LAND AT CHICHELE ROAD, OXTED, SURREY RH8 0NZ

TANDRIDGE DISTRICT COUNCIL

PINS Appeal Ref No.: APP/M3645/W/24/3345915

LPA Ref No.: TA/2023/1345

CLOSING STATEMENT FOR THE LPA

Introduction

1. The LPA maintains that planning permission should be refused for the appeal scheme. It is acknowledged that the proposed development would deliver several material benefits, some of which carry substantial weight. Nevertheless, the development would cause significant harm to the Green Belt, to the Surrey Hills AONB, and to the site itself as a valued landscape identified for future inclusion within the AONB. National policy dictates that substantial weight should be given to the harm to the Green Belt, great weight to the AONB and that the valued landscape should be protected and conserved. Overall, the package of benefits is not sufficient to justify the grant of planning permission.

2. The LPA set out in opening at §7-9 what was said to be the correct approach to the decision-making framework. This was based on the proposed development being, by definition, inappropriate development in the Green Belt: which is common ground between the parties[1]. The decision-making framework was put to Mr Slatford who accepted it, agreeing inter alia that if the Inspector concludes that very special circumstances ("**VSC**") are not shown then (i) the proposal would not be in accordance with the development plan taken as a whole and (ii) there would be no material

[1] See CD11.3 at §5.3

considerations which would justify a decision otherwise than in accordance with the development plan. In terms of other material considerations, the LPA had identified the possibility of an argument around the draft changes in the NPPF consultation document but – in the light of Mr Slatford's acceptance that those changes can be given only limited weight and his agreement that there are no other material considerations relied upon outside of the VSC balance and development plan, this possibility falls away.

3. With this in mind, the remainder of these closing submissions will follow the Inspector's remaining main issues as set out in the Pre-CMC note, concluding with my submissions on the VSC balance as it pertains to the evidence before the inquiry.

The effect on the openness of the Green Belt and Green Belt purposes

4. This main issue stems from the LPA's first reason for refusal which alleges that the "*Proposed residential development represents inappropriate development in the Green Belt that would result in significant harm to openness both spatially and visually*". The LPA's statement of case at 8.3 added to this by identifying that it was considered that the loss of the site to development "*will cause further harm to the Green Belt because the site currently plays a role in supporting purposes (a), (b), (c) and (*e*) of the Green Belt as set out in paragraph 143 of the NPPF".*

5. The first reason for refusal refers to national policy as well as Policy DP10 and DP13 of the Tandridge Local Plan Part 2: Detailed Policies (2014) ("**the Part 2 Plan**").

6. DP10 states:

> "B. Within the Green Belt, planning permission for any inappropriate development which is, by definition, harmful to the Green Belt, will normally be refused. Proposals involving inappropriate development in the Green Belt will only be permitted where very special circumstances exist, to the extent that other considerations clearly outweigh any potential harm to the Green Belt by reason of inappropriateness and any other harm."

7. It is agreed that this is consistent with the NPPF and attracts full weight.

8. DP13 states that "*Unless very special circumstances can be clearly demonstrated, the Council will regard the construction of new buildings as inappropriate in the Green Belt.*" It then goes on to set out exceptions to this principle. While Mr Slatford agreed in x-exam that it was not surprising that it has been referred to, the LPA accepts that it does not add to the consideration to be given to the proposal as against DP10.

9. In applying the VSC test, the starting point under the NPPF is substantial weight should be given to any harm to the Green Belt. That will include any loss of openness and any harm to the purposes of the Green Belt which the parcel now serves.

Openness

10. The PPG[2] confirms that openness is capable of having both spatial and visual aspects – "*in other words, the visual impact of the proposal may be relevant, as could its volume*" – and identifies factors such as duration, remediability and degree of activity as matters which may be taken into account.

11. At the inquiry, an important aspect of the debate was the distinction between loss of openness experienced within the site itself and loss of openness beyond the area to be developed.

12. As to wider impacts, Mr Thurlow for the LPA explained that the site was relatively open and – notwithstanding a lack of intervisibility from public viewpoints – the loss of the developed area to housing would result in harm to openness beyond the site. He did not overstate this, acknowledging that there was significant enclosure of the site, but set out his assessment by reference to a range of factors including the perceptual impact that the proposed scheme would have in terms of intensification of use, noise and introduction of artificial lighting[3]. The changes would be permanent and irreversible.

13. Mr Gibbs disputed the degree of wider impact and emphasised (i) the enclosure provided by the ancient woodland and eastern hedgerow and (ii) the "urbanising" influence of the sites to the west east and south, including the two schools and their playing field/outdoor spaces. His evidence in respect of both visual and spatial openness was that the impact of the scheme in areas where it will be appreciated/experienced[4] will only be moderate, leading him to a judgement that overall the impact is limited given the narrow zone where he says the scheme will be perceived.

14. Both the geographical zone within which the change brought about by the proposed development will be experienced, and the degree to which that change will be harmful

[2] CD8.4
[3] See his proof at 8.6.
[4] See his proof at 8.5, 8.18 and 8.22

to perceptions of openness, are matters of judgement which the Inspector is well placed to judge for herself on the basis of her site visit.

15. However, as explored with Mr Gibbs and Mr Slatford in x-exam, it is important to recognise that the current openness of the site itself will be lost. This does not appear to have been directly weighed by Mr Gibbs in his proof but in x-exam he accepted it was an additional "significant harm" to which regard needed to be given. His approach, and Mr Slatford's in reliance upon him, appeared to be that because the loss of the green field was "*inevitable*"[5] it should be given less weight. However, as both accepted, there are other sites where the internal/spatial contribution to openness might be lower – for example previously developed sites – and it follows that the significant harm to the openness of the Green Belt arising on the site itself is itself a weighty matter the Inspector as decision-maker.

Green belt purposes

16. The site forms part of a larger parcel of land which was considered by the LPA's 2015 Green Belt Assessment ("**GBA**") to be effective in checking urban sprawl and assisting in safeguarding the countryside from encroachment[6]. The 2015 GBA also concluded that most of the areas in the parcel made a "*strong*" contribution to these two purposes – albeit it noted that the general openness of the parcel was decreased in the vicinity of the site.[7]

17. The LPA and Mr Thurlow also identify a contribution to purposes (b) and (e) of the Green Belt, albeit he accepted that the contribution to purpose (e) is effectively generic to all Green Belt sites within the District.

18. The contribution to purpose (b) is acknowledged to be weaker than that to purposes (a) and (c). There has been a merging of Limpsfield and Oxted in some locations already. However, it is submitted that the purpose *"to prevent neighbouring towns merging into one another"* is capable of being served by land which prevents further merging and Mr Thurlow explained why the site serves that purpose now.

[5] Mr Slatford's word in x-exam
[6] See Mr Gibbs' proof at 5.8 and 5.11.
[7] Ibid at 5.14

19. On purposes (a) and (c), the debate between Mr Gibbs and Mr Thurlow turned primarily on the role played by the current urban edge of Oxted in influencing the character of the site; and the degree to which the current edge forms an acceptable boundary to the green belt. The LPA through Mr Thurlow, reflecting the position of Ms Hooper in relation to the discussions around the value of the landscape and the approach taken by Natural England on the Boundary Review Project (see further below), does not contest that the proposed new boundary would be an appropriate and defensible one but argues (i) that the existing edge to the Green Belt is also defensible and appropriate, (ii) that the proposed new boundary would protrude significantly beyond the current urban edge and (iii) denies the extent to which the site is already influenced by the surrounding uses, pointing out in particular that much of the surrounding use to the west and the east is school playing fields. The Inspector will be able to assess these points from her own visits but it is submitted that, as on landscape value, Mr Gibbs overstates the influence of Oxted where the site plays a closer relationship with the countryside in his approach to green belt purposes and, as with openness, his calibration of the contribution as "limited" (contrary to both Mr Thurlow and the 2015 GBA) should not be accepted.

20. Stepping back and drawing the evidence on Green Belt harm together, the LPA queries how Mr Gibbs can get to his judgement of "limited" overall harm given the degree of harm which arises on the site itself and asks the Inspector to prefer Mr Thurlow's assessment of the matter.

The effect of the proposal on the setting, landscape character and distinctiveness of the Surrey Hills National Landscape (AONB) and the surrounding countryside

21. The landscape issues stem from reasons for refusal 1 and 4. So far as relevant state

> "1) The proposed residential development represents inappropriate development in the Green Belt that would result in significant harm to openness both spatially and visually. The proposed development would also result in significant other planning harm in that it would have an urbanising effect upon and fail to conserve and enhance the setting of the Surrey Hills National Landscape defined in the development plan and would fail to safeguard the open countryside from encroachment and would not be seen to check the sprawl of large built-up areas. Very special circumstances do not exist to override the very substantial weight that must be afforded to the harm to the Green Belt and other harm resulting from the proposal. As such, the proposed development is contrary to policy CSP20 of the Tandridge District Core Strategy 2008 and policies DP10 and DP13 of the

Tandridge Local Plan Part 2: Detailed Policies (2014) and paragraphs 152, 153 and 182 of the NPPF (2023)"

4) The application site is sensitive in terms of its proximity to the National Landscape and Ancient Woodland. The proposed development would by reason of its siting and form and appearance adversely impact upon the character and distinctiveness of the landscape and countryside of the site and wider area and significantly detract from the overall character and appearance of the area. As such, the proposed development would be contrary to the provisions of Tandridge Core Strategy 2008, Policy CSP21 and Tandridge Local Plan Part 2: Detailed Policies (2014) policy DP7."

22. The LPA's reliance on NPPF 180 was expanded upon in the Statement of Case which confirmed that the LPA was considering whether the site should be treated as a valued landscape for the purposes of NPPF 180(a). Ms Hooper's evidence subsequently confirmed that it should be and Mr Thurlow's evidence has addressed the implications.

Local policies

23. CSP20 relates to the protection of AONBs and requires that a series of principles are to be followed including to "*(b) conserve and enhance important viewpoints, protect the setting and safeguard view out of an into the AONB*".

24. Mr Thurlow explained why he considers that this is consistent with the NPPF, making the point that it does not say that the setting is to be protected for its own sake and that as a result it can be read as anticipating what is now found in NPPF 182:

> "Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads[63]. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas."

25. Mr Slatford was not sure whether the policy can be read in that way, but both witnesses agreed that the NPPF approach was the correct basis on which the issue should be assessed so little turns on the point.

26. CSP21 is accepted to be inconsistent with the NPPF in that it makes no distinction between valued landscapes (which are to be protected and conserved under NPPF 180(a)) and other landscapes whose intrinsic character and beauty is to be recognised (under NPPF 180(b)).

National policy

27. On national policy, there appeared at times to be some distance between the LPA and Appellant's approach to NPPF 182 – although Mr Slatford's acceptance when questioned by the Inspector that any harm to the AONB should be given great weight has perhaps resolved the point. The LPA's position, as explained by Mr Thurlow and Ms Hooper, is that:

    (1) There is no issue with the design of the proposed scheme and it is not said that it could be better designed so as to avoid and mitigate adverse impacts on the AONB (as counselled by the final part of NPPF 182).

    (2) However, that does not mean that the LPA does not contend that there is harm to the AONB or as a result conflict with NPPF 182. Ms Hooper was clear that the harm to the AONB was "significant".

    (3) Insofar as a "hook" for a finding of conflict is needed in the final sentence of NPPF 182, the LPA says that the obvious point is that a proposal which causes significant harm will not be "sensitively located… so as to avoid or mitigate adverse impacts on the designated areas". Mr Thurlow agreed that this was the implication of Ms Hooper's evidence in in re-exam.

    (4) It follows that such harm as is found by the Inspector to the AONB should be viewed as policy conflict and should be given great weight. This was, indeed, the position of Mr Slatford.

Impact on the AONB

28. The developed area of the site lies in close proximity to the AONB, indeed the ancient woodland within the north is actually within it.

29. Ms Hooper's evidence on impact was given as a chartered member of the Landscape Institute commenting on the fuller landscape and visual impact assessment work carried out by Mr Gibbs and his colleagues within Chapter D of the Environmental Statement.

30. Ms Hooper's view, as expressed in section 5 of her proof and her oral evidence, was that while the site was not very visible from public viewpoints within the AONB it still had strong intervisibility with it including with places that were not publicly accessible

but still formed part of the AONB landscape.[8] This, augmented by impacts on tranquillity, night time lighting and the greater prominence of the site in winter views, formed the basis for her view that there was significant[9] harm to the AONB in the local area (if not across the whole of the designated area) through the introduction of a development which she said was too large for it to accommodate. In her evidence in chief she referred specifically to the LPA's Landscape Capacity and Sensitivity Assessment ("**the TCSS**") which had been relied upon by Mr Gibbs to emphasise that

(1) It had also identified intervisibility with the AONB "*throughout the site*"[10] and

(2) Although it had identified a medium capacity for the site, this was for "*limited housing proposals*".

31. Her position was criticised in x-exam, including (i) on the basis that she had failed to meet the requirements of a GLVIA3 assessment in terms of the degree to which her written evidence set out the full workings of her view (ii) on her application of Mr Gibbs' methodology in relation to magnitude and (iii) around her judgements on susceptibility.

32. On the first point, she did not accept that her evidence was inadequate or that there was any requirement for her to set out a full GLVIA3 assessment given the particular role she was instructed to perform in reviewing the work prepared by Mr Gibbs. The acid test for this inquiry is, in any event, not the degree of compliance with those guidelines but whether her professional view is presented in a way that allows it to be understood and interrogated and trusted by the Inspector. It is submitted that her reasoning as explained both in writing and in her oral answers to questions meets that threshold and is credible.

33. On the second, it did become clear – particularly in the light of the answers later given by Mr Gibbs – that Ms Hooper's calibration of the harm to the landscape receptors was based on a different approach to that set out by Mr Gibbs. Whereas Mr Gibbs was asking the question of the development would result in a losses or alterations to landscape character or characteristics of the landscape receptor <u>as a whole</u> (i.e. across the whole of the AONB, or the whole of the two relevant landscape character areas),

[8] See her answers in x-exam.
[9] Major significant adverse effect – see Table LHP 2b
[10] CD14.11 ep 5

Ms Hooper was considering the magnitude of effects within the part of the receptor within the study area. While this might not be a correct application of Mr Gibbs' own methodology, the inquiry will have to reflect on the limitations of the usefulness of what Mr Gibbs has actually done. Describing the effect of the scheme on the AONB as a whole as negligible may be correct, but in diluting the impact of scheme in this way it risks hiding impacts which need to be taken into account in policy terms.

34. On the third criticism, Ms Hooper was clear that she did not agree with Mr Gibbs as to the susceptibility of the various landscape receptors in the local area. Her points have some force, the M25 and urban edge of Oxted are clearly present in the area but – as the inspector will have seen from her site visit – the areas of the AONB in the proximity of the site are experienced in a context of tranquillity and with only limited influence from the urban edge.

35. Mr Gibbs' approach sought to emphasise the degree of enclosure and lack of public viewpoints. However, he accepted in x-exam that non-public viewpoints (such as may be ascertained via Ms Hooper's method of standing on the site and looking out) were also relevant to assessment of impact on landscape character albeit that – as he confirmed in re-examination from Mr Taylor KC – he had not taken these views into account in any way. While the basic difficulty of assessing impacts on views from locations which cannot be accessed is of course understood, an absence of consideration does suggest that the landscape impacts of the scheme have not been fully recognised; perhaps explaining some of the difference between Ms Hooper and Mr Gibbs' expert views.

36. Overall, the LPA will invite the Inspector to prefer Ms Hooper's judgement on these matters.

37. In weighing and assessing any harm to the AONB, the Inspector will have to have regard This policy requirement is now supplemented by the statutory duty in s.85(A1) of the Countryside and Rights of Way Act 2000 which changes the previous "*have regard*" duty to a mandatory obligation to "*seek to further"* the purposes of the AONB. While the LPA would agree that this does not mean that any development resulting in harm to the AONB must be refused, it will be submitted that Parliament's intention is to strengthen the duty and this cannot solely be addressed by applying the policy tests which predate the enactment of the new provision. The Inspector, in carrying out her assessment of

the scheme, must seek to further the purposes. At a minimum, it is submitted that this heightens the need to give careful consideration and reasoning as to any positive or negative effects.

Open Countryside / valued landscape

38. The discussion about the impact on the countryside outside of the AONB turns on the Inspector's approach to whether the proposed development area should be considered as part of a valued landscape for the purposes of NPPF 180(a). If it is, then the development of the site for housing – which Mr Gibbs acknowledges will result in a major adverse impact on the character of the site[11] - would result in conflict with NPPF 180(a)'s goal of protecting and conserving that character.

39. The concept of a valued landscape has been addressed by the courts in ***Stroud District Council v Secretary of State for Communities and Local Government*** [2015] EWHC 488 (Admin) where Ouseley J held that the NPPF is clear in distinguishing "valued landscape" from landscape which has a "designation" (see [13])); and he considered that "valued" meant something other than popular, such that landscape was only "valued" if it had physical attributes which took it out of the ordinary (see [14] and [18]). This has been followed in later cases, including ***Forest of Dean DC v Secretary of State for Communities and Local Government*** [2016] EWHC 2429 (Admin) where it was commented that the approach of Ouseley J reflected, at least to some extent, the GLIVIA3 factors in Box 5.1[12] That guidance has now been augmented by an additional guidance note from the Landscape Institute (TGN 02/21) which is directed specifically to the assessment of landscape value.

40. Both landscape witnesses set out their assessment of features which they said raised or failed to raise the landscape beyond the ordinary.

41. A difference between them, explored with some force in x-exam on Ms Hooper, is that Ms Hooper has looked at the whole of the site – whereas Mr Gibbs has looked at he proposed development area.

[11] See Proof at 11.6
[12] See [14] of ***Forest of Dean***

42. While the logic behind the proposition that the part of the site within the AONB must be excluded was fairly accepted by Ms Hooper, the Inspector should be careful about seeing this as the fundamental error it was at times presented as.

43. First, it should be noted that, as he accepted, Mr Gibbs' own assessment at §6.58 and following does not assess the developed part of the site without reference to the features which surround it. Under scenic quality, he refers to boundaries and nearby built form; under recreation value had regard to the presence of FP75. That is because – as he acknowledged, clearly rightly – the landscape value of any plot of land has to be assessed in its context.

44. Second, the importance of context is precisely the point made explicitly in TGN 02/21 in 2.4.5:

> "When assessing landscape value of a site as part of a planning application or appeal it is important to consider not only the site itself and its features/elements/characteristics/qualities, but also their relationship with, and the role they play within, the site's context. Value is best appreciated at the scale at which a landscape is perceived – rarely is this on a field-by-field basis."

45. While Mr Gibbs' approach would appear to be that the developed part of the site is perceived as its own landscape, Ms Hooper was clear that it was not.

46. On other factors, and on the approach to them, the LPA considers that Ms Hooper's assessment at section 6 of her proof should be preferred. In addition to that analysis, Ms Hooper relied on the position of the Surrey Hills AONB adviser and Natural England, both of whom have confirmed that they consider that the remaining part of the site has the characteristics to merit inclusion in the AONB itself.

47. This is set out in a range of documents, with which the Inspector will now be familiar.

    (1) Natural England's original 2023 view that the site should be included is in ID16 at pg 68-69.

    (2) Natural England reaffirmed that position in 2024 in CD9.10 at pg 9 and 10, where their "Commentary" responds (if not on a line by line basis) to the reasons advanced by Mr Gibbs on behalf of the Appellant as to why the site should not be included in the AONB. The Inspector will note that this response directly rebuts the idea that they consider the inclusion of sites except in relation to the natural

beauty criterion but that they also confirm it should not be applied on a "*field by field basis*". It also sets out the elements of the site which they say shows it makes an important contribution to the character and qualities of the area.

(3) In their consultation response on the application, summarised in the officers' report at ep 17 and 18[13], Natural England again confirmed that the area had been "*assessed as meeting the criterion for designation as a National Landscape (known as a Candidate Area for Designation) and may be included within a boundary variation to the Surrey Hills National Landscape*" (albeit they were clear that this gave rise to no direct planning protection).

(4) The AONB adviser, Mr Smith, to whom Ms Hooper referred to explain her position in x-exam, set out his views in his consultation response at CD9.4. While the Appellant has tended to focus on his disagreement with Ms Hooper over the availability of intervisibility with the AONB from distant public views, it should be noted that he also confirmed his position that (i) the proposal to include the whole of the site within the AONB was relevant (ii) that it was worthy of inclusion "*for its own intrinsic landscape merit and forming part of a sweep of qualifying land rising form [*sic*] Oxted to the north Downs"* and that: "*The site has the landscape benefit of being attractive rolling farmland bounded on several sides by trees, as do neighbouring fields in the AONB. To conclude that the field does not relate to the wider protected landscape would be a misjudgement based upon a lack of sensitivity as to what merits AONB designation*."

48. The Appellant has criticised Ms Hooper and the LPA's reliance upon Natural England's position on a number of grounds, including what they characterise as a lack of assessment and – in particular – a lack of engagement with the Natural Beauty Criterion and their own guidance for assessing it (as contained at Table 1 of the 2023 Consultation Document[14]. However:

(1) It is clear from the passages discussed with the witnesses that Natural England's methodology does not involve having to assess each candidate minor boundary variation site against Table 1.

[13] CD3.1
[14] CD 9.7

(2) The approach of Natural England is to look at sites which have emerged during the process of identifying and assessing the main evaluation areas where there is either (i) a small parcel of land between the existing AONB and an urban area and/or (ii) an inadequate boundary to the AONB: see 3.2.1 of ID16. These were then assessed against the factors at 3.2.5 and minor refinements proposed where, amongst other matters, Natural England considered that the areas under consideration "*relates strongly to the wider AONB forming part of a sweep of qualifying land*" (CD9.7 at ep48). This was said by them to be the issue which the potential inclusion of the site "*revolves around*".[15]

(3) As Mr Gibbs accepted in x-exam, if the land strongly relates to the wider AONB, this is entails acknowledging that it shares key characteristics with it. This is, in effect, another way of dealing with the Natural Beauty Criterion where the AONB landscape to which the candidate site is said to relate has already been judged to meet the criteria for inclusion. This is consistent with Natural England's statement in 2024 that they had undertaken an assessment of the natural beauty of the site but not on a field-by-field basis.

49. The point is fairly made that Natural England are of course assessing a different question to that of whether the developed area of the site is a valued landscape under NPPF 180(a), and it is right that neither Natural England nor Mr Smith comment on the possibility that it the site might be a valued landscape when making their representations on the application.

50. However, the LPA submits that the implications are inescapable. If the development area is (as Natural England and the AONB adviser believe) suitable for designation as part of a nationally designated landscape then it is hard to see how that area would not also merit protection in the meantime under NPPF 180(a).

51. Further, while it is right that the application/appeal is now accompanied by more detailed evidence than would have been available to Natural England (albeit that a significant element of Mr Gibbs' evidence has already been made available to them as CD1.18), that is not a proper basis for giving their expert view any less weight.

[15] See CD9.10 pg 9.

52. Overall, the Inspector is invited to conclude that the site is a valued landscape.

Whether the proposal would prejudice the Surrey Hills National Landscape boundary variation.

53. This issue arises from the LPA's seventh reason for refusal which states:

> "The current proposal in the Natural England Consultation Surrey Hills AONB Boundary Variation Project is that the application site should be included in the AONB and this is now a material planning consideration in the determination of this planning application. A grant of planning permission that would nullify the proposed Boundary Variation Project findings which are based on advice of expert landscape consultants would be unjustified. Based on the precautionary principle, planning permission should not be granted for development such as now proposed that would prejudice the outcome of the Boundary Variation Project."

54. Mr Thurlow acknowledged in x-exam that the grant of planning permission for the proposed development would not prevent the wider Boundary Variation Project from coming forwards and it follows that the harm he identifies under this heading cannot be equated with a prematurity argument as might arise in relation to a local plan.

55. The LPA's point remains that there is a conflict between the development proposals and the aspiration of Natural England to include the whole of the site within the AONB and that the grant of permission would nullify this. Mr Slatford did not dispute this as a matter of fact and the question then becomes one of weight. Mr Thurlow said it should attract moderate weight on the basis of the degree of progress with the Boundary Variation Project – pointing in particular to the fact that Natural England's position has been maintained following the consultation. Mr Slatford in Re-exam from Mr Taylor KC suggested that the status of the Boundary Variation Project was akin to a Regulation 19 draft plan, but this is not accepted – that analogy does not allow for the point which Mr Thurlow was making; the Boundary Variation Project is (at least in relation to this site) a further step along in that Natural England have considered the objections raised in consultation and confirmed their intention to seek the inclusion of the site

56. However weighed, this factor remains an additional matter which needs to be added to the VSC balance as a form of "other harm".

The effect of the development on ancient woodland and important trees

57. This issue stemmed principally from reasons for refusal 2 and 6. These stated:

"2) By neglecting to provide a sufficient semi natural buffer, the proposed development would be likely to cause a deterioration of ancient woodland and fails to properly consider its protection contrary to NPPF 2023 paragraph 186 (c) which requires that development resulting in the loss or deterioration of irreplaceable habitats such as ancient woodland should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. The proposal is also contrary Tandridge Local Plan Part 2: Detailed Policies (2014) policy DP7 which requires that proposals protect and, where opportunities exist, enhance valuable environmental assets. The proposal is also contrary to Tandridge Local Plan Part 2: Detailed Policies (2014) policy DP19 which provides that where a proposal is likely to result in direct or indirect harm to an irreplaceable environmental asset of the highest designation, such as ancient woodland, the granting of planning permission will be wholly exceptional, and in the case of ancient woodland exceptions will only be made where the need for and benefits of the development in that location clearly outweigh the loss. Impact or loss should not just be mitigated, but overall ecological benefits should be delivered."

and

"6) Due to the potential impact on important trees by unjustified encroachment into root protection areas, and the potential for post development pressure on retained trees due to proximity to dwellings and parking areas, the application fails to recognise the constraints posed by the most important existing trees, which are important by virtue of their significance within the local landscape. As such, the proposal is contrary to Tandridge Local Plan Part 2: Detailed Policies (2014) policy DP7 and Tandridge Core Strategy 2008 policy CSP18, and Key Consideration 2 and 4 of the Tandridge District Trees and Soft Landscaping Supplementary Planning Document 2017."

58. In response to the reasons for refusal, the Appellant has:

(1) Prepared a series of revised planning layouts culminating in CB_36_313_0001 Rev E (CD7.17). These have drawn back the residential unit plots so that they no longer intrude within the 15m buffer zone and moved proposed development so as to avoid unjustified encroachment into root protection areas of the identified important trees and the potential for post-development pressure on them.

(2) Evolved their proposals in relation to the ancient woodland to the point where they are willing to commit to a scheme which will prevent future public access, including to the buffer zone, and secure a comprehensive woodland management plan.

(3) Agreed a condition which, as discussed during the relevant sessions, will require such a scheme to be approved and implemented in terms in accordance with the

heads of terms provided by the LPA's consultant prior to the commencement of development.

59. Mr Thurlow for the LPA has confirmed that this resolves the issues raised in relation to ancient woodland and important trees within the site. The LPA will insist that the ancient woodland management scheme is properly secured in terms which ensure the protection of the ancient woodland from increased residential pressure in perpetuity, but it is content that this can be dealt with in the future discharge of the agreed ancient woodland condition.

60. The residual issue therefore remains around the potential for deterioration to be caused at Chalk Pit Woods SNCI and ancient woodland. The LPA's concerns in this regard arise from Mr Phillips' proof at 4.2.7 and 4.2.8 which shows (i) that informal access to the site is currently occurring (ii) that it is being used heavily by walkers with dogs and (iii) that this is having a negative impact on the woodland. While Mr Phillips does not confirm where the access points are from, the LPA's advisers have raised a concern that the provision of a connection from the site to FP75 could increase footfall to the PROW and then into the SNCI/ancient woodland. While it is acknowledged that this has not been fully investigated, the LPA's concerns remain and are not allayed by the Appellant's reliance on cases like ***Gateshead MBC v Secretary of State for the Environment*** (1996) 71 P. & C.R. 350. While it is right that the planning system should not seek to duplicate other regimes which are the statutory responsibility of other bodies, this does not mean it is appropriate to assume that private rights will be asserted where (i) it appears that this is contrary to historic practice and (ii) there is no evidence to suggest that they can or actually would be asserted. The planning system must be practical. Just as it would not be appropriate to ignore evidence that pedestrians or drivers were inclined to break the highway code in a given road environment, it is not appropriate to ignore evidence that recreational pedestrians are inclined to stray from formally recognised public rights of way.

61. The LPA acknowledges that the Inspector might consider that their concern is unduly precautionary but, if she is satisfied that the risk arise, then it is submitted that she should proceed to indicate that the footpath link does not meet the CIL tests -such that it will not be provided.

Whether the development would contribute to and enhance the natural environment by minimising impacts on and providing net gains in biodiversity

62. This issue arises from the third reason for refusal which states:

> "3) The proposed development is contrary to the provisions of the NPPF paragraph 180 d) because it has not been demonstrated that it will contribute to and enhance the natural environment by minimising impacts on, and providing net gains for, biodiversity. Likewise, the proposed development is contrary to the provisions of Tandridge District Core Strategy policy CSP17 and Tandridge Local Plan Part 2: Detailed Policies (2014) policy DP19 because it has not been demonstrated that biodiversity will be protected, maintained and enhanced."

63. As set out in opening, the LPA has accepted that the additional survey work provided and the imposition of suitable conditions and planning obligations resolves this reason. Those conditions and obligations have been discussed in the roundtable session and nothing further needs to be said.

The extent to which a five year housing land supply can be demonstrated

64. Paragraph 60 NPPF states that:

> "To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

65. Paragraph 77 NPPF provides that, where the criteria in paragraph 76 or paragraph 226 are not met, "*local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing*". The exceptions in paragraphs 76 and 226 do not apply to Tandridge, so it is subject to the requirement to demonstrate a rolling 5YHLS.

Position

66. As set out in the SoCG, the LPA and Appellant agree that the five year housing supply is in the order of 1.8-1.9 years and that the difference between their respective positions is not material to the determination of this appeal[16].

[16] CD11.3 para 5.8

67. The Inspector is asked to determine the appeal on this basis. The LPA has not called evidence in relation to housing land supply but simply relies on its position as set out in the most recent annual monitoring report.[17]

The benefits of the proposal

68. The above main issue forms a key part of the context for assessing the benefits of the proposal.

69. As already stated, it is common ground that the LPA cannot currently demonstrate a 5YHLS. It is also common ground that there is a shortfall of at least 2,341 homes, equating to over three years' worth of the required supply. Mr Thurlow and the LPA also accept the evidence put forward by Mr Taylor in relation to affordable housing need, including in Oxted, albeit that Mr Thurlow expressed some reservations about the annual need figure – whilst acknowledging it remains the appropriate basis on which to consider the appeal.

70. It is common ground that the delivery of 116 homes including 50% affordable housing should carry the top level of weight in the planning balance, substantial in both Mr Thurlow and Mr Slatford's terms.

71. There was some debate about whether this downplays the benefits of each, but Mr Thurlow did not accept that he had downplayed either aspect and – indeed – comparators relied upon by Mr Slatford such as Inspector Troy in the Warlingham decision[18] also "lump" the two aspects of housing provision together albeit after discussing each separately first.

72. This perhaps does not matter overmuch provided the Inspector has regard to all of the factors which go to the level of weight that should be given to the benefits which the scheme will deliver in meeting market and affordable needs.

73. Those factors include the acute supply shortfalls, and that the LPA's emerging local plan has had to be withdrawn. This was, it should be noted,despite the strenuous attempts of the LPA to progress it – including through a request to shorten the plan period as a pragmatic measure but it remains the case that while work is being undertaken in order

[17] CD8.7 section 3 page 30.
[18] CD6.1

to meet the new timetable set out in the local development scheme,[19] there is no development plan mechanism available now or in the short term which can meet needs in full.

74. However, it also must include that the LPA is taking active steps to provide alternative routes to granting permission on sustainable sites through the IPSHD[20] and will look to review that approach to find sustainable further supply as the IPSHD is reviewed. Mr Thurlow speculated that this might include encouraging new sites identified via the call for sites and for brownfield sites – albeit as he acknowledged the IPSHD could not allocate sites or remove them from the Green Belt.

75. The sites which the IPSHD currently identifies under criterion ii) (sites included in the withdrawn emerging plan where the Examining Inspector did not raise concerns) would make a significant contribution to meeting need (about 1 year), even if it is not capable of coming close to delivering a five year supply. Likewise, while the contributions made by the LPA's own sites in delivering affordable housing (which have the potential for up to 166 units) might not come close to meeting the raw need calculation figure, they will make a substantial contribution (as Mr Martin Taylor accepted in x-exam), indeed a greater contribution that the units which would be delivered on this site.

76. Other benefits were discussed by Mr Thurlow and Mr Slatford. Mr Thurlow accepted that the high levels of sustainable construction proposed should be given moderate weight but maintained that the other benefits were limited, for the reasons set out in his proof at 10.5. In relation to the additional benefit claimed in respect of enhancement of ancient woodland via the management plan he gave only limited weight on the basis that the protections and management were primarily necessary to avoid deterioration – a position consistent with the advice given to the LPA and appended to his proof of evidence. He acknowledged that he had not expressly calibrated weights given to BNG, economic benefits or open space provision by reference to the two Tandridge appeal decisions before the inquiry but correctly explained that his reasons can be read as explaining any departure. Mr Slatford relied more closely on the approaches of Inspectors Troy and Spencer. He accepted that locational sustainability was something

[19] Adopted in May 2024, it identifies a target of Q2 2025/26 for Reg 18 consultation; Q1 2026/27 for Reg 19 consultation and Q3 2026/27 for submission for examination.
[20] CD8.9

which was necessary for a housing site not to give to housing harm but otherwise maintained his position as against Mr Thurlow's.

77. Overall, the LPA invites the Inspector to prefer the approach of Mr Thurlow.

Whether any harm by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations, so as to amount to the 'very special circumstances' required to justify the proposal

78. The bar for VSC is, as Mr Slatford agreed: "*an extremely high policy bar to cross*".[21]

79. As the Inspector's main issue records, for VSC to be shown any harm by reason of inappropriateness and any other harm must be clearly outweighed by other considerations.

80. The core benefit of the scheme is its ability to contribute to meeting market and affordable housing needs.[22] In this regard, the current position, as for the Warlingham appeal decision and the Lingfield appeal decision is one of acute need where the LPA is not able to point to any mechanism that will reliably be able to remedy its housing land supply position in the short term. However, while it is right that an alternative approach is to grant permission for sites which have not previously been identified for development that does not answer the question of what to do in relation to any given site.

81. Here, as explored in x-exam with Mr Slatford, the facts of the case (on the LPA's case) are that the proposed development is not only inappropriate development in the green belt, giving rise to significant harm to the green belt, but also gives rise to significant other conflict with the national policies protecting both nationally designated landscapes and valued landscapes without formal designation. It is not supported by any unusual additional benefit (along the lines of the re-provided and enhanced sports facilities in the Warlingham decision[23]) nor is it a site identified by the IPSHD (again, as the Warlingham site was) but instead, like the Lingfield decision, is a case where significant harms arise beyond those which development of 'any' green belt site might entail.

82. The Appellant obviously contests those additional harms, as they do the LPA's assessment of the green belt harms, but overall the comparison with the Lingfield

[21] See Lingfield Decision at CD14.1/ID1 at DL111
[22] Agreed Mr Slatford in x-exam.
[23] See Lingfield decision CD14.1 at DL109

decision is instructive. This is a case where the VSC for release of this site for housing has simply not been met. This is not altered by the 'mood music' coming from national government (to which only limited weight can be attached even as a factor going to the weight to be given to provision of housing) or the consultation NPPF draft changes (which are as yet clearly subject to change). The LPA does not shy away from the need to look at new sites in order to meet its needs but is clear that this is not the right site and that as a result permission should be refused.

Conclusion

83. For all these reasons, the LPA invites the Inspector to dismiss the appeal.

MATTHEW DALE-HARRIS

Landmark Chambers

8 October 2024.