends on making suitable new land available and there is no

realistic alternative to releasing land from the Green Belt. Exceptional circumstances therefore arise at the strategic level to alter Green Belt boundaries to accommodate business and employment needs.”

43. The Inspector also concluded, at IR81, that it was not possible to rely on increasing the supply of housing within the urban areas so as to obviate alterations to the Green Belt boundary. Development opportunities in those areas had been thoroughly investigated and assessed; he referred to the identified constraints in the urban areas. Having canvassed various possibilities, he concluded that any extra yield from such sites “would fall a long way short of making the scale of contribution towards meeting overall development needs that would enable the allocated sites in the Green Belt to be taken out of the Plan.”
44. The fourth subheading went to the heart of the issue underlying the argument before me: “Whether the difference between potential supply of 14,602 dwellings in the latest MM2 housing requirement of 10,678 implies that the plan should allocate fewer sites and release less Green Belt land.” I need to set out almost all of it, in view of the Claimants’ submissions. The passage is relevant to local exceptional circumstances and to the spatial distribution strategy which underlay the choice of sites.

“83. The first point here is that the plan must be considered as a whole; it contains an integrated set of proposals that work together. As is discussed below in Issue 6, the strategic locations operate to deliver a range of benefits which cannot be achieved by smaller dispersed sites. A25 *Gosden Hill* provides a park and ride facility and part of the sustainable movement corridor and contributes towards a new railway station; A26 *Blackwell Farm* provides land to enable the expansion of an important research park, together with part of the sustainable movement corridor and it contributes towards a new railway station. They work together to provide housing, employment and sustainable movement across Guildford. Site A35 *Former Wisley airfield* provides the A3 slip roads and bus services and cycle network that benefit the allocations at Send, Send Marsh/Burnt Common and Ripley and feed into local stations; in turn, Burnt Common provides an employment facility for the Borough. The large sites also make an important contribution towards meeting the needs of gypsies, travellers and travelling showpeople. The sites all work in concert to deliver a sound, integrated approach to the proper planning the area.

84. Secondly, the plan needs to be robust and capable of meeting unexpected contingencies such as delivery failure or slippage on one or more sites. It needs to be borne in mind that the housing requirement is a minimum figure, not a target. A robust strategy is particularly relevant for Guildford where longer term housing delivery is largely by means of large strategic housing sites. There is also uncertainty about the timing of the A3 RIS [road improvement strategy] scheme...; The headroom provides some flexibility over timing and

ensures that if a degree of slippage does occur, the Plan is not vulnerable. The amount of headroom between potential housing provision and the housing requirement means it is not necessary to create safeguarded land which would have to be removed from the Green Belt to meet longer term development needs, or to identify reserve sites to be brought forward should sites fail to deliver as expected. In any case, if it had been necessary to identify reserve sites, they would almost certainly have had to be on land removed from the Green Belt.

85. Thirdly, that Plan needs to be effective over its life and have regard to potential changes in circumstances. To that end it contains a balance of short- and long-term sites. This can be seen in the housing trajectory...; The permitted and commenced sites and smaller allocations deliver the 5 year supply. These include for example the allocations at West Horsley, Send, Send Marsh/ Burnt Common and Ripley and on land at the inset villages. Land needs to be released from the Green Belt to allow these sites to be developed, in order to meet housing needs in the first 5 year of the Plan. When delivery from these sites starts to diminish, that from the strategic sites builds up. But large strategic sites have long lead-in times and development periods - their timespan may cover a number of plan reviews and housing requirement recalculations. Circumstances may change, and new strategic sites cannot be brought forward quickly to meet revised housing requirements; they have to be planned well in advance. Therefore, by making the allocations now, the Council have aimed to future proof the Plan. This is in accordance with the NPPF which says that plans should have sufficient flexibility to adapt to rapid change. The Plan clearly demonstrates a flexible, integrated and forward-looking approach towards meeting present and future needs in the Borough and towards encouraging more sustainable modes of travel. Removing one or more sites would significantly diminish the Plan's ability to meet these objectives.”

45. IR86 specifically dealt with whether development should be restricted having regard to the Green Belt, as raised by footnote 9 to NPPF [14]. The Inspector said:

“86. Subject to the proposed Green Belt alterations, the Plan is capable of meeting objectively assessed needs with adequate flexibility. The alterations to the Green Belt boundary would have relatively limited impacts on openness as discussed in Issues 10 and 11 and would not cause severe or widespread harm to the purposes of the Green Belt. The allocations at A25 *Gosden Hill Farm* and A26 *Blackwell Farm* would be planned urban extensions rather than sprawl. Site A25 together with the allocations at Send and Burnt Common/Send Marsh would be visually and physically separate, as discussed in Issue 7 and

would not add to sprawl or coalescence. A35 *Former Wisley airfield* would include a substantial amount of previously developed land and is separate in character from its wider Green Belt surroundings. The other Green Belt sites would be adjacent to settlements and would have very localised effects on openness. There is therefore no justification for applying a restriction on the quantity of development. Considerations in respect of the Surrey Hills Area of Outstanding Natural Beauty (AONB) and the Thames Basin Heaths Special Protection Area (SPA) do not alter this conclusion; see issue 7.”

46. All this, concluded the Inspector in IR 89, amounted “to strategic-level exceptional circumstances to alter the Green Belt boundary to meet development needs in the interests of the proper long-term planning of the Borough.” Local-level exceptional circumstances were considered later.
47. The soundness of the Plan’s overall distribution of development was relevant to the Green Belt issues, and to “exceptional circumstances”. The Inspector considered this next under Issue 6. At IR91 onwards, the Inspector accepted that the urban areas, inset villages and identified Green Belt villages could accommodate 4600 houses but not all Guildford BC’s development needs. Land had therefore been identified for development beyond the Green Belt, in urban extensions to Guildford, in a new settlement at the former Wisley airfield, and in development around villages. Strategic and non-strategic sites were spread across the middle of the Borough, constrained by the SPA to the north and the AONB to the south. Five strategic sites, including Gosden Hill Farm and Blackwell Farm, both extensions to Guildford, and the freestanding Wisley site close to the junction of the A3 and M25, delivered a significant proportion of the housing and employment land needed. Gosden Hill Farm and the Wisley site were residential-led mixed-use allocations supporting a range of housing types and employment, social and community facilities, which would help provide improved highway and sustainable transport links. Blackwell Farm would deliver a large number of homes and a large employment allocation next to the Surrey Research Park.
48. At IR95, the Inspector summarised the “considerable advantages” of this spatial strategy:

“Firstly, it allocates the largest amounts of development to the most sustainable locations, or those which can be made sustainable; secondly, it achieves a satisfactory spatial balance in a variety of locations and types of site; and thirdly, the strategic sites will accommodate a significant amount of the Borough’s housing and employment needs whilst at the same time meeting their own social needs and contributing towards transport improvements that have wider benefits. The advantages of the last of these points is recognised by the Sustainability Appraisal and it justifies the inclusion of the larger sites including Gosden Hill Farm, Blackwell Farm and the former Wisley airfield.”

49. Allocating more sites to the villages would risk eroding their character without achieving the social and transport benefits of the larger sites; further development beyond the Green Belt would risk creating a sprawl and could exacerbate highway problems. The inclusion of the strategic sites made for an effective plan meeting the sustainable needs of the Borough, IR97:

“Their size facilitates the delivery of social, transport and other facilities that would be more difficult to achieve by spreading the same amount of development around on smaller sites. They serve housing, employment and social needs in different parts of the Borough, yet are well positioned in relation to Guildford. They are in locations where they do not significantly affect areas important for landscape and diversity.”

50. The Inspector continued his analysis of the spatial strategy by considering, among other matters, the allocation of sites for growth in villages such as East and West Horsley, Send, Send Marsh/Burnt Common, and Ripley. He regarded the allocations as proportionate extensions to these medium-sized villages, with access to their facilities, and with the opportunity to assist or take advantage of transport or highway improvements associated with the strategic sites. They would make an important contribution towards the delivery of sites in the early years of the Plan. Subject to the Main Modifications, the Inspector concluded that the overall spatial development strategy was sound in every respect.

51. Issue 10 concerned whether various strategic allocations including Gosden Hill Farm, Blackwell Farm and the former Wisley airfield, were sound; and relates to the extent of housing allocations above the OAN figure of 10678. The Inspector had dealt with the justification for the location of the strategic sites and the strategic level exceptional circumstances for moving the Green Belt boundaries when dealing with the Spatial Strategy. Issue 10 concerned the local impacts of the larger allocations and the effectiveness of these specific policies for their development. The Inspector was here considering local “exceptional circumstances”.

52. The Inspector considered Gosden Hill Farm at IR156 onwards. He introduced the issues in this way:

“Policy A25 [the site] is located in the submitted Plan for a residential-led mixed-use development delivering about 2000 homes with a minimum of 1700 homes during the plan period, as well as gypsy and traveller pitches, retail and service facilities and primary and secondary schools. The delivery trajectory for the site is consistent with the assumed delivery of A3 improvements, but MM35 reduces the overall site capacity to about 1800 dwellings based on more recent master planning with a consequent reduction in the number of gypsy and traveller pitches to 6. The key issues are whether there are local-level exceptional circumstances to alter Green Belt boundaries, and whether the allocation is acceptable in terms of highway impact.”

53. He made the following points about the Green Belt at IR 157:

“...the site is adjacent to the built-up area of Guildford and its development would appear as a natural urban extension rather than a major incursion into the Green Belt. The Green Belt and Countryside study considered it to be a medium sensitivity land parcel. The landscape is not subject to any designation and is not crossed by any public right of way. The local topography and tree cover ensure that the site is not widely prominent, and it would be possible to establish a new defensible Green Belt boundary. As discussed above under Issue 7, in respect of openness and countryside impact, the cumulative impact of this allocation in combination with allocations to the east of Guildford is acceptable. MM35 responds to concerns about the visual impact by including a new requirement for increased landscaped buffer/ strategic planting with frontage development set back from the A3 and other measures to mitigate the visual impact. The selection of this site is therefore appropriate on the basis of its local characteristics, and exceptional circumstances exist at the Local-level to alter the Green Belt boundaries to facilitate the allocation.”

54. Measures to cater for the increased traffic, including that brought about by the necessary improvements to the A3 junction, would promote sustainable travel options, including a new park-and-ride facility, plus assistance with the proposed Sustainable Movement Corridor, and a contribution towards a new railway station. Having considered other matters, the Inspector concluded that the allocation was sound.
55. The Inspector then turned at IR 164, to Blackwell Farm. This too was a residential-led mixed use allocation, for about 1800 homes of which all but 300 would be delivered in the plan period. A Main Modification raised the B1 floorspace extension to the Surrey Research Park to 35,000sm, of which 30,000 would be delivered in the plan period. There would be specialist and self build plots, 6 gypsy and traveller pitches, a primary and a secondary school, retail and community uses. “The key issues are whether there are local-level exceptional circumstances to alter Green Belt boundaries, the effect on the Surrey Hills AONB and the Area of Great Landscape Value, and whether the allocation is acceptable in terms of highway impact.” He dealt with the Local-level exceptional circumstances as follows, at IR165:

“As regards the local circumstances, the Green Belt and Countryside study identifies the site as a potential development area. It is on gently sloping land on the edge of Guildford adjacent to the Research Park and is well-enclosed by woodland and hedgerows which visually separate the allocation from the more open land to the west and would form good defensible boundaries. The site is well separated from the historic centre of Guildford by extensive development and does not contribute to the setting of the Cathedral or its historic core. It would appear as a logical addition to Guildford rather than an obtrusive extension into the wider Green Belt. It would make an important contribution towards meeting housing, employment and educational needs and has obvious locational

advantages, firstly in terms of its position immediately adjacent to the Research Park presenting a unique opportunity to further enhance this already successful business cluster, and secondly in its ability to contribute towards sustainable transport including a new station. There are therefore exceptional circumstances at the Local-level to justify moving the Green Belt boundary to accommodate this site allocation.”

56. I deal with what the Inspector said about the AONB, the access to the A31 and “major development,” when I come to that ground. The Inspector considered other issues, including transport sustainability, before concluding that, subject to certain main modifications, the allocation was sound.
57. Next, the former Wisley airfield, Ockham; Policy A35. This was a residential-led development for about 2000 homes, plus about 100 sheltered or extra care homes, gypsy and traveller pitches, employment land, retail facilities services, community uses and a new primary and secondary school. The Inspector identified the key issues as being whether there were Local-level exceptional circumstances to alter the Green Belt boundary to accommodate the allocation, transport impacts and the effect on biodiversity.
58. The PE Inspector first dealt with the decision of the Secretary of State, accepting the recommendation of the appeal Inspector, dismissing the developer’s appeal against the refusal of planning permission for up to 2068 dwellings on land included in the allocation, but which was not as extensive as the allocation. I set out what the PE Inspector had to say about it here, as objectors to the allocation understandably exploited its conclusions. The Inspector said, IR 181:

“The principal reasons for refusal concerned Green Belt, the strategic road network and the character and appearance of the area. Many other issues were examined during the course of the inquiry, including the effect on the Thames Basin Heaths Special Protection Area, the local road network and air quality, but were not cited as reasons for refusal. The harm to heritage assets was considered less than substantial and was outweighed by the public benefits. It is important to note that this appeal decision was made in the context of the background of the saved policies of the Guildford Borough Local Plan 2003, against which the scheme was unlikely to be considered anything other than inappropriate development in the Green Belt and development affecting the character of the countryside. However the conclusion of this report is that there are compelling strategic-level exceptional circumstances to make significant alterations to the Green Belt boundary to accommodate the Borough’s assessed housing, employment and other needs to 2034.”

59. The Inspector then turned to the local-level exceptional circumstances at IR182, saying:

“...the Green Belt and Countryside Study considered the site to be of medium Green Belt sensitivity. It shares little of the character of the countryside around it; most of the site is flat, rather featureless, contains a runway and hard surfacing and can be regarded in part as previously developed land. It is separated from much of Ockham by a valley and a small knoll. Development here would be fairly self-contained visually and would not add to the appearance of sprawl.

183. The allocation has the ability to deliver a significant contribution towards the Borough’s housing requirement, helping to meet a pressing housing need as well as providing homes to meet the needs of particular groups. Its size means that it can support a suitable range of facilities to meet the needs of the new residents, creating the character of an integrated large new village with its own employment, schools, shops and community facilities, and it can support sustainable transport modes. This would avoid putting pressure on other areas of the Green Belt of greater sensitivity, and would avoid pressure on other communities too, because alternative smaller sites would be less able to deliver such a comprehensive range of facilities to serve the development. For all the above reasons there are exceptional circumstances at the Local-level to alter Green Belt boundaries to accommodate this allocation.”

60. He noted that, at the time of the appeal, Natural England had been satisfied that the appeal proposal would not have a significant effect on the SPA, and it had confirmed that it had no objection in principle to the larger allocation site as there was sufficient land available to create additional Suitable Alternative Natural Greenspace, SANG. Then he concluded, after considering other topics, that the allocation was sound.
61. Next, transport. The transport impacts of the development strategy were relevant both to the selection of the sites and the overall extent of the allocations. The assumption behind the Plan had been that the A3 Guildford Road Investment Strategy (RIS) scheme would be delivered. The Inspector, IR 128, pointed out that planned development in the later stages of the plan period could be affected by the delivery of the A3 improvement scheme, which had implications for the delivery rates at Gosden Hill Farm, Blackwell Farm and one other major site.
62. There was also a link between additional A3 slip roads to deal with the development at Wisley airfield, which would relieve Ripley of some through traffic, and would also serve development at Send, Send Marsh and Burnt Common. New Guildford stations, as part of broader rail network improvements were to be funded by development contributions including from Gosden Hill Farm and Blackwell Farm; IR 137. Those two, and other site allocations, contained measures contributing to the provision of sections of the multi-modal Sustainable Movement Corridor; IR138. This Corridor linked new sites, new rail stations, a new park and ride site at Gosden Hill Farm, Guildford railway station, and town centre and Surrey University. Gosden Hill Farm, Blackwell Farm and Wisley airfield all had to provide a significant bus network.

Issue 1: did the Inspector consider and provide legally adequate reasons for his conclusion that the objectively assessed need for 10678 dwellings should be met in full, notwithstanding the consequent need for the release of land from the Green Belt?

63. Mr Kimblin submitted that the two stage process of establishing the housing requirement figure had not been followed. The first stage was the establishment of the objectively assessed housing needs without the application of any policy constraint. The second stage was to consider whether policy constraints, of which Green Belt was the one principally deployed here, required a housing requirement figure below those needs to be adopted. 89% of the area of Guildford Borough was covered by Green Belt policy.
64. The Inspector had only asked whether there should be a restriction on the 14602 figure. His task was to consider whether soundness required releases from the Green Belt for housing, bearing in mind that the NPPF itself recognised that the Green Belt was one of those constraints, applicable at the second, or policy-on, stage. Its application could mean that the OAN would not be met. The Inspector's approach, in any event, did not identify lawfully, or with adequate reasoning, the "exceptional circumstances" warranting release of land from the Green Belt to meet housing needs.
65. In addition to the large sites removed from the Green Belt, Mr Cranwell challenged the removal of other sites under this head. They included land north of Keens Lane (150 dwellings and a 60-bed care home within 400m of the SPA), the various sites making up the 945 dwellings in allocations around villages such as Send, Send Marsh/Burnt Common, the Horsleys, and land for new north facing slip roads to the A3 at Send Marsh. The challenge to them all is based on the general contention that there were no exceptional circumstances to warrant releasing land from the Green Belt generally, even if the application of that policy restraint meant that Guildford BC housing needs, as expressed in the OAN, would be unmet.
66. I accept that the two stage process, "policy-off" and "policy-on", is well known and applicable; the analysis comes from *St Albans CC v Hunston Properties Ltd* [2013] EWCA Civ 1610, and *Gallagher Estates v Solihull MBC* [2014] EWCA Civ 1610.
67. The NPPF itself recognises that the OAN at the policy-off stage may not be met by the conclusion of the policy-on stage. NPPF [47], set out above, accepts that the OAN is to be met "so far as is consistent with the policies set out in this Framework." NPPF [14] puts it slightly differently but to the same effect: those needs should be met "unless specific policies in the Framework indicate that development should be restricted." Those include Green Belt policies. But importantly for Local Plans, NPPF [83] recognises that the preparation or review of a Local Plan is the mechanism whereby Green Belt boundaries can be altered in "exceptional circumstances," and, as altered, should be capable of enduring beyond the plan period.
68. There is no definition of the policy concept of "exceptional circumstances". This itself is a deliberate policy decision, demonstrating that there is a planning judgment to be made in all the circumstances of any particular case; *Calverton Parish Council v Nottingham City Council* [2015] EWHC 1078 at [20], Jay J. It is deliberately broad, and not susceptible to dictionary definition.

69. The parties agreed that whether a particular factor was capable of being an “exceptional circumstance” in any particular case was a matter of law; but whether in any particular case it was treated as such, was a matter of planning judgment. That does not take one very far, in my judgment, because a judicial decision that a factor relied on by a planning decision-maker as an “exceptional circumstance” was not in law capable of being one is likely to require some caution and judicial restraint. All that is required is that the circumstances relied on, taken together, rationally fit within the scope of “exceptional circumstances” in this context. The breadth of the phrase and the array of circumstances which may come within it place the judicial emphasis very much more on the rationality of the judgment than on providing a definition or criteria or characteristics for that which the policy-maker has left in deliberately broad terms.
70. “Exceptional circumstances” is a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which requires “very special circumstances.” That difference is clear enough from the language itself and the different contexts in which they appear, but if authority were necessary, it can be found in *R(Luton BC) v Central Bedfordshire Council* [2015] EWCA Civ 537 at [56], Sales LJ. As Patterson J pointed out in *IM Properties Development Ltd v Lichfield DC* [2014] EWHC 2240 at [90-91 and 95-96], there is no requirement that Green Belt land be released as a last resort, nor was it necessary to show that assumptions upon which the Green Belt boundary had been drawn, had been falsified by subsequent events.
71. There is however a danger of the simple question of whether there are “exceptional circumstances” being judicially over-analysed. This phrase does not require at least more than one individual “exceptional circumstance”. The “exceptional circumstances” can be found in the accumulation or combination of circumstances, of varying natures, which entitle the decision-maker, in the rational exercise of a planning judgment, to say that the circumstances are sufficiently exceptional to warrant altering the Green Belt boundary.
72. General planning needs, such as ordinary housing, are not precluded from its scope; indeed, meeting such needs is often part of the judgment that “exceptional circumstances” exist; the phrase is not limited to some unusual form of housing, nor to a particular intensity of need. I accept that it is clearly implicit in the stage 2 process that restraint may mean that the OAN is not met. But that is not the same as saying that the unmet need is irrelevant to the existence of “exceptional circumstances”, or that it cannot weigh heavily or decisively; it is simply not necessarily sufficient of itself. These factors do not exist in a vacuum or by themselves: there will almost inevitably be an analysis of the nature and degree of the need, allied to consideration of why the need cannot be met in locations which are sequentially preferable for such developments, an analysis of the impact on the functioning of the Green Belt and its purpose, and what other advantages the proposed locations, released from the Green Belt, might bring, for example, in terms of a sound spatial distribution strategy. The analysis in *Calverton PC* of how the issue should be approached was described by Jay J as perhaps a counsel of perfection; but it is not exhaustive or a checklist. The points may not all matter in any particular case, and others may be important especially the overall distribution of development, and the scope for other uses to be provided for along with sustainable infrastructure.

73. Mr Kimblin put forward Mr Cranwell's contention that the supply of land for ordinary housing, even with the combination of circumstances found here to constitute exceptional circumstances by the Inspector, could not in law amount to "exceptional circumstances." I cannot accept that, and I regard it as obviously wrong. These judgments were very much on the planning judgment side of the line; I do not see how they could be excluded from the scope of that phrase as a matter of law. This contention involves a considerably erroneous appreciation of the whole concept of "exceptional circumstances" and the role of the Inspector's planning judgment. Mr Kimblin accepted in oral argument that he might be putting it too high, but he said there still had to be something exceptional about the need.
74. It is of a piece with Mr Cranwell's further contention that the Inspector had ducked the issue of why the circumstances he found to be "exceptional" were "exceptional". The phrase "exceptional circumstances" should be considered as a whole, and in its context, which is to judge whether Green Belt boundaries should be altered in a Local Plan review. It is not necessary to explain why each factor or the combination is itself "exceptional". It does not mean that they have to be unlikely to recur in a similar fashion elsewhere. It is sufficient reasoning to spell out what those factors are, and to reach the judgment. There is a limit to the extent to which such a judgment can or should be elaborated.
75. I do not accept Mr Kimblin's further submissions on the way in which the Inspector considered the issue and reasoned his conclusions.
76. The order of magnitude of unmet need which these submissions contemplate is worth setting out, first. If there were to be no releases of land from the Green Belt in respect of any of those sites contentious to the Claimants in these proceedings, sites with a capacity for 6295 dwellings would not have been allocated; so on any view there would have been a shortfall against Guildford BC's OAN, of 10678, of over 2300, taking 6295 from 14602. The figure of 6295 includes the 945 sites in developments around villages without which the initial rolling 5 years supply could not be achieved, on the housing trajectory approved by the Inspector. If those under challenge were removed, there would have been a shortfall in supply at the end of 5 years. Here too the housing trajectory was essential to understanding the total picture.
77. There were in addition a further 447 dwellings on Green Belt sites which the Claimants in these proceedings did not challenge, but they still have to be deducted from the allocations for proper consideration of this issue. They all require exceptional circumstances to be shown; the distinction drawn by the Claimants between those which they make contentious and other releases from the Green Belt for housing is artificial. The deficit thus rises to over 2700 out of 10678. Mr Findlay did not agree either with the Claimants' calculation that none of the other sites were Green Belt developments; he said that at least 90 and more were Green Belt sites. I do not need to resolve that, because neither the Inspector nor Guildford BC's approach depended on the precise figure and the order of magnitude of need which would be unmet suffices to illustrate the point. Mr Findlay also pointed out that the Claimants' exercise ignored the other uses and infrastructure contributions which were an important part of the thinking behind the allocations; he said that such exercises as the Claimants had furnished me with had been a commonplace of the PE, and were simply grist to the mill of the planning judgment which it was for the Inspector to make. I agree.

78. Second, this issue did not arise at the PE without prior and careful consideration by Guildford BC. I shall deal with Sustainability Appraisals, SA, later but the approach contended for by Mr Cranwell was one of the alternatives addressed in SAs before the PE.
79. In the SA with the 2016 version of the submitted Plan, the options or reasonable alternatives discussed excluded expressly any potential for Guildford “to justifiably undersupply”, i.e. provide for housing below the OAN figure. The option for providing no buffer was rejected as it would risk Guildford’s OAN not being met in practice. The options with a buffer to help ensure that the OAN was met in practice ranged from OAN + 3% to OAN +14%, the latter including Wisley airfield. Higher buffers would enable some of Woking’s needs to be met but the highest buffer considered was OAN+34%. The underlying figures differed from those in the adopted Plan but the question, whether the OAN should or should not be met, was considered.
80. In the 2017 version of the SA provision of housing below OAN was rejected again. I regard it as clear that the Inspector was to accept the soundness of this approach in his Report. It said:
- “Guildford Borough Council is committed to delivering its OAHN figure, having established that there is no potential to justifiably ‘under-deliver’ and rely on neighbouring authorities to meet the shortfall (under the Duty to Cooperate). Whilst Guildford Borough is heavily constrained environment, it does not *stand-out* as relatively constrained in the sub-regional context. This conclusion is reached on the basis of Duty to Cooperate discussions, past SA work (notably spatial strategy alternatives appraisal in 2013/14 ...), an understanding of precedents being set elsewhere, and other sources of evidence. It is evidently the case that under-supplying in Guildford would lead to a range of socio-economic problems, given that Woking is already under-supplying within the HMA.... There is an argument for under-supplying to be preferable from an environmental perspective; however, this argument is far from clear-cut given an assumption that unmet needs would have to be met elsewhere within the HMA (i.e. within Waverley, which is heavily constrained) or elsewhere within a constrained sub-region. For these outline reasons, lower growth options- i.e. options that would involve planning for a level of growth below that necessary to meet OAHN - were determined to be unreasonable.”
81. The Inspector, third, was satisfied that the duty to co-operate had been met; he had also been so satisfied when considering the Waverley Local Plan. The strategic housing market assessment, SHMA, involved the three Councils. Woking BC had insufficient capacity to meet its own needs, its boundaries tightly constraining the urban area. The duty to co-operate included consideration of Waverley and Guildford BCs providing part of the strategic housing area land supply for Woking BC’s needs. There was no question of the duty to co-operate being invoked to ask either of those to meet Guildford BC’s needs. There was no challenge to the lawfulness of his conclusion on the duty to co-operate.

82. Fourth, the Inspector's Report concludes that the allocations, involving releases from the Green Belt, taking the total supply of land up to 14602, with headroom over the 10678 OAN of 4000 dwellings, are justified by exceptional circumstances, strategic and local. Mr Kimblin accepted that, were I to conclude, as I explain later I do, that the challenge, under Issue 2, to the lawfulness of that later conclusion failed, it was inevitable that that lawful conclusion would also constitute a lawful and adequate explanation for why the OAN had not been restrained at the policy-on stage.
83. However, fifth, specific consideration was also given to that point by the Inspector; it was not just all swept up in the larger justification for the overall level of allocations. It was evident from the PE agenda that it was specifically identified as an issue, and was considered over a whole day. It was also related to the Inspector's Issue 9, the spatial strategy and whether there were exceptional circumstances for the amount of Green Belt releases, which was considered about two weeks later. As Mr Findlay and Mr Honey submitted, consideration of exceptional circumstances for the release of Green Belt land necessarily involves consideration of the application of restraint policies at the policy-on stage.
84. IR 22-38 are essentially dealing with the objective assessment of housing needs, stage 1, policy-off. But IR 35 is relevant to both stages. The policy-on stage was clearly considered in IR35. It also sets out why the OAN needs to be met by Guildford BC, apart only from the question of any contribution towards meeting unmet needs from Woking BC. The circumstances point clearly to the serious problems which would arise from a lower housing figure, such as 361dpa. That is the first reason why the policy restraint was not applied; there was a significant need which had to be met. The implication of Mr Kimblin's submission was that the Inspector ought to have explained why needs from Guildford BC could not simply be left unmet, to be picked up if at all in some unspecified place yet further afield than the Strategic Housing Market Area. But that is what IR35 explains.
85. IR79 is also relevant; it describes the pressing housing needs; the absence of scope to "export Guildford's housing need to another district". The "overall level of provision", 14602, "will address serious and deteriorating housing affordability and will provide more affordable homes." If that is true for 14602, it is obvious that the Inspector considered that a lesser figure would not address those pressing needs. IR 42 and 46, and 83-85 also address the need for flexibility above the OAN.
86. Mr Kimblin submitted that IR86 was irrelevant to this Issue because he submitted that it dealt only with the headroom. I disagree. IR86 addressed the question of "Whether the quantity of development should be restricted having regard to Footnote 9 of the NPPF", one of the passages in the NPPF in which the role of restraint policies, such as the Green Belt, is recognised to be a basis upon which the OAN might not be met in full. On the face of it the paragraph, even if also relevant to another purpose, covers the very point Mr Kimblin raised. The Inspector, in this section of the Report, is considering the strategic case for altering any of the Green Belt boundaries, and not just for strategic sites, nor just to the extent necessary to accommodate the headroom over 10678, or even the 10678. It is dealing with the very point which the "policy-on" stage raises. In my judgment, it is directly to the point.
87. The Inspector has already considered the pressing needs, and the consequence of them not being met. Here he considers whether the consequence of those needs being met,

through releases of Green Belt land, mean that they should nonetheless not be met. His conclusion is clear: there is no justification for applying a restriction on the quantity of development. His reasoning is clear and adequate: land can be found within the Green Belt, through boundary changes, with relatively limited impacts on openness, elaborated elsewhere in the Report, and without causing severe or widespread harm to its purposes. He also considered whether further land could be made available in the urban areas; IR 81-2; these had been thoroughly investigated; significant constraints existed; any extra yield from sites which could have potential not yet earmarked, “would fall a long way short of making the scale of contribution towards meeting overall development needs that would enable the allocated sites in the Green Belt to be taken out of the Plan.”

88. I reject the Claimants’ first ground of challenge. This issue and whether a policy restraint should be applied to the OAN was considered and the Inspector’s conclusion that there should be no restraint below OAN was supported by ample reasoning.

Issue 2: Was the conclusion that there were exceptional circumstances justifying the allocations of housing land, released from the Green Belt, to provide headroom of over 4000 dwellings above the 10678 OAN lawful, and adequately reasoned?

89. This is the major issue in the challenge and permeates most of the grounds. I have already dealt with some general propositions about “exceptional circumstances”.
90. The gravamen of Mr Kimblin’s and Mr Harwood’s submissions on this ground concerned the headroom of 4000 dwellings or “excess” over OAN as they put it. The matters relied on by the Inspector in that respect were said not to be exceptional. As the argument developed, led on this point by Mr Harwood, and the more so in reply, it became clear that the attack was not on the fact that there was some supply beyond the 10678, but concerned the extent of the headroom. Mr Harwood recognised that the delivery of the initial and the rolling 5 year housing land supply would require provision for a 20% buffer, at least initially. Land had to be allocated which could be brought forward throughout the plan period. He acknowledged that this was reflected in two of the strategic level factors behind the Inspector’s acceptance that the strategic sites, which created the headroom, should be released from the Green Belt; IR 84-5.
91. However, in my judgment, once meeting the OAN is accepted as a strategic level factor contributing to “exceptional circumstances”, as it has to be for the purpose of this Issue in the light of my conclusions on Issue 1, it follows that the provision of headroom against slippage and for flexibility to meet changes, “future-proofing” the Plan, as the Inspector put it, would also contribute to such circumstances. The challenge is to the scale of the headroom which it is said goes beyond that level; the headroom should have been judged to be sufficient at some lower level, between 10678 and 14602, enabling fewer Green Belt releases.
92. An impression of where the submissions go can be gleaned from adding 20% to the 10678, to give a rough idea of what in reality is contentious in this Issue. This issue comes down in practice to the inclusion of one or more of the three large strategic sites in the allocations. It is one or two of the former Wisley airfield site, and the sites at Gosden Hill Farm or Blackwell Farm which are at stake in this challenge. (The housing trajectory shows that the 945 dwellings on land around the villages are needed for the early years of the adopted Plan.) I accept that the unquantified unmet

need from Woking BC would not be more than a small component of the total headroom, in view of the way the Inspector expressed himself in IR38 and 79. It could have been added to the OAN, but providing for it in the headroom is reasonable, and either way meeting that need is equally capable of being an exceptional circumstance.

93. The housing trajectory showed that the largest Green Belt contributors are the three large sites to which I have referred, and which come on stream after the initial years from Plan adoption and build up over time. The Inspector considered whether that should be reduced, but did not reduce it, although the reduced OAN, after September 2018, meant that four additional sites in the proposed Main Modifications were deleted following the February 2019 resumed hearing.
94. Mr Kimblin challenged the logic of the exceptional circumstances relied on by the Inspector for the release of land from the Green Belt to supply land for 4000 dwellings over OAN. The housing land supply figures, during the Plan period, were the sum of the allocations, in so far as they are judged to produce dwellings during the Plan period. This leads to the figure of 14602. They were not allocated in order to provide a figure of 14602, because headroom of 4000 had been judged to be necessary by some form of assessment outside of the allocations. The precise headroom, though not the principle that there should be some, was the product of the specific allocations. This was said to be circular reasoning. The quantification of the need for the releases was calculated by reference to the releases to meet the quantified need.
95. Both advocates for the Claimants pointed to the way in which the headroom had varied, but had not reached 37% until the final adopted version of the Plan: 2016: 15,844 supply for 13,860 OAN; 2017: 14191 for 12,426; 2018: 15107 for 12,600; 2019: 14602 for 10,678.
96. First, I see nothing illogical in the Inspector's thought process, requiring a buffer of some significance and treating the total of the allocated sites as creating an appropriate buffer. There was no need to calculate a spuriously precise headroom figure, and then match it with sites. Sites do not present themselves or come forward in precisely matching dwelling numbers either. The headroom figure was a judgment based on the sites which were available to meet a requirement figure somewhat over 10678, and to do so in such a way that, over the initial and subsequent years of the plan, the rolling five year housing supply, with a 20% buffer for some years, would be maintained. The three would provide assurance that the requirement would be met, not just in total, but over the five year rolling periods. As the IR showed, the scale of the headroom was in part required because the sites to be released were themselves large, and could face delays on that account.
97. The Inspector asked, as part of the soundness judgment, whether those sites provided, not just the housing required, but did so with a good balance of location, size, meeting other needs such as for employment land, creating a coherent spatial distribution strategy. He asked whether there were significant advantages if more housing was provided than the OAN, in view of the pressing housing needs in Guildford, in terms of affordability and affordable housing. The way in which the buffer can meet the needs matters. The larger sites permitted other needs to be catered for, without peppering the area with Green Belt releases, or releases in more sensitive areas. The

question that then arose, in view of the extent of the headroom which those sites created, was whether there should be a reduction in release. This was specifically addressed in the IR. That is a logical approach.

98. The IR's analysis of the need to release land from the Green Belt considered the need for housing, IR79, the need for land for business uses which could not be met other than by Green Belt releases, IR80, the lack of scope for increasing housing on land within the urban areas, IR82, the need for a sound and integrated approach to the proper planning of the area, IR83, and the need for flexibility, IR84-5, along with the Local-level exceptional circumstances in relation to the major sites and issues. The question was then asked whether that was too much and one or more sites should be removed from the allocations. It was not a simple question of defining a need and then deciding where to meet it; the process was in reality more iterative. The number of dwellings for which land supply was allocated, was determined in the first place by the OAN, but in addition a buffer had to be provided and a satisfactory delivery trajectory provided for; the selection of sites was affected by where the needs could best be met, with least impact on the Green Belt, catering for other needs, and making a coherent strategy; the land thus allocated yielded the total supply, adjudged to be a sufficient buffer but not so much larger as to require the removal of sites from the allocations. In all of this, the Inspector would obviously have been aware of the function of the Green Belt, and the importance of keeping land permanently open and free from development. That permeates his whole consideration of exceptional circumstances; it is why he is considering them.
99. Second, having read the strategic and Local-level exceptional circumstances, which have to be taken together, I had no sense of having read something illogical or irrational, or which strained the true meaning of "exceptional circumstances." I can see that a different approach to the quantity of headroom might have commended itself, but that was plainly a matter of planning judgment.
100. I now turn to the specific points made by Mr Harwood in relation to IR83-89, headed "Whether the difference between potential supply of 14602 dwellings and the latest MM2 housing requirement of 10678 implies that the plan should allocate fewer sites and release less Green Belt land." IR 83 said that the plan had to be considered as a whole as it contained an integrated set of proposals which worked together, with strategic allocations delivering a range of benefits which could not be achieved by smaller dispersed sites. This was not in principle said to be irrational, and it could not be so described. This latter point was also foreshadowed in IR43.
101. It was however, irrational, submitted Mr Harwood in relation to Wisley airfield: Wisley's allocation helped with A3 slip roads, bus services and cycle network which benefited allocations around villages such as Send and Send Marsh/Burnt Common; Burnt Common provided an employment facility for the Borough. Most of this was to mitigate the impact of the allocation and so could not itself help justify it. The sites around the villages were sequentially less preferable than Wisley itself; facilitating unnecessary schemes could not be exceptional circumstances. Put in that way, Mr Harwood has a point on both fronts. But that way of putting it, is not the whole picture. The fact that mitigation at Wisley assists the development of other sites, that is to say, it functions beyond mitigation at Wisley, goes to the important point in the context of this topic, that the allocations work together as an integrated whole. The contention that the sites benefited were unnecessary anyway, rather depends on the

case for their release, accepted by the Inspector. The Inspector considered these village site releases in the context of the housing trajectory. They may be sequentially less preferable than the strategic sites, but they were necessary allocations in order to provide the initial five year housing land supply, as the trajectory showed, and as the Inspector was entitled to conclude. So, benefiting their development was a further aspect of the integration of the allocations. I do not accept Mr Harwood's submission. Mr Kimblin made a similar point in relation to Blackwell Farm which I consider under Issue 3, but a railway station is relevant in an area of transport difficulties.

102. Nor do I accept Mr Harwood's submission that business needs were not relevant to exceptional circumstances at the former Wisley airfield, because it was not an employment-led site. The employment land there served a variety of purposes: the allocation itself, advancing the sustainability of the new settlement, both on the site and as part of a sound strategic distribution of new employment land. I also accept Mr Findlay's point about the extent of Green Belt and AONB constraining development opportunities, the restrictions on further development in the urban areas, and the need for work to the A3, an important road for infrastructure in Guildford BC.
103. He next attacked IR84: the Inspector erred in law in saying, in the Green Belt context, that the housing requirement figure was a "minimum not a target." Policy S2 expressed it as a requirement for "at least" 10678 dwellings. The error of law was that an opportunity to provide more than the requirement was not a "need", such as was required to constitute "exceptional circumstances." There was nothing "exceptional" about a desire to provide housing additional to any need. The NPPF did not call for the requirement to be exceeded at the expense of the Green Belt.
104. Again, I do not think that Mr Harwood is grappling with IR84 read as a whole, in which context that particular sentence has to be read. The real thrust of IR84 is that the Plan has to be robust and capable of meeting unexpected contingencies: reliance on large sites made that particularly important, and there were various uncertainties about them. In those circumstances, the Plan ought to provide more than the bare minimum of supply in allocations; if that led to more than the minimum, that was not a reason not to make the provision; see also IR79. Besides the headroom meant that safeguarded or reserve land did not have to be provided; its provision would still have meant that land would "almost certainly" have been removed from the Green Belt. I do not accept that submission of Mr Harwood either.
105. Moreover, the prospect that a level of housing in excess of the OAN might be achieved can contribute to exceptional circumstances. I have set out under Issue 1, the pressing nature of the housing problems in Guildford BC. This is not just a question of totals. There would plainly be significant benefits, as the Inspector was well aware in this context, in terms of affordability, and affordable housing if more were provided. Taken as part of the whole group array of exceptional circumstances, there is nothing unlawful about that being seen as a useful even significant advantage, in line with NPPF housing policy, and as a contributor to exceptional circumstances. I accept that the OAN figure makes some allowance for those problems, but recognises that the problems are of a degree and scale that they cannot be resolved to a large extent. However, that does not mean that the advantage of a higher level of housing supply cannot contribute to exceptional circumstances. Once land is to be removed from the Green Belt for housing allocations, and a suitable buffer, the exceptional

circumstances for their capacity can include the planning soundness of choosing sites which contribute most to the other requirements of the Plan.

106. Mr Harwood's third point relied upon reading IR85 as envisaging that the allocations would endure well beyond the plan period, perhaps for decades. The reference to the timespan of the larger sites covering a number of plan reviews is, in context, a reference to the reviews during the plan period rather than to the review towards the end of or after the plan period. This trajectory also shows that the larger sites were expected to be built out within a couple of years of the end of the plan period.
107. Accordingly, I reject the Claimants' submission on Issue 2.

Issue 7 Sustainability Appraisal.

108. I take this issue here, because it concerns the overall approach to the housing allocations. The essence of the point is closely related to Issue 2. The Claimants contended, through Mr Harwood, that once the OAN was reduced from 12426 to 10678 as a result of the publication in September 2018 of the 2016 household projections, there should have been a further SA examining reasonable alternatives which matched allocations to the OAN figure of 10678, with the Wisley airfield allocation in mind in particular however. There was no challenge to any aspect of the SAs which actually were carried out.
109. SAs are governed by the Environmental Assessment of Plans and Programmes Regulations 2004. SAs include the Strategic Environmental Assessment which those Regulations require. An environmental report is required for an environmental assessment, by Regulation 12. By Reg 12(2), the report has to:
- “identify, describe and evaluate the likely significant effects on the environment of (a) implementing the plan or programme; and (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.”
110. There are various consultation obligations. There is no specific provision dealing with when an updated SA is required, or when material changes of circumstances require an update. The question will always be whether the likely significant effects on the environment of the adopted Plan had been evaluated, and whether reasonable alternatives have been evaluated. Whether the work done is sufficient is for the reasonable judgment of the decision-maker, here Guildford BC; that judgment is reviewable on normal public law grounds, and indeed was also assessed by the Inspector.
111. By the time of the SA with the original submission local plan of 2016, the former airfield at Wisley had featured in five of the eight options for meeting a range of OAN between 13844 and 18594, brought in, when considering an OAN of 15844, or more, as a key supply variable. In the 2017 version of the SA, submitted to the Secretary of State, Wisley airfield was present in all eight options, with OANs ranging from 13,600 to 15680 dwellings. There was an Addendum Report SA in 2018, produced to deal with the fact that it was then thought that sites for a further circa 550 homes would be required to meet needs in the first five years of the plan after adoption.

112. In the 2017 SA, with the 2017 submitted version of the Plan, various plan objectives were set out: these included sufficient sustainable development to meet all identified needs, expressed later as providing sufficient housing of a suitable mix taking into account local housing need, affordability, deliverability, the needs of the economy and travel patterns. The plan objectives were described similarly in the 2018 SA update.
113. The 2017 SA also described how the spatial strategy alternatives were arrived at in 2016. The 2016 growth quantum options were considered: the OAN for the Borough was increased by the need to plan for a buffer, and the possibility of planning to meet Woking's unmet needs was considered. The distribution options were then considered, using a ten tier hierarchy of places with the most suitable, Guildford town centre at the top and development around Green Belt villages at the bottom. From that work, the eight reasonable spatial strategy alternatives were arrived at, leading to the 2016 preferred option, 4, OAN plus buffer, with high growth at Wisley airfield, enabling low growth elsewhere, 15844 dwellings.
114. The possibility of meeting unmet need from Woking was considered. The reasonable alternatives ranged from 13,600 – 15680, which all represented OAN+ buffer, ranging from 9.4% to 26.2%. The unreasonable options rejected were any lower or higher figure outside that range, at each end. An option involving no Green Belt release would be unreasonable as it would involve very low growth. While a smaller buffer than in the 2016 SA was reasonable at the lower end, as the delivery assumptions for two large sites had been revised downwards, any lower option would be too small. The preferred option then emerged, Option 1: 13,600, OAN +9.4% buffer. This had been described in the SA as “a reasonable low growth option.” A buffer needed to be planned for “given the likelihood of some sites (particularly large sites) not delivering or delivering at a slower rate than anticipated.” The advantages and drawbacks of Option 1 were then discussed at some length.
115. I do not need to deal with the 2018 SA update which was undertaken to deal with the anticipated release of four further sites to meet the then increase anticipated in OAN.
116. The Inspector's December 2018 Note for the resumed PE in February 2019, following publication of the 2016-household projections, and Woking BC's acceptance that it now had no unmet need, identified five issues which needed to be addressed. These included the overall housing requirement in the housing trajectory. But the Inspector noted that he would not be discussing the spatial strategy, strategic sites and constraints, which had already been thoroughly discussed.
117. His January 2019 Note, accompanying the Agenda, reiterated that consideration of the merits of allocated sites was not being reopened. The sole purpose was to look at whether there should be a change to the OAN or to the housing requirement. He had however read all the material submitted for the hearing.
118. Guildford BC opened its comments at the resumed hearing by pointing out that it accepted there was a genuine housing crisis in the Borough. It had not sought to reduce the number of sites originally proposed, “notwithstanding ostensible changes in circumstances which might have given scope for such an approach. It has not advocated the necessary minimum approach.”

119. Guildford BC produced a Note (“Initial Submission Whether Further Consultation and Sustainability Appraisal Is Necessary”) for the second day of the resumed hearings of the PE. Guildford BC’s position was that the OAN should be reduced to 10,678 and that the additional Green Belt sites in the proposed main modifications to assist with early delivery were no longer required. It disavowed a reduction in overall housing supply. It asserted that the buffer remained necessary to take account of the need for flexibility to adapt to rapid change, “to boost significantly the supply of housing”, uncertainty as to the future position in relation to Woking’s need, the need for infrastructure improvements because of development, ensuring the longevity of the plan, and other factors. It concluded that no further consultation was required, because all those affected by the reduction in OAN or the deletion of the four additional sites had had every opportunity to make representations as part of the additional hearing sessions. That specific point is not at issue.
120. The Note also expressed Guildford BC’s view that no update to the SA was required. It referred to Planning Practice Guidance, PPG, from the Department for Housing, Communities and Local Government, which advised that SAs should only focus on assessing likely significant effects of a plan. An update was to be considered only “where appropriate and proportionate to the level of change being made to the Local Plan.” A change to the plan was only likely to be significant, if it involved a substantial alteration to the plan, or was likely to have significant effects, or if the changes had not previously been assessed and were likely to have significant effects. Changes that were not significant would not usually require further SA work.
121. The Note stated:

“GBC has not considered further alternatives, but has maintained the approach of providing OAN with a “buffer”. Whilst the size of that “buffer” has varied throughout the process (SA2017 9.4%, 14% at submission and at 26% on main mods in respect of which the Inspector was content but now at 37%) that does not constitute a different alternative. Our understanding of the Inspector’s comments [informally made at the end of the summer and on the first day of the resumed PE] (and in GBC’s view) it would not be sound or reasonable to have a buffer that was materially lower. GBC are not advocating any growth option. We are maintaining the approach of meeting OAN with an appropriate buffer.”
122. The changes, reducing the housing requirement figure and deleting proposed additional Green Belt sites, could not give rise to likely significant effects which had not already been considered. Eight different housing delivery scenarios had been considered as reasonable alternatives catering for the range of 13,600 to 15,680 dwellings over the plan period; the likely significant effects of each been evaluated. It would be inappropriate and disproportionate for further SA to be undertaken.
123. Mr Findlay also pointed out that participants such as Compton PC and Guildford Green Belt Group had made further written representations to the Inspector, among those responding to his specific questions for the resumed hearings in February 2019, to the effect that one or more strategic sites released from the Green Belt could be omitted from the allocations.

124. The Inspector, in the final section of his Report, assessed the legal compliance of the Plan. One issue was compliance with the legal requirements for SA. He concluded that what had been done was adequate. No further SA was required in relation to MM2, since the level of housing provision was within the range of options already tested by the SA, and the housing sites were the same as those in the submitted Plan; IR219. MM2 was the modification providing for 10,678 new homes during the plan period 2015-34, or 562 dpa, reduced from 12,426 in the 2017 submitted version of the Plan. The allocations to provide a supply of 14,602 dwellings were not reduced, although a modification, proposed before the 2016 household formation figures became available in September 2018, and introducing a further 4 sites with a capacity of 550 dwellings, was not proceeded with. I have set out IR 44 above in which the issue is also considered.
125. Mr Harwood submitted those paragraphs in the IR were wrong, although the error that mattered was that of Guildford BC. It was required by the Regulations to assess reasonable alternatives to the plan, taking into account the objectives of the plan, which by the time of adoption included 10678 dwellings. Alternatives which it was obviously reasonable to have considered were meeting that need and no more, and meeting a lesser need than 14602. The reasonable alternatives were not only in the range of 13600 to 15680 dwellings, with the supply figure in the middle. Reasonable alternatives to the 14602 figure had to be considered, since the dwellings requirement was 4000 fewer. There had also been material changes in circumstance, with Woking BC announcing that it had no unmet need, and Waverley taking some 82 dpa of Woking's need. In 2017, the option preferred by Guildford BC had provided headroom 9.4% above the then OAN, but it was now 37% above the present and final OAN. It was not possible to say what the outcome of an assessment of reasonable alternatives might have been. Indeed, he went so far as to submit that there had been no SA of the requirement finally adopted, 10,678, or anything like that number, or of an "overprovision", as he put it of 4000. Guildford BC and the Inspector had simply refused to consider a housing figure at or near 10678, which refusal had fed into the decision that no further SA was required.
126. I cannot accept these arguments. No complaint is made of the SA process before the effect of the 2016 household projections was considered. First, the objectives of the Plan had not changed; the objective was not the provision of 10,678 dwellings; it was not simply the provision of the OAN plus an appropriate buffer. I have set out how the objective was phrased in the earlier versions of the SA. An updated SA, confining itself to the provision of 10,678 dwellings, omitting any buffer, would not have been a reasonable alternative, as previous SAs concluded, and would have been for an objective other than that of the Plan.
127. The judgment that an OAN without any buffer was not a reasonable alternative, was a reasonable judgment for Guildford BC to make. It could only be attacked on rationality grounds; see *Spurrier and Others v Secretary of State for Transport and Others* [2019] EWHC 1070 (Admin) at [434]. That would be untenable.
128. Second, whether the effective increase in the headroom or buffer, but without change to the level of housing allocation, was a significant change or one likely to have significant effects was a matter for the judgment of Guildford BC, as the decision-maker. It is clear that the overall level of housing supply was within the range already considered. All the housing allocations had already been evaluated. The judgment that

the change was not significant or likely to have significant effects which had not already been considered, was reasonable.

129. Third, the only point in considering further alternatives would have been whether one or two large sites should be removed from the allocations. The smaller, sequentially less preferable Green Belt releases around villages, totalling 945 dwellings, could not have been omitted from any reduced buffer because of their importance in meeting the five-year housing supply in the early years of the Plan after adoption. Guildford BC and the Inspector did in fact consider whether the increased level of buffer in the same total supply, with a reduced OAN, was appropriate. They each concluded that it was, and that no large Green Belt site allocation should be now omitted. The arguments for deleting one or more of the 3 large sites were raised; indeed there was an obvious issue about whether that would be an appropriate response. Guildford BC and the Inspector considered it. Guildford BC was entitled to conclude that a further round of SA was quite unnecessary. The Inspector agreed, in his Report. There was no misdirection as to the law; it was for Guildford BC to judge whether there had been a change in circumstances or in the plan which warranted a further SA. This judgment can only be challenged on public law grounds; the only one available would be irrationality. There was no irrationality in the decision.
130. The history of the extensive SAs and updates make it impossible to say that there had been no SA of the effect of the allocations, or of the OAN plus buffer. There were no further reasonable alternatives to be discovered; the alternatives would have involved the omission of one or more of the three large sites released from the Green Belt. In reality it had already been considered.
131. Even if there had been an error, and assuming that the omission of one or two of the large sites would have been a reasonable alternative to consider, it is perfectly obvious that the allocations in the adopted plan would have been the preferred choice. That issue was considered by both Guildford BC and by the Inspector. Omission of a further SA would have been a procedural error causing no prejudice, let alone substantial prejudice to anyone. Even if one going to vires, I would have exercised my residual discretion to take no action, given that it is perfectly obvious that it could have had not the slightest effect on the outcome of the Plan.
132. I reject this basis of challenge.

Issue 3: unlawful finding that exceptional circumstances existed.

133. Mr Kimblin submitted, focussing on Blackwell Farm, but making a wider point, that at IR165, the Inspector had included the “important contribution towards meeting housing, employment and educational needs” that the site would make, among the Local-level exceptional circumstances justifying the release of the site from the Green Belt. Mr Kimblin submitted that as any residential allocation anywhere would meet housing needs, meeting them could not be an exceptional circumstance. This is wrong. This was not an example of a site being released simply because it was suitable for housing. First, as I have already explained, meeting a general housing need by the release of land from the Green Belt, is not legally irrelevant to the concept of “exceptional circumstances.” Second, meeting any housing needs beyond a figure somewhat below the OAN would entail the release of land from the Green Belt. Third, the release would be an effective contribution to meeting that housing need, but

it would do so in a way which enabled other needs to be met, creating a sustainable pattern of development. This supports both meeting the need, and meeting it through the release of that particular allocation.

134. Mr Kimblin also submitted that housing needs were counted both in the strategic and Local-level exceptional circumstances, which he contended was illegitimate double counting. It is not surprising that, given the way in which the Inspector considered the strategic level exceptional circumstances and the local-level exceptional circumstances, both of which he needed to consider, that housing need would be referred to in both. The former focused on the strategic level need but the Inspector also had to consider the overall impact of the various Green Belt releases as a matter of strategy; the Local-level circumstances dealt with the practical nature of the contribution to housing and other needs which such a site allocation would yield, and the spatial distribution of development which the particular sites allocate would achieve. I cannot see that there is some flaw in logic, or that he has counted a factor twice in such a way that he has given the same factor, in reality but unconsciously, weight twice over.
135. In so far as the “double-counting” alleged was of the existence of a need, and the ability of a site to meet that need, they are different though related aspects of the “exceptional circumstances.” The way in which a site can meet the need, not just in numbers but in location, and as part of a sound spatial distribution, with other uses, and help bring forward infrastructure, can all fall within the concept of “exceptional circumstances.”
136. Mr Kimblin also took issue with IR165 over the inclusion, as part of the exceptional circumstances which Blackwell Farm offered, of its contribution to sustainable transport, including a new station. He submitted that these financial contributions were “necessary to meet the impact” of development, and legally irrelevant; contributions necessary to make a development acceptable were either immaterial or not exceptional. This echoes the earlier argument I dealt with in relation to the contributions which development at Wisley airfield would make to sustainability at other sites. In principle, I accept that mitigation measures are not a reason for granting permission, and would not be factors adding to the exceptional circumstances favouring the release of land from the Green Belt, other than as a means of choosing between competing sites where the potential for mitigation affected the choice. That can be important where, as here, Guildford BC and the Inspector had to undertake a comparative exercise in choosing which combination of allocations would constitute a sound spatial distribution of development, contributing also to more widely beneficial infrastructure.
137. In my judgment, Mr Kimblin’s submission has not fully taken on board the significance of the contribution to the infrastructure. This is clearer from IR137. As with other forms of infrastructure, the contribution assists the achievement of a facility, here a new station, which is obviously of wider importance than simply providing for the allocation site users. It can provide for existing users in its vicinity. That wider aspect is plainly material. But there is a more general point: this is a sustainable site on which various needs can be met. The overall qualities of the site can contribute to local exceptional circumstances.

138. I do not know if Mr Kimblin is right to say that the contribution would be seen as “necessary” to make the development acceptable, but the contribution would still be a material consideration favouring development, even if it were not necessary for acceptability. His point is not made out in relation to this Plan; he is substantially taking issue with a reasonable and lawful planning judgment.
139. I turn now to the grounds relating to the individual sites, starting with the former Wisley airfield.

Issue 4: the Wisley airfield appeal decision and the way in which the Inspector dealt with it.

140. I have set out above what the Local Plan, LP, Inspector said about this decision. Mr Harwood contended that, although Guildford BC had refused permission for the development on the former airfield, on a site smaller than the allocation, and had opposed the appeal, it had sought to do so in a way which protected its allocation, but in reality has failed. The refusal had been on the grounds that there were no “very special circumstances” to justify this inappropriate development in the Green Belt, even though Guildford BC lacked a 5 year housing land supply, and there would be harm to the character of areas to the north and south of the site. This, Guildford BC had contended, would be avoided by the inclusion of the areas in the allocation which lay to the south of the appeal site, but which were not part of the appeal site. There was no strategic highways objection.
141. The Inquiry lasted 21 days in 2017; the decision was dated 13 June 2018, coming out during the PE. Mr Harwood submitted that the appeal Inspector’s conclusions and recommendations, and the Secretary of State’s decision accepting them, went rather wider than the issues raised at the appeal by Guildford BC. His submissions to me were very similar to those sent to the Secretary of State dated 18 April 2019, by Ockham PC after publication of the LP Inspector’s Report. Ockham PC asked the Secretary of State to prevent Guildford BC adopting the Plan until he had been able to decide whether to call in the Plan or to direct its modification. The letter complained in strong terms about the extent of land removed from the Green Belt. It contended that the Plan reversed key findings made in the appeal, without recognising it was doing so, or providing any reason for doing so. The decision, it was said, condemned, in reality, not just the appeal proposal but also the allocation.
142. The Secretary of State refused either that request, or more probably another request to the same effect, in a short letter to the Leader of Guildford BC. The Secretary of State said that the LP Inspector “has taken the issues raised into account when considering the allocation of the former Wisley Airfield site for development, and that the plan provides appropriate mitigation of the impacts of development on this site.” He was pleased that the Plan contained a requirement for a master plan for the site; he would also consider calling in applications in relation to the development of Wisley airfield, on their individual merits.
143. The appeal Decision Letter, DL, agreed that the development was inappropriate for the Green Belt and that it could only be permitted in very special circumstances. It would conflict with two of the five purposes of the Green Belt: it would not assist in safeguarding the countryside from encroachment nor in the regeneration of urban land. It would reduce the openness of this part of the Green Belt. The harm to the

Green Belt would be “very considerable”, in conflict with the development plan and paragraph 79 of the NPPF. The DL went on to consider whether there were very special circumstances which clearly outweighed the harm.

144. The DL gave limited weight to the Wisley airfield allocation in the emerging Local Plan. It was the development plan policies which were of most relevance. Significant weight was given to the significant shortfall in the 5 year housing land supply, which then amounted to only 2.36 years. Significant weight was also given to the affordable housing, 40% of the proposed total.
145. The DL agreed that a suitable quantity and quality of SANG would be provided, and that subject to conditions and a planning agreement, “the development would not have an unacceptably likely significant effect on the SPA.” There would be a severe and harmful strategic highway impact to which significant adverse weight was given, although unacceptable harm to the local road network was unlikely, with certain works being undertaken. On transport sustainability, the DL agreed that “...overall, the proposals go a long way towards making the location more sustainable...[but] the proposal would not be in full accord with [the] emerging Policy A35... as it would fail to provide the required cycling improvements...” Limited weight was given to that, as it was to the concerns of the local education authority that the site was not suitable for an all-through school for the wider community. Although some of the harmful impacts on the appearance of the area could be partially mitigated by extensive landscaping, “this would not disguise the basic fact that a new settlement in a rural area would, inevitably, cause substantial harm to both its character and its appearance.” This would be irreversible, contrary to development plan policy, and carried significant adverse weight. Other factors were considered as well. The Secretary of State agreed that many of the purported benefits were little more than mitigation, while the benefits for the wider community, outside the appeal site, were rather more limited. The loss of some 44ha of best and most versatile agricultural land was accorded considerable weight. The harm to heritage assets was less than substantial.
146. On 13 June 2018, the Secretary of State rejected a request from Wisley Property Investments Ltd to delay issuing his decision on the appeal, concluding that:

“in view of the range of factors remaining to be resolved, the most satisfactory approach is to decide this appeal in the context of the current development plan. This reduces the uncertainty for all parties and leaves the way open for further applications to be considered (by the Council in the first instance) once there is an up-to-date planning framework for the Borough.”
147. Mr Maurici QC for Wisley Property Investments Ltd submitted that this showed that the Secretary of State did not regard the appeal decision as ruling out the allocation or a further application. That is true, but its significance can be overstated. He also drew my attention to the decision of the Inspector, accepted by the Secretary of State, to refuse an application for costs against the developer after the appeal. The application was made on the grounds that the pursuit of the appeal was unreasonable in view of the absence of any solution to the highways issues, and the unmet housing need was “unlikely” to outweigh harm to the Green Belt and provide very special

circumstances. The emerging local plan could not add sufficient weight to amount to very special circumstances. The appeal Inspector found that the appellant had always intended to pursue a plan-led scheme, and had done so in the reasonable expectation that the emerging Local Plan would have been adopted in July 2016 in time for the decision on the application lodged in December 2014. But it had been delayed; the allocation boundaries had varied. The highways issue turned on the slip roads; it was not an objection in principle but went to whether they could in fact be provided. On Green Belt, the appeal Inspector said that the lack of suitable housing sites remained acute and some land would probably need to be released from the Green Belt to meet any identified need. He continued:

“I do not consider that it is inevitable that this appeal would fail on Green Belt grounds or that its location within the Green Belt, in advance of any determination on whether it should be taken out of the Green Belt, made the appeal hopeless. The Appellant put forward a credible case for the development in the Green Belt including a raft of matters that were, when taken together, considered to comprise the necessary VSC.”

148. It is worth noting, in the context of the arguments which I have heard, that neither the appeal Inspector nor the Secretary of State regarded the scope of “very special circumstances” as limited to individual circumstances which were, taken by themselves, not very special, in the sort of language which Mr Kimblin deployed in relation to the concept of “exceptional circumstances.” The need for general housing was capable of contributing to those circumstances.
149. I note these further points from the appeal Inspector’s Report, AIR. Guildford BC’s Green Belt and Countryside Study, part of its Local Plan preparatory work, recognised that any large non-urban site in a Borough where 89% of the land lay within the Green Belt, would conflict with the Green Belt purpose of assisting in the regeneration of urban land; and it was only being contemplated because there was insufficient suitable urban land within the Borough. At 20.71, AIR, the appeal Inspector considered transport sustainability. Without changes, the appeal site was not in a sustainable location, with little public transport in the immediate vicinity, and narrow winding lanes, without footways or lighting, which were not conducive to walking or cycling. The proximity of the A3 and the strategic road network would encourage travelling by car. Various significant interventions were proposed to deal with this. The maintenance of the level and cost of the bus services would be “quite challenging”, but would go “some way to improving the public transport options.” The off-site cycle network required, by the emerging Local Plan, to key destinations including railway stations at Ripley and Byfleet was not provided; the roads were of insufficient width and rather demonstrated that they were not conducive to cycling other than by experienced and confident cyclists. The long linear shape of the site did not assist sustainability as buses would be needed by some residents to reach the village centre, notably from the housing which could be up to 1500m, as the crow flies, from the centre. The scheme failed to meet even the minimum requirements for cycling in the emerging Local Plan. However, AIR20.81, the proposals went a long way towards making the location more sustainable but fell short of the full cycling improvements required by the emerging Local Plan. Weight would be given to that

shortfall because that was the plan which Guildford BC intended to submit for examination.

150. The appeal Inspector accepted, AIR20.87, that some landscape and visual harm was inevitable with development in the countryside: the character and appearance of the site would change significantly; the character of the wider area would also be affected. Guildford BC accepted some harm was inevitable, wherever new housing was provided in the Borough, given the severe constraints it faced. But there would still be a very substantial change to the character of the area; the form of the proposed settlement would be wholly at odds with the loose, informal nature of the settlements that had grown up organically in the area over the years. The site was on a long east-west ridge, rising to the east, so “any development on the site would inevitably stand out in the surrounding landscape making it prominent and potentially dominating.” The inclusion of the additional land in the allocation to the south of the appeal site, with the same amount of development, “would allow a less dense and linear development, as envisaged in the eLP.” As it was, AIR 20.94, all the development was squeezed from the north, by the SPA, and the south:

“forcing the development upwards and resulting in a highly urban character this is partly a consequence of the site being considerably smaller than the site that GBC intends to allocate in eLP Policy A35. While any development of this scale on this site would appear out of keeping with its surroundings, the additional constraint imposed by a smaller site seems to exacerbate the harm to the character of the area.”

151. The overall impact “would result in substantial harm to the character of the immediate area”, eroding the historic pattern of the settlements to the detriment of their character. He agreed with residents that this impact “would be catastrophic on their rural way of life.”
152. The impact on the appearance of the area would be rather less severe than on its character, as much of the site was quite well screened from off-site public viewpoints. The existing runway was a stark concrete feature that failed to make a positive contribution to the appearance of the area; but there would be a harmful impact on public rights of way. There would be a change from travel through an open largely agricultural landscape to an urban walk, with urban sights and activity. Off-site views would be fairly long distance as the site was quite well screened by existing trees and, from nearby, but the ridge would be visible from as far afield as the AONB. It would appear as a linear, urban feature, although careful use of materials would soften its visual impact. Its impact would be exacerbated by its village location, with 3- to 5-story buildings along the central spine road making the full 2.4km of the development visible from highly sensitive locations on public rights of way in the AONB. In time, some of the impacts on the appearance of the area could be mitigated by extensive landscaping.
153. The appeal Inspector also considered nitrogen and nitrous oxide levels in the SPA. He rejected the extreme position put forward by Wisley Action Group and Ockham Parish Council, for whom Mr Harwood appeared at the appeal Inquiry, that because the critical level for NO_x and the critical load for nitrogen were already being exceeded, not one single vehicle movement could be generated without infringement

of EU law, so planning permission would have to be refused. He summarised the detailed assessment carried out by the Appellant, AIR 20.140:

“This shows that the part of the SPA where the 1% increase is exceeded is limited to strips of land adjacent to the A3 and M25....Surveys show that beyond 200m there is no discernible effect; the impacts are thought to be greatest within the first 50-100m but the area where the appeal scheme makes a greater than 1% contribution is much more limited. ...20.141 [M]ost of the SPA that falls within even 200m of the A3 and M25 comprises woodland; there are only small areas of heath. It also shows that by 2031 none of the heathland would fall within an area exceeding critical levels for NOx with the appeal scheme and other future development....This woodland provides a shelter belt and possibly nesting opportunities for the Woodlark but does not offer ground nesting sites. This type of buffer is advocated in DBRM as best practice. The evidence, which was not challenged, shows that some Nightjar territories have been within the 200m distance but none within the 140m distance from these roads.”

154. Natural England had raised no objections on air quality grounds. There was no evidence demonstrating that changes in air quality, individually or in combination with other developments, were likely to have significant effects or undermine the conservation objectives for the SPA; an Appropriate Assessment was not required.
155. The appeal Inspector accepted that the runway and hard standings, amounting to almost 30ha, was the largest area of previously developed land in the Green Belt in the Borough, and its beneficial reuse contributed to very special circumstances, and to Guildford BC's justification for seeking to release it from the Green Belt. This had to be tempered by the fact that a larger area of agricultural land including well over 40ha of the best and most versatile would be lost.
156. In his overall conclusions, the appeal Inspector said that the proposals were “largely, but not completely, in accordance with the eLP but, for the reasons set out above, it carries only limited weight as there are unresolved objections to the relevant policies. The unresolved objections are significant in content and quantity and this limits the weight that can be accorded to the eLP.” He understood the frustration of the Appellant who could reasonably have expected the eLP to be more advanced and therefore weightier than it was.
157. The proposals did not fully accord with the eLP, seeking to accommodate roughly the same amount of development as sought by the eLP, on a smaller site. Other requirements in Policy A35, such as the provision of an off-site cycle network to key destinations and sensitive design at site boundaries would only be partly met by the appeal scheme. The failure to provide adequate infrastructure, in the form of north facing slip roads at Burnt Common, was a major and fatal failing of the scheme. The proposals would not protect or enhance the natural, built or historic environment and could result in a high level of car-dependency. The inevitable harm from such development in a rural setting would be particularly noticeable in the midst of a cluster of hamlets. Its linear form, in part a consequence of the smaller site, and its

location on a ridge meant that there would be longer views of the proposals; from the AONB, the new settlement would be seen to impose itself on the landscape without regard to the established settlement pattern or form.

158. Mr Kimblin's contention was that the LP Inspector had not grappled with the thrust of the reasons which led the Secretary of State to accept the appeal Inspector's recommendations for the dismissal of the appeal. They reached different decisions on the same issues, and it was not possible to understand why he differed from the appeal decision. Mr Kimblin highlighted the contrasting language about the harm to the Green Belt, the loss of best and most versatile agricultural land, the degree of prominence and visual self-containment, the sustainability of the location, including the provision of bus services and the difficulty of accommodating facilities for the average cyclist.
159. Mr Kimblin made some complaint, without alleging any separate error of law, that the Inspector had sought a note from Guildford BC on the appeal Decision but had refused to accept written representations from other participants, on whatever side of the Wisley airfield allocation debate. The Note pointed out that an appeal decision and the decision on a Local Plan allocation were decisions of a different nature, with different statutory tests. The approach to development in the Green Belt necessarily differed. It has always been the intention of Guildford BC that the site should come forward via the plan-making process. There would be no substantial harm to the Green Belt if the site were removed from it. The important highways objection had largely been resolved and Highways England expected to be able to withdraw its objection. The harm alleged to the character and appearance of the landscape had been considered, in that process, in the context of longer -term housing need, and where else the need could be met with less harm. The allocation in the emerging Local Plan had been given limited weight. The residue of the allocation outside the appeal site, could have come forward for further housing, had the appeal succeeded. The appeal Inspector accepted that the difference between the allocation and the appeal site had exacerbated the harm caused by the development.
160. First, in my judgment, this issue is different from some cases where an appeal decision has been prayed in aid of an objection to an allocation, but has not been dealt with by the LP Inspector. This appeal decision concerned the larger part of an allocated site, rather than a calculation of some more generally applicable nature, or some unallocated site. It was contemporaneous. Here, the LP Inspector did treat the appeal Decision as relevant in considering the soundness of the allocation, as it obviously was; and he set out to deal expressly with its significance for his Report. If he had not done so, there could have been a lively debate as to whether he ought to have done so, but that is not the case here.
161. Second, the decision on the appeal was not a decision on the soundness of the allocation, nor vice versa. It would not have been for the appeal Inspector to trespass on the functions of the LP Inspector and the former, and the Secretary of State, would have been well aware of the need not to do so. The framework for the respective decisions was markedly different, as IR 181, the subsequent discussion, and the earlier discussion of strategic Green Belt exceptional circumstances in IR86, showed.
162. The appeal was concerned with whether the proposal was consistent with the existing development plan; the PE was concerned with whether the emerging Local Plan was

sound, in making changes to the Green Belt boundary, and in making housing provision for the period to 2034. “Very special circumstances” had to be shown for this inappropriate development in the Green Belt, as opposed to “exceptional circumstances”, a lesser test, for varying Green Belt boundaries.

163. Third, the Local Plan was emerging but the appeal Inspector was aware of the objections to the Wisley allocation and did not afford it much weight on that account; the LP Inspector had the task of judging its soundness, and not its weight as an emerging Plan. The LP Inspector also had not just the immediate housing land supply shortfall, but also the future allocations to meet the OAN with a buffer to deal with. He had to deal with a long-term plan, covering the whole of Guildford BC’s area, so that a coherent strategy for that period was provided, within which development control and infrastructure decisions could be made. He necessarily had to consider whether there were any non-Green Belt sites which could be released instead, and, if Green Belt sites were to be released, which were the best locations overall, including not just their effects on the Green Belt, but also their ability to form a coherent spatial distribution strategy, meeting other needs, and being made sustainable, as a whole. This was a comparative exercise, and not a decision about a single site. This was all part of the LP Inspector’s consideration of “soundness”. The consideration of “soundness” was no part of how the appeal Inspector had to approach his Report, and the Secretary of State, his decision.
164. Fourthly, there were also more development/allocation specific considerations: one of the most important was the sustained highways objection to the absence of practical solution to the necessary north-facing A3 slips, which was sufficiently resolved by the time of the LP IR for that major objection not to be a factor against the allocation’s soundness. The second was the difference between the appeal site and the allocation, with the implications which that had, whether for further development on the residue of the allocation, or on the way in which the height of the buildings, particularly with the ridge running west-east, would make development prominent. Necessarily, the detail of the boundary treatment would be different. These are all part of IR186, and the way in which the allocation is analysed by the LP Inspector.
165. I do not consider that it was necessary for the LP Inspector to take the AIR and analyse all its views against his views on the various topics. There is perhaps a difference in emphasis in the LP IR comments on the Green Belt releases in general “relatively limited impacts on openness” and their not causing “severe or widespread harm”, and the AIR comment that there would be “very considerable harm” to the Green Belt from the Wisley allocation. However, as IR 182 makes clear, on a comparative basis, the Wisley site was of medium sensitivity. Its development would avoid putting pressure on other Green Belt areas of greater sensitivity. This comparative exercise, underpinned by the Green Belt and Countryside Study, was not a task which the appeal Inspector could undertake or attempted to undertake; but was essential for the LP Inspector. The same applies to the assessment of the degree of visual prominence: the LP IR comments on the allocation as “fairly self-contained visually,” being on a plateau and not prominent, whereas the AIR thought it visible along its length to highly sensitive receptors, though quite well screened in certain respects. But the sites they consider differed in an important respect and with an adverse effect for the appeal scheme. It is obvious from the AIR that the narrowness of the appeal site exacerbated the prominence of the appeal development. The LP

Inspector also considered that specific design objectives, should be in the Plan, via a Main Modification, Policy A35. The effect on the character of the area is referred to in IR 181, but is a factor outweighed by the compelling strategic-level exceptional circumstances. The LP Inspector obviously considered the appeal decision, but found the circumstances he had to deal with, compelling.

166. At the strategic level, the allocation can support sustainable modes of travel. It was not necessary for the LP Inspector to point out how the comments of the appeal Inspector in relation to the cycle network in the appeal scheme could be varied so as to provide what the allocation envisaged. The Secretary of State had already agreed that the appeal proposals went a long way towards making the location sustainable. The appeal Decision could not and did not conclude that the cycle network could not be provided or provided with a larger site, or that the bus services could not be provided. The shortcoming was only given limited weight. The LP Inspector was not required to deal with best and most versatile agricultural land explicitly in order for adequate reasons to have been given for his conclusion on the soundness of the allocation of this site; limited weight was given to that aspect by the Secretary of State.
167. Accordingly, I reject the contention that it is not possible to see why the LP Inspector reached the conclusion he did, having considered, as he obviously did, what the AIR and Secretary of State had to say. In the circumstances known to all participants about the differing tasks, the reasons are sufficient. There was no need to identify, issue by issue, where the LP Inspector did or did not, to some degree, agree or disagree with the appeal Inspector. Such differences as there may be are explained by the different focus of their tasks and the different cases they were considering. I have referred earlier to the authorities on reasons which are most to the point. The instant case calls for no further elaboration of the law. I add *Dylon 2 Ltd v Bromley LBC* [2019] EWHC 2366 (Admin) to the authorities on reasons, already referred to because it deals with reasons and their relationship to earlier appeal decisions, though in a different set of circumstances.

Issue 5A: the “white land” at the former Wisley airfield

168. This relates to the allocation at the former Wisley airfield. There are three areas where land around the allocation was taken out of the Green Belt but left unallocated, termed “white land”. That expression is convenient in this context even though other policies applied to restrict development on the areas in question, and it is not reserved or safeguarded for future development, as would normally be the purpose of “white land”. The major area of white land lies between the Wisley allocation and the new Green Belt boundary to the north along the SPA; it is part of the buffer zone for the SPA. The second is to the south with allocated land on three sides. The third is at the south-east corner of the allocated site, and was removed from the Green Belt in the 2017 changes to the Plan.
169. Mr Kimblin submitted that, once it had been accepted by the Inspector that there was no need for land to be safeguarded for development or treated as reserve land, there was no need for land to have been removed from the Green Belt, and left as white land. His complaint was that the Inspector, though no longer it appeared Guildford BC, had provided no justification for those areas to have been removed from the Green Belt.

170. The reasons for exclusion from the Green Belt of the area north of the allocation were the establishment of new defensible Green Belt boundaries, and because some development, such as small car parks, board walks and the like, which would or could be inappropriate in the Green Belt, was proposed in connection with the new SANG, as essential mitigation for the development on the allocation, as agreed with Natural England. It was not included in the area allocated because it was not suitable for development in general. The need for that land to be excluded from the Green Belt so as to create a suitable Green Belt boundary was raised in the Green Belt and Countryside Study, part of the evidence base for the Local Plan. IR115 referred to the buffer between residential development and the SPA boundary. Policy P5 resisted a net increase in residential units within 400m of the SPA boundary and sought avoidance and mitigation in respect of residential development between 400m and 5km from the boundary.
171. The test of “exceptional circumstances” cannot simply be applied to the whole of the area of change to the Green Belt boundary without acknowledging that the new boundary has to follow defensible lines. The rather wavy line bounding the north of the Wisley allocation was plainly not as defensible a boundary as that adopted. It is not necessary for separate exceptional circumstances to be shown. The necessary exceptional circumstances justify the Wisley allocation; defensible boundaries to the Green Belt may not always align with the allocation boundary, but defensible boundaries have to be provided as a necessary consequence; see NPPF 85, above.
172. The second area was near the Bridge End Farm. This was not available for development so it was not allocated. But the need for defensible boundaries to the Green Belt make its exclusion from the Green Belt clear. This was also explained in the Green Belt and Countryside Study.
173. The third area, at the south east corner of the site, was not included in the allocation because it is not available; the owner is opposed to the allocation. Yet the boundary of the Green Belt, if it followed the allocation boundary hereabouts would not follow defensible features. The previously redrawn boundary followed the airfield boundary and a field boundary. It was now to follow the two roads, Ockham Lane and Old Lane, which bounded the south-east corner site on the south and east sides. This was explained in the “Summary of key changes to the Proposed Submission Local Plan: strategy and sites (2017)”. The airfield is no more; defensible boundaries are permanent hard features, of which roads are a paradigm. Field boundaries are not so permanent. This is a simple matter of planning judgment.
174. The explanations by Guildford BC are sufficient. This is a matter of planning judgment for Guildford BC. It was not necessary for the Inspector to address each area where the proposed new Green Belt boundary was contentious between Guildford BC and others making representations. He had the local authority evidence base. He had to consider the allocations for soundness, but not their precise boundaries, unless in some way a boundary issue itself went to the major issues on soundness, legal compliance and policy consistency. That is not alleged here. As I have said, there was no further test of “exceptional circumstances”, at least not normally, to be applied to such areas of land as might lie between an allocation and a defensible new Green Belt boundary, where they are not reserved or safeguarded sites and simply result from a sensible boundary drawing exercise. The exceptional circumstances come from the very allocation of the site.

Issue 5B and the consultation on the 2017 version of the submitted Plan

175. This point is of no real moment according to Mr Harwood who fashioned it: it was a technical but readily correctable error, on his analysis. The 2017 changes to the allocation area and Green Belt deletions could not be made without the Inspector determining that the 2016 plan was unsound if they were not made, which he did not do. So, there was no power to make them on the part of either Guildford BC or the Inspector.
176. This is how his argument proceeds. The 2016 proposed submission version of the Plan was published for representations to be made under Regulation 19 of the 2012 Regulations. Representations were received in large number. That version was not however submitted to the Secretary of State. The 2016 version proposed the removal of the Wisley allocation from the Green Belt, along with the land to the north of the allocation which was a buffer to the SPA, and the southern part of the unallocated land.
177. The Plan was altered in 2017. So far as the Wisley area was concerned, three fields towards the south-east of the centre of the allocation were included for the first time, and the area to the south-east corner was removed from the Green Belt but not placed in the allocation.
178. A further round of representations was sought, but this was confined to the changes from the 2016 version, and it was only representations on the 2017 Plan about the changes which would be passed on to the Inspector. He would however also receive all the representations on the 2016 version. General comments about the changes could be made, and Guildford BC was also seeking specific comments on legal compliance, the duty to cooperate and soundness. Guildford BC described this as a “targeted Regulation 19 consultation”.
179. The 2017 version was submitted to the Secretary of State and was the subject of the PE, and proposed modifications. None of the changes to the 2017 version from the 2016 version were themselves the subject of any modification proposed by Guildford BC to the Inspector or by him directly.
180. Mr Harwood submitted that regulation 19 required the consultation in 2017 to have been on the whole plan and not just on the changes. Regulation 19 states:

“Before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must-(a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35....
181. By regulation 20(1): “Any person may make representations to a local planning authority about a local plan which the local planning authority propose to submit to the Secretary of State.” It is those representations which have to be submitted to the Secretary of State. “Proposed submission documents” are defined in regulation 17: they include “(a) the local plan which the local planning authority propose to submit to the Secretary of State.” By s20(2) of the 2004 Act, no development plan document can be submitted by a local authority to the Secretary of State, unless the requirements

of various regulations have been complied with, and the submitting authority thinks that the document is ready for independent examination for, amongst other matters, its soundness. The examining Inspector must recommend that a plan that is not sound or which does not satisfy statutory requirements should not be adopted, unless he considers that there are modifications that would make it sound and satisfy the statutory requirements, provided that the duty to cooperate has been met, and the submitting authority asks the examining Inspector to make the necessary modifications.

182. The powers of the Court under s113 of the 2004 Act extend beyond a quashing of the document, and by s113(7A) and (7B), permit it to remit the document to the planning authority with directions as to the action to be taken. Directions may require specific steps in the process to be treated as having been taken or not taken, and require action of unspecified scope to be taken by the plan-making body. Those powers can be exercised in relation to the whole plan or part of it.
183. Mr Harwood submitted, as had the Wisley Action Group in its response to the 2017 submission draft, that the plan intended to be submitted was the 2016 version; the changes in the 2017 version could not lawfully be made until the Inspector had found that the Local Plan was unsound without them, and modifications had been sought by the Council or recommended by the Inspector to make the plan sound. The 2017 changes were no different in law from any other changes intended to remedy unsoundness; this was all because there had not been consultation on the 2017 plan as a whole. He submitted however that the consequence was that it was only the inclusion of the changes made in the 2017 draft which were unlawfully included in the Plan.
184. I did not find this persuasive at all. I note that Planning Practice Guidance, PPG, contemplates that there can be such a targeted consultation, though that cannot be determinative of the law. The PPG states that the Inspector should consider whether the changes resulted in changes to the plan's strategy, whether there had been public consultation and a SA where necessary. If those points were satisfied, the addendum could be considered as part of the submitted plan. If not, he would usually treat those proposed changes as any other proposed main modifications, which would need to satisfy the statutory terms of s20(7B) and (7C). I regard that as practical advice, which does not assist Mr Harwood's rather technical legal submission. But I do not necessarily accept that the PPG is a complete statement of the circumstances in which, before submission, modifications can be made, with a targeted consultation, to a plan which had already been consulted on. It may not be necessary for the plan to be regarded as unsound before the changes can be made, in view of the obligation to submit what the local authority considers to be a sound plan.
185. It starts with Regulation 19. I see nothing in that Regulation on its own or with Regulation 20 which prevents a Local Plan being amended before submission so that in the judgment of the local planning authority it is sound when submitted. The contrary is not contended. There has to be consultation on the submitted Plan, and all the representations have to be submitted to the Secretary of State. All aspects of the Plan submitted in 2017 were the subject of consultation and all the representations were submitted. That is all that the language requires. The authority must submit a plan which it believes is sound. If it considers that changes are necessary after consultation but before submission, Mr Harwood would require that the whole Plan is

subject to further consultation. I cannot suppose that all those who had previously made representations would realise that they had to repeat them, even if they merited no change, for them to be forwarded to the Secretary of State, or would have the stamina to do so. Were they not to repeat themselves, it is hard to see on what basis their consultation responses to an earlier plan should be forwarded to the Secretary of State.

186. I cannot see what language or purpose of the Regulations means that amendments cannot be the subject of a targeted or restricted consultation at all. The opportunity to provide further comments would be pointless. I can see that if a further round of consultation was limited in its scope with the result that an aspect of the Plan, or some interaction between the various parts or some discontinuity arising from the fact that the alterations came later in time, was not consulted upon, that would be a breach of the Regulations, but that is not contended here. Mr Harwood was unable to point to an aspect of the 2016 Plan which was affected by the alterations in 2017 from which further representations were excluded. His point had no substantive contention behind it. If it did, he would have been able to argue that the Regulations had been breached, not because of form but because of the substance of the consultation.
187. If Mr Harwood is right about a breach of a procedural requirement, falling short of the submission of the wrong plan, it is difficult to see what useful remedy there should be. The alleged breach of a procedural requirement prejudiced no one and had no effect on the Plan at all. I could require the consultation step to be treated as having been taken in relation to the whole plan, but that is not the purpose of his argument. I was unable to follow his submission that, if a procedural remedy were required, some limited solution confining itself to the Wisley allocation would suffice.
188. I agree with Mr Findlay that the essence of Mr Harwood's argument is that the consultation requirement was breached, and unless it is repeated on the Plan as a whole, and the 2017 version recognised as not having been submitted and examined, no useful remedy can be granted. If the consultation process had to be repeated, the flaw could not be remedied without a repeat of the whole consultation exercise, with updated representations and the whole PE starting again. Yet that was what Mr Harwood disavowed.
189. I find it impossible to see how Mr Harwood's submission that it was in fact the 2016 version which was must be treated as having been submitted to the Secretary of State for examination can possibly be right. But, if right, I can see no sensible basis upon which the whole Plan could avoid reversion to a pre-submission stage. Mr Harwood, understandably, did not wish to go so far. It rather illustrated the lack of merit in this whole submission.
190. I reject this ground of challenge.

Issue 8: The air quality impact of the allocation at the former Wisley airfield

191. The Inspector considered this issue under Issue 7, sub-heading "Biodiversity." The SPA consisted of fragments of dry and wet heath, deciduous wood land, gorse scrub, acid grassland and mire, and conifer plantations. The public had access to about 75% of it, as common land or designated open country. It supported populations of European importance of nightjar, woodlark and Dartford warbler during the breeding

season. These species nested on or near the ground, which made them susceptible to predation and disturbance. A Special Area of Conservation, SAC, overlapped the SPA, but did not feature separately in the submissions to me.

192. Regulation 105 of the Conservation of Habitats and Species Regulations 2017 SI No.2012 requires an appropriate assessment to be made of the implications of a land-use plan, on its own or in combination with other projects or plans, “likely to have a significant effect” on an SPA. The assessment examines the implications for an SPA in view of its conservation objectives. The appropriate nature conservation body, in this case Natural England, had to be consulted, and the opinion of the general public was also to be taken. However, the land-use plan could only be given effect in the light of the assessment, if the authority had ascertained that the plan would “not adversely affect the integrity of the” SPA. Were it to do so, the plan could only be given effect, if there were no alternative solutions and there were “imperative reasons of overriding public interest;” reg. 107.
193. Guildford BC’s Local Plan Habitats Regulations Assessment, HRA, in November 2017, and updated in June 2018, considered first the likely significant effects of the Plan on the SPA, and then carried out an appropriate assessment, at which stage mitigation was considered. The “pathways of impact” included air quality. This approach accorded with the later CJEU judgment in “*People over Wind v Coillite Teoranta* C323/17 [2018] PTSR 1668”, the “*Sweetman*” case. The 2018 HRA was updated specifically to address this case. This case held that mitigation should only be taken into account at the appropriate assessment stage, and not at the earlier stage of considering whether the plan was likely to have significant environmental effects; the approach of the November 2017 HRA update had in fact accorded with the law as pronounced in the *Sweetman* case. Certain of the language of that update, in relation to appropriate assessment, had been made more precise but without changes in substance.
194. The guideline annual mean level of NO_x concentrations, for the protection of vegetation, is 30 ug/m³ (micrograms per cubic metre), the Critical Level. Above that level, nitrogen deposition should be investigated. Appendix D to the 2018 update to the HRA, taking 2033 as the year for comparing the positions with and without the Local Plan development, showed that that Critical Level would be exceeded with development somewhere in the range of between 1 and 50 m from the M25, (the range of concentrations was from 40.5 reducing to 23.4 over that distance). The Local Plan development would have contributed between an additional 2.5ug/m³ and 1 ug/ms to that figure again reducing over that distance. With or without the Local Plan development, there would be an exceedance for part of the band within that distance; the width of the area of land in which there was an exceedance would be increased with Local Plan development. On the A3 link, the levels of NO_x concentrations, with Local Plan development, reduced from 29.7 to 20.2 over 1 to 50m from the road, and the increase brought about by Local Plan development, was between 2.5-1ug/ms, so that there would be an exceedance over part of that band with the Local Plan development.
195. The annual mean deposition Critical Load for nitrogen, which varies with the habitat at issue, in (kN/ha/yr-(kilos of nitrogen per hectare per year) was 10. That figure was exceeded with Local Plan development in 2033 in the area 1-50 m back from the edge of the M25, at levels of 10.42 reducing with distance to 9.64. Without the Local Plan

development, there would still have been more than 10 kN/ha/yr close to the M25. The position on the A3 was similar though the exceedances were a little less.

196. The assessment in the 2018 update said:

“10.4.4. Within 50m of the M25 NO_x concentrations are still forecast to be above the critical level ‘in combination’ (the only link for which this is forecast to be the case) but the main role of NO_x is as a source of nitrogen and the improvement compared to the baseline is forecast to be substantial enough to bring nitrogen deposition rates down by 5kgN/ha/yr even with the Local Plan in place. Since nitrogen deposition rates are predicted to decline to the critical load, NO_x concentrations in themselves are less important because the primary role of NO_x is as a source of nitrogen. As NO_x exceedances alone is unlikely to result in a significant adverse effect on vascular plants except possibly at very high annual average concentrations of 100 ug_m³ or more, which is not predicted by the end of the plan period along any link.”

197. In reality a substantial improvement in NO_x concentrations and nitrogen deposition rates was expected by 2033, which would be barely affected by the development proposed in the Plan. Even where slowing down of improvement was at its highest, within 50m of the M25, nitrogen deposition rates would still be considerably better than now.

198. Guildford BC produced an Addendum HRA in January 2019 in the light of the CJEU rulings in November 2018 in *Holohan v An Bord Pleanala C-46/17*, and in *Cooperatie Mobilisation for the Environment and others v College van gedeputeerde staten van Limburg C293/17, C294/17*, the *Dutch Nitrogen* case. It had been submitted by Mr Harwood that reliance on anticipated reductions in background air quality was wrong in principle because those improvements were entirely independent of the Local Plan. It was not in the end at issue but that improvements to the baseline against which likely significant or adverse effects would be measured were relevant, if sufficiently certain. Those later CJEU decisions made that clear. The Addendum HRA demonstrated why there was sufficient certainty for the baseline to be adjusted, along with the April 2019 response updated HRA.

199. The 2019 Addendum described the specific habitats required by woodlark, nightjar and Dartford warbler. Their foraging areas were close to their nesting territories. Key habitats were heathland and early stage plantation, not dense bracken, mature plantation or permanent deciduous woodland. All three species were highly sensitive to disturbance. Surveys indicated that the nearest SPA bird territories to the M25 and A3 were approximately 300m from the roadside. Even where suitable habitat was present, Dartford warbler territories were not found within 70m of the motorway; nightjar and woodlark territories were even more distant, the closest were 200m away, with the majority more than 500m away, even when ample suitable habitat existed much closer. The 2019 Addendum continued:

“3.1.3 There is therefore strong reason to conclude that nightjar, woodlark and Dartford warbler (particularly the first

two species) would be unlikely to successfully establish nesting territories, will undertake much foraging activity, within at least 50m of either the A3 dual carriageway or M 25 motorway. This is probably partly a function of habitat distribution (since the majority of the habitat within 200m of the A3/M25 junction is mature plantation, bracken and permanent deciduous woodland which are generally unsuitable for nesting or foraging) and partly a noise -related displacement effect of the very large volume of traffic movements in this area meaning that the birds settle in more tranquil locations.

3.1.4 The parts of the SPA closest to the A3/M25 junction still serve an important function through buffering and protecting those areas of the SPA which do support bird territories and foraging habitat. However, the low likelihood of SPA birds actually using the area closest to the dual carriageway and motorway is clearly an important factor when determining the likelihood of roadside atmospheric pollution negatively affecting the ability of the SPA to support the relevant bird species and thus the integrity of the SPA. The modelling undertaken for the Local Plan in 2016 clearly indicates that the area that will be most subject to elevated nitrogen deposition due to the presence of the A3 and M25 is also the area least likely to be used for nesting or foraging by the birds for which the SPA is designated....

3.1.7 Even with RHS Wisley included therefore, the modelling forecasts total nitrogen deposition rates to have fallen to the critical load at the roadside and below the critical load by 15-30m from the roadside by the end of the plan period. This would mean that the atmospheric nitrogen (irrespective of source) would cease having an influence on vegetation composition/structure except possibly within a narrow band along both the A3 and M25 which, as has been established, is the area of the SPA least likely to be functionally used by SPA birds. Moreover, the NO_x critical levels and nitrogen critical loads are based primarily on protecting floristic vegetation characteristics such as species-richness and percentage grass cover. The ability of the...SPA to support nightjar, woodlark and Dartford warbler is based far more on habitat structure and appropriate management. It is the broad structure of the vegetation that is relevant to the ability of the area to support SPA birds....”

200. The presence of heathland and traditionally managed plantation within and beyond the SPA boundary was important as nesting and foraging habitat for the birds species which had led to the designation of the SPA. It had not been designated for the habitats in their own right. The impact of the allocation on those habitats was considered but as none of the proposed development sites would cause the loss of

significant areas of those habitats outside the SPA and no adverse effect on integrity was expected, the *Holohan* case required no change to the HRA.

201. This Addendum was criticised by Ockham PC and Wisley Action Group. They contended that the HRA was deficient because any additional nitrogen deposition above the critical load should inevitably lead to a conclusion that there were adverse effects on the integrity of the SPA, a contention no longer pursued. It was also contended that the foraging value of roadside habitat to SPA birds had been ignored.
202. It was clear that Guildford BC had not simply relied on the reduction of nitrogen deposition, with and without the Local Plan development, to support the conclusion that there would no adverse effect on the integrity of the SPA. Its response to the further contentions was to point to [3.1.7], from the 2019 Addendum, which I have set out above. It commented:

“The information in [3.1.7] is fundamental to the overall conclusion of no adverse effects on integrity because it indicates that a) the critical load for heathland is not projected to be breached and b) even if the improving trends in nitrogen deposition were slower than predicted in [the] modelling (such that deposition rates at the roadside remained above the critical load for heathland) the affected area consists almost entirely of common and widespread habitats of low value to the SPA birds for nesting or foraging, and this is highly likely to remain the case.

3.1.7 ...the strip of habitat within 15-30m of the roadside of the A3/M25 junction will not be of high significance as foraging habitat [for SPA birds] because ... it consists primarily of habitat that is of relatively low foraging value for the three species...and which is abundant in the wider area within and outside the SPA... Moreover, it is very unlikely to be reverted to heathland as this would remove the useful buffer the woodland currently provides between the A3 and M25 and the SPA. Therefore this band of vegetation is of very limited significance to sustaining or increasing the SPA population... Invertebrate diversity and abundance... is certainly not expected to decline. As such, it is considered that effects in this 15 to 30m zone will not ‘affect the ecological situation of the sites concerned’ (in the words of the European Court of Justice) or materially retard the ability of the SPA to achieve its conservation objectives. This is reflected in the fact that Natural England has never objected to the Local Plan or its HRA.”

203. The Inspector concluded that the Plan was based on a lawful and adequate HRA and Appropriate Assessment. The Inspector set out the air quality position in IR113:

“The air quality modelling shows that NO_x concentration and nitrogen deposition rates within 200m of the...SPA are expected to be better at the end of the plan period than they are at the moment, due to expected improvements in vehicle

emissions and Government initiatives to improve background air quality. The Design Manual for Roads and Bridges [DMRB] guidance for air quality assessments recommends reducing nitrogen deposition rates by 2% each year between the base year and assessment year. [The Inspector then set out the actual annual average rate of improvement over the 10 years to 2014]. This reduction occurred despite increased housing and employment development and traffic growth, and is most likely to be attributable to improvements in emissions technology in the vehicle fleet. Consequently, allowing only a 2% year improvement in nitrogen deposition rates represents a precautionary approach. The approach taken towards improvements in baseline NO_x concentrations and nitrogen deposition rates is in line with [DMRB] guidance for air quality assessment and does not conflict with the “Dutch Nitrogen” CJEU ruling. “

204. Mr Harwood did not pursue his original contention that the HRA was unlawful because it relied on improvements to the background level of emissions, and did so although the outcome with development would be worse than if there were no development. It was rightly pointed out that what Guildford BC and the Inspector were considering was not related to mitigation of the Local Plan development but related to the accurate and soundly based future changes to the baseline against which the impact of the development had to be considered. The scientific reliability of the future emission reductions was not at issue.
205. Instead Mr Harwood relied on the fact that the development would add to exceedances of critical levels which meant, therefore, that the development was bound to have an adverse effect on the integrity of the SPA. A contrary conclusion, as reached by Guildford BC and the Inspector, was unlawful. He submitted that the LP Inspector had relied on the benefit of anticipated reductions in vehicle emissions to offset those from additional traffic generated by development. This was wrong in principle because it ignored the fact that the outcome would still be worse with the development than without. There was no headroom for further development, because there would still be exceedances of the critical level and load for NO_x and nitrogen respectively. The increase would still be harmful.
206. Mr Harwood also submitted that as the critical level for NO_x emissions, and the critical load for nitrogen deposition, would still be exceeded at the SPA, Guildford BC and the Inspector ought to have but failed to consider whether the effect of the increased pollution due to the development comprised in the Local Plan would, individually or in combination with other sources, have no adverse effect on the integrity of the SPA.
207. It is perfectly clear, in my judgment, that Guildford BC, whose task it was to undertake the HRA, did consider whether significant adverse effects were likely from the development proposed in the Local Plan; it then undertook an appropriate assessment to see whether there would be no adverse effect on the SPA. That could not be answered, one way or the other, by simply considering whether there were exceedances of critical loads or levels, albeit rather lower than currently. What was required was an assessment of the significance of the exceedances for the SPA birds

and their habitats. Guildford BC did not just treat reductions in the baseline emissions or the fact that with Plan development, emissions would still be much lower than at present, as showing that there would be no adverse effect from the Plan development. The absence of adverse effect was established by reference to where the exceedances of NOx and nitrogen deposition would occur, albeit reduced, and a survey based understanding of how significant those areas were for foraging and nesting by the SPA birds. The approach and conclusion show no error by reference to the Regulations or CJEU jurisprudence. I have set out the 2019 HRAs at some length. The judgment is one for the decision-maker, as to whether it is satisfied that the plan would not adversely affect the integrity of the site concerned; the assessment must be appropriate to the task. Its conclusions had to be based on “complete precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effect of the proposed works on the protected site concerned”; *People Over Wind*. But absolute certainty that there would be no adverse effects was not required; a competent authority could be certain that there would be no adverse effects even though, objectively, absolute certainty was not proved; *R (Champion) v North Norfolk District Council* [2015] UKSC 52 at [41], and *Smyth v Secretary of State for Communities and Local Government* [2015] EWCA Civ 174 at [78]. The same approach applies, following the *Dutch Nitrogen* case, to taking account of the expected benefits of measures not directly related to the plan being appropriately assessed.

208. This is how it was approached. Guildford BC’s conclusion was reasonable, and was based on a lawful approach. Both the 2019 update and response were considered by Guildford BC before the Plan was adopted. I reject this ground of challenge.

Issue 6: The access road at Blackwell Farm and major development in the AONB

209. NPPF [116] states:

“Planning permission should be refused for major developments in [AONB] except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of: the need for the development, including...the impact of permitting it, or refusing it, upon the local economy; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.”

210. The PPG, applicable with the 2012 NPPF, offered this help: whether or not a development was “major development” was for the decision-maker, taking into account the proposal and the local context. Great weight had to be given to conserving the landscape and scenic beauty of AONB, whether development was “major development” or not. The 2019 version of the NPPF added that the nature of a development, its scale, setting and the significance of its impact on the purposes of the designation as AONB were relevant. I do not read *R(JH and FW Green Ltd v South Downs National Park Authority* [2018] EWHC 604 (Admin) at [27] as supporting a proposition that whether development was “major” should be determined solely by its

degree of impact on the qualities of the AONB. That is obviously an important factor, and it may be decisive. But the PPG and 2019 version of the NPPF are correct in their approach to the meaning of “major development.”

211. It was not disputed but that NPPF [116] only applied in terms to development control decisions, but Mr Kimblin submitted that that did not mean that it had no ramifications in plan-making when assessing the deliverability of allocations. The soundness of the Plan required the allocations to be deliverable. The Inspector needed to recognise that Guildford BC or the Secretary of State might take the view that the access road was “major development” and conclude that the harm did not warrant the road or therefore the development allocation. Mr Kimblin pointed to the £20m cost of the link, what he described as the “very challenging topography” which the road had to cross; it was not simply a development access road but was intended to provide relief to the A31/A3 junction. (Perhaps this was an example of the wider benefits of the infrastructure brought by the allocations).
212. The issue before me was whether the Inspector reached a conclusion on whether the access road was “major development” in the AONB, to which NPPF [116] applied; a contrary conclusion was said to be irrational. If he had reached no conclusion, he ought to have considered the risk to the allocation, and hence to its deliverability, which would arise when a planning application was made, and a decision could be reached that it was indeed “major development”, with all the weight, adverse to the development, which would have to be given to such a conclusion.
213. The Inspector expressed some of his views under Issue 7 headed “Whether the Plan’s approach towards the protection of landscape and countryside, biodiversity, flood risk and groundwater protection is sound.” At IR107, he referred to the Blackwell Farm site’s proposed access “which passes through a small part of the AONB... But the allocation would not have a significant impact on [this area].” Policy P1 aims to conserve the AONB, “and contains a presumption against major development within it except in exceptional circumstances where it can be demonstrated to be in the public interest.” Subject to a modification, immaterial for these purposes, “the plan’s approach to the AONB is sound.” The spatial strategy successfully accommodated substantial development whilst avoiding significant landscape harm; the impacts in relation to the needs met did not justify accepting a lower level of development. Indeed Policy P1 adopts the language of NPPF [116]. Its reasoned justification at 4.3.6 adopts as relevant factors the essence of those in NPPF [116].
214. He elaborated on the access when dealing with the site-specific allocation under Issue 10. There was no issue before me about the effect of the development itself, because the Inspector had concluded that it would have very little impact on the character of the AONB or its setting. He said at IR167:

“However, the access road from the site to the A31 would pass up the hill through part of the AONB. Cutting and grading together with junction and vehicle lighting would have some visual impact. With carefully designed alignment, profiling and landscaping, the effect is capable of mitigation, but the submitted Plan does not allow for adequate land to find the best road alignment in highways and landscape terms or to mitigate its impact through landscaping. [Accordingly, Main

Modification 37 was required, which introduced a new allocation for the access road; Policy 26a.] This is a site allocation which seeks the best landscape and design solution, taking into account the topography, the existing trees, the need for additional landscaping, and the needs of all users, including walkers and cyclists as well as vehicles entering and leaving the site. It also requires mitigation measures to reduce the landscape impact including sensitive lighting and buffer planting. This modification allows for an appropriate design solution to be developed. Subject to MM37, the scenic beauty of the AONB would be conserved.”

215. I reject this ground of challenge.
216. I can see the force in the argument from Mr Findlay and Mr Turney that the Inspector has in substance concluded that, with the Main Modifications, the means have been provided for the access road to be constructed in such a way that it would not constitute “major development.” However, he has not expressly so concluded, and it would not have been for him to express the decisive view on the point, or to do so in advance of the detailed design of the road. He has reached the view that the road would not inevitably be “major development”, and that it could be designed and landscaped so that the risk of a significant hurdle to the delivery of the allocation is minimised. I do not consider that he needed to go further. In effect, the degree of risk, with the modification, was not such that it made him find the allocation to be unsound. He considered the issue; his language makes his view clear that he sees no significant risk, and is adequately reasoned.
217. But it cannot be ignored that he has included an extent of headroom, complained of by the Claimants, in part because he recognised the difficulties which larger sites face. This issue was not expressly part of his consideration of the justification for the headroom, but hurdles and delays in the way of approving infrastructure would have been well within his contemplation of the sort of problems which larger sites face.

Overall conclusion

218. I reject all the grounds of challenge. The three claims are dismissed.