

IN THE MATTER OF AN APPEAL BY BERKELEY HOMES (SOUTHERN) LIMITED AND THE HOWARD TRUST PARTNERSHIP AGAINST THE DECISION OF GUILDFORD BOROUGH COUNCIL TO REFUSE PLANNING PERMISSION FOR A HYBRID APPLICATION FOR THE ERECTION OF A REPLACEMENT SECONDARY SCHOOL AND THE CONSTRUCTION OF 295 DWELLINGS ON LAND AT LOWER ROAD AND BROWN'S FIELD, BROWN'S LANE, EFFINGHAM, SURREY KT24 5JR

PINS REF : APP/Y3615/W/16/3151098

LPA REF : 14/P/02109

CLOSING NOTE ON BEHALF OF EFFINGHAM PARISH COUNCIL

POLICY CONTEXT

1. The most up-to-date statement of planning policy in relation to education is NPPF 72 which identifies that the Government attaches great importance to “*ensuring that a **sufficient** choice of school places is available to meet the **needs** of existing and new communities*” (emphasis added). It continues to state that LPAs should take a proactive, positive and collaborative approach to meeting this requirement and also to development that will “*widen choice in education.*”.

2. Progressing in to bullets NPPF 72 then identifies that LPAs should:
 - a. Give great weight to the **need** to create, expand or alter schools; *and*
 - b. Work with school promoters to identify and resolve key planning issues before applications are submitted.

3. So provided that *sufficient* choice is provided to meet the *needs* of communities, NPPF 72 is met. Great weight is attracted in policy terms by a *need* to expand a school per NPPF 72. Crucial to these assessments then is the identification of:
 - a. The *need* to expand a school (cf. it being *desirable*, about which NPPF 72 is silent);
 - b. The *needs* of communities pertaining to schools (cf. the *wants* of communities); *and*
 - c. Whether *sufficient choice* is already provided for the identified *needs* of those communities (cf. increasing choice ‘for the sake of it’ or beyond a ‘sufficient’ level of choice).

4. Relating to the policy context for education considerations is the “joint policy statement” of the DCLG and DfE (at DOBSON apx6)¹. This identifies the Government’s commitment to ensuring “**sufficient provision**” to “*meet growing demand for state-funded school places, increasing choice and opportunity in state-*

¹ The joint policy statement is a document which is published in August 2011 and so, as it pre-dates the NPPF, must be interpreted in light of the (later) NPPF 72 and should any conflict between the two arise the NPPF would be expected to take precedence

funded education and raising educational standards.". In that context (sufficiency of provision and the limits of the NPPF) the 2011 policy statement sets out a presumption in favour of development of state-funded schools. That presumption, couched in sufficiency and need (and not reiterated in NPPF 72), must be set in a wider policy context.

5. The wider policy context of the appeal proposals includes the Green Belt, within which this inappropriate development is proposed. As per NPPF 88, substantial weight should be given to any harm to the GB and Very Special Circumstances will not exist unless the potential harm by way of inappropriateness and any other identified harm is clearly outweighed by other considerations.
6. In the *Bishop's Stortford* decision [CD21.14] at Inspector's DL747 (supported by SoS) the interaction of the 2011 policy statement and GB policy is addressed; the 2011 policy statement does not purport to override Green Belt policy, to which the Government is still clearly committed. Moreover the 2011 statement itself refers back to the (then) draft NPPF which makes it plain that where there are adverse planning impacts, the proposals should be refused, and that there is no suggestion that the 2011 policy statement should over-ride other planning considerations but that it should be read alongside GB policy.
7. In addition to engaging GB policy the proposals impact on designated heritage assets leading to less than substantial harm and so the proposals require an assessment of the level of such harm against the public benefits of the proposals

(per NPPF 134) and also engaging the specific statutory duties under the Listed Building Act ('LBA')².

8. As regards the development plan Effingham is classified as a large village, unsuitable for substantial growth but capable of accommodating a proportionate extension under Guildford Borough Council's 'Settlement Hierarchy and Profiles'. Under the 2003 Local Plan all three sites are within the GB; under the emerging Local Plan Site 3 remains in the GB, classified as "high sensitivity" in GBC's 'Green Belt and Countryside Study' (at Appendix 1, 'Green Belt Purposes Schedule', of the Volume II Addendum, April 2014 (parcel D10)³).
9. The Effingham Neighbourhood Plan (2016-2030) has been submitted for examination and so, whilst not forming part of the development plan, is plainly a material consideration in policy terms. Moreover EPC submit the weight the Submission ENP attracts should be informed:
 - a. By the likely further progressed stage of the SENP at the point any decision in relation to the appeal proposals is taken; *and*
 - b. In light of s1 Neighbourhood Planning Act 2017 which, when in force, will require that when determining applications for permission the LPA must have regard to a post-examination neighbourhood plan⁴.

² The Planning (Listed Buildings and Conservation Areas) Act 1990

³ D10-A being identified as providing an opportunity to accommodate development without significantly compromising the purposes of the GB, noting that the parcels scored highly in the GB Purposes Assessment (12.11 Vol III, page 12 Pegasus document); 12.12 going on to identify that D10-A is affected by the adjacent Thornet Wood SNCI and Ancient Woodland and being to the north of the Effingham Conservation Area, which provides a partial constraint to any proposed development.

⁴ Section 70(2)(aza) and s70(3B) Town and Country Planning Act 1990

10. In terms of conflict with the SENP, the proposals conflict with ENP-G1 and SA3 which steers development to within the settlement (G1) as per the 2003 Local Plan or (in effect) the Inset Boundary of the emerging Local Plan, along with allocated sites (SA3). To that end, the appeal proposals can be seen as effectively negating and almost totally destroying (HOGGER XIC) the considered (and consulted upon) approach adopted by the SENP⁵. The proposals conflict with the wildlife corridor provided for under ENP-ENV2, Local Green Spaces as addressed under ENP-ENV1, and schools under ENP-C6. This is no small degree of conflict.

11. It is suggested by the Appellant that little weight be given to the SENP because of:

- a. Unknown compliance with the emerging local plan; *and*
- b. Its draft status [RHODES 3.80].

12. Draft status is already addressed; on (a) above in RHODES XIC he stated that if SENP survives examination, is passed, and then made, then we'll need to have regard to it. EPC submit that the SENP attracts weight in any event; RHODES' reservations (and therefore assessment of weight to SENP at this stage) are misgiven. His XIC was that *'as soon as new LP is produced it will be necessary to look again at NP otherwise there's a risk that NP is seriously out of date'*. He went on to suggest that the NP "housing requirement" is derived solely from EPC's own survey of residents rather than seeking to align with the Local Plan. Its current consistency with PSLP was described as a "coincidence"; but p42 of the NP does

⁵ And this was also the effect of the proposals on the ENP identified by the HPTrust response to the ENP Regulation 14 consultation [CD10.17] – that the ENP would have to take account of the decision in this appeal, rather than vice versa

say that its housing proposals are in line with the assumed requirements of the PSLP.

13. This does a disservice to the SENP which is explicit in the extensive provision of, and for, housing above and beyond that proposed in the emerging Local Plan and which is rooted in the 2015 SHMA and 2016 availability assessment:

- a. **Page 41** that a Housing Requirement Survey was carried out in Effingham to provide a local assessment of housing need within the Plan Area to supplement the 2015 SHMA;
- b. That the 52 homes at SENP-H1 is a “minimum target” and anticipates delivering a greater number of homes within the ENP period;
- c. The 2016 Land Availability Assessment identifies sites within the inset boundary proposed in the emerging Local Plan as realistic candidates for 43 dwellings in the ENP (a Plan which sets a minimum housing target);
- d. **Page 42** that the ENP will provide more new homes than are assumed by the 2016 emerging Local Plan;
- e. The four allocated sites in the ENP and in the GB are all ‘not inappropriate’ in GB policy terms per NPPF 89;
- f. **Page 43** that windfall sites are likely to increase and continue to come forward in the Plan Area and provide significant amounts of additional housing;
- g. That the target of at least 52 homes is consistent with the emerging Local Plan.

14. EPC submit it is not a defensible position to assert that little weight attaches to the SENP – it attracts at least modest weight, if not more, because it is plainly in accordance with national policy and strategic policies of the current and emerging Local Plans. The NPPG expressly provides for NPs being made before a LP is adopted, including the need for such a NP to comply with the strategic policies of both the current and emerging Local Plans (which SENP does); notably the Appellant makes no suggestion that the SENP in any way conflicts with that Guidance.

RICHBOROUGH ESTATES/SUFFOLK COASTAL⁶

15. The effect of the ruling of the Supreme Court can be summarised thus – on the question of whether a relevant policy has become out-of-date, whether that is so, and with what consequence, is a matter of planning judgement unrelated to paragraph 49 which deals only with housing supply. This determination may in turn have an effect on other related policies.

16. This may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But that is a matter of pure planning judgement. Housing policies deemed “out-of-date” under paragraph 49 must also be read in that light.

⁶ *Richborough Estates Partnership LLP and another v Cheshire East Borough Council* [2017] UKSC 37

17. Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the “tilted balance”.

18. EPC submits that there is no ‘tilted balance’ here because of the GB designation which, per NPPF 14 fn9, precludes the tilted balance. Ultimately degrees of weight for various factors are a matter for the decision taker.

HARMS AND BENEFITS

19. The benefits of the appeal proposals have been set out extensively in evidence by the Inquiry and undoubtedly the appeal proposal has benefits in the form of provision of market and affordable housing⁷ and community benefits⁸. Education benefits will also arise – the provision of new school facilities must count as a benefit, however the weight to be given requires careful consideration.

NEED

20. A new and expanded school is not necessary to meet a basic demographic need⁹. The SCC 2017 statement (DOBSON apx 9) explains the clear distinction between need and demand, and why school-level demand is not used to determine the need for provision of additional places. The table at DOBSON reb pg11 shows a deficit in places in the Effingham Planning Area however, properly understood and contextualised in terms of need, demand and planning areas, all this shows is that for a handful of years there will be pupils in the Effingham planning area who will

⁷ Against the background of the absence of a 5yr housing land supply

⁸ For example improvements to the KGV hall

⁹ Meeting a demographic need in Effingham planning area was not how the Appellants put their case at application stage – CD1.11 apx D

have to be accommodated in schools in the Leatherhead planning area, or perhaps another planning area (the excerpt here shows no other planning areas despite there being clear evidence that pupils come to the HoE school from a wider geographical area). All of this has to be understood against a background that this only actually arises if all children living in the Effingham planning area choose HoE as a 1st preference (or express a 1st preference for a school outside the Effingham planning area but fail to achieve their 1st preference and, because they live in catchment, then go to HoE).

21. Evidence is provided as to how many pupils currently from *within* the Effingham planning area choose to go to schools *outside* the Effingham planning area; MOSS was clear in XIC¹⁰ that 2FE (of 8FE) attending HoE school do so *despite* having expressed a 1st preference for another school (which must, by definition, be outside the Effingham planning area) but failed to achieve that place. The effect of the catchment area they live in being given equal weight to a 1st preference is to place those pupils to attend the HoE – not their choice of school, but a placement arising because of available capacity at the HoE and a lack of available capacity elsewhere. The same ‘catchment trap’ will continue to operate (and operate on a larger scale) should capacity at the HoE expand – it will then be able to take *more* students from within its catchment, which will operate to deny pupils who express a 1st choice to go elsewhere, their 1st choice – because on an equal footing between 1st choice to go elsewhere and provision in HoE catchment, those pupils will be directed to the HoE instead of their 1st choice.

¹⁰ Not contradicted by DOBSON

22. When understood that way not only is there no problem in accommodating pupils in other planning areas, but the accommodation of pupils in other planning areas is the natural consequence of seeking to allow pupils choice between schools. It is something which already happens and is not suggested to be problematic – HoE are not complaining that they attract pupils from other planning areas; how then does it become problematic for pupils to move out of the Effingham planning area to go to school or for their 1st preference school? To think otherwise (i.e. to assume that all pupils living in the Effingham planning area¹¹ should be accommodated in the planning area and attend the HoE) is the polar opposite of increasing choice. As MOSS demonstrated, the HoE catchment area already operates to effectively deny 2FE pupils their choice of school, purely because they live within the HoE catchment area. It's not just MOSS and CLYNE however; the same issue was aired by Julia Dickinson - children who express a preference for HoE can be frustrated because places are often granted to applicants living within catchment but who expressed a preference to attend a school in a different planning area because HoE is their nearest alternative school.

23. The reality of increasing choice in this area is SCC's planned expansions of FE at schools near and around the border of the Effingham planning area – see MOSS at 3.21 showing more than 14FE to come 'on stream' by 2017/18. That will increase choice by allowing students within the HoE catchment expressing preferences to go elsewhere to actually go elsewhere, releasing places currently taken at HoE for

¹¹ Not the catchment area, as the catchment area is simply a tool used to control admissions and does not denote a need or desire to attend a certain school

those outside catchment¹² who express a preference to go to HoE but currently are prevented by those living in catchment but failing to make their 1st preference 'out-of-planning-area' school.

24. Even in a scenario where 'bulge' classes are required for Effingham planning area (because all of the children there decide that year to attend HoE instead of other schools as they historically always have) the small number of years which cannot be accommodated in either Effingham or Leatherhead planning areas requires no *permanent* increase in FE; Surrey and CLYNE confirm this. If needed SCC propose to use 'bulge' classes given the temporary nature of the increase. DOBSON XX (JF) stated that the operation of 'bulge' classes required the co-operation of schools which were free to refuse to accept the same, however there is no evidence supporting a view that any school would refuse to co-operate with SCC to ensure the temporary increase in need is met. And again, 'bulge' classes at HoE are only an issue if in that year every child living in the planning area chooses to go to HoE.
25. Perhaps (sadly) most telling is the question of money. As highlighted in DOBSON XX (JF) "*Making Significant Changes to an Open Academy*" (CLYNE apx 4) at CLYNE apx pg63 "*Where an academy agrees to expand in response to a proposal by an LA to meet a local need for places, the LA should meet these costs.*". There is no intention by (and no request of) SCC to fund the expansion sought – the proposals therefore plainly do not relate to meeting a 'need' for places (otherwise SCC would be – and would be expected to be – paying for those places).

¹² Recollecting that since 2010 HoE has placed all pupils living within catchment expressing a preference for HoE and a number of students from out of catchment, all on their current PAN

26. The consequential disruptive effects on SCC's wider, cohesive plan for education provision across Surrey were set out by MOSS and CLYNE (and such effects are clearly in the Government's mind underpinning CLYNE apx pg54, addressing steps to be taken where a change is proposed which either the LA or neighbouring schools consider may undermine the quality of education provided by other good or outstanding schools in the area by creating additional places where there is already surplus capacity. And, again, following the money, both BARNFIELD and DOBSON confirmed (XX) that funding for schools is (at least in part) per capita. If HoE does draw students away from other schools, that per capita funding goes to the HoE (actually it goes to the Trust) and does not go to that 'other' school. This is also reflected in the NAO "Capital Funding For Schools" Feb 2017 (CLYNE apx pg 691, 709 710 that spare capacity due to increased provision nearby could have a moderate to high impact on the funding of neighbouring schools and a consequential risk that pressure on funding may adversely affect standards in existing good or outstanding neighbouring schools.

27. Is the HoE now as outstanding as 2009 Ofsted might suggest? Its Progress8 score¹³ is -0.04, squarely average in the nation and where 40% of schools currently sit. Progress8 is the emerging measure of school performance which the Government is moving to; PENNINGTON at pains to explain (XX) the lack of historical comparator, however that lack of *historical* context does nothing to explain how other schools in the area achieve *much* higher Progress8 ('value-added') scores (MOSS apx 7 – St Andrews achieves +1.08 'well above national average'; St Peters at +0.59 'well above national average'; Therfield (proposed to

¹³ The measure of "value-added" by a school from KS2 to KS4, with "0" representing no value added

accommodate students from the Effingham planning area) achieves a higher Progress8 than HoE at +0.05). PENNINGTON's 'lack of historical context' point also doesn't explain why the Trust itself accepts the Government's shift in key performance indicators to Progress8 (CLYNE apx pg 749/750) and uses Progress8 as measures in its own internal reports (CLYNE apx pg 750, 751 for Thomas Knyvett, 752 for Oxted etc). Incidentally the Trust's assertion that "Progress8 scores are not published to students" does not sit easily with the fact that all Progress8 (and Attainment8) scores are freely available through the Government website "www.compare-school-performance.service.gov.uk".

28. One final point on 6th form provision – despite PENNINGTON's protestations to the contrary, the only quantification of demand for 6th form provision beyond that currently existing is to be found at CD10.11 (SCOTT BROWNRIGG EN REPORT) at pg53 which estimates that *"up to 10 students each year who would have chosen to stay, leave because of the limited facilities available for the courses they have chosen."*

BUILDINGS

29. The reality of HoE's suitability, sufficiency and condition might best be neatly summarised with the Appellants acceptance that should the appeal fail the HoE will continue with what buildings they have. This is not a school on the point of closure due to inadequacy of buildings; they are not about to turn students away for fear of mishap or litigation. Nor has the suitability, sufficiency or condition of the buildings affected the HoE Ofsted – PENNINGTON quite clear that the situation regarding the buildings was very much the same as in 2009 when rated

“Outstanding”. As BARNFIELD accepted (XX) any risk exposure of a school in the Trust, or to the Trust itself, would be identified, assessed then addressed or mitigated within the risk appetite of the school concerned and the Trust. Any exposure that couldn’t be addressed or mitigated would have to be flagged for the Trust and the Trust would have to take steps or acknowledge an unresolved concern before their accounts and finances could be signed off. No unmitigated, unaddressed, inappropriate or unusual risks relating to buildings at HoE (or anywhere in the Trust estate) appear in the Trust financial statements or report (CLYNE apx pg 757, 758). The “risk of prosecution or civil litigation” that concerns OLIFF (his 4.92 pg53) clearly does not so concern the HoE nor the Trust.

30. On suitability/sufficiency, the Appellants put forward the poor working conditions for staff and learning conditions for pupils; recall the lobbying that PENNINGTON had to do of the Trust to get them to relinquish the ground floor of the Eco Building for 6th Form use (albeit that PENNINGTON would rather have had the whole building for the 6th Form).

31. BARNFIELD (POE pg11) tells us that the Eco Building arrived 2009 – a point when it couldn’t have been used for Trust purposes since the Trust didn’t come into existence until 8th April 2011¹⁴. What can be seen is that the decreasing space for teachers/teaching appears to be related at least in part to the expansion of the Trust and its staff¹⁵. PENNINGTON tells us so expressly at 3.6 and in XX that the

¹⁴ See the Trustees Report at CLYNE apx pg 745 – Trust incorporation 8th April 2011, took over HoE School from 1st July 2011, 2013 became a MAT and changed its name to THPT

¹⁵ Recollect PENNINGTON’s evidence that student numbers at HoE have remained stable for some time – 3.5

conversion of storerooms and toilets she described at her 3.18 was to accommodate partnership growth and changes in leadership structure.

32. OLIFF accepted that the condition of the HoE is materially no different to that of thousands of other schools; within the acknowledged general condition of the wider school estate however both Gleeds and the PDS assess the HoE buildings (taking into consideration the age, context and construction of the various blocks and their usage) the majority of Howard of Effingham School was deemed satisfactory from a building condition perspective (e.g. CD10.12 para 1.4) with some 89% of building elements in either good or satisfactory condition. The HoE did not challenge the PDS survey results; BARNFIELD (XIC) said this was because *'certainly the guidance in the PDS document said it would not be used to target funding – that it was a strategic guidance document for Government and nothing more than that'* which unfortunately is the precise opposite of what the PDS explicitly stated about itself – *“The PDS information **will be used by the department later in the year to help target future capital investment** to identify where school building condition needs are greatest and to help shape future capital allocations.”* (emphasis added) (EPC SoC apx 2 at para 1.1)

33. Decisions to adopt a failure/replace maintenance policy over a lifecycle maintenance approach; to spend no more than necessary on maintenance and not to even bid for funding for works (e.g. PSBP2) are all management decisions, seemingly centred or focussed on impending provision of a new school. BARNFIELD up front that since joining the HoE she had the ambition of replacing the school buildings entirely (4.7). Later years saw what BARNFIELD

describes as 'seeking all opportunities to invest in the school buildings' (4.8) seemingly drop away, given that the HoE did not apply for PSBP2 because it did not fit with the vision of a complete rebuild. That lack of application for PSBP2 was unfortunate to say the least – PSBP2 *automatically* included blocks rated as condition D by the PDS and which required substantial funding and otherwise outside the programme (CLYNE apx pg 251 – PSBP2 Methodology); likewise PSPB2 automatically included any blocks with a significant structural issue or asbestos that could only be sustainably addressed by rebuilding (CLYNE as above). This is all reminiscent of the NAO warnings and cautions that lack of maintenance and failure to invest in preventative maintenance was a major barrier to improving the condition of school buildings, with a risk of creating a perverse incentive as school leaders could let buildings in poor condition deteriorate further so they meet criteria for replacement (CLYNE apx pg 720).

34. For reasons which remain unknown the HoE asbestos records were not maintained which, combined with the failure/replace policy led to the “£40,000” repair bill for the art and textiles light fittings¹⁶. The bid for funding for this was unsuccessful as HoE was expected to meet the costs itself, which it did – unsurprising given the Trust financial statement shows across all schools in the Trust c.£4.5million is spent on buildings and maintenance (CLYNE apx pg 790) (recollecting PENNINGTON’s evidence in XX (JF) of an annual maintenance budget for the HoE school of c.£80,000 and OLIFF’s c.£200,000 across two years). Of a total income to the Trust of c.£79million (CLYNE apx pg 756) the operational surplus of the Trust was c.£1.4million.

¹⁶ Although BARNFIELD notes an emergency application cost of £18,968 – Table 2 at BARNFIELD pg18

35. It is against that background that we must take the assertion of inability to spend c.£100,000 on security measures (within which an unspecified element was for boundary fencing) (PENNINGTON 3.13(ii)). This might be thought of as especially odd given, when asked by Insp whether PENNINGTON saw the problems at HoE occurring as she went to other schools, replied with her concern regarding how open the HoE site was.
36. That openness derives seemingly from two points – the car park entrance and the footpath. On those, the primary concern for the car park entrance was joggers and the potential for collision with pupils – although PENNINGTON was quite blunt that such collisions, if occurring just outside the school entrance on the pavement were of no concern to the school since that was off school property (XX) and she provided no instance of this actually having happened on school property; seemingly no thought appears to have been given to the use of gates across the car park entrance to prevent joggers from entering.
37. Similarly the footpath – following an earlier (2009) informal consultation, because of indications that consent for diversion or closure would not be forthcoming the school did not progress seeking any form of Order for diversion, or temporary or permanent closure of the path. Putting aside the (likely criminal) behaviour of the single deliberately intimidating individual PENNINGTON described – in relation to whom both the criminal justice system and civil litigation provide controls over in the form of various orders of restraint – the concern expressed by PENNINGTON is of interaction between pupils and ordinary members of the public. PENNINGTON makes the point that ‘the school doesn’t know who they are’

– but this doesn't seem to hold the school back from using KGV fields for orienteering (CORNWELL XIC).

38. As regards wider car park safety concerns, PENNINGTON talked of two incidents in 2013 (a parent reversed into a teacher's car and a school bus struck a teacher's car while turning) and one incident in Jan 2017 where two cars "were damaged" (presumably as one driver misjudged the space and tried to squeeze out). Again despite PENNINGTON urging in her POE that these occur 'frequently' and there are 'many' of these incidents, only three are identified. In addition to those three are the annual demolition of a brick pillar by a school bus (inviting the obvious question as to why this is continually rebuilt) and the off-site "over-turning" incident (which actually wasn't) of 2014.

39. On the Cullum Centre, BARNFIELD's evidence on the approach to her is noted, but the fact remains that there is no reflection of what she says in the recorded position as regards SCC. There is nothing to suggest that the Cullum Centre for the HoE was in any way dependent on the provision of a new school with a separate block, indeed the very ethos of the NAS and Cullum Centres are inclusion in and integration with the mainstream student body for upwards of 60% of a pupil's time in school. The other three (of four) centres are open and operating, only the HoE's is not. This has to be seen in the wider context of the school's management decisions not to apply for funds for rebuilding of individual or groups of blocks which might then, in rebuilding, have accommodated the Centre, but to wait for comprehensive rebuilding of the entire school.

ECOLOGY

40. The approach to ecological considerations is of great concern to EPC, from the misidentification of (and subsequent inadequate investigation of the flora and fauna of) the marshy grassland area to the north of the Effingham Lodge Farm site – which FINNIE accepted (XX) was at least a ‘checkerboard’ of the same and which was not represented as such in the ES (indeed ‘marshy grassland’ does not appear at all in the ES), through the downplaying of the value of the Ancient Woodland and SNCI that is Thornet Wood (from a single visit at a sub-optimal time of year) to the seemingly wholesale disregard of the position regarding potential bat use of the site and wildlife corridor. The overall character of the approach can be illustrated with that taken to HSI assessment (in relation to GCN) – the ES contains HSI scores for ponds which were not visited; FINNIE was critical of WHITBY’s approach in assessing likely fish use of a pond in informing his HSI scores without acknowledging that he similarly reached a view on HSI without even visiting some of the ponds scored.

41. Of more concern by the close of the Inquiry is the situation as regards bats. It is clear from the Appellants’ own evidence that bats use the northern and eastern boundary of the Effingham Lodge Farm site – this is where the majority of registrations in the surveys for the ES are made (ES 9.5.49 – CD1.20).

42. At the time of the ES a brown long eared bat roost is found in the science block roof space; latterly we know from the Surrey Bat Group that in Bookham Common myotis bat species have been recorded and that the whiskered, Brandts, Alcatheo bat (found in only 3 counties in the UK) and the Bechsteins bat (an Annexe II

species) are among them¹⁷. The Surrey Bat Group note that this is one of the very few woodland sites where all three small myotis bats have been found together and that the Thornet Wood woodland is close to, and connected by, linear landscape features¹⁸ to Bookham Common. This leads the Surrey Bat Group to the conclusion that it is reasonable to assume (until proven otherwise) that the same bat species are present¹⁹. FINNIE's 'updating' 2016 survey work confirms the registration of "unknown" bat types along the eastern and northern boundaries of Effingham Lodge Farm²⁰.

43. As both FINNIE (XX) and WHITBY (XIC) agree, different bat species are affected by differing levels of light in different ways. The difficulty then is this – there is plainly evidence of potentially nationally important groupings of bats in very close proximity – bats which will use linear landscape features to commute and forage, where such linear landscape features are present and are clearly on the Appellants case being used by "unknown" bat types. It is not possible on that basis to be satisfied as to the 'in principle' acceptability or otherwise of the impact of the proposed development on bats. A condition for more survey work is not proposed and in any event could not remedy the situation, since a decision taker needs to know now, at the stage of granting permission, that any impact is acceptable in planning terms. EPC submit that on the evidence before the Inquiry that is not possible.

¹⁷ Confirmed primarily by acoustic lure and harp trap

¹⁸ The wildlife corridor as per ENP-ENV2

¹⁹ WHITBY apx 2

²⁰ FINNIE reb table 5 (static detector registrations)

44. That the 'linear landscape features' comprising the wildlife corridor as set out in ENP-ENV2 is actually being used by wildlife (see the bat registrations obtained by FINNIE) undermines FINNIE's suggestion that the wildlife corridor is not of value or that his alternative proposed corridor should be used instead. FINNIE was not able in XX to explain how his alternative route (which crosses multiple residential plots – cf. ENP-ENV2 which does not) provided any better corridor. Staying with the topic of bats, FINNIE's proposed alternative contains no linear landscape features (which he agreed in XX are used by bats – bats don't fly out across open fields by and large, they get predated and/or there is little food for them). But FINNIE's proposed alternative requires that they fly through open residential gardens, not along linear features, and across land with unknown and uncontrolled levels of lighting (security lighting, plus the presence of street lighting on Water Lane). The built form of the school (and all the human activity and lighting that comes with it – especially for car parking and the proposed community uses including gym and other classes in the evening) will have an unknown impact on the wildlife using the corridor (including the previously discussed bats) and will effectively sever the corridor.

NEIGHBOURHOOD PLAN

45. The appeal proposals directly conflict with, and attempt to ride roughshod over, many policies of the SENP (see policy context above). From severing the wildlife corridor to fundamentally ignoring the spatial strategy and housing allocations (themselves arising from the SHMA and SHLAA). The reality is that the HoE expect the NP to conform to the Trust and the school's ideas for the future and development of Effingham – there is no other way to read CD10.17 (THPT

response to ENP consultation) that *“In due course, the Neighbourhood Plan will need to...reflect the outcome of the planning appeal decision relating to the Howard of Effingham School’s proposals.”* – that comment encapsulates entirely the clearest example of the tail of an appeal scheme wagging the dog of the plan process. There is no regard by the HoE to the extensive community engagement and consultation on the SENP (see pg20+) ongoing over a four-year period for a plan setting out as comprehensive a plan as possible for all of Effingham, reflecting the needs and aspirations of Effingham Parish, not just one element of that community.

46. As per HOGGER (XX) it is not a ‘nimby’ NP, it is a NP to support the development of Effingham to meet the needs of all members of its community in a measured and planned approach, improving facilities and services for all residents while enhancing and promoting the essential character and landscape of the village, providing development appropriate to the objectively assessed needs of the community.

47. It would be nothing short of astonishing for a community which has so positively embraced the ethos and practice of localism to then be ignored – and worse, directly contradicted and overridden, by one appeal scheme which will, at a stroke, render pointless so much of a submitted NP.

HERITAGE

48. EPC maintains that the proposals for all three sites, individually and collectively, fail to respond positively to the distinct character of Effingham and will change the shape of Effingham village, causing considerable, direct and irreversible harm to

the setting of the designated heritage assets which are the Effingham and Little Bookham Conservation Areas and having a harmful impact on the settings of identified Listed Buildings. As per *Forge Field*²¹ a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong (albeit rebuttable) presumption against planning permission being granted and that the desirability of preservation be given considerable importance and weight in discharging a decision-taker's statutory duties under ss66 and 72 LBA. These harms stand for assessment alone (as per NPPF 134 and ss66 and 72 LBA) and add cumulatively to the harm by way of inappropriateness. BELL's assessment of the level of harm was that it is considerable, albeit less than substantial (in terms of NPPF 134).

49. The Inspector will now be familiar with the sites concerned in this appeal and with the character, setting and heritage assets in and around Effingham. It is therefore not intended to repeat the same orally however attention is drawn to BELL's POE and his description of the significance of the designated heritage assets, the character and settings of the three sites which are the subject of this application at paragraphs 2.4 to 2.9, Effingham Conservation Area (and heritage assets at paragraphs 4.4 to 4.18) and Little Bookham Conservation Area (and heritage assets at paragraphs 4.19 to 4.27).

50. NPPF 134 is applicable here; also relevant is NPPG paragraph 009 confirms that *'Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the*

²¹ *R. (on the application of the Forge Field Society, Barraud and Rees) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), following from *East Northamptonshire DC v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137 [2015] 1 WLR 45 ('Barnwell Manor')

significance of a heritage asset and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals.'

At paragraph 013 detailed guidance is provided on how the setting of a heritage asset should be taken into account.

51. The most significant harm caused by the appeal proposals is that the scale of development overwhelms the historic village of Effingham which is quintessentially small in scale and historic in nature having escaped extensive redevelopment or extensive post-war expansion instead retaining its evolved medieval form as well as most of its rural separation and setting [BELL, 5.2]. BELL is clear in his proof that these are the characteristics which make it special and gave rise to its designation as a conservation area [BELL 5.2].

52. The scale of development in the appeal proposals is disproportionate and contrary to Effingham's natural evolution and growth which gave rise to its character. This would amount to a *"revolutionary change in the shape and morphology of the village which cannot fail to harm its distinct character"* [BELL 5.3]. An additional 295 dwellings (37 within the conservation area and 258 alongside it) - an increase of 83% set against the current 353 dwellings in the historic village - will irreversibly change the way in which the historic village of Effingham is perceived; from an evolved medieval village in rural surroundings to a much larger modern suburb with a historic core [BELL 5.4].

53. BELL is clear that even if such development were well designed, it could not assimilate well into the fine grain and historic parameters of the village and would

remove historic green spaces which contributes so much to character and provides the valuable historic and visual context to the village [BELL, 5.5-5.6]. This development will cause demonstrable harm and as such clearly fails to conserve the heritage assets in a manner appropriate to their significance and so cannot achieve the NPPF objective of sustainable development [BELL 5.7].

54. Site 1, the appeal proposals would extend well beyond the footprint of the existing school buildings, on land currently used as playing fields and tennis courts closing the green gap which is a significant feature in defining the setting of both Effingham and Little Bookham Conservation Areas [BELL 5.9]. The development would connect the two ancient settlements for the first time causing a loss of their separate identities and impacting negatively on the setting of both conservation areas when viewed from Lower Road [BELL 5.9]. This coalescing can be seen in maps and plans showing the proposed development.

55. The development will have a harmful impact on the setting of Little Bookham Parish Church (Grade II*) as, unlike some village churches which gain significance and character from being at the heart of a village, Little Bookham Parish Church is significant for its rural surroundings and for its relative tranquillity which make it special and contribute to its significance [BELL 5.11]. Mr Bell is clear that Development within 45m of the existing graveyard cannot fail to cause harm to its unspoiled rural setting and to its tranquillity and relative remoteness. Even if the visual impact of the development is mitigated by sensitive landscaping the tranquil quality of the place and the value of its green setting will be diminished [BELL 5.11].

56. With regard to Little Lodge, the former gate house to Effingham Lodge (locally listed), although it appears to be retained on the indicative layout the development fails to respond to its significance in any positive way. The historic significance of Little Lodge could be better revealed if the geometry of the historic carriage drive to Effingham Lodge were used as the basis for the proposed road layout which would enhance understanding and legibility of the architectural and historic significance of Little Lodge and Effingham Lodge (Grade II), both of which currently lack their historic contexts [BELL 5.12].

57. Site 2, Browns Field, falls within the Effingham Conservation Area and sits within close proximity to a handful of listed buildings and locally listed buildings. Historically part of Manor Farm, now Browns Farm, its heritage significance derives from its historical link, farmland to farm, to the farming village and from its green and pleasant character [BELL 5.14]. It also serves the important role of providing the green gap between the historic village and the 20th century housing development to the south of Guildford Road [BELL 5.14]. When viewed in the context of the other fields and playing fields around the periphery of the village, it makes a very significant contribution to the way in which the historic village is perceived [BELL 5.16].

58. BELL is clear that the appeal proposals on site 2 would compromise the ability of the onlooker to comprehend the modest size and distinctness of the historic village, diminishing the strong relationship between the village and its green surroundings, and coalescing the medieval village with the suburban 20th century

housing to the south [BELL 5.17]. It will have an urbanising effect on the character of Guildford Road, Brown's Lane and to a lesser extent The Street. All these impacts are harmful to the special character and appearance of Effingham Conservation Area and the setting of the listed buildings and locally listed buildings which are adjacent to the site.

59. Site 3, Lodge Farm, is the largest at 19.7 hectares and provides the rural backdrop to both Effingham and Little Bookham Conservation Areas. It also helps to reinforce the separate identity of the two distinct medieval settlements and enhances the perception of both villages as isolated and modest rural settlements [BELL 5.28]. Mr Bell is clear that the appeal proposals on this site will be harmful to the setting of both conservation areas because it will remove the significant green gap which separates and gives identity to both conservation areas [BELL 5.29].

60. In particular, on the north side of Lower Road, the proposals will result in continuous built development from Effingham through to Little Bookham then Great Bookham and Fetcham some several miles to the east. It will directly affect views into and out of the conservation area [BELL 5.30]. Whilst it is accepted that views of the conservation area from the north across farmland are largely (but not exclusively) private, NPPG 013 is clear that *'The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance.'* The significance of the conservation area, when viewed across the proposed housing development and school, instead of across farmland, will be

harmed. Views from the conservation area across farmland to Thornet Wood, from the Church of Our Lady of Sorrows and the British Legion site, will also be urbanised and will be harmed as a result [BELL 5.30].

61. BELL further emphasises the impact of the development on the shape of Effingham village which he states will be significantly changed; any new development should reinforce local distinctiveness and special character rather than dilute it therefore needs to be of a scale and type which builds on the very special characteristics of the place [BELL 5.31] which this development is not.

62. Overall, the impact of development across the three sites will plainly be harmful and (per BELL) considerable, albeit less than substantial in terms of NPPF 134. The modest scale of the historic village would plainly be overwhelmed transforming the historic settlement, with its tight-knit grain and cumulative layers of history.

DESIGN OF BROWNS FIELD

63. NPPF 58 and 60 state that planning decisions should aim to ensure that development responds to local character and history, reflect the identity of local surroundings and materials, and promote or reinforce local distinctiveness.

64. BELL was clear that part of the harm to character and setting derives from the poor design of the proposed houses and the site layout [BELL 5.17]. The proposed site layout and the proposed architectural and highway designs falls short in several respects: the layout of the highway has the character of a suburban estate

layout which relates poorly to the urban grain of Effingham; many of the houses are inward looking or fail to address the street in the way that is well established in the conservation area; and the architectural treatment of the dwellings lacks integrity [BELL, 2.16]. He further emphasises his view that development of this type, which does not reinforce local distinctiveness or respond positively to an area's special character, inevitably dilutes it and as such the detailed proposals for the Browns Field site cause harm to the special character and appearance of Effingham Conservation Area [BELL, 2.16].

65. BELL emphasises that the character of the conservation area derives from houses which directly address the historic streets and are set at the back of pavement or behind small front gardens, and criticises the houses in the proposed layout for failing to directly address the historic streets [BELL 5.19; see also 5.20-5.22]. Furthermore, Mr Bell asserts that the proposed highway layout fails to respond to the historic grain of the conservation area due to being designed around organic, branch-like 'estate roads' with all the characteristics of modern suburban housing layouts and no relation at all to the pattern set in the rest of the conservation area nor to the distinct character of Effingham Conservation Area resulting in its own distinct character which will not integrate well and will cause harm to the special character [BELL 5.23]. His wider concern was that the development itself has little regard to its historic context and fails to respond positively to its conservation area surroundings. Consequently it is poorly integrated into the historic environment and causes harm (less than substantial) to the character of the conservation area and the setting of the designated and non-designated heritage assets. Such conclusions sit with the clear discomfort

experienced by GROVER on being asked (Insp) whether the scheme represented something he would promote in teaching materials.

HIGHWAYS

66. Whilst it is acknowledged that the LPA and Appellant have now agreed the situation regarding highways and traffic impacts, EPC remain concerned as to the highways impact that the development proposals will have locally.

67. It is regrettable that the Appellant did not engage with EPC earlier in the process and more readily as set out by Cliff Hackett. Had that opportunity not been missed, it is likely that many of the issues leading up to (and in to) the Inquiry may well have been narrowed before the inquiry opened. FOXALL accepted (XX) that he wouldn't criticise EPC as lay people for not having been able to reassess their case until after receipt of both proofs and rebuttal and that he appreciated that EPC would want to see as much as possible [FOXALL XX]. Notably, when presented with the detail of the appellants case (as the LPA and SCC were) EPC reacted appropriately and amended their stance accordingly and reasonably. As previously mentioned, it is regrettable that the appellants did not choose to engage with EPC earlier and in more detail at stages earlier than exchange of proofs and rebuttals.

68. HACKETT was clear that the everyday experience of residents and visitors to Effingham is that roads around the village are congested – especially so at school times – and voiced EPC's concerns as to the likely negative impacts of increased traffic from the proposals. EPC remain concerned (as per HACKETT) that the

inputs used for analysis do not sufficiently match the reality of Effingham, given that in local residents' views some of the outputs – such as short queues dispersing quickly – do not match what is experienced on the ground locally [HACKETT XIC]. To that end the Inspector is drawn to Appendix 2 – the pedestrian and vehicle survey produced by Mr Hackett to his proof – and to the photographs at his Appendix 4. In short, EPC fairly acknowledges that they are not experts but rightly points to their local knowledge which should assist to inform the data output, rather than (for example):

- a. The site selection criteria used (at Appendix L (Transport Assessment) and Appendix M (Transport Assessment) locations “suburban area” and “edge of town” have been selected) - Effingham which is more reasonably described as “village” or “out of town” [HACKETT 3.22 and 3.30].
- b. Appendix L one can see that “all” has been selected for public transport which may therefore include sites where such transport is better than poor. Mr Hackett is clear that public transport in Effingham is inadequate. Mr Foxall doesn't dispute the accuracy of what Mr Hackett says about public transport provision [FOXALL rebuttal 3.22; FOXALL XX] however disagrees that it is inadequate. EPC emphasise that it plainly is [HACKETT 3.13 – 3.14];
- c. The adherence to (albeit industry-standard) consideration of AM and PM network peak times may well leave a distorted view of the actual peak traffic in the area which will be heavily affected by school run traffic;

- d. No account appears to have been taken of the KGV carpark or lower end of Church Road with regard to drop off points meaning that the drop off rates are likely underestimated [HACKETT 3.42 and 3.46].

69. The consequential effects are (in EPC's view) that even if the link road from Lower Road to Effingham Common Road does divert some school traffic away from the centre of the village and the mini roundabouts, the development will lead to increased traffic on the narrow roads in the conservation area and over the mini-roundabouts. Further concerns are raised as to the size of the drop off area. Mr FOXALL confirmed (XX) that he was content to discuss the drop off and design of the link road with EPC (subject to SCC as Highway Authority) approval.

70. Points which seem to now be resolved (subject to Highway Authority approval) appear to be:

- a. The crossing proposals at The Street [Appendix W] should be reconsidered so as to widen the footway at the corner of Crossways and swap the kerb build out to the other side at the pinch point, extending out. EPC takes the view that this would be a safer alternative; a proposal described by Mr Hackett in XIC and on the site visit, confirmed as beneficial from a heritage perspective by Mr Bell in his oral evidence, and Mr Foxall confirmed in XX that in principle he had no issue with this proposal subject to highways approval;
- b. EPC and the appellant are *ad idem* on the lack of need for yellow lines on Browns Lane, flagging that this might push people into more dangerous

parking. Mr Foxall confirmed in XX that the Appellant would be happy to not have these, subject to highways approval;

- c. EPC's suggestion for parking for plots 1-4 be revisited on the Browns Field site to make the parking spaces more desirable; a condition has been suggested in this regard and there is an expectation of consultation with EPC on any redesign of the same;
- d. Additional parking is required at Browns Field to comply with ENP R1 of the Neighbourhood Plan [HACKETT 3.65 and 3.67]. FOXALL confirmed (XX) that this could be accommodated;
- e. HACKETT notes the current problems experienced at the double mini roundabouts at the junction between Lower Road, The Street and Effingham Common Road which, given its proximity to St Lawrence Primary School is of particular concern to EPC [HACKETT 3.8]. In evidence, Mr Hackett flagged the total lack of mitigation at present at the mini roundabouts (HACKETT apx 1 marked "I" and "H"; also HACKETT 3.36 – 3.38). FOXALL denied in XX that mitigation was required which is disappointing for EPC to hear;
- f. EPC also expressed concern as to the safety of those walking up Church Street - highlighted by HACKETT as dangerous in his proof [HACKETT 3.6 and 3.7; 3.68 and 3.77] and the total lack of mitigation proposed. Mr Hackett in XIC described a route taken by parents to go to the primary school, where they are forced to cut through the pathway through the

green space to the right where there are a number of small steps which are almost impossible to navigate (on map Appendix 1, mid page near vicarage, two orange marked buildings). Mr Foxall in XX asserted that no mitigation was required. Again, EPC is disappointed at the failure to consider mitigation here in light of EPC's pedestrian survey [HACKETT Appendix 2]. EPC strongly suggests that in such an event these two aspects be reconsidered and that the Appellant consults with them.

71. Ultimately, EPC's primary concern and objective here is the safety of pedestrians and those making their way to school, including the primary school.

72. With regard to Browns Field EPC asks that should (contrary to EPC's submissions) the appeal be allowed, that suitable conditions be put in place which would allow for additional parking spaces in accordance with the SENP and for the relocation of parking at plots 1-4. With regard to EPC's remaining concerns, should the appeal succeed EPC urges that the Appellants engage with them at the reserved matters stage.

BROWNS FIELD AND EFFINGHAM & LEATHERHEAD RUGBY CLUB

73. The removal of Brown Field from Effingham Rugby Club use will fundamentally strike at the club's "one club" ethos. At present the entire minis and juniors can train and play together on facilities across the road from each other, facilities which accommodate hundreds (and hundreds) of minis and juniors.

74. Moving the minis to the new school field and facilities will sever that connection with the juniors and with the wider club. There are not enough pitches provided at the school to accommodate the needs of the club for running its minis and juniors together; the reality is that minis will be taken away to a remote location to play with no connection to the juniors. That will create logistical problems for parents who previously might have had one child playing each side of a road, they will now have one child playing on completely separate sites with no ability to easily move from one site to another (as now). There will be no clubhouse which the minis will train or play near, no interaction with or ability to watch juniors play while the minis wait for their match to begin and no seniors around (since the clubhouse will be remote from them). The fundamental effect on the rugby club is not hard to see.

CONCLUSION

75. As noted in opening (and as accepted by EPC throughout) there are obvious benefits to the proposals. Provision of market and affordable housing given GBC's shortfall, community benefits and provision of a brand new school all doubtless have positive aspects to them.

76. But those benefits, such as they are, need to be understood in context. The considerable (albeit less than substantial) direct and irreversible harm to the designated heritage assets as identified by BELL, coalescing the distinct communities of Effingham and Little Bookham, closing the green gap and introducing inappropriate development into the GB whilst causing unquantified likely harm to protected species and their habitats, including the severing of the

proposed wildlife corridor, the division of the Effingham and Leatherhead Rugby Club, riding rough shod over the considered and consulted upon NP which itself reflects the needs and aspirations of the Parish as a whole, all for the sake of expanding a school which doesn't require expansion, to replace buildings which are largely good or satisfactory, for a school which demonstrably performs no better than others in the area, and the consequence of expansion here likely being a reduction in choice to attend other nearby schools, to provide housing which doesn't reflect the needs of the Parish and will drive a wrecking ball through the spatial strategy of the NP, all point to the benefits (such as they are) not constituting VSC so as to clearly outweigh the harm by way of inappropriateness and all other identified harms. The appeal should clearly be dismissed.



**SCOTT STEMPE
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2nd June 2017

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