



Appeal Decisions

Inquiry Held on 10-13 September 2019

Site visit made on 13 September 2019

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Appeal A: APP/R0335/W/19/3228697

Land north of Tilehurst Lane and west of South Lodge, Binfield, Bracknell

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr & Mrs Neale and JPP Land Ltd against the decision of Bracknell Forest Borough Council.
- The application Ref 17/01174/OUT, dated 3 November 2017, was refused by notice dated 31 January 2019.
- The development proposed is erection of forty houses, including ten affordable houses, together with the provision of parking, a play area, landscaping and an attenuation pond, with access from Tilehurst Lane.

Appeal B: APP/R0335/W/19/3231875

Land at Tilehurst Lane, Binfield RG42 5JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by JPP Options Ltd against the decision of Bracknell Forest Borough Council.
 - The application Ref 18/00758/FUL, dated 20 July 2018, was refused by notice dated 5 June 2019
 - The development is described as the erection of 60 dwellings (including 15 affordable dwellings), together with open space, landscaping and vehicular and pedestrian access.
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Decisions

1. Appeal A is allowed and outline planning permission is granted for the erection of forty houses, including ten affordable houses, together with the provision of parking, a play area, landscaping and an attenuation pond, with access from Tilehurst Lane at land north of Tilehurst Lane and west of South Lodge, Binfield, Bracknell in accordance with the terms of the application, Ref 17/01174/OUT, dated 3 November 2017, subject to the conditions set out in the schedule to this decision notice.
2. Appeal B is allowed and planning permission is granted for the erection of fifty three dwellings, (including thirteen affordable houses), together with open space, landscaping and vehicular and pedestrian access at land at Tilehurst Lane, Binfield RG42 5JS in accordance with the terms of the application Ref 18/00758/FUL, dated 20 July 2018, subject to the conditions set out in the schedule to this decision notice.

Costs

3. An application for costs was made by JPP Options Ltd against Bracknell Forest Council in respect of Appeal B only. This application is the subject of a separate Decision

Preliminary matters

4. Rule 6 (6) status was granted to Binfield Residents. I refer to them hereafter as the R6 party. At the Inquiry the R6 party confirmed that, having seen the contents of the appellant's proof of evidence, it would not be pursuing its objection regarding noise.
5. The application the subject of Appeal A was submitted in outline form, with only access to be considered at this stage. Matters relating to appearance, landscaping, layout and scale were reserved for future consideration. However, the indicative layout (2399 100C) sets out a way of providing 40 dwellings together with structural landscaping, open/play space and potential open water storage areas.
6. During the course of the application the subject of Appeal B, the number of dwellings was reduced to 53 including 13 affordable units. I have determined the appeal on that basis.
7. The application the subject of Appeal A was refused for three reasons. Two of these relate to the alleged harm caused by the lack of an acceptable Flood Assessment and Surface Water Management Strategy, and the failure to demonstrate that the proposed development would not have an adverse impact on the road network to the detriment of highway safety.
8. The application the subject of Appeal B was refused for six reasons. Four of these relate to the absence of a planning obligation and one that it has not been demonstrated that the proposed development would incorporate a Sustainable Drainage System (SuDS) for the management of surface water run-off.
9. After the Inquiry two signed agreements under S106 of the Town and Country Planning Act 1990 were submitted. For both schemes these secure the provision and maintenance of Open Space of Public Value (OSPV) and footways and a SuDS, a travel plan and the delivery of 25% of the dwellings as affordable houses. In addition, financial contributions towards the provision and maintenance of OSPV and SuDS, off-site highway works, community facilities and the monitoring of the agreement have been secured.
10. In respect of Appeal B only, there are also contributions towards Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) in respect of Thames Basin Heath Special Protection Area (SPA) and the monitoring and implementation of the Reptile Enhancement Plan (REP).
11. The Council and the appellant agree that the submission of the two legal agreements address the Council's reasons for refusal regarding these matters. Concerns are maintained to both schemes by the R6 party in respect of the effect on highway safety

12. Prior to the Inquiry, the appellant agreed an amended plan with the Council regarding highway access for Appeal A (ITB13129-GA-020A). The revisions involved moving one of the pedestrian accesses three metres to the southeast, the installation of a 2.5 sq m footway connection on the south side of Tilehurst Lane and additional signage regarding road narrowing. At the Inquiry I advised that as the amendments are minor, and they had been the subject of a public consultation exercise, then I did not consider that anyone would be prejudiced by the submission of the plan. Therefore, I accepted it for consideration at the Inquiry.
13. Appeal Site B has relevant planning history. In 2015 an appeal was dismissed for the erection of 72 dwellings¹. In 2016 an appeal was dismissed for the erection of 28 dwellings². The decision was subsequently quashed. I accept, having regard to relevant case law that a decision which has been quashed is capable of being a material consideration in a subsequent decision³. I have therefore had regard to parts of the decision that were not affected by the accepted legal error.
14. The Inspector for the subsequent redetermined appeal for the 28 dwellings allowed the scheme⁴. He found that the benefits of the proposal significantly and demonstrably outweighed the minor harm to the character and appearance of the area, in light of the Council being unable to demonstrate a five year housing land supply at the time.
15. In 2018 the Council published a draft Local Plan (DLP). It has recently revised the Local Development Scheme and intends to undertake further consultation on additional growth options in late 2019. At such an early stage of preparation the DLP can only be afforded very limited weight.
16. The parties are agreed that the appeal sites are located in the countryside outside of the Binfield settlement boundary as identified in the Bracknell Forest Borough Policies Map 2013. Therefore, they are contrary to Policy CS2 of the Core Strategy Development Plan Document 2008 (the CS) and saved Policies H5 and EN8 of the Bracknell Forest Borough Local Plan 2002 (the Local Plan).

Main Issues

17. Specific to Appeal A is the following main issue:
 - which policies are the most important for determining the appeal and whether they are out of date or not for the purposes of paragraph 11d of the National Planning Policy Framework (the Framework);
18. The following main issues are relevant to both appeals:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the significance of nearby heritage assets as a consequence of development in their setting;
 - whether or not the appeal site is in an accessible location; and

¹ APP/R0335/A/14/2219888 – referred to as the 72 dwelling scheme

² APP/R0335/W/15/3139035 – referred to as the quashed decision

³ R. (Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)

⁴ APP/R0335/W/15/ 3139035 – referred to as the 28 dwelling scheme

- the effect of the proposal on highway safety.

Reasons

Policy

19. The parties agree that the determination of Appeal A is different to that of Appeal B due to the presence of an agreed relevant fall-back position for latter. I have therefore concentrated on Appeal A in my consideration of Policy.
20. The parties do not agree which are the most important policies for determining the appeals. The dispute relates to Policies CS1, CS7 and CS15 of the CS and saved Policy EN1 of the Local Plan.
21. Policy CS1 underpins the CS and provides a fundamental set of criteria that should be applied to all development proposals. It is relevant to the appeal proposal and is contained within the Council's reason for refusal. However, as it would apply to every development proposal that is considered by the Council, while relevant, I am not convinced in this instance, it would be one of the most important Policies for this particular appeal.
22. Policy CS7 mostly deals with aspects of design, which may be more suitable for consideration at reserved matters stage, as noted by the Inspector in the 28 dwelling scheme. However, it also states that development proposals will be permitted, which build on the urban, suburban and rural local character, respecting local patterns of development and the historic environment. In this instance, given the relevance of the historic environment in the consideration of the appeal, then I am satisfied it is one of the most important Policies.
23. Policy CS15 is not cited within the Council's reason for refusal for Appeal A. Although there appears to be some conflict between the Statements of Common Ground for Appeal A and B, the Council stated that its inclusion in the Statement of Common Ground for Appeal B in error.
24. Policy CS15 relates to overall housing provision and sets out how many houses should be delivered over the plan period. This seems to me a Policy that all housing development would be assessed against and, while relevant, is not one of the most important Policies for the specific proposal to be assessed against.
25. Policy EN1 states that permission will not be granted for development which would result in the destruction of trees and hedgerows that are important to the retention of a clear distinction between built up areas and countryside and the character and appearance of the landscape/townscape. It seems to me that one of the issues of concern for the Council relates to the character and appearance of Tilehurst Lane, which is very much characterised by the vegetation along it. While it may be the appellant's view that the proposal complies with the requirements of the Policy, it would still be one of the most important Policies for determining the appeal.
26. Therefore, in my view the most important Policies for determining the appeals are Policies CS2, CS7 and CS9 of the CS and saved Policies EN1, EN8 and H5 of the Local Plan. Policy BF1 of the Binfield Neighbourhood Plan 2015-2026 (BNP), although not in dispute, is referred to in the Council's reason for refusal. However, it relates to infill and backland development. Both are defined within the BNP, and neither would apply to the development proposed.

27. I accept that it is important that the public can put trust within a plan led system. However, for the purposes of paragraph 11d of the Framework it is necessary to ascertain whether the Policies are out of date or not.
28. Policy CS2 sets out criteria for the allocation of land for development on a hierarchical basis. It then permits development on allocated sites and within defined settlement boundaries. Policy CS9 seeks to protect land outside of settlements for its own sake, particularly from development that would harm the physical and visual separation of settlements. Policy EN8 protects the countryside for its own sake. Outside the development boundaries, development will be permitted only where it would not adversely affect the character appearance or function of the land. It also lists a number of types of development which may be acceptable in the countryside. Policy H5 only permits a new dwelling outside of settlement boundaries where it is needed in connection with an acceptable use in Policy EN8 and it would cause no harm to the character of the area.
29. It is apparent that these policies, taken together, allow consideration of the effect of the proposal on the character and appearance of the area which would be in accordance with the requirements of paragraph 127 of the Framework. However, while Policy CS9 has no restriction on the type of development outside of settlements, the interaction between Policies EN8 and H5 means that the consideration of character and appearance is limited to the certain types of development that would be considered appropriate in the open countryside. Therefore, the suite of Policies taken together, although not imposing a blanket ban on development, do not allow the provision of new buildings for open market housing outside the settlement limits in the open countryside and seek to protect the countryside for its own sake.
30. The Framework recognises the intrinsic character and beauty of the countryside, it seeks to protect and enhance valued landscapes and distinguish between the hierarchy of international, national and locally designated sites, allocating land with the least environmental or amenity value where consistent with other policies in the Framework. Policies CS9, EN8 and H5 do not seek to differentiate between different landscapes within the countryside in the manner of the Framework. Therefore, irrespective of the current housing land supply position, there is a fundamental inconsistency between the Policies and the Framework. What is apparent is that, although the DLP can only be given limited weight, and the situation may change, currently a significant number of sites within the currently defined open countryside will need to be allocated in that plan to meet future housing needs.
31. There is nothing in the Framework which prohibits the use of settlement boundaries, and indeed the hierarchical approach to directing development to the most accessible locations is one supported by the Framework. Nevertheless, in this instance the settlement boundaries are defined in the 2013 Site Allocations Local Plan, which is based on the CS housing requirement. There is no dispute that, even though the plan period extends to 2026, this housing requirement is out of date, being lower than the now revoked South East Plan and the figure derived from the standardised methodology of the Framework. Even if the Council is able to demonstrate a five year housing land supply, I do not know the circumstances under which all of those permissions contained within the housing land supply figures were granted. The Council suggest that substantial contributions are made by

allocations and prior approval sites, but there is no firm evidence before me on this point. Even if I were to find that Policy CS2 is up to date in respect of settlement boundaries, it restricts development to within those boundaries. The obvious inference being that development outside those boundaries in the open countryside is not acceptable, and hence its inclusion in the Council's reason for refusal.

32. Drawing all the above together therefore, even if the Council is currently able to demonstrate a five year housing land supply, the policies are inconsistent with the Framework's approach to the protection of the countryside. This, together with the reliance on settlement boundaries based on out of date housing figures, means that they do not reflect the Framework's requirement to ensure that a sufficient amount and variety of land can come forward to boost the supply of land and ensure economic growth. They are therefore out of date to an extent that any conflict with them would attract only limited weight.
33. I note the concern of the Council regarding the expertise of the appellant's planning witness in his reference to a whole raft of, what he considers to be, relevant case law in this respect⁵. However, I have, as required, taken the relevant cases into consideration, having regard to both parties comments. In some the relevant development plan was time expired, which is not the case here, and some of the judgements were made prior to the latest iteration of the Framework. However, the inconsistency I have found derives from the extent to which the policies are consistent with the Framework, which as the Central Bedfordshire judgement, made after the judgement on which the Council relies⁶, makes clear is the acid test as to whether a policy is out of date or not. Furthermore, the Secretary of State considered in a recent appeal decision that policies, one of which is similarly worded to Policy EN8 of the Local Plan, were out of date, through inconsistency with the Framework, even though the Council could demonstrate a ten year housing land supply⁷. I appreciate that each case should be decided on its own merit, and this decision has not been determinative, but reinforces my approach on this matter.
34. Policy CS7 in relation to design and heritage matters is entirely consistent with parts 12 and 16 of the Framework and therefore attracts full weight. Policy EN1 regarding the protection of trees and hedgerows is consistent with paragraph 170 of the Framework and therefore also attracts full weight.
35. Four of the most important Policies for the determination of the appeal are out of date. As the appeal site is within the open countryside and outside the settlement boundary, those four Policies go to the heart of the determination of the appeal. Therefore, I am satisfied that the Policies, taken as a whole, are to be regarded as out of date for the purposes of the decision⁸.
36. I appreciate that this is different to the conclusion of the Inspector in appeal decision APP/R0335/W/19/3223724 who concluded that the most important

⁵ Bloor Homes East Midlands Limited v SSCLG [2014] EWHC 754 (Admin), Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37, Gladman Developments Limited v SSHCLG & Central Bedfordshire Council [2019] EWHC 127 (Admin) – referred to as the Central Bedfordshire judgement, Eastleigh BC v SSHCLG [2019] EWHC 1862 (Admin), Crondall PC v SSHCLG & Crondall Developments Ltd & Hart District Council [2019] EWHC 1211 (Admin).

⁶ Gladman Developments Ltd v Daventry DC & SSCLG [2016] EWCA Civ 1146

⁷ APP/F4410/W/17/3169288

⁸ Wavendon Properties Ltd v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin)

policies, including those referred to in these appeals were not out of date. However, I am not aware of the evidence in front of that Inspector at that time, and there is no written assessment of the consistency of those policies with the Framework in that decision.

37. As I have found the most important policies to be out of date, and this is sufficient to trigger paragraph 11 d ii of the Framework, then I have not gone on to consider whether the Council is able to demonstrate a five year housing land supply or not. In any case the Council agree that the delivery of housing, including affordable housing is beneficial and weighs in favour of the grant of planning permission.

Character and appearance

38. Tilehurst Lane forms a narrow road on the edge of Binfield with a strong hedgerow and trees to the northern side of the road. To the south are houses forming the built edge of Binfield. To the east of York Road these are mainly large detached houses set back from Tilehurst Lane in spacious plots, with generous planting to front gardens. To the west of York Road, the houses are smaller, mainly semi-detached or terraced and accessed from roads leading from Tilehurst Lane, in between which is hedgerows and trees. Consequently, Tilehurst Lane has a particularly verdant character and appearance. It is though also influenced by the clearly visible built development and therefore has a semi-rural character on the edge of the settlement.
39. The appeal sites lie within the Landscape Character Area C1: Binfield and Warfield Clay Farmland of the LUC Landscape Character Appraisal 2015 (LCA). This describes the area as having woodland copses and small woods, tree groups, parkland landscapes associated with old manor houses and rural and open character providing a rural buffer to the settlements of Binfield and north Bracknell, and historic buildings.
40. To an extent this describes the area north of Tilehurst Lane where there is open former parkland. However, there are some buildings including Binfield Park a Grade II* listed building, residential properties, a day nursery, kennels and a cattery set within the open countryside. To the west of Terrace Road North there is also housing extending to the north. Beyond this transitional area the landscape more readily reflects the Character Area description.
41. Both appeal sites contain rough grazing land, being former parkland to Binfield Park. However, parkland features on both sites are not particularly apparent other than a strip of poplars on Appeal Site A which, although not original to the house, were set out by 1889. Appeal Site B also includes a disused riding area. Therefore, both have very little in the way of distinguishing features other than their boundary shrub and tree planting. It is mainly their open, undeveloped nature that contributes positively to the rural character and appearance of the area beyond Tilehurst Lane and the rural setting to Binfield rather than it particularly being parkland. The Character Area Assessments Supplementary Planning Document 2010 (SPD) describes the area as heavily influencing Binfield Character Area A, as there is a strong contrast between the urban form between Tilehurst Lane and Forest Road and the open landscape around it. This is reinforced in the Binfield Parish Landscape Character and Heritage Study. Nevertheless, the

contribution is undermined to an extent by the presence of built development in the landscape as I have described.

42. The LUC study on behalf of the Council⁹ assesses sensitivity based upon a range of development scenarios relating to those brought forward in the site allocation process, as set out in the Council's Strategic Housing Land Availability Assessment 2017 (SHELAA). The study considers land encompassing Appeal Site A as a whole. It concludes that it has medium sensitivity, although the lower slopes in the south east have a lower visual sensitivity. Having viewed the area on site I agree. The appeal site is well contained by vegetation, landform and buildings, such that long distance views are very limited. The site is most publicly visible from glimpsed views along Tilehurst Lane through dense vegetation.
43. I saw that Appeal Site B is visible from the private access track to residential properties to the west of the site. Public views are limited to those experienced very occasionally through substantial vegetation cover on Church Lane and Tilehurst Lane. There is though no footway along Church Lane and the road is well used by traffic, thereby limiting its use by pedestrians. Although there is very limited footway on Tilehurst Lane, I understand the road is more widely used by pedestrians, who have restricted views of the appeal site.
44. There is no suggestion from any party that this is a 'valued landscape' as considered under paragraph 170a of the Framework. Equally, there is no dispute that the landscape here is clearly valued by local people, and that was very apparent at the Inquiry. Nonetheless, I am not persuaded that the appeal site includes specific attributes or landscape features which would take it out of the ordinary, sufficient for it to amount to a 'valued landscape' in terms of the Framework.
45. The proposal to erect dwellings on both appeal sites would extend Binfield to the north into the former parkland area, although it would extend no further than existing development to the west and north, and that which already has planning permission on Appeal Site B. The appearance of the sites would change, and there would be a direct loss of the open land that contributes to the character of Tilehurst Lane and the northern edge of Binfield. However, although Appeal Site A rises to the north west, the proposed location of the housing would be at a lower level within the least sensitive well screened area.
46. On Appeal Site B, the proposed housing would be set back from Tilehurst Lane and Church Lane. The provision of a relatively large green open space separating the two areas of built development would allow views through the proposed access to the open countryside beyond.
47. In addition, the existing substantial tree and shrub cover along Tilehurst Lane, the private access drive to Binfield Park and to Chapel Lane would be largely retained. The most significant change would be through the introduction of the two proposed accesses. This would necessitate the removal of about 30 metres of hedgerow. In addition, to maintain visibility

⁹ Landscape Sensitivity Appraisal of Potential Housing and Employment Sites in Bracknell Forest 2018

splays, the vegetation would need to be faced back up to 2 metres for a length of about 71 metres for Appeal A and 80 metres for Appeal B. Furthermore, the proposed pedestrian accesses would require the removal of about 2 metres of vegetation, together with visibility splays.

48. The visual appearance of this is shown in Mr Smith's evidence for the appellant¹⁰, which shows that due to existing planting, and the proposal for additional planting, the visual appearance of Tilehurst Lane would be little altered when viewed from east and west. In addition, the pedestrian accesses would lead into open and planted areas on Appeal A and would be near to garden areas on Appeal B, so that views of the housing would be limited.
49. It is true that the immediate area of the two vehicular accesses would change significantly as shown in Mr Smith's evidence¹¹. The loss of the hedgerow which contributes particularly to the character and appearance of the lane would cause some harm. However, this would be for a limited distance, and has been planned to coincide with an existing area of partial vegetation. While houses would be visible from both new accesses, planting within the appeal sites would ensure that in the longer term any effects would be reduced and would not be dissimilar to the existing residential development on the opposite side of the road to Appeal Site A. Moreover, the footway along the part of Tilehurst Lane opposite Appeal Site A is mainly set behind existing hedgerows on the south side of the road where pedestrian views of the site are limited.
50. I acknowledge that glimpses are available to the appeal sites through the existing hedge and tree cover, and that these will be more available in the winter months when the trees lose their leaf. Nevertheless, I am satisfied that there would still mostly be a relatively dense level of vegetation between the houses and Tilehurst Lane, which together with proposed planting, would ensure that the inherent verdant nature of the lane would be maintained and there would be limited views of the proposed houses. Therefore, I am of the view, that both individually and cumulatively the development of the appeal sites would only cause minor harm to the character and appearance of the lane.
51. The Council question the extent of the tree planting that could either be retained or planted along Tilehurst Lane, given the intention to have swales in between the proposed housing and the road on Appeal Site A. The appellant submitted drawing PL01 showing the proposed frontage area including planting and swales. The application is in outline form, and the precise layout will be for the Council to determine in the first instance. I have seen no substantive evidence to suggest that planting as suggested by the appellant could not be accommodated on the appeal site.
52. The development pattern on both sites would not reflect that to the north of Tilehurst Lane. However, the indicative layout for Appeal A shows that 40 dwellings could be accommodated in a manner broadly comparable with the development pattern on the opposite side of the road. The details for Appeal

¹⁰ Proof of Evidence Appeal A Appendix 4 VVM 1, 3 and 4 & Proof of Evidence Appeal B Appendix 5 VVM 1, 2 and 4

¹¹ Proof of Evidence Appeal A Appendix 4 VVM 2 & Proof of Evidence Appeal B Appendix 5 VVM 3

- B show 53 dwellings mainly in the form of detached, semi-detached and terraced properties. Such property types would be different to the larger detached dwellings opposite the appeal site, but nevertheless similar to that further west on Tilehurst Lane. Furthermore, the houses would be two storeys in height and of a design that would reflect local architecture and display sufficient variety to ensure that they would effectively integrate into the existing built form. Moreover, gaps would be retained between building blocks sufficient to retain an open character to the development.
53. The proposed block of flats within Appeal B would be two storeys in height, and of an appropriate design, set in a large plot. Given its location to the north-east, it would be screened by planting on Church Lane and houses within the site.
54. In as much as the open land would be lost, including the sights associated with such a countryside landscape, together with the introduction of noise, vehicle movements and lighting, there would be some harm to the rural setting of Binfield. Furthermore, the current existing clear built edge of the settlement would change and there would be less opportunity for members of the public to appreciate that edge. However, the change would occur on well contained sites and would be accommodated in a manner that would be sensitive to the wider locality, such that the harm to the character and appearance area would be limited.
55. The Inspector for the quashed appeal decision found significant harm to the character and appearance of the area. I have taken a different view, and this is not unusual in matters of character and appearance. While I have taken the findings of the Inspector into account, in as much as I am able, I am not aware of the evidence before her at that time, specifically in terms of visual appearance in the short and long term.
56. Appeal Site A is allocated for housing development within the DLP, supporting documents for which also include guidance to be taken into account if the site were to be developed. Although the DLP only attracts very limited weight, the proposal would, in my view, comply with that guidance, through the retention of trees and hedgerows, provision of planting, the provision of an access road in sympathy with its semi-rural location and the location of development away from the most elevated land to the north.
57. For the reasons above, I conclude that there would be minor harm caused to the character and appearance of the area by both proposals. Consequently, there would be conflict with saved Policies EN1 and EN20 of the Local Plan, Policies CS1, CS7 and CS9 of the CS, the Character Areas Assessment SPD and the Framework. Together these seek to protect trees, hedgerows, the open countryside and the character and appearance of areas.

Heritage assets

58. Binfield Park is a grade II* classical, three storey, late Georgian detached house sited to the north of Appeal Site A and north-west of Appeal Site B. From the evidence before me its significance is largely derived from its historic form. There is no dispute that the building was once surrounded by parkland, and the R6 party is of the view that the property was deliberately created within its own parkland and therefore it is key to understanding the main house.

59. There is limited intervisibility between the area of the appeal sites within the parkland and the house. However, this in itself, does not mean that the setting does not contribute to the building's significance. Mr Simons, for the R6 party, suggested that intervisibility is deliberately limited, so that visitors experienced unfolding parkland rather than a constant view of the house.
60. The various historic maps¹² show the development of Binfield Park over time. In particular, the route of the principal access to the house has altered, culminating in its current location to the west of the house. In addition, the area immediately surrounding the house has, over time, been formalised and enclosed by gardens, of a very distinctly different character to the open parkland on the outer edges of the estate, which has now been sold and subdivided and is no longer in use as a country estate. Elements of the formal gardens close to the house remain, together with some structural planting and ancillary buildings. The house has a main aspect to the east over open agricultural land. The aspect to the west over the former parkland is secondary in nature.
61. The legibility of the former parkland is poor. Although rough grazing land, which in places is used for that purpose, it retains very few original and later features. Therefore, in my view, although the remaining former parkland, does contribute to the significance of Binfield Park, its contribution is limited by its poor legibility and location away from the principal aspect of the house, beyond an area of more formalised planting. This also limits its significance as a non-designated heritage asset in its own right.
62. Both schemes propose housing within the former parkland, and therefore within the setting of Binfield Park. The concerns of Historic England relate to the way in which the sense of a house standing in its parkland would be diminished if houses would be seen from the approach drive. It considers that the revised proposals (those the subject of the current Appeal A) reduce the development area and, as a result, there is little direct visibility from the drive. It maintains its concerns though, in that the proposals still transform what was once parkland in the immediate environs of the house into a housing estate, which would be visible through the trees alongside the previous approach to the house from the South Lodge.
63. However, in my view, neither appeal site is within the immediate environs of the house. The proposed houses on both sites would lead to the loss of part of the outer limits of the parkland. There would be very limited views of the housing in the distance on Appeal Site A from the western entrance to Binfield Park, particularly in the longer term when planting establishes. Parkland adjacent to the western entrance to the house and within views from the western aspect of Binfield Park would be retained, so that the building would remain within a parkland setting.
64. This land would become the proposed Heritage Park. This would involve the restoration of parkland features from the 1889 Ordnance Survey Map, with mown recreation paths and the installation of an interpretation board. I am satisfied, given the nature of the alterations proposed, that this would not have the character of a contrived municipal park, but would instead improve the setting of Binfield Park by reinstating parkland features. My views on this are

¹² Appellant's Built Heritage Statement 2018

reinforced by the evidence of Mr Smith, which shows an informal open area with reintroduced specimen trees¹³.

65. Nevertheless, with regard to Appeal A there would be direct loss of some parkland. Furthermore, the historic drive to Binfield Park, although not original and no longer the principal access, would no longer be situated in the middle of parkland. As a consequence, there would be some minor harm to the significance of the listed building.
66. The scheme at Appeal B would also result in the loss of some former parkland. However, its considerable distance from Binfield Park, together with intervening buildings and vegetation means that there would be no material harm caused to its heritage significance by the proposals.
67. Both proposals would result in the loss of former parkland. However, existing features important to the parkland would be retained such as the poplars on Appeal Site A. The indicative layout shows that the quantum of development could be located away from the poplars. Furthermore, the parkland closest to the house would be retained and enhanced. Any harm to it as a non-designated heritage asset would therefore be minor.
68. Mr Simons considers the level of harm to be at the upper end of less than substantial, given, in his opinion, the importance of the parkland to the setting of Binfield Park. I have given reasons why I disagree with that suggestion. Furthermore, having regard to case law¹⁴ I am of the view that the harm caused to each heritage asset would not come near to the ascribed effect of substantial which would "have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced".
69. The South Lodge and Gate Piers to the east of Appeal Site A and west of Appeal Site B are Grade II listed buildings. There is no dispute that they were associated with Binfield Park, even though South Lodge was built prior to the house and therefore its use as a gate house was not its original use or function. The significance of these listed buildings is derived primarily from their historic, evidential and aesthetic value as well as having a degree of group value.
70. Given their historic association with the estate, their setting is quite wide and encompasses Appeal Site A. However, given the erosion of the link between the structures and the estate the contribution to that significance is limited.
71. The indicative layout shows that the proposed houses on Appeal Site A could be set back some distance to the rear of the listed buildings, which would ensure that they would not harmfully encroach into the parkland setting of South Lodge, which has already been degraded by the adjacent modern cattery buildings. The roofs of some houses would be visible in views from Tilehurst Lane. However, in time, proposed landscaping would effectively mitigate any harm caused. Consequently, the listed structures would still be read, particularly from Tilehurst Lane, where their significance is most appreciated, as being on the edge of a park. Furthermore, from within the site, the listed buildings would be viewed in the context of the much altered rear elevation of the South Lodge. Therefore, while there would be some harm caused by

¹³ Proof of Evidence Appeal A Appendix 4 VVM 4

¹⁴ *Bedford Borough Council v. SSCLG and Nuon UK Ltd* [2012] EWHC 4344

development within the open parkland setting of the buildings, it would be minor.

72. Tile House and Honeysuckle Cottage form two dwellings fronting onto Tilehurst Lane to the west of Appeal Site B and the east of Appeal Site A. Little Pightle forms a dwelling on the west side of Terrace Road North to the west of Appeal Site A, just south of the entrance to Binfield Park. Their significance largely derives from their historic form and particular architectural features.
73. Although they are close to entrances to Binfield Park there is no known historic or functional relationship between them, and the listed building and its estate. As dwellings, their setting is largely confined to the gardens to the front and rear which aid an understanding of their function within the streetscene, rather than deriving any significance from the setting of Binfield Park. Mr Simons advised that Little Pightle once had a view over the parkland. However, this link is no longer apparent, mainly due to dense vegetation. Plus, the houses would be a considerable distance from Little Pightle. Therefore, the proposals would cause no harm to the significance of the buildings.
74. The Gate Piers at the west entrance to Binfield Park are a Grade II listed building. These are similar in appearance to the Gate Piers at the southern entrance to Binfield Park and their significance is derived from their historic, evidential and aesthetic value. Appeal Site A, by virtue of it being on parkland, with some intervisibility to the listed structures, contributes in a very minor way to the significance of this asset as they form the entrance to the estate as a whole. Although there is very limited intervisibility between the two, the proposal would still lead to the removal of parkland which contributes to the significance of the estate as a whole. Nevertheless, the Gate Piers would still be experienced as a gateway into the former estate which would be improved by the proposed Heritage Park. Therefore, harm to the heritage significance of the western Gate Piers would be very minor.
75. The Stag and Hounds Public House is located to the south-east of Appeal Site B. It predates Binfield Park, dating back to the late Middle Ages, and has a strong association with its place at the heart of the Royal Forest and Henry VIII. Much of its significance is therefore derived from its historic form and historical association. Although much of the Forest has now gone, standing in the car park of the building there is an appreciation of trees surrounding it. The boundary vegetation of Appeal Site B contributes to this setting and significance. The housing would be set in from the boundary and much of the planting, would be retained. That required to be removed as part of the pedestrian and vehicular access would be minimised and therefore the significance of the listed building would not be materially harmed.
76. The LUC study Bracknell Forest Local Plan: Historic Environment Assessment of SHELAA sites 2018 records the sensitivity of Appeal Site A to be high through harm to listed buildings, including those I have identified. However, the proposed developable area in the study has been pulled back from the higher land in the central part of the site, away from the listed building, comparable to the proposed area for housing on Appeal Site A. In any case, I have also found harm to the mentioned listed structures.

77. For the reasons above, I conclude that the proposals in Appeal A would be harmful to the heritage significance of Binfield Park, South Lodge and Gate Piers, Western Gate Piers and the former parkland. It would therefore be in conflict with paragraphs 193 and 197 of the Framework, Policy CS7 of the CS and Policy BF2 of the BNP. These require that great weight should be given to a designated heritage assets conservation, the effect of an application on the significance of a non-designated heritage asset should be taken into account and that development proposals should respect local patterns of development and the historic environment and should sustain and enhance the setting of heritage assets in their vicinity.
78. Also, for the reasons above, I conclude that there would be no material harm to the significance of the heritage assets caused by the proposals in Appeal B. Therefore, there would be no conflict with paragraphs 193 and 197 of the Framework, Policy CS7 of the CS and Policy BF2 of the BNP.
79. Although I have identified a minor level of harm, in the words of the Framework, this would be less than substantial which accords with the view of Historic England through their advice to weigh the harm against the public benefits of the proposal as required by paragraph 196 of the Framework¹⁵.
80. The reinstatement of parkland features, to the south-west of Binfield Park would improve its setting, particularly given the immediate relationship of this part of the parkland and Binfield Park. This would be a benefit of the scheme. Any benefits of allowing public access to the estate would be moderated by the very limited views available of Binfield Park itself through existing vegetation. It would though, allow an appreciation of the relationship of the parkland and the building which has hitherto been private.
81. I acknowledge that if the appeal were to be allowed, then the owners of Binfield Park would plant a hedge along the south boundary of the western access for security. However, given the existing level of vegetation, I am not persuaded that this would diminish the benefit of the Heritage Park.
82. There are further public benefits in the form of the provision of market and particularly affordable housing. The scheme would provide 30 open market houses. Even if I were to find that the Council is able to demonstrate a five year housing land supply there is nothing in the Framework to suggest that the existence of a five year supply should be regarded as a restraint on further development. Indeed, it identifies the Governments objective of significantly boosting the supply of homes. In this context the provision of 30 open market houses in a reasonably accessible location, would attract significant weight.
83. Although it would only be a policy compliant amount, the scheme would deliver 10 affordable homes. This would be a benefit attracting significant weight given that 1561 households are on the current housing waiting list. Furthermore, there is an overall deficit of 872 affordable houses against the Strategic Housing Market Assessment (SHMA) net affordable housing need of 227 dwellings per year.

¹⁵ At the time of Historic England letter dated 28 March 2018 this was paragraph 134 of the Framework 2012

84. In addition, the appellant details significant economic benefits generated by the proposal in terms of jobs during construction and local expenditure by future occupants. It was suggested by the R6 party that the weight given to any benefits should be reduced as there is already a buoyant economy and full employment. Even if that is the case, the Framework states that significant weight should be placed on the need to support economic growth. It goes on to state that the approach taken should allow each area to build on its strengths.
85. There would be additional benefits from CIL receipts and a new homes bonus. However, no schemes upon which the bonus would be spent have been identified. In accordance with advice in the Planning Practice Guidance (PPG)¹⁶ it would not be appropriate to make a decision based on the potential for the proposal to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms.
86. The provision of an area of public open space in excess of the policy requirement would also be a benefit of the proposal that would allow views towards the open countryside and Bracknell. However, while this area would be available for all existing residents, they would need to walk to the facility through the proposed development. It may not therefore prove attractive to a wider population. Therefore, I give this benefit minor weight.
87. Paragraph 193 of the Framework states that great weight should be given to the conservation of heritage assets and the more important the asset the greater the weight should be. Given that Binfield Park is a Grade II* building in this case I give great weight to the harm to the heritage assets. However, I also give great weight to the benefit of the improvements to its setting. Taken together, even without allocating weight to the backlog of housing against the CS as suggested by the appellant, the considerable benefits of the proposal would be sufficient to outweigh the less than substantial harm to the heritage assets.
88. With regard to the balance required within paragraph 197 of the Framework, I am firmly of the view that the benefits I have outlined above outweigh the minor harm I have found to the setting and significance of the parkland, a non-designated heritage asset.
89. I note the concerns of the R6 party regarding the appellants reliance on Palmer¹⁷ to aggregate the harmful and beneficial impacts of the proposal. Even if that is the correct approach, I have in any case found that, in this instance, the public benefits outweigh the harm to the heritage assets.

Accessible location and Highway safety

90. The appeal sites are situated on the edge of Binfield. There is no dispute that Binfield is a reasonably accessible settlement, with services and facilities available to meet the day to day requirements of residents. Furthermore, Bracknell is within cycling distance of both appeal sites.

¹⁶ ID 21b-011-20140612

¹⁷ *Palmer v Herefordshire Council* [2016] EWCA Civ 1061

91. There is no specific infrastructure for cyclists within the vicinity of both sites, although this is not unusual and is the situation for existing residents. The roads are narrow, and I heard from members of the public that cycling to Bracknell on the most direct route is considered dangerous on the local roads. Mr Wall, for the appellants, highlighted a route which would be off road. While this would be a longer route than the on road option, it would nevertheless give choice to local residents.
92. The pedestrian route into Binfield from Appeal Site A would be via the two proposed pedestrian crossings onto the footway on the opposite side of the road providing an acceptable route into Binfield. A third pedestrian route would be via the main vehicular access close to Pound Place on the opposite side of the road. While there would be the possibility of vehicles approaching from four directions, visibility is good here. Furthermore, Pound Place only contains a small number of dwellings which, together, are unlikely to generate significant traffic levels.
93. Access from Appeal Site B would be via two pedestrian links and the provision of a footway along part of the northern side of Tilehurst Lane and the southern part of Tilehurst Lane adjacent to the Stag and Hounds Public House. Manual for Streets advises that while there is no maximum width for footways, in lightly used streets the minimum unobstructed width should generally be two metres.
94. The footway on the southern side of Church Lane/Tilehurst Lane would only be about 1.2 metres wide. Given that pedestrians already walk along these routes, the provision of a footway would be an improvement, segregating pedestrians and vehicles. Furthermore, I saw that visibility is good, pedestrian flows are not likely to be high and it would only be for a short length. Moreover, given the limited width Tilehurst Lane, this would be a practical solution.
95. There is a short length of York Road, about 45 metres, which pedestrians may use to access facilities in Binfield that has no footway. I saw that even though cars may be parked on the road, there is good visibility. Therefore, while pedestrians would need to walk on the carriageway for a short length of time, this would not be materially harmful. Moreover, while I acknowledge the appeal proposal may result in more people using this route, it is an existing situation and I have seen no substantive evidence of any accidents having occurred in this location.
96. In addition, there would be a further footway provided within Appeal Site B. This would provide an off road alternative for pedestrians along this part of Tilehurst Lane and would not be considerably longer than walking along Tilehurst Lane itself.
97. Drawing the above together, I am satisfied that pedestrians would be able to safely access services and facilities and bus stops. It is agreed that there is an adequate bus service to Bracknell. Although the service further afield is less frequent, I am satisfied that services and facilities in Bracknell are more than sufficient to meet the majority of the needs of the future population.

98. The distance to the York Road bus stop from Appeal Site A and the Terrace Road North bus stop from Appeal Site B may be over that recommended in relevant guidance¹⁸. However, in the case of Appeal Site A it is only by about 100 metres. Furthermore, the bus stop on York Road is within the recommended walking distance of Appeal Site B.
99. Residents could cycle or catch a bus to the train station. Even if some residents drive, at least some of the overall journey would be made by means other than the private car. Therefore, taken together, I am satisfied that there would be a genuine choice of transport modes for residents. I am not persuaded therefore that the appeal sites are so obviously inaccessible as to be in fundamental conflict with paragraphs 8b and 103 of the Framework and Policy TC1 of the BNP. These require that services are accessible, development should limit the need to travel and offer a genuine choice of transport modes. Developments should also, where practical, be designed to provide dedicated footways and cycleways.
100. The swept path analysis of both junctions presented by Mr Wall, demonstrate that a refuse vehicle can enter the site safely if there is a vehicle waiting to exit onto Tilehurst Lane¹⁹. Even if it is not, in all likelihood, vehicles waiting to enter would wait for those existing the access roads. I am advised that this is a similar situation to other roads along Tilehurst Lane, other than York Road. Furthermore, refuse vehicles are unlikely to be regularly accessing the appeal sites. I appreciate that, with the advent of internet shopping, there could be an increase in larger vehicles accessing the developments. However, these would likely be smaller than a refuse vehicle and therefore would be safely accommodated.
101. I spent some time at Tilehurst Lane, and my observations of the level of traffic using the road accord with the view of the appellants that this is a lightly trafficked road. The data shows that at peak time there are about 100 vehicles per hour. While these may not be conveniently spaced during that hour, nevertheless, this is still a low level of traffic. Furthermore, there has been no recorded accidents on the road. I appreciate that the data does not record accidents that do not lead to a personal injury and therefore does not extend to damage only incidents. Indeed, I was given evidence of an accident that had recently occurred resulting in a tree falling into the road.
102. Nevertheless, the narrowness of the lightly trafficked road itself is likely to encourage people to drive slowly and carefully. Furthermore, visibility is very good along the length of the road. The evidence of only one accident does not weigh significantly against the proposal. Moreover, the alterations and improvements proposed by the appellant, for both appeals, have been agreed by the Highway Authority and considered and approved by an independent road safety audit²⁰.
103. From the evidence submitted by the appellant regarding the impact of the two schemes on the surrounding highway network, it is likely that the Forest Road arm of the Church Lane/Forest Road junction would be approaching its capacity in the evening peak hour. While the impact of the appeal schemes is

¹⁸ Planning for Walking, Chartered Institute of Highways and Transportation April 2015

¹⁹ Mr Wall Rebuttal Proof of Evidence Appendices HH & II

²⁰ Mr Wall Proof of Evidence Appendices D & E

small, they would, nevertheless add to the totality of traffic queuing at Forest Road causing delays and congestion for users of the highway. I am satisfied therefore, that some form of mitigation is required to the junction.

104. The appellant identified that the introduction of a mini roundabout at the junction would address the capacity concerns. On this basis, the Highway Authority requested contributions towards a costed scheme from both appeals, which have been secured within the S106 Agreements. Therefore, I am satisfied that the contributions meet the statutory tests contained in Regulation 122 and 123 of the CIL, and the requirements of paragraph 56 of the Framework.
105. While the Highway Authority is not committed to the mini roundabout solution, it is clearly satisfied that an acceptable solution can be accommodated within the financial parameters. This is in the context that it would also seek contributions from other developments in the area within its wider network strategy for improvement of the Forest Road corridor.
106. The comparative tracking analysis within the evidence of Mr Wall demonstrates that the turning movements from Forest Road into the mini roundabout would be little different than the existing situation²¹. Furthermore, Mr Wall clarified in the round table discussion that the length of entry deflection was only indicative on the proposed plan and would be a matter of detailed design when the improvements were implemented. I have seen no substantive evidence to dispute these matters and, having viewed the situation on site, I am satisfied that such improvements would not materially harm highway safety over and above the current situation.
107. In terms of the cumulative impact of the two schemes resulting in the requirement for the junction improvements, at the Inquiry, Mr Russell for the R6 party accepted that his capacity assessments were based on traffic flows that were not fully up to date. However, he still considered that the appellant's use of the Council's Multi-Modal Model data should have been moderated, to ensure accuracy, by comparing it to observed local data. This is exemplified by comparing the observed traffic flow from 2018 with the forecast traffic flow for 2026 which show a decrease of around one third in respect of the Church Lane entry flow. While this could be explained by the implementation of improved infrastructure over time, it is not certain.
108. The dispute between the two methods used is not helped by the seemingly different methods of assessment recommended by the Highway Authority. On the one hand there is support for the approach advocated by the appellant in addressing the reason for refusal on Appeal A, and, on the other, confirmation that there should be a requirement for more detailed local modelling to be undertaken²².
109. However, even if the method used by the appellant underestimates the cumulative impact of the proposals on the Church Lane junction, there will still be a financial contribution from the schemes to mitigate congestion at the junction that would be applied in a suitable manner by the Highway Authority. Therefore, there would be compliance with Policy TC2 of the BNP which

²¹ Mr Wall Rebuttal Proof of Evidence Appendix XX

²² Mr Russell Rebuttal Proof of Evidence Appendix C

requires that where there is potential severe impact on local junctions, suitable mitigation measures will be required.

110. Residents have signed a declaration that they have maintained land by their properties that is required for off-site highway improvement works, rather than the Highway Authority. I saw on site that some of the areas required have planting in appearing to be part of gardens. The limited extracts I have before me from the legal judgements referred to by the R6 party suggests that the width of the highway depends on the evidence in each particular case as to the nature of the district, the width and level of the margins, the regularity of the lines of the fences and other relevant circumstances²³.
111. However, I am also party to evidence from the Highway Authority that, to the best of the knowledge of the Council, the extent of the highway on the agreed plan is the presumed extent of publicly maintainable highway, which includes the areas of land in dispute. In any case, should the appeal be allowed, then a condition could be attached such that the development could not be occupied until the off-site works have been completed. While I note the maintenance undertaken by residents, I have seen no meaningful evidence that would suggest that there is no prospect at all of the improvements in question being implemented within the time limit imposed by the permission.
112. I have already found that the two proposals would be in a reasonably accessible location and, for the reasons above, I conclude that they would not be materially harmful to highway safety. Therefore, there would be no conflict with paragraphs 108 and 109 of the Framework. This requires that safe and suitable access to the site can be achieved for all users. Development should only be prevented or refused if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

Other matters

113. The Council, in consultation with Natural England, has formed the view that any net increase in residential development between 400 metres and five kms straight line distance from the SPA is likely to have a significant effect on it either alone or in combination with other plans or projects. In addition, developments of over 50 dwellings or more, located between five and seven kms of the SPA, are also likely to have a significant effect on the integrity of the SPA. The SPA Supplementary Planning Document 2018 (SPASPD) states that this would be due to the consequent increase in local population leading to a potential increase in recreational activity within the SPA which may harm the ground nesting bird populations caused by disturbance to the birds from a growth in the number of walkers, cats and dogs frequenting the heathland.
114. Appeal Site A lies beyond the buffer distance and is below 50 dwellings. However, Appeal Site B lies approximately 5.52kmn from the boundary of the SPA and would result in the erection of 53 dwellings. Therefore, based on the evidence before me, it is likely that, in the absence of mitigation measures, the proposal would have a significant adverse effect on the integrity of the SPA. Accordingly, therefore, I have carried out an Appropriate Assessment.

²³ *AG and Croydon RDC v Moorson-Roberts* (1908) 72 JP123 and *Countess of Belmore v Kent County Council* [1901] 1 Ch 873

115. The proposed legal agreements would secure a contribution to the provision of a SANG to attract new residents away from the SPA and towards SAMM which would fund strategic visitor access management measures in the SPA. This would be in accordance with the requirements of the SPASPD.
116. The Council has concluded that the proposed mitigation measures would prevent an adverse effect on the integrity of the SPA. In its response dated 1 February 2019 Natural England confirmed that it had no comments to make on the application, as long as the relevant avoidance and mitigation measures are secured. I have seen no substantive evidence to dispute the contents of the SPASPD, nor have I any reason to believe that the situation has changed since Natural England made its comments, and therefore see no reason to disagree with the findings of the Council and Natural England. Therefore, I conclude that, with the S106 agreement in place, the proposal would not adversely affect the integrity of the SPA.

Legal agreements

117. Both S106 Agreements require that 25% of the dwellings are delivered as affordable units and this accords with the requirements of Policy CS17 of the CS.
118. Policy R4 of the Local Plan requires the provision of 4.3 hectares of OSPV per 1000 persons. This is broken down to provide 2.3 hectares per 1000 persons of Passive OSPV and 2 hectares per 1000 persons of active OSPV. Both sites provide the required on-site passive OSPV. The shortfall in active OSPV is provided for by the payment of a contribution by both sites towards an off-site active OSPV project, in this instance York Road Play Area, as accepted in the Planning Obligations Supplementary Planning Document 2015.
119. The agreement allows for the provision of on-site OSPV and its maintenance together with that of private accesses and footways. Furthermore, there are provisions relating to a drainage strategy, sustainable drainage and its management and maintenance.
120. Both agreements also secure contributions towards the expansion of Farley Wood Community Centre, a community facility as required by Policy CS6 of the CS. This would increase capacity to accommodate the growth of the population from these new developments, in association with other developments in the area.
121. Obligations regarding the payment of a contribution towards both the monitoring of the SuDs and the monitoring of the provisions of the individual obligations are in accordance with the guidance in the PPG²⁴. I am satisfied based on the evidence before me that the costs are proportionate and reasonable and reflect the actual cost of monitoring.
122. With regard to Appeal B only there are obligations which secure a contribution towards SANG and SAMM which I have already addressed. In addition, an obligation secures the relocation of a population of grass snakes on the appeal site in accordance with an off-site REP. This would ensure the development complied with Policies CS1 and CS7 of the CS and paragraphs 170, 174 and 175 of the Framework.

²⁴ 036 Reference ID: 23b-036-20190901

123. Therefore, I am satisfied based on the evidence before me, that these obligations are necessary, and meet the statutory tests contained in Regulation 122 and 123 of the CIL, and the requirements of paragraph 56 of the Framework.

Planning Balance and Conclusion

APPEAL A

124. I have found no harm to highway safety and this would be neutral in the planning balance. Although there would be local highway improvements, these are required as a direct result of the development and would also be neutral in any balance.
125. The appeal site is outside the defined settlement boundary for Binfield, contrary to Policies CS2 and CS9 of the CS, and does not fall within any of the categories of development that may be permitted by saved Policies EN8 and H5 of the Local Plan. However, I have already found that conflict with these Policies attracts limited weight.
126. I have found harm to the character and appearance of the area, albeit minor. I have also found harm to the significance of heritage assets, but these are outweighed by public benefits.
127. As the most important policies for determining the appeal are out of date, and the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development proposed, then paragraph 11 (d) ii, or the so called tilted balance is applied.
128. All in all therefore, the harm that would be a consequence of the limited adverse impacts I have identified would not significantly and demonstrably outweigh the considerable benefits referred to above when assessed against the policies in the Framework when taken as a whole. Consequently, the proposal would benefit from the presumption in favour of sustainable development as defined in the Framework, and material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.
129. For this reason, and having regard to all other matters raised, I conclude, on balance, that the appeal should be allowed.

APPEAL B

130. It is agreed between the parties that the extant planning permission on the appeal site for 28 dwellings is a relevant fall-back position. The appellant confirmed at the Inquiry that if this appeal were to fail then the 28 dwellings would be constructed. To that end an application for reserved matters has recently been submitted to the Council for consideration. Although the site has had outline planning permission for over two years, and reassurances were given at the time of the previous appeal that the site would be delivered quickly to meet housing need, the appellant explained that the consideration of the current scheme for 53 dwellings had taken some time and preparation. They did not therefore wish to commit to the 28 dwelling scheme while the 53 dwelling proposal was still being considered. This is a realistic approach. I am

satisfied therefore that if this appeal were to fail there is a reasonable prospect that the 28 dwellings would be constructed.

131. For significant weight to be afforded to a fall-back position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission was refused, but it would also need to be equally, or more harmful, than the scheme for which permission is sought.
132. In this respect, I have found that the proposal would cause minor harm, similar to that considered by the Inspector in the 28 dwelling scheme. When that Inspector made his decision, the Council was unable to demonstrate a five year housing land supply. It appears from the wording of the decision that the Inspector considered that harm would be caused as an inevitable consequence of having to provide more housing in the short term to meet the requirement for housing. However, I have found minor harm irrespective of whether the Council can demonstrate a five year housing land supply or not.
133. The Inspector considering the 72 house scheme found considerable harm to the character and appearance of the area. The R6 party therefore suggests that there is a quantum of development somewhere between 28 and 72 units that results in unacceptable harm in character and appearance terms. It is not that straightforward though. The scheme for 72 dwellings was for a considerably larger number of houses than the current proposals. Given the number of houses proposed it is unlikely to have been able to include a large green area in the centre of the site and therefore it is likely that a quantum of development would have been located all along Tilehurst Lane where the site is most visible. Furthermore, the proposed access was from Church Lane rather than Tilehurst Lane. There are therefore significant differences to what is proposed now.
134. Turning to the specifics of the scheme, the access to the development would be in the same position as the 28 dwelling scheme. Although wider, this would only be by about two thirds of a metre and therefore not materially different. The development would also still be split into two parts separated by a large green area. The Inspector on the 28 dwelling scheme commented that the density was low enough to allow some flexibility in disposition of buildings between different parts of the site.
135. The density of the scheme before me now may be low overall, and similar to that on the opposite side of the road. However, the individual density of each separate area in itself would be higher and approaching that in the 72 dwelling scheme, which was dismissed for, amongst other things, being overtly suburban in character. However, while the increased number of houses would result in smaller plot sizes than those on the opposite side of the road, they would, nevertheless, be comparable to those to the west. In any case, because of the existing and proposed high level of screening, the smaller plot sizes and the consequent increase in hardstanding and boundary treatment would mostly only be experienced from within the site, particularly in relation to the increased level of development in the north eastern corner of the site. Furthermore, parking would be mostly accommodated away from the main access roads so would not be visually dominant.
136. The south-east cluster of development would be the most noticeable from the proposed access to the site. However, even here, the evidence of Mr Smith shows that visual differences between the approved and proposed scheme are

minimal²⁵. At the round table discussion Mr Cobben for the Council pointed to the limited number of gaps between the proposed houses in the current scheme compared to that in the extant permission. However, on VVM5 there are a sequence of buildings on the right hand side of the picture and there are still gaps shown between the dwellings not dissimilar to the 28 scheme unit. Furthermore, at the right hand side of VVM3 there is a large block of built development, however to its right is a gap. Therefore, although different, there would still be gaps between the houses and views would be available through to the open countryside to the rear.

137. The footprints of the buildings would be broadly similar to those considered in the previous appeal (albeit that was an indicative plan only) as displayed by the appellant's Building Overlay Plan. The houses would also be set back from Tilehurst Lane behind existing and proposed screening. A block of flats would be introduced in the north eastern corner of the site, however given the existing dense level of screening on Church Lane, it would not, as I saw when undertaking my wider observations of the area, be particularly visible from the road.
138. It is likely that there would be an increase in the number of vehicle and pedestrian movements associated with almost double the number of dwellings in this scheme. I am firmly of the view though that the relatively low numbers involved overall would not cause material harm over and above that already approved.
139. There has been no meaningful evidence submitted that demonstrates that additional noise that would be caused by the increased number of houses would be harmful to the character and appearance of the area. Moreover, as the internal layout of the scheme is very similar to that on the previous indicative layout, the level of artificial light would not be materially higher and could in any case, could be controlled by condition as secured on the previous appeal decision.
140. There is a requirement for an acoustic fence to the rear of a number of plots to protect the future residents from noise arising from the adjacent kennels. However, this would be about 1.8 metres high and could be softened with landscaping and therefore would not be overly intrusive in the wider area.
141. Therefore, the fall-back position maintained by the appellant would be likely to give rise to an equal level of harm in terms of the impact on the character and appearance of the area. This must be balanced against the increase in benefits from the 53 dwelling scheme over and above the 28 dwellings.
142. There are public benefits in the form of the provision of market and particularly affordable housing. The scheme would provide an additional 25 open market houses. I have already found that the provision of open market houses in a reasonably accessible location, would attract significant weight.
143. Although it would only be a policy compliant amount, the scheme would deliver an additional 6 affordable homes. The R6 party suggests that the weight given to the benefits should be reduced due to the location of the affordable housing in flats in the north east corner of the site which would not lead to an inclusive community. However, irrespective of its location on the

²⁵ Proof of Evidence Appeal B Appendix 5 VVM 1-6

site, there would be a mix of housing tenure here, including shared ownership and social rented accommodation. Furthermore, a mix of the size of houses has been agreed across the site ranging from one to four bedrooms. Therefore, I am satisfied that the proposal would not conflict with the requirements of paragraph 62 and 91 of the Framework regarding the delivery of mixed and balanced communities. I have already found that the delivery of affordable housing would be a benefit attracting significant weight.

144. It is unlikely that the additional number of houses would generate substantial additional economic benefits over and above those from the 28 dwelling scheme. Nevertheless, it is a benefit to be weighed in the balance. Furthermore, the increase number of dwellings, would make more efficient use of the land in accordance with paragraph 8c of the Framework. Overall, I give these benefits moderate weight.
145. Given that there would be an equal amount of minor harm caused by both schemes, then I find that the appeal scheme would have benefits when considered against the fall-back position. That consideration outweighs the harm in terms of the effect on the character and appearance of the area and the location of the appeal site within the open countryside that would be associated with development proposed.
146. For this reason, and having regard to all other matters raised, I conclude, on balance, that the appeal should be allowed.
147. I recognise that these decisions will be disappointing for local residents and their representatives, and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local residents, very important though they are, must be balanced against other considerations. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan and the Framework, as well as the relevant case law.

Conditions

148. Following a round table discussion at the Inquiry regarding the suggested conditions an amended list of agreed conditions was submitted by the parties. I have had regard to the amended list and considered them against the tests in the Framework and the advice in the PPG. I have made such amendments as necessary to comply with those documents.

APPEAL A

149. Standard conditions relating to outline permissions and the submission of reserved matters, are reasonable to give certainty.
150. A condition regarding finished floor levels is required to protect the character and appearance of the area. Details are necessary, prior to work commencing on site to take account of existing ground levels. A further condition regarding landscaping is necessary to clarify the measures to be included within the scheme and its implementation. Conditions requiring measures to be submitted to protect the existing trees and hedgerows on the site and their implementation prior to the commencement of works is necessary in the

interests of the character and appearance of the site, and to avoid damage to the existing landscaping.

151. Details of cycle parking are required to comply with principles of accessible development. Schemes for detailing construction parking, buildings and storage, the control of environmental effects of the demolition and construction work and a condition restricting the timing of work are required prior to work commencing to protect living conditions and highway safety.
152. Conditions regarding biodiversity enhancements, site clearance, landscape and ecological maintenance, ecological surveys and newt mitigation are required in the interest of nature conservation. It is necessary to require the submission of details of lighting prior to work commencing on site to ensure that habitats of birds and bats are protected.
153. Conditions regarding energy and water efficiency are necessary to ensure the efficient use of resources. Conditions regarding surface water drainage are required to reduce the risk of surface water flooding to the development and properties downstream for the lifetime of the development.
154. Condition 9 is necessary to protect highway safety and enhance accessibility. Details of the Heritage Park and its implementation are required to enhance the setting of Binfield Park and secure its implementation in an appropriate manner. A pre-commencement condition regarding archaeology is needed to protect and record heritage assets.

APPEAL B

155. A condition requiring the development to be carried out in accordance with the approved plans is necessary to give certainty.
156. Conditions regarding finished floor levels, materials and boundary treatments are required to protect the character and appearance of the area. Details are necessary prior to work commencing to take account of existing ground levels. Conditions regarding landscaping are necessary to clarify the details of the proposed landscaping and its implementation.
157. Schemes for construction parking, buildings and storage, the control of the environmental effects of the demolition and construction work and a method statement for the storage of materials and construction works within the root protection areas of protected trees, together with a condition restricting the timing of work are required prior to work commencing on site to protect living conditions and highway safety.
158. Conditions are necessary to ensure that no first floor windows or above are inserted into relevant elevations of properties, windows be obscure glazed, and details of the acoustic fence and sound insulation be submitted to ensure appropriate living conditions for future residents.
159. Conditions regarding the implementation of on-site footway, off-site highway works, parking areas, turning and visibility and the vehicular access are necessary in the interest of highway safety and the accessibility of the proposal. Details of cycle parking are required to comply with principles of accessible development. Details of bin storage are required to protect the character and appearance of the area and highway safety

160. It is necessary to require the submission of details of lighting prior to work commencing on site to protect the character and appearance of the area and ensure that habitats of birds and bats are protected. Conditions regarding surface water drainage are required to reduce the risk of surface water flooding to the development and properties downstream for the lifetime of the development.
161. Conditions regarding biodiversity enhancements, site clearance, landscape and ecological maintenance, ecological surveys, a wildlife protection plan for construction and newt mitigation are required in the interest of nature conservation.
162. Conditions securing the agreed water usage measures and renewable energy measures are necessary to ensure the efficient use of resources. Pre-commencement conditions regarding archaeology are needed to protect and record heritage assets.
163. A condition requiring the installation of super-fast broadband and electric vehicle charging points are necessary to ensure a sustainable communications infrastructure and the development accords with relevant parking standards
164. I am satisfied that the suggested condition regarding the removal of permitted development rights for boundary walls and fences is necessary in the interests of the character and appearance of the area particularly along Tilehurst Lane.
165. I have disagreed with the Inspector for the 28 dwelling scheme on the inclusion of some of the above conditions. However, I am satisfied that, for the reasons above, the conditions are necessary and reasonable.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Ms M Murphy of Counsel

Instructed by Ms Inderjit
Bhatti, Bracknell Forest Council

She called:

Mr G Pockett

Parks and Countryside
Development Manager
Bracknell Forest Council

Mr N Cobbold

Senior Associate Bell Cornwell

Ms E Alexander

Bell Cornwell

Ms M McEvit

Principal Planning Officer
Bracknell Forest Council

FOR THE APPELLANT

Mr A Tabachnik QC

Instructed by Mr D Bond
Partner, Woolf Bond Planning
LLP

He called

Mr D Bond

Partner, Woolf Bond Planning
LLP

Mr A Smith

Fabrik

Mr J Smith

Deputy Operational Director of
Heritage RPS

Mr Wall

Associate Partner i-Transport
LLP

Mr G Ritchie

Associate Planner, Woolf Bond
Planning LLPs

FOR THE RULE 6 PARTY

Ms K Barnes of Counsel

Instructed by Mrs S Peacey,
Parish Councillor and resident

She called:

Mrs S Peacey

Parish Councillor and resident

Mr E Simons

Heritage Consultant

Mr J Russell

Thames valley Regional
Director, Motion Limited

INTERESTED PERSONS

Mr Phillips	Local Resident
Mrs Phillips	Local Resident
Dr Gabriel Monkson	Local Resident
Mr A Cotton	Local Resident
Ms S Jackson	Local Resident
Ms J Glenn	Local Resident
Ms C Butler	Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Email regarding planting at Binfield Park dated 9 September 2019
- 2 Photographs of Tilehurst Lane and tree damage submitted by Binfield Residents
- 3 Photographs of Tilehurst Lane submitted by the appellants
- 4 Comparison of house types
- 5 Plan PL01
- 6 Council's Letter of Notification on Inquiry dated 10 June 2019
- 7 Opening Submissions on behalf of the Local Planning Authority Bracknell Forest Council
- 8 Rule 6 Party Opening Submission
- 9 Bracknell Forest Council Housing Delivery Test Action Plan
- 10 Statement and photographs submitted by David Phillips, local resident
- 11 Agreed Itinerary for Site visit
- 12 APP/M1900/V/18/3195373
- 13 Highway Verges Open Space Society document
- 14 APP/R0335/W/17/3177088
- 15 Planning Practice Guidance Historic Environment
- 16 R(on the application of Graham Williams) v Powys County Council v Colin Colin Bagley, 2017 WL 02533107 (2017)
- 17 Catesby Estates Ltd v Steer 2018 WL 03460702 (2018)
- 18 Plan Ref 2409 112B
- 19 Plan Ref 2409 113A

- 20 Closing Submissions On behalf of the Local Planning Authority, Bracknell Forest Council
- 21 Rule 6 Party Closing Submissions
- 22 Appellants Closing submissions
- 23 Amended agreed conditions Appeal A and Appeal B
- 24 Costs Response on behalf of the Local Planning Authority Bracknell Forest Council
- 25 Statement by Mrs Phillips

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- A Section 106 Agreement Appeal A
- B Section 106 Agreement Appeal B

SCHEDULE OF CONDITIONS

APPEAL A CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) An application for approval of reserved matters must be made no later than the expiration of 3 years from the date of this decision.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

Levels

- 4) The development hereby permitted shall not commence until details showing the finished floor levels of the dwellings hereby approved in relation to a fixed datum point have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Landscaping

- 5) Any application for the approval of landscaping as a Reserved Matter shall include full details of both hard and soft landscape works. These details shall include:
 - i) proposed finished ground levels or contours,
 - ii) comprehensive planting plans of an appropriate scale and level of detail that provides adequate clarity including details of ground preparation and all other operations associated with plant and grass establishment, full schedules of plants, noting species, and detailed plant sizes/root stock specifications, planting layout, proposed numbers/densities locations.
 - iii) Details of tree planting,

- iv) Underground service and external lighting layout (drainage, power, communications cables, pipelines etc. indicating lines, manholes etc.),
 - v) Means of enclosure (walls and fences etc)
 - vi) Paving including pedestrian open spaces, paths, patios, proposed materials and construction methods, parking courts, play areas etc.
 - vii) The siting, layout and equipment proposed for any Open Space of Public Value
 - viii) Furniture, play equipment, refuse or other storage units, signs, lighting etc.
 - ix) The creation of new water features and associated habitats
 - x) Ecological mitigation features as recommended in the Ecology Partnership's preliminary Ecological Appraisal dated October 2017 developments where appropriate
 - xi) Any other landscape features
- 6) All planting comprised in the soft landscaping works as may be approved under the relevant Reserved Matters applications shall be carried out and completed in full accordance with the approved details in the nearest planting season (1st October to 31st March inclusive) to the completion of the development or prior to the occupation of any part of the approved development, whichever is sooner. All hard landscaping works shall be carried out and completed prior to the occupation of any part of the approved development. As a minimum, the quality of all hard and soft landscape works shall be carried out in accordance with British Standard 4428:1989 'Code Of Practice For General Landscape Operations' or any subsequent revision. All trees and other plants included within the approved details shall be healthy, well-formed specimens of a minimum quality that is compatible with British Standard 3936:1992 (Part 1) 'Specifications For Trees & Shrubs' and British Standard 4043 (where applicable) or any subsequent revision. Any trees or other plants which within a period of 5 years from the completion of the development, die, are removed, uprooted, are significantly damaged, become diseased or deformed, shall be replaced during the nearest planting season (1st October to 31st March inclusive) with others of the same size, species and quality as approved.
- 7) Notwithstanding the information submitted with this application, the development hereby permitted shall not be begun until a detailed scheme, and programme for its implementation, for the protection of existing trees and hedgerows to be retained in accordance with British Standard 5837:2012 'Trees in Relation to Construction Recommendations' (or any subsequent revision) has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include details of any phasing of implementation, required to allow changes to the positioning of any protective fencing necessitated during the course of the development to ensure appropriate protection is provided from the commencement of any site clearance works, to the completion of hard landscaping works. The development shall be carried out in accordance with the approved scheme and programme.

- 8) The protective fencing and other protection measures approved pursuant to condition 7 shall be erected in the locations agreed in writing by the Local Planning Authority prior to the commencement of the development, including any initial site clearance, and shall be maintained fully intact (and in the case of fencing) upright. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made.

Highways

- 9) No development (other than the construction of the access) shall take place until the access has been constructed in accordance with the approved drawing ITB13129-GA-020A. No dwelling on the site shall be occupied until the on and off-site highway works have been provided in accordance with the approved drawing ITB13129-GA-020A. No dwellings on the site shall be occupied until the visibility splays shown on the approved drawings to both the vehicular and pedestrian access points have been provided. Those areas shall at all times thereafter be kept free of all obstructions to visibility between a height of 0.2 metres and 0.6 metres measured from the surface of the adjacent carriageway.

Cycle parking

- 10) No dwelling shall be occupied until secure and covered parking for bicycles has been provided for that dwelling in accordance with details to have been submitted to and approved by the Local Planning Authority. Such secure cycle parking shall thereafter be retained at all times.

Site organisation

- 11) The development hereby permitted shall not be begun until a scheme has been submitted to and approved in writing by the Local Planning Authority, to accommodate:

- i) Parking of vehicles of site personnel, operatives and visitors
- ii) Loading and unloading of plant and vehicles
- iii) Storage of plant and materials used in constructing the development
- iv) Wheel cleaning facilities
- v) Temporary portacabins and welfare for site operatives

Each facility shall be retained throughout the course of construction of the development, free from any impediment to its designated use. No other areas on the site, other than those in the approved scheme shall be used for the purposes listed (i) to (v) above.

- 12) The development hereby permitted (including any demolition) shall not start until details of a scheme (Working Method Statement) to control the environmental effects of the demolition and construction work has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- i) control of noise
- ii) control of dust, smell and other effluvia
- iii) control of surface water run off
- iv) site security arrangements including hoardings
- v) proposed method of piling for foundations

- vi) hours during the construction and demolition phase, when delivery vehicles or vehicles taking materials are allowed to enter or leave the site

The development shall be carried out in accordance with the approved scheme.

- 13) No demolition or construction work shall take place outside the hours of 0800 and 1900 Monday to Friday; 0800 and 1300 Saturday and not at all on Sundays and Public Holidays.

Biodiversity

- 14) Any demolition and site clearance shall not be begun until a scheme for the provision of biodiversity enhancements (not mitigation), including a plan or drawing showing the location of these enhancements, has been submitted to and approved in writing by the local planning authority. The approved scheme shall be performed, observed and complied with prior to the completion of development on the site.
- 15) No site clearance shall take place during the main bird-nesting period of 1st March to 31st August inclusive, unless a scheme to minimize the impact on nesting birds during the construction of the development has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be complied with during construction.
- 16) A landscape and ecological maintenance and management plan (LEMP) shall be submitted to, and approved in writing by, the local planning authority prior to the occupation of the development. The content of the LEMP shall include the following:
 - i) Description and evaluation of features to be managed
 - ii) Ecological trends and constraints on site that might influence management
 - iii) Aims and objectives of management
 - iv) Appropriate management options for achieving aims and objectives
 - v) Prescriptions for management actions
 - vi) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period)
 - vii) Details of the body or organization responsible for implementation of the plan
 - viii) On-going monitoring and remedial measures
 - ix) Long term design objectives
 - x) management responsibilities; and
 - xi) maintenance schedules for all landscaped areas within the development.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning

biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details

- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking and re-enacting that order, no external lighting shall be installed on the site or affixed to any buildings on the site except in accordance with details set out in a lighting strategy for biodiversity that has first been submitted to and approved in writing by the Local Planning Authority. The strategy shall:
- i) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - ii) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places.

The Strategy shall identify any phases of development. All external lighting shall be installed prior to the first occupation of any dwellings within that identified phase in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

- 18) The development hereby permitted shall be carried out in accordance with the newt mitigation measures outlined in Ecology Partnership's letter dated 14th May 2018.
- 19) If there are more than two years between the previous protected species surveys and the due commencement date of works, an updated protected species survey shall be carried out by a suitably qualified ecologist. A report confirming the results, and implications of the assessment, including any revised mitigation measures, shall be submitted to and approved in writing by the local planning authority before any site clearance or construction works commence on site. The development shall proceed in accordance with the approved report.

Energy and water efficiency

- 20) The development hereby permitted shall not be begun until an Energy Demand Assessment has been submitted to and approved in writing by the Local Planning Authority. This shall demonstrate that:
- i) before taking account of any on-site renewable energy production the proposed development will reduce carbon dioxide emissions by at least 10% against the appropriate Target Emission Rate as set out in Part L of the Building Regulations (2006), and
 - ii) a proportion of the development's energy requirements will be provided from on-site renewable energy production (which proportion shall be 20%).

The dwellings thereafter constructed by the carrying out of the development shall be in accordance with the approved assessment and retained in accordance therewith.

- 21) No residential development shall commence until a Sustainability Assessment covering water efficiency aimed at achieving an average water use in new dwellings of 110 litres/person/day, has been submitted to, and agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with the Sustainability Statement, as approved and retained as such thereafter.

Archaeology

- 22) Prior to the submission of reserved matters applications, the applicant, their agents or successors in title, will secure the implementation of a programme of archaeological field evaluation in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The results of the evaluation will inform the preparation of a mitigation strategy to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The mitigation strategy shall be implemented in accordance with the approved details

Drainage

- 23) Development shall not commence until a surface water drainage scheme for the site, based on sustainable drainage principles in accordance with Clive Onions Ltd FRADS V10 dated 8th August 2019 and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details. The scheme shall include:

- i) Results of intrusive ground investigations demonstrating the depth of the seasonally high groundwater table and interpretative report confirming that the SUDS scheme will not impact on ground water levels.
- ii) Discharge Rates.
- iii) Discharge Volumes.
- iv) Sizing of features - attenuation volume.
- v) Detailed drainage layout with pipe numbers.
- vi) Confirmation of the gully spacing calculations demonstrating that they are capable of conveying the rainfall volumes as set out in the Approved Drainage strategy.
- vii) Full details of any SUDS Balancing Ponds, headwalls, control structures and conveyance swales as set out in the drainage strategy.
- viii) Full details of the eastern and southern conveyance swales including levels and earthworks confirming their volume.
- ix) Network drainage calculations.
- x) Exceedance routing.
- xi) Phasing plans.

- 24) Development shall not commence until a drainage strategy detailing any on- and off-site drainage works, along with proposed points of connection, has been submitted to and approved by the Local Planning Authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
- 25) The design, installation and completed structure of the works retaining the above ground eastern Balancing Pond shall be inspected during construction and approved by a suitably qualified Engineer (a chartered engineer with embankment and reservoir design experience). A verification report including substantiating evidence confirming the satisfactory design and construction of the SUDS Scheme shall be submitted to and approved in writing by the local planning authority prior to first occupation.

Heritage Park

- 26) Prior to commencement of development a scheme for the Heritage Park shall be submitted to and approved in writing by the Local Planning Authority. The Heritage Park Scheme will relate to the area shown on Heritage Park Strategy Plan No. CSA/3479/107 RevE, with its details according with the principles illustrated on this plan. The Heritage Park Scheme shall also include details of its provision, layout, soft and hard landscaping (inclusive of interpretation signage), landscaping, management and the ensuring of the future maintenance thereof in perpetuity. The Heritage Park shall be provided in accordance with the approved Heritage Park Scheme in perpetuity. Prior to first occupation of the approved dwellings, the Heritage Park shall be provided in accordance with the approved Heritage Park Scheme and will be made publicly accessible open space by way of (inter alia) making applications for and obtaining any necessary consents from the Local Planning Authority and maintained thereafter in perpetuity.

******* END OF CONDITIONS APPEAL A*******

APPEAL B CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out only in accordance with the following approved plans: 2409 01D, 2409 02B, 2409 100A, 2409 101, 2409 102, 2409 103, 2409 104, 2409 105, 2409 106, 2409 107A, 2409 108, 2409 109A, 2409 110, 2409 111A, 2409 112B, 2409 113A, 2409 114, 2409 115, 2409 116, 2409 117, 2409 118, 2409 119A, 2409 120A, 2409 121A, 2409 122, 2409 123, 2409 124, 2409 125, 2409 126, 2409 127, 2409 128, 2409 129, 2409 130, ITB13632-GA-025C, ITB13632-GA-027C, ITB13632-GA-002C, ITB13632-GA-017

Landscaping

- 3) Notwithstanding the information shown on the approved plans, the development shall not be begun until a scheme depicting full details of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a 3 year post planting maintenance schedule.
- 4) All planting comprised in the soft landscaping works shall be carried out and completed in full accordance with the approved scheme, in the nearest planting season (1st October to 31st March inclusive) to the completion of the development or prior to the occupation of any part of the approved development, whichever is sooner. All hard landscaping works shall be carried and completed prior to the occupation of any part of the approved development. As a minimum, the quality of all hard and soft landscape works shall be carried out in accordance with British Standard 4428:1989 'Code Of practice For General Landscape Operations' or any subsequent revision. All trees and other plants included within the approved details shall be healthy, well formed specimens of a minimum quality that is compatible with British Standard 3936:1992 (Part 1) 'Specifications For Trees & Shrubs' and British Standard 4043 (where applicable) or any subsequent revision. Any trees or other plants which within a period of 5 years from the completion of the development, die, are removed, uprooted, are significantly damaged, become diseased or deformed, shall be replaced during the nearest planting season (1st October to 31st March inclusive) with others of the same size, species and quality as approved.

Materials

- 5) No above-ground construction works shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Levels

- 6) The development hereby permitted shall not be begun until details showing the finished floor levels of the buildings hereby approved in relation to a fixed datum point have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.

Boundary treatment

- 7) No development shall commence until details of the boundary treatments (fencing, hedges, walls) have been submitted to and approved by the Local Planning Authority. The approved details shall thereafter be implemented on each plot prior to its occupation and retained as such.
- 8) No development to Plots 8, 9, 10 or 11 shall take place until details have been submitted to, and approved in writing by the Local Planning Authority in respect of acoustic boundary treatments on their northern boundaries. The approved acoustic boundary treatment shall be implemented prior to the occupation of these dwellings, and thereafter permanently retained.

Site organisation

- 9) The development hereby permitted shall not be begun until a site specific method statement for the storage of materials and the associated construction works undertaken in respect of the development located within the minimum Root Protection Areas (RPAs) of the protected trees, has been submitted to and approved in writing by the Local Planning Authority. Details shall include:-
- i) The mixing of cement or any other materials.
 - ii) Storage or disposal of any soil, building materials, rubble, machinery, fuel, chemicals, liquids waste residues or materials/debris of any other description.
 - iii) Siting of any temporary structures of any description including site office/sales buildings, temporary car parking facilities, porta-loos, storage compounds or hard standing areas of any other description.
 - iv) Soil/turf stripping, raising/lowering of existing levels, excavation or alterations to the existing surfaces/ ground conditions of any other description.
 - v) Installation/siting of any underground services, temporary or otherwise including; drainage, water, gas, electricity, telephone, television, external lighting or any associated ducting.
 - vi) Parking/use of tracked or wheeled machinery or vehicles of any description.
 - vii) A site plan identifying all areas where such work is to be undertaken.
 - viii) The timing and phasing of the above works.

The approved Method Statement shall be observed, performed and complied with.

- 10) The development hereby permitted (including any demolition) shall not be begun until details of a scheme (Working Method Statement) to control the environmental effects of the demolition and construction work has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- i) control of noise;
 - ii) control of dust, smell and other effluvia;
 - iii) control of surface water run off;
 - iv) site security arrangements including hoardings;
 - v) proposed method of piling for foundations;
 - vi) hours during the construction and demolition phase, when delivery vehicles or vehicles taking materials are allowed to enter or leave the site.

The development shall be carried out in accordance with the approved scheme

- 11) No demolition or construction work shall take place outside the hours of 8:00 am and 6:00 pm Monday to Friday; 8:00 am and 1:00 pm Saturday and not at all on Sundays and Public Holidays.

- 12) No development shall commence until a scheme has been submitted to and approved in writing by the Local Planning Authority, to accommodate:
- i) Parking of vehicles of site personnel, operatives and visitors,
 - ii) Loading and unloading of plant and vehicles,
 - iii) Storage of plant and materials used in constructing the development,
 - iv) Wheel cleaning facilities, and
 - v) Temporary portacabins and welfare for site operatives.
- Each facility shall be retained throughout the course of construction of the development, free from any impediment to its designated use. No other areas on the site, other than those in the approved scheme shall be used for the purposes listed (i) to (v) above.

Permitted Development

- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that order with or without modification), no windows at first floor level or above shall be installed on the side-facing elevations of the following dwellings hereby approved, with the exception of those shown on the approved plans:
- i) Both side-facing elevations: Plots 13, 18
 - ii) North-facing side elevations: Plots 3, 5, 7, 20, 33, 35
 - iii) South-facing side elevations: Plots 2, 4, 6, 21, 34, 36
 - iv) East-facing side elevations: Plots 8, 10, 12, 15, 17, 28
 - v) West-facing side elevations: Plot 9, 14, 16, 29
- 14) The following windows on the first floor side elevations of the dwellings hereby permitted, shall not be glazed at any time other than with a minimum of Pilkington Level 3 obscure glass (or equivalent). They shall at all times be fixed with the exception of a top hung openable fanlight:
- i) Both side-facing elevations: Plots 13
 - ii) North-facing side elevations: Plots 3, 5, 7, 20, 33, 35
 - iii) South-facing side elevations: Plot 2, 4, 6, 21, 34, 36
 - iv) East-facing side elevations: - Plots 8, 10, 12, 15, 17, 28
 - v) - West-facing side elevations: Plot 9, 14, 16, 29

Any replacement windows shall be glazed and fixed to this standard, and retained as such.

- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected anywhere on the site, except for those in accordance with the details hereby approved, or

via information to be provided as part of Conditions 7 or 8 of this permission.

Sound insulation

- 16) The dwellings hereby approved shall not be occupied until sound insulation in the windows has been implemented in accordance with details that have been submitted to, and agreed by the Local Planning Authority. The windows shall thereafter be retained in accordance with these measures, and any replacement windows shall also be installed to this specification.

Highways/parking

- 17) No development (other than the construction of the vehicular access) shall take place until the vehicular access from Tilehurst Lane has been constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 18) No dwelling shall be occupied until the primary west-to-east pedestrian footpath hereby approved, as identified in drawing 2409 01 Rev.D has been implemented in full.
- 19) No dwelling shall be occupied until the off-site pedestrian and highway improvements hereby approved, as identified in drawings ITB13632-GA-002 Rev C and ITB13632-GA-017 has been implemented in full.
- 20) The dwellings hereby permitted shall not be occupied until their corresponding vehicle parking spaces (including parking courts), along with associated turning, access and visibility, have been surfaced and marked out in accordance with approved drawing 2542_PL01 2409 01 Rev.D. The spaces shall thereafter be kept available for parking, along with access and turning (where relevant) at all times. Visibility splays to the parking spaces shall thereafter be kept free of all obstructions to visibility between a height of 0.2 metres and 0.6 metres measured from the surface of the carriageway.
- 21) The relevant dwellings hereby permitted shall not be occupied until their corresponding garages and car ports have been completed and made available for parking, in accordance approved drawing 2542_PL01 2409 01 Rev.D. The garages and car ports, and their access, shall thereafter be kept available for vehicular parking at all times.
- 22) Notwithstanding the approved plans, no dwellings hereby permitted shall be occupied until their associated cycle store and access has been implemented in accordance with details to be submitted to and approved in writing by the local planning authority in respect of all of the dwellings. The store and access shall thereafter be kept available for cycle parking at all times.
- 23) No development above ground level shall take place until details showing 20% of all vehicle parking spaces designed and constructed to be readily adaptable to provide electric vehicle charging points have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

Bin storage

- 24) Notwithstanding the approved plans, no dwellings hereby permitted shall be occupied until their associated bin storage and access has been implemented in accordance with details to be submitted to and approved in writing by the local planning authority in respect of all of the dwellings. The store and access shall thereafter be kept available for refuse storage at all times.

Lighting

- 25) No development above slab level shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority for external site lighting including details of the lighting units, levels of illumination and hours of use. No lighting shall be provided at the site other than in accordance with the approved scheme. The development shall be carried out in accordance with the approved scheme.
- 26) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no external lighting shall be installed on the site or affixed to any buildings on the site except in accordance with the details provided in respect of Condition 23, or in details set out in a Lighting Design strategy for Biodiversity that has first been submitted to and approved in writing by the Local Planning Authority. The strategy shall:
- i) identify those area/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - ii) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.

Drainage

- 27) No development shall commence until full details of the Drainage System(s) in relation the approved drainage strategy (Clive Onions FRA and Drainage Strategy dated 11th February 2019 Version 2) have been submitted to and approved in writing by the Local Planning Authority. These shall include: full details of all components of the proposed drainage system including dimensions, locations, gradients, invert and cover levels, headwall details, planting and drawings as appropriate taking into account the groundwater table, and calculations demonstrating that the strategy accords with the approved rates for the 1 in 1, 1in 30 and 1in100 + allowance for climate change. The

development shall be implemented in accordance with the approved details.

- 28) No development shall commence until a drainage strategy detailing any on- and off-site drainage works, along with proposed points of connection, has been submitted to and approved by the Local Planning Authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy for that particular phase have been completed.
- 29) No occupation of any dwelling shall take place until a verification report, appended with substantiating evidence demonstrating the agreed/approved construction details and specifications have been implemented to serve the particular property, has been submitted to and approved in writing by the local planning authority. This will include photos of excavations and soil profiles/horizons, any placement of tanking, crating, connecting pipe work, hydrobrakes, cover systems, etc.

Biodiversity

- 30) The development hereby permitted shall not commence until a great crested newt mitigation and enhancement strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include details of the measures that will be taken to ensure that great crested newts are not harmed during works and details of the on-site habitat enhancements that will be provided. The development shall be carried out in accordance with the approved scheme.
- 31) The development hereby permitted (including any site clearance and demolition) shall not commence until a wildlife protection plan for construction has been submitted to and approved in writing by the local planning authority. The plan shall include:
 - i) an appropriate scale plan showing where construction activities are restricted and protective measures;
 - ii) details of protective measures to avoid impacts during construction;
 - iii) a timetable to show phasing of construction activities, and
 - iv) persons responsible for compliance with legal consents, planning conditions, installation of protective measures, inspection and maintenance.
- 32) No dwelling shall be occupied until a landscape and ecological management plan (LEMP) has been submitted to, and approved by, the Local Planning Authority. The content of the LEMP shall include the following:
 - i) Description and evaluation of features to be managed;
 - ii) Ecological trends and constraints on site that might influence management;
 - iii) Aims and objectives of management;
 - iv) Appropriate management options for achieving aims and objectives;
 - v) Prescriptions for management actions;

- vi) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- vii) Details of the body or organization responsible for implementation of the plan, and
- viii) On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The development shall be carried out in accordance with the approved scheme.

- 33) The development hereby permitted shall not commence until a scheme for the provision of biodiversity enhancements (not mitigation), including a plan showing the location of these enhancements, has been submitted to and approved by the Local Planning Authority. The approved scheme shall be performed, observed and complied within perpetuity.
- 34) No site clearance shall take place during the main bird-nesting period of 1st March to 31st August inclusive, unless a scheme to minimise the impact on nesting birds during the construction of the development has been submitted to and approved by the Local Planning Authority. The approved scheme shall be complied with during construction.

Water and energy efficiency

- 35) The development hereby permitted shall be implemented in accordance with the water usage measures detailed within document 'Bluesky Unlimited - Sustainability & Energy Statement' indicating usage of 104.99 litres per person per day. Such measures shall be retained thereafter.
- 36) The development hereby permitted shall be implemented in accordance with the submitted renewable energy measures detailed within document 'Bluesky Unlimited - Sustainability & Energy Statement'. Such measures shall be retained thereafter.

Archaeology

- 37) No development shall commence, including any site preparation works, until a programme of archaeological field evaluation has been undertaken in accordance with a written scheme of investigation which has been submitted to and approved by the Local Planning Authority.
- 38) No development shall commence until any required archaeology mitigation strategy informed by the evaluation undertaken in Condition 37 has been submitted to and approved by the Local Planning Authority. The mitigation strategy shall be implemented in accordance with the approved details.

Broadband

- 39) No dwelling shall be occupied until details have been submitted to the Local Planning Authority confirming that provision has been made for the installation of superfast broadband (fibre optic) internet connections for the entire development.

Richborough Estates