AN APPEAL IN RESPECT OF LAND AT EFFINGHAM LODGE FARM, Lower Road, and HOWARD OF EFFINGHAM SCHOOL, Lower Road, Leatherhead, Surrey

BEFORE: Inspector Gareth Jones
APPEAL REFERENCES: A: APP/Y3615/W/22/3298341 / B: APP/Y3615/W/22/3298390

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

INTRODUCTION & SUMMARY

1. These closing submissions do not seek to repeat the evidence heard at this inquiry but rather bring all that's been heard over three weeks into sharp focus. At the end of the inquiry, we are now more clear than ever about the following.

   i. The **2018 planning permission** is the starting point of established consent, accepted evidence and conclusive findings of fact underpinning the judgement to be made at this inquiry;

   ii. The **school** is consented, by the Secretary of State and now in detail by GBC, supported by SCC. It is entirely inappropriate to ask the Inspector to imagine a different world or to speculate about alternative schools that have not been designed, assessed for their suitability or applied for and both inappropriate and impossible to contemplate what the likely outcome of the same would be;

   iii. In any **viability assessment** undertaken in accordance with policy and guidance in the NPPF and NPPG, even accepting the totality of the Council's case, it is common ground between the parties that the scheme as consented by the 2018 permission, on what the Appellant says is any sensible view of developer profit of between 15-20%, is unviable. The RMAs which has been granted since, is unviable without the release of further land. Judged (as required) on the same basis, the return on investment from the appeal scheme is consistent with that

policy and guidance. And even on the Council's best case, accepting all Mr Fishlock seeks to remove, the Council can still only identify of profit level of below 20%. The figure given by Mr Jones was 19.23%. We were told that is an aggregate figure, i.e. implying that it is not precise. But no other figures was provided – see the handwritten amendments the inquiry had to make to the table on Mr Jones Replacement rebuttal at page 15. The 20.96% figure was reduced to 19.23% because of the mistake made over the need for an all weather pitch. That mistake corrected, even on just Mr Fishlocks terms (i.e half the pitch size of that which has RM approval) puts the profit level within the acceptable range identified in the PPG. 19.23% is wholly justified in the present economic climate. And that is the end of the Council's case. The case for the hybrid application is and always has been on viability. The mistake the Council made was to open that issue up. The Appellant was happy to rely on the conclusions of the 2021 viability appraisal and costing And so seemingly was the Council when the Statement of Case was written. But when they decided to challenge the viability and the costs, the Appellant was more than entitled to update its costs evidence. And that is what has undermined the Council's case completely. The costs have shot up in the last year.

2. Those conclusions in themselves demonstrate the difficulties of the Council's case and how unnecessary most of the evidence at the inquiry has been, especially in light of the concessions made under XX. Even if the surprising case put together at the last minute to sustain members' refusal of permission was to be entirely accepted – that case still does not justify the refusal of planning permission.

3. This inquiry relates to an **application for 114 dwellings** and for the reserved matters for the existing school site. It does not relate to development proposals for a new school, which have already been examined and granted planning permission by the Secretary of State in outline and by GBC in detail.

4. The main thrust of the case made by GBC and EPC is focused on the school, not the houses and that bizarrely to actually claim the consented school, consented by the

Council itself, was *"too good"*[1]. Even if it was legitimate to reopen settled issues, that approach fundamentally fails to accept, understand or apply government policy for which the previous Inspector concluded (at para. IR462) there was "little basis for misunderstanding"[2].

5. The Appellant has, nevertheless, met the challenge and the evidence is compelling that the consented school responds to a clear need, it will extend parental choice and it will replace a school which is fundamentally unfit for purpose. But none of that evidence should have been necessary.

6. The Appellant provided its unredacted contract with the school to the Borough Council and, as a result, the Council no longer pursues its concern expressed in the SoC[3] that a grant of this appeal might not lead to the delivery of the school. As Mr. Rhodes said in evidence, the school is "shovel ready", conditional only on the outcome of this appeal. There is no other scenario which can generate any confidence that this excellent, much needed and overdue school will be provided.

7. There are legitimate areas to debate relating to the impact of these appeal proposals on the Green Belt and the character of the area and on the suitability of the reserved matters proposals in proximity to heritage impacts. Again, however, it would be fair to recognize that the principles raised are similar to those settled at the last inquiry.

8. As the planning officer advised members, these are not applications that should have been refused.

The Approach to decision making - Alternative Schemes

9. These applications have been made and refused and now fall to be considered on their own merits against the tests of planning policy. It should not be necessary to say that.

10. The Appellant is entitled to have its applications judged in that way. This is not an inquiry into different proposals which will never be advanced. Before even entertaining

[1] Mr. Fishlock's concession under XX
[2] CD 1.1, The '2018 permission' – SoS decision letter and the Inspector's Report
[3] CD 8.1, GBC's Statement of Case and appendices

the idea that it is ecessary to consider the possible existence of an unplanned and untested alternative, it would conclude any debate to recognise that, even the existence of an alternative in this case would not alter the outcome because the viability evidence demonstrates that the appeal proposals are necessary. In other words, there is no alternative.

11. The profit level that would arise if all Mr Fishlocks's deductions were made would be to provide Berkeley with a profit of below the 20% identified in the PPG (19.23%).

12. It also follows that every step towards the Council's multiple alternatives is a step which is taken contrary to government policy. A policy that was not referenced at all in the proof and certainly not applied by the Council's planning witness.[4] That is very odd given that it is referred to repeatedly by the previous inspector, who's decision is the starting point for all those involved in the case – or at least it should have been. Arguments that this or that could be removed from the school or provided to a lower specification or quality fly directly in the face of the unequivocal objectives of the Joint Ministerial Policy Statement[5] and the NPPF.[6]

13. A theme of the Councils' case at this inquiry is the idea that things could have been done differently, and cheaper, and that for present purposes the Inspector should have regard to this. But the Inspector has before him an application for 114 dwellings to add to, and make deliverable, what has already been supported in the strongest terms by the previous Inspector and the Secretary of State. In this respect, their previous conclusions and approach provide a template for this inquiry. In other words, any alleged alternative is worse rather than better in terms of planning policy.

14. It is, however, necessary to respond to the legal submissions made on the relevance of alternative schemes put by GBC and EPC. In *Trusthouse Forte Hotels Ltd v SSE (1987) 53 P. & C.R. 293*, the court stated, "*(1) […] The fact that other land exists (whether or*

[4] Mr. Jarvis in XX accepted that he had given no consideration at all for ministerial statement (CD 6.6) and that, whilst his proof referenced para 95 of the NPPF, nowhere had he sought to apply the policy.
[5] CD 6.6, Department for Education / Department for Communities and Local Government, August 2011. Joint Policy Statement – Planning for Schools Development
[6] NPPF (2021) para 95

not in the applicant's ownership) upon which development would be yet more acceptable for planning purposes would not justify the refusal of planning permission upon the application site."

15. The Parish Council relies in its closings to the case of *Langley Park*, particularly paragraphs 44-53 of the judgement.[7] This is a case which need not trouble the Inspector for the following reasons.

    i. The focus of the Council's alternative in the current case has already been addressed, the Secretary of State has already granted a consent for the school;
    ii. The case of *Langley Park concerned alternatives to the form of development proposed, which was found to cause* 'very serious harm'. That scale of harm is not alleged in this case. Here we are dealing with development in the Green Belt, for which the NPPF provides clear policy tests;
    iii. At Langley Park, the case concerned alternative layouts to the scheme proposed in the application. Here the Councils are suggesting alternative schemes for a development which is not the subject of this application – ie the consented school;
    iv. There is no alternative proposed to the consented school. Neither GBC nor EPC have offered any alternative layout, design, specification, assessment of suitability or evidence of deliverability for an alternative school just a preference for a less good school, with the ulterior motive of resisting the housing; in *Langley Park* there was evidence available that physically different layouts for the development were available;

16. In short, the case of *Langley Park* is promoted as an alternative to the approach of applying planning policy to the appeal proposals – because the application of policy would result in the conclusion recommended by the planning officer. If guidance was needed on the approach to take in this case, it is fully available in the Secretary of State's 2018 appeal decision.

[7] Langley Park School for Girls v LB Bromley [2009] EWCA Civ 734

17. The case against is made in response to a Council that has repeatedly told the inquiry that they want local children to have less adequate resources if that is a way of stopping the additional 114 dwellings.

18. For all the reasons that follow, that case should be rejected.

2018 PLANNING PERMISSION – what was consented

19. The starting point for this inquiry is the decision by the Secretary of State[8].

20. The Council's case asserted that, because the issues they dispute (i.e. Trust offices, number of school places, Cullum Centre in present form etc) were not explicitly recorded in the formal description of development granted planning permission, it was somehow legitimate to question their inclusion in the consented school. However, it is clear that the SoS and his Inspector were fully appraised that these matters formed part of the proposal which they examined and for which planning permission was granted:

    i. The Trust Offices were clearly before the previous Inspector. The plans and layouts before the inquiry clearly showed them as an integral part of the school building[9];

    ii. The Parish Council's case at the ;last inquiry sought to argue against the transfer of the Trust offices in the present school to the new school, complaining the Trust offices was growing too large at the expense of teaching space – see IR paragraph 117

[8] CD 1.1, The '2018 permission' – SoS decision letter and the Inspector's Report

[9] The Trust Offices were fully described in the submitted DAS (for example at pages 51 and 56) and in the submitted Planning Statement at para 3.4. Similarly, a fair reading of IR220 together with footnote 111 demonstrates that (a) part redevelopment is not an answer to the inadequate and dwindling office space; (b) a new school would include new Trust offices to deal with this and (c) 'any option short of provision of an entirely new school would be more expensive'

iii. The Inspector described the proposals before him as a proposal where the "*school would increase its capacity from 1,600 to 2,000 pupils*"; (IR30); [10]

iv. The Cullum Centre was considered and clearly understood and supported by the Secretary of State and the Inspector's Decision[11];

v. The Council itself has (twice) granted reserved matters consent for a school of this capacity and with these facilities, pursuant to that outline planning permission.

21. The points being taken now seek to re-write the Inspector's conclusions and the Secretary of State's decision. They also fail to take into account that each element criticised by the Councils now adds to the quality of the school and the service it provides to its community, consistently with planning policy for schools.

COMMITTEE REPORTS

22. The Council has been professionally advised by its officers. The committee reports are through and comprehensive. Remarkably parts were drafted by the very firm seeking to undermine them at this inquiry.

23. Such is the clarity with which planning permission was recommended that it became necessary for witnesses to suggest that the planning officers did not know or understand Effingham sufficiently (the evidence of Mr Johnson) or that officers' judgement was affected by them being overworked (the case made by EFFRA).

24. These are unjustified arguments which should never have been made but which fall completely away when the thoroughness and quality of the officers' analysis is read and appreciated. We simply commend, rather than repeat, the officers' recommendations and analysis and we respectfully support it. Notably, the reports are clear, for example, on all the principal issues on the hybrid application in particular:

[10] There were multiple explanations of the intended capacity of the new school – for example in the DAS at pages 16 and 52 and the evidence to the inquiry but the IR is clear that capacity for 2,000 was understood.
[11] CD 1.1, paragraph 27 of SoS decision, IR 444-464

a. the relevant approach to decision making[12];
b. the robustness of the viability case[13];
c. the effect of the hybrid proposals on the Green Belt and on the character of the area[14]; and
d. on the acceptability of the proposals on the eastern boundary of the existing school site.[15]

25. The officer analysis should provide comfort that a sensible, informed, objective approach leads to the clear conclusion that planning consent should be granted. The balancing exercise undertaken by the Council Officer provides a comprehensive and clear conclusion in relation to how this scheme was appraised.[16] What is particularly powerful is the acknowledgement of the harm arising from the proposal, whilst also being clear that the '*benefits of the scheme are fundamental and long lasting'* . The delivery of the school is said to weigh '***very*** *heavily in favour of the application*.' (CD 4.1, page 168 and 169)

APPEAL B – MAIN ISSUE: THE EFFECT OF THE PROPOSED DEVELOPMENT ON THE SETTING OF THE GRADE II* LISTED CHURCH OF ALL SAINTS AND ON THAT OF THE LITTLE BOOKHAM CONSERVATION AREA

26. The RMA proposals that are subject of the current appeal are very similar in layout and scale to the outline application for 99 dwellings that was approved by the 2018 permission. The only area of dispute is in the eastern portion[17] of the site. The originally proposed arrangement comprising an apartment block in the southern corner and two residential housing blocks at the north-eastern corner. It was indicative only but subject to parameters. The RM sought in this appeal have substituted the blocks with a row of terraced housing set back from the south-eastern corner and an apartment block in the north-eastern corner fronting the less sensitive Lower Road. The changes were negotiated with and endorsed by the planning officer, who advised that they were acceptable in relation to the following key areas;

[12] CD 4.1, Officer's Report to Planning Committee, 30 March 2022 – Hybrid, GBC ref. 21/P/01306, pages 100-102, 163-170
[13] CD 4.1, pages 135-138
[14] CD 4.1, pages 133-135, & 141-148
[15] CD 4.4, Officer's Report to Planning Committee, 21 March 2022 – RMA, GBC ref. 21/P/00428, pages 103, 104, 107 and 112
[16] CD 4.1, page 163-170
[17] CD 4.4, pages 106-108 – see for the Officer Report assessment

i. Impact on the setting of the CA, no objection raised by the Council's Conservation Officer (CD 4.4, page 105-106);

ii. The impact on the Listed Buildings: the LPA can be '*satisfied that over and above the outline permission, the proposal would not result in any greater harm to the setting of the neighbouring listed buildings'* (CD 4.4, page 108, top of page); and

iii. That the result of the redesigned eastern boundary is that it would not result in any harm to the Conservation Area (or the listed building (CD 4.4, page 106, top of page).

27. Rightly, and despite the criticisms now made, the officer advised that the layout has been "significantly improved" compared to that which was before the previous inquiry.[18] The objections now raised are very surprising in this context. The principal characteristics of the changes are that the apartment building has been moved further from the church, to front more appropriately onto Lower Road, whilst the orientation of properties has been revised specifically to allow the introduction of significantly greater landscaping on the eastern boundary, just as the Inspector commended the appellants to do.

28. To make a case, the Council sought to distort the conclusions of the previous inquiry. A fair reading of the Inspector's report, however, would find:

i. That the Church and the CA are screened from the existing school site by layers of dense intervening vegetation.[19]

ii. That some harm arises now from the larger school buildings towards the east of the site – but that their replacement with 'lesser' residential buildings would reduce that harm[20];

iii. That the addition of landscaping on the eastern boundary could entirely remove the harm.

29. It was not concluded that any conceivable harm would or must be removed. And neither was it suggested that the degree of harm even now was particularly significant. Mr.

[18] CD 4.4, Officer Report, page 103
[19] CD 1.1, paragraph IR 387, page 80
[20] CD 1.1, paragraph IR 388, page 80. As Mr Rhodes stated, the text clearly relates to residential buildings being lesser than the school buildings.

Johnson accepted that we are not looking for perfection.[21] The main conclusion to be drawn from the Inspector's analysis is that the heritage assets are very well screened from the school and that no difficulty was expected to arise at the reserved matters stage. As the Inspector explained at para. 405 – "*because of the extensive tree cover, the strong sense of separation between the settlements here would remain."*

30. Contrary to the XX by Mr. Streeten, Mr. Grover did not seek to 'downplay' the intervisibility between the Grade II* listed church and the appeal site.[22] It would be hard for him to do that when the professional planning officers of GBC concluded there was no harm, yet he finds some harm, albeit very limited in respect of both the conservation area and the listed church. The accompanying photographic plates from 2017 compared with 2022 POE illustrate this well.[23] The attempt to find inconsistencies between the 2017 proof and 2022, especially in relation to the open land contributing modestly to the setting of the CA and Churchyard, was similarly an attempt to concoct a case through cross examination.[24] Mr. Streeten suggested to Mr. Grover that there was a high degree of 'overlooking' of the graveyard of All Saints' Little Bookham, a 'large number of windows' in the terraced property with direct line of sight. In practice, as Mr. Grover showed, the layout presented at the 2017 inquiry would have been much more likely to enable some overlooking than the reorientation now proposed.

31. Mr. Grover is criticised in the closings for EPC, which suggests that he did not understand the status of the graveyard as setting to the listed Church: ('Mr. Grover maintained that the graveyard was secondary')[25]. However, at para 4.11 of his evidence, Mr. Grover was careful to explain that whilst the traditional graveyard is indeed an important part of the setting and part of the heritage asset, the modern graveyard extension, which falls outside the Conservation Area and the curtilage of the grade II* listed church, is in fact secondary: see GBC closing para 1(c). A proper understanding of the heritage asset allows a proper assessment of its relationship to the carefully designed layout on the eastern boundary.

[21] CYKC XX
[22] See paragraphs 4.38 and 4.61 of 2017 PG POE, against 4.12 and 4.20 of the 2022 PG POE.
[23] Appendices: CD 1.7, page 48 Plates 35 in 2017 PG POE, compared with Plate 11 of the 2022 PG POE
[24] See Plate 36 in the Appendix to PG POE from 2017
[25] Grover para 4.11

32. Similarly, the Council's closings suggest that the a site forms part of the setting of the Church – not something found by or consistent with the conclusions of the previous Inspector. The playing fields of the school do extend eastwards however, along the northern boundary of the graveyard. That relationship would not change but it would be secured and further enhanced by the Appellant's proposals to landscape and make available the playing fields area for community use. An application remarkably refused by Mole Valley DC but being progressed to appeal

33. As to the statutory tests, despite the line of questioning to JR, the tests are clear. A limited degree of harm at the lower end of '*less than substantial'* is accepted by Mr. Grover. Mr Grover should not be criticised for the fairness of that assessment. Where developments would cause adverse impacts to the significance of a designated heritage asset, this factor is to be given considerable importance and weight.[26] Mr. Grover and Mr. Rhodes have explicitly done that. In East Northants v SSCLG [2014] EWCS Civ 137, (aka Barnfield) the Court of Appeal held "There is a strong presumption against the granting of planning permission for development which would harm the character and appearance of the conservation area…" (para 23 of the Judgment). If the harm is very limited, then it is very limited. That Court's presumption is applied to the harm. It means the matter needs to be approached using these words. But it cannot change the degree of harm. It is just the harm need to be properly understood and appreciated and given appropriate weighting in the test in the NPPF at paragraph 202. The harm is not to be treated as just any material consideration. It needs special attention and special regard needs to be had to it.

34. The Barnwell case concerned the applicability of Section 72(1) of the PLBCA 1990. That requires "special attention be paid to the desirability of preserving or enhancing the character and appearance of the area." That is when exercising the provisions of the planning Acts (see subsection 72(2). That would apply to RM approval as here. So Section 72(1) must be considered ion this decision.

35. The position with Section 66(1) is more arguable. This section concerns listed buildings and is worded differently. It seems to relate specifically to the grant of planning

[26] Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990

permission; "in considering whether to grant planning permission". The previous inspector felt the harm to the heritage assets of Little Bookham could be addressed through planting. Mr Grover accepts limited harm, which is his professional view. Mr Bennett Smith suggests something between limited and moderate. Both accept a degree of harm albeit the final details of the planting and boundary treatment are to be determined by the Council as part of the RM conditions. The Council now say, the harm is different from that which the previous inspector and Secretary of State had assumed when granting permission. Both only had an outline scheme with illustrative material and parameters. But even if one assumes the harm now is more than he had assumed, the simple answer is to address the concern by applying Section 66(1) and considering that test and the considerable importance and weight and the strong presumption in terms of the harm to the significance of the listed building. That way no legal error can occur because it will be a belt and braces approach which demonstrates special regard has been had to the harm to the listed building as well as the conservation area.

36. That considerable importance and weight, special regard and strong presumption are of course not the end of the matter. They just dictate how the harm should be approached. The key test is the one in paragraph 202 of the NPPF.

37. The NPPF provides that any harm or loss of significance will require '*clear and convincing justification'*.[27] That justification is provided in this case by the application documents for the reserved matters which explain the proposals at length.[28] However, paras. 201 and 202 of the NPPF then set out the government's policy on how any harm should be addressed and weighed. Para 202 applies in this case (unlike para 201, it does not set a test of necessity) and it requires any less than substantial harm to weighed against the public benefits of the proposal.

38. Mr. Jarvis sensibly accepted in cross examination that there was no reason why this should not be the test to be applied.[29] The government, of course, is fully aware of the implications of statute and case law when it sets that test in its national planning policy.

[27] NPPF paragraph 200
[2828] The application included a Statement of ES Conformity, which explained the changes to the illustrative layout made in the context of the approved parameters (CD 3.12)
[29] CYKC XX

Applying that test can only lead to one conclusion. As set out in Mr. Rhodes proof at 6.6-6.9, the benefits are overwhelming.

39. As ever, the Officer Report provides useful confirmation.

40. **First,** the report clearly identifies the correct tests and the legally expected weighting exercise (s66(1) of the PLBCA 1990)[30]. Section 72(1) must also be considered in the context of the conservation area.

41. **Second,** the correct tests in national and local policies are recited and applied to the case. [31]

42. **Third,** reaching the conclusion that, *'Taking into account the detailed (amended) plans submitted with this reserved matters application, the Local Planning Authority is satisfied that over and above the outline permission, the proposal would* ***not*** *result in any greater harm to the setting of neighbouring listed buildings.'* (emphasis added). [32]

43. **Finally,** on the CA it was said '*the proposal is not considered to result in any harm to the setting of the conservation areas surrounding the site.'*[33]

44. Indeed, assisted by this material, as well as reasoning of the 2018 Inspector (which the report directly assessed on page 105), he said the following.

"It is also noted that in broad terms, the illustrative masterplan approved by the Secretary of State is being followed through in the reserved matters application. However, as will be set out below, ***Officers believe that the layout has been significantly improved as a result of the amendments which have been secured through the reserved matters application.****"* (emphasis added)

"…The dwellings here would be in broadly the position indicated on the parameter plans and in the majority of cases would be well set back from the boundary due to their front gardens and the presence of an internal road."

[30] CD 4.4, page 106: and *Barnwell Manor Wind Energy v East Northants* [2014] EWCA Civ 137
[31] CD 4.4, page 106
32 CD 4.4, page 107 and 112
[33] CD 4.4, pages 106

"In terms of design, the proposed dwellings have a relatively traditional appearance. They are well detailed and the Local Planning Authority is ***content that design will be of a high standard.****"*[34] (emphasis added)

45. The views of the Conservation Officer in Mole Valley do also need to be taken into account – see the committee report, page 93.

HOUSING NEED AND SUPPLY

46. The Council is required to demonstrate a deliverable five year housing land supply when dealing with applications and appeals using the latest available evidence[35]. Therefore, even if there are no appeal decisions since the Local Plan was adopted which have found there to be a shortfall in the 5 year housing land supply, that does not mean that the Council has discharged its responsibility. Reference to the Ash Manor appeal decision finding that Guildford has a 5 year housing land supply its closing submissions[36] gets the Council nowhere. As BP explained in XX – that was an allocated site and paragraph 73 of the appeal decision confirms that the issue was not disputed in that case[37]. It is disputed in this case.

Matters Agreed / Not Agreed

47. The following matters are agreed in relation to the availability or otherwise of a 5 year housing land supply:

i. The base date for the assessment is 1st April 2021 and the five year period is to 31st March 2026:

ii. The 5YHLS should be measured against the adopted housing requirement set out in the Local Plan of 562 dwellings per annum; and

[34] CD 4.4, pages 103-104
[35] PPG - Paragraph: 004 Reference ID: 68-004-20190722 – as set out in BP's PoE, paragraph 11.26, page 32
[36] LPA closing submissions - appendix – paragraph 2
[37] CD13.1 – page 16, paragraph 73

iii. A 5% buffer applies.

iv. There was a further ScG submitted during the course of the inquiry.[38]

48. The following matters are not agreed:

i. The extent of the shortfall at 1st April 2021. The Council now considers this to be 828 dwellings and the Appellant considers it is 1,011 dwellings. The reason for the difference largely relates to how student completions should be counted. But there is also a small difference between the two parties due to actual completions recorded in 2015/16, 2016/17 and 2019/20[39]

ii. How the shortfall should be addressed. The Council considers that this should be spread over the plan period to 2034 (i.e. the Liverpool method). The Appellant considers it should be addressed in full in the five year period (i.e. the Sedgefield method).

iii. The extent of the deliverable supply. Whilst the Council's position statement claims this to be 4,570 dwellings, it was quickly accepted by the Council's consultant Mr. Miller that the published supply overstates the position to the tune of 785 dwellings (17%) which should be removed. Its figure is now 3,785 dwellings, which it equates to 5.76 years.[40]

iv. The Appellant considers the deliverable supply is 2,940 dwellings, which it equates to **3.67 years**.

Liverpool vs Sedgefield and Local Plan Review

49. It is agreed that the 5YHLS should be measured against the adopted housing requirement of **562 dwellings per annum** even though this is significantly less than the local housing need calculated using the standard method as set out in the PPG, which is uncapped **at 803** dwellings and capped at **787** dwellings[41].

[38] ID 17, Final Statement of Common Ground between the Appellant and GBC on Housing Land Supply
[39] BP PoE page 7, paragraph 3.2
[40] It was agreed that the deliverable supply should also be reduced by the extent to which it has been developed since the base date, although that has not been quantified.
[41] BP PoE, page 17, paragraphs 7.3 and 7.4

50. The Council was allowed to adopt an approach of spreading the unmet need over the plan period, despite the presumption in paragraph 68-031 of the PPG, due to its reliance on large scale strategic sites, which the Council assured the local plan Inspector would be coming forward in the medium term.[42]

51. Paragraph 45 of the Local Plan Inspector's Report[43] states:

"The trajectory indicates a 5 year housing land supply on adoption of 5.93 years rising to 6.74 years in year 5. ***The 5 year supply calculation includes a 20% buffer for past persistent under-delivery and uses the Liverpool method in recognition of the contribution made by the strategic allocations which typically have a longer lead-in time****. These are the Council's figures and it is recognised that slippage could reduce this supply, but there is enough flexibility built in to the trajectory to maintain a rolling 5 year housing land supply.* (emphasis added)

52. The acceptance by the LP Inspector of the Liverpool approach was predicated on the assumption that those large strategic sites would be delivering by now. The trajectory in the Local Plan[44] shows many of those strategic sites were expected to be delivering from 2022/23. This has not happened and nor are they expected to deliver any dwellings in the current five year period to 2026[45],with the exception of the sewerage works site. And delivery from this site is also contested.

53. It is clear in the appendix to its closing submissions that the Council relies on the wording of paragraph 68-031 of the PPG which states that if an approach other than Sedgefield is proposed, this should be through the plan-making and examination process. The claim made by the Council is that this was established through the LP examination. But paragraph 68-031 relates to the current Framework – not the 2012 version of the Framework against which the LP was examined.

[42] CD 6.1, Inspector's Report on the Examination of the Guildford Borough Local Plan: Strategy and Sites (27 March 2019), paragraphs 45-46
[43] CD6.1, pages 12 and 13, paragraph 45
[44] CD5.4 – Appendix 1, page 265
[45] CD6.2 – Land Availability Assessment (LAA), Appendix 7 – Table 1, pages 398-399

54. Paragraph 68-031 of the PPG must therefore be considered within the context of the current Framework's requirements to:

i. Plan to meet the local housing need calculated using the standard method;
ii. Review and update the Local Plan in a period of less than 5 years if the local housing need is not being met; and
iii. In any event, calculate the 5YHLS against the local housing need once the plan becomes five years old.

55. These matters are discussed below.

56. There is a policy requirement that a review of the Local Plan must take place in a shorter time frame than the statutory 5 years. This is set out in paragraph 33 of the NPPF and explained further at paragraph 61-062 of the PPG[46]. The explicit requirement to review sooner where "*the applicable housing need figure has changed significantly…or is expected to change significantly*" is defined precisely in the PPG to include the circumstance in Guildford where a local plan predates the Standard Methodology and the SM provides a significantly greater figure. That is this case. The reason given why there must be an early review is explained in the PPG: because it is government policy to plan to meet unmet needs "*as soon as possible*".

57. It should not have to be remembered, put during XX to Mr. Miller and Mr Jarvis, that the government's housing policy is and remains to significantly boost the supply of homes, and not take every possible step to try and avoiding doing so.

58. At the inquiry we were treated to the sight of a Council striving to avoid the obligation to meet the unmet housing needs of its own community. The Council asserted that it did not need to meet those needs in the short term because it could not be forced to do so until the local plan was reviewed.[47] The Council referred to a legal opinion it had received which concluded that it may not want to undertake an 'early' review, because to do so would oblige the Council to recognise that the local housing need as expressed in the SM was greater – described as the very opposite of what the Council wanted to

[46] BP PoE, page 20, paragraphs 9.8 and 9.9
[47] Mr. Jarvis during XX

do.[48] As explained during XX, the review would result in *"the very last thing members of the current administration are seeking to achieve*" i.e. a higher housing requirement (to meet local needs).

59. As Mr. Rhodes pointed out, the NPPF requirement is to **complete** the review within (less than) 5 years (i.e. by April 2024) – meaning that the review should be fully underway now, even if no account is taken of the clear requirement to review sooner any plan which significantly underprovides for the current housing needs.

60. The evidence in relation to strategic sites – and the fact that three of the principal sites (totalling 5,200 homes) are now apparently undeliverable due to the exclusion of the A3 upgrade from the Government's RIS 2 strategy, also necessitates a local plan review in accordance with local plan policy ID2. In those circumstances, and given the severity of the housing need in the borough, the Council's excuse for not addressing the housing needs of its own community, which have accumulated due to its own chronic under-delivery, is not tenable.

61. Even if an early review will not take place, in less than 19 months' time, on 25th April 2024 the Council's 5YHLS will no longer be measured against the adopted housing requirement but against the higher local housing need figure and this is a material consideration for the Inspector to consider when forming a judgment on how the past backlog should be addressed. This is relevant because within the very five year period the forward supply is being considered, the figure the supply is to be measured against is going to significantly increase[49].

62. For the avoidance of doubt, the Appellant does not invite the Inspector to calculate the five year housing land supply against the local housing need or even a hybrid requirement involving the adopted housing requirement for the first three years and local housing need for the final two. To do so would be contrary to the Framework.

63. Nor is the Appellant advocating a re-examination of the Local Plan. However, the Inspector is invited to make a judgment on how the shortfall should be addressed by considering what has happened since the LP was adopted i.e. the failure of the strategic

[48] ID 08, Town Legal Advice to GBC
[49] BP PoE paragraphs 9.12 and 9.13 (page 21)

sites to progress as the Council claimed they would at the LP examination and the introduction of a revised Framework which requires a LP review to be completed in less than five years, local housing need calculated using the standard method to be addressed as soon as possible and unmet housing needs from under delivery to be addressed now.

64. For these reasons, the past backlog should be addressed in the five year period. This means the five year requirement is 3,821 dwellings or 764 dwellings per year, which would still be below the local housing need expressed in the Standard Methodology. Using any lower figure would falsely represent the state of housing availability.

65. On this basis, using the Council's supply figure of 3,785 dwellings against the housing requirement plus its backlog figure under Sedgefield equates to 4.95 years (see table 2 below).

Student accommodation

66. This affects both the extent of the backlog and the 5YHLS. The Appellant argues that the backlog should be increased by 202 dwellings[50] and that the 5YHLS should be reduced by 184 dwellings[51] once student completions have properly been calculated.

67. It is agreed that on campus student accommodation should not be included in the past completions or the 5YHLS. The difference is in relation to off campus accommodation.

68. This is because on campus accommodation does not form part of the housing requirement but off campus accommodation does[52].

69. An uplift was applied to the OAN to take into account the increased growth in student population and its accommodation needs off campus

[50] 302 dwellings were included at Kernal Court however the 403 bedspaces should have been included as 100 dwellings – therefore a reduction of 202, which in turn is added to the past shortfall
[51] 2 dwellings at Land at Guildford College Campus, 74 dwellings at Just Tyres, 49 dwellings at Bishops Nissan and 59 dwellings at 1&2 Ash Grove = 184 dwellings
[52] BP PoE pages 43-44, paragraph 17.3

70. The uplift is 23 dwellings per annum based on 1,710 new students in off campus accommodation over the plan period and 4 students per household i.e. 1,710 / 4 = 428 / 19 year plan period = 23[53]

71. Without any regard to the uplift applied to the OAN of the 23 dwellings per annum, the Council instead now counts studio units as 1 dwelling each and cluster units as 1 dwelling each. In doing so, it refers to paragraph 68-034 of the PPG[54] but the first part of this paragraph essentially explains that analysis of the amount of student accommodation that new student housing releases in the wider housing market and / or the extent to which it allows general market housing to remain in such use rather than being converted for use as student accommodation. That analysis was undertaken through the preparation of the Local Plan and explains why the uplift to the OAN was 23 dwellings.

72. To now calculate the supply side in a different way to the requirement is inconsistent and contrary to the development plan. Had the Local Plan approached the housing requirement in the same way as the Council now claims the supply should be included, then there would have been a greater increase in the OAN than 23 dwellings per year.

73. The Appellant's case is that the number of bedspaces provided in off campus accommodation should be divided by 4 as that is effectively how the uplift to the OAN was calculated. The number of bedspaces provided at Kernel Court, completed in 2021/22 was 403. Divided by 4, this equates to 100 dwellings rather than the 302 dwellings the Council includes in its completion figures. Therefore, the past shortfall should be increased by 202 dwellings.

74. In terms of the five year supply, 1,072 student bedspaces are proposed. Divided by 4, this means 268 dwellings should be included in the five year supply, not 452 dwellings claimed by the Council (a difference of 184 dwellings).

75. The Appellant's approach is consistent with the approach taken in the development plan and should be preferred. This means that the backlog is 1,011 dwellings and the 5YHLS should be reduced by 184 dwellings.

[53] CD 6.1 – paragraph 29 (included in BP PoE, page 44, paragraph 17.4)
[54] Paragraph: 034 Reference ID: 68-034-20190722: "How can authorities count student housing in the housing land supply?"

Windfall Allowance

76. The windfall allowance relates to sites of less than 5 dwellings gross. The Council seeks to include a windfall allowance of 250 dwellings in the 5YHLS. This is in addition to the 198 dwellings on sites of less than 5 dwellings already included in the deliverable supply (and for the avoidance of doubt are not contested by the Appellant)[55]

77. Paragraph 71 of the NPPF requires compelling evidence for the inclusion of a windfall allowance in the anticipated supply. Any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates and expected future trends.

78. The Council does not provide any evidence of historic delivery rates – only what has been approved – not delivered. It has not had any regard to the fact that permission on some small sites will lapse.

79. The only evidence provided in relation to historic delivery rates is:

- Firstly, those in figure 6 (page 25) of MM's PoE. These show 91 dwellings were delivered on small windfall sites in 2019/20 and 42 in 2020/21. In both years, the delivery was less than the 100 dwellings the Council seeks to include and results in an average of 66.5 dwellings; and

- Secondly, those that were used in the preparation of the Local Plan, which explained that the historic delivery rate was approximately 59 dwellings per year[56].

80. In the absence of compelling evidence in relation to historic delivery rates, the Appellant concludes that small windfall sites should be included as set out in the Local Plan of 60 dwellings per annum[57].

81. This means that 300 dwellings would be included in the 5YHLS. As there are already 198 dwellings on small sites in the 5YHLS, this means a windfall allowance of 102 dwellings, a deduction of 148 dwellings from the Council's supply.

[55] BP PoE, page 47, paragraphs 18.1-18.2
[56] BP PoE, page 49, paragraph 18.10 and Appendix EP17
[57] CD 5.4 – Guildford Local Plan – Appendix 1 (page 265) – Trajectory

82. In terms of future trends, appendix EP17 of BP's PoE explains why future windfall delivery is not expected to exceed past rates[58]. Whilst the Council refers to a newsletter in West Horsley which explains that Parish's experience of planning applications since the inset village policy was introduced, this is not compelling evidence. As BP explained in XX, the number of permissions on small windfall sites has decreased since the Local Plan was adopted[59].

Methodology

83. The LAA claimed that the deliverable supply at 1st April 2021 was **4,570 dwellings**. MM considers that it should now be **3,785 dwellings**. i.e. that **785 dwellings** (17%) should be removed. The LAA is clearly not robust and the Council has a history of repeatedly over estimating housing delivery.[60]

84. The definition of deliverable has significantly changed since the 2012 NPPF against which the Guildford Local Plan was examined.[61] Clear evidence of deliverability is now required for the many sites the Council relies on without detailed planning permission.

85. BP referred to several appeal decisions in his PoE where the definition of deliverable and clear evidence have been considered[62]. In some of those cases, much more evidence was provided by the respective Councils than has been provided by Guildford, such as signed proformas and statements of common ground, yet the Secretary of State and Inspectors found that those sites should not be considered deliverable e.g. in XX, MM was taken to the Gleneagles Way appeal decision (CD7.9) where the SoS rejected completed proformas and emails from developers as clear evidence and removed sites with only outline permission or allocated without planning permission.

[58] BP PoE, Appendix EP17, page 390: "Reduced reliance"
[59] BP PoE, table 18.2, page 50
[60] BP PoE Section 4, pages 9-13 Another measure of this can be seen from Appendix 1 of the LPSS which shows the trajectory of strategic and other sites take up provided to the Local Plan inspector. Note the reliance on strategic sites from 2022/23, which is now clearly exaggerated.
[61] BP PoE Section 11, pages 25-31
[62] BP PoE Section 11, pages 31-37

86. Further examples in BP's evidence are:

i. Popes Lane, Sturry (CD7.10) where the Inspector removed 1,811 dwellings (28% of Canterbury Council's claimed supply) even though that Council had provided statements of common ground with developers and landowners[63]. There are no statements of common ground provided by Guildford for this appeal; and

ii. Cox Green Road, Rudgwick (CD7.3) where the Inspector found the contents of a proforma to be scant in detail without any explanation of the timings of delivery could be achieved including the timescales for submitting and approving reserved matters, applications for the discharge of conditions, site preparation and installing infrastructure[64]. There are no proformas provided by Guildford and the evidence it has provided is similarly scant in any detail.

87. It is worth repeating that the onus remains throughout on the LPA to demonstrate a healthy supply. Yet the Council appears to claim that the limited evidence it has provided for this inquiry – far less than that rejected in other cases referred to by BP – satisfies the clear evidence test set out in the same Framework against which those other cases were considered. The limited and scant evidence put forward by the Council falls substantially short of what is required.

88. This is not BP setting the test of deliverability far too high as claimed in the Council's closing submissions[65], but what is required by the Framework. This was confirmed in the Great Torrington (CD7.11) appeal decision, where the Inspector described paragraph 68-007 of the PPG and then stated in paragraphs 56 and 57:

> *"56…. This indicates the expectation that 'clear evidence' must be something cogent, as opposed to simply mere assertions. There must be strong evidence that a given site will in reality deliver housing in the timescales and in the numbers contended by the party concerned.*

[63] BP PoE paragraphs 11.39 and 11.41
[64] BP PoE paragraphs 11.41 and 11.42
[65] Council's closing submissions, paragraph 29a, page 46

> *57. Clear evidence requires more than just being informed by landowners, agents or developers that sites will come forward, rather, that a realistic assessment of the factors concerning the delivery has been considered. This means not only are the planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. Securing an email or completed pro-forma from a developer or agent does not in itself constitute `clear evidence'. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward"*

89. The Council claims that BP has taken an approach that is "*wholly unrealistic and disproportionate to the exercise*" and that "*providing the level of information Mr. Pycroft demands would not be feasible*" resulting in inordinate time and money being expended at every inquiry[66].

90. However, these claims should be read within the context of:

i. A Council which has a proven track record of completely over-estimating housing delivery (see BP PoE section 4, pages 9-13) and the Housing Trajectory in the Local Plan (Appendix 1, page 265);

ii. The fact that the LAA claimed a deliverable supply of 4,570 dwellings, yet even MM found these claims to be completely unfounded and unsubstantiated and removed 17% of the claimed supply;

iii. The fact that the Council's own submissions confirm that this is the first inquiry since the Local Plan was adopted over 3.5 years ago where the supply has been tested;

iv. The fact that the position statement has a base date of 1st April 2021 and the Council has had over a year to collect the clear evidence it needed to rely on the inclusion of category b) sites;

v. The scale of the exercise clearly depends on how many sites without detailed planning permission the Council seeks to rely on. If it seeks to rely on these

[66] Council's closing submissions, appendix paragraph 29b, page 47

sites, then it must provide the clear evidence for doing so and therefore the amount of work required is not dictated by Mr Pycroft but the Council itself given that it relies on the inclusion of so many sites without detailed planning permission; and

vi. This is not a unique position in Guildford – the Framework requires and the Guidance supports (PPG 68-004) the fact that all Councils must be able to demonstrate a five year housing land supply at all times – for the determination of appeals and applications. Therefore, this Council should be constantly considering its realistic deliverable supply and the evidence it has for the inclusion of sites without detailed pp, not just when its supply is challenged at appeal.

91. The other point on methodology is that the latest evidence needs to be taken into account – BP fairly did this by accepting the inclusion of sites that had been granted planning permission between writing his proof and the inquiry. There appears to be some criticism of BP for doing so in the Council's closing submissions[67], but respectfully the Council misses the point. Those sites accepted by BP had moved from category b) sites to category a) sites where the onus swung from the Council to the Appellant to demonstrate why they should be included in principle. For all of the sites that remain in category b), the Council has failed to provide the clear evidence required.

92. The base date is also relevant as there is only 3.5 years left in the 5YHLS period and yet the Council includes so many dwellings on allocated sites without full planning permission, including those where a planning application has not been made.

93. **Within this context, the disputed sites are specifically explained within Annex A to these closing submissions.**

94. For all these reasons, it is clear that the Council cannot demonstrate a 5 year housing supply but also that it cannot rely on key strategic sites to supplement and increase supply in the medium term, as the local plan inspector was assured. As the Town Legal

[67] Council's closing submissions, appendix paragraph 29a, page 46

advice to the Council made clear "*it is all the more important to ensure that other sites, strategic or otherwise, come forward and are granted planning permission promptly…".*"[68]

95. The question of weight is addressed later but neither this case nor the last are cases where the tilted balance applies. The shortfall is though, plainly a very important material consideration. The 5 year supply is only one indicator of housing need.

96. This closing submission does not need to provide the detail of the exceptional need for housing in Guildford Borough, because the evidence is before the inquiry and, tellingly, was not significantly challenged in cross examination and is studiously avoided in closing submissions from GBC and EPC. In due course, we will be inviting you to attach very substantial weight to that need.

97. **Mr Rhodes evidence at section 7 was effectively unchallenged**. It describes a position of extreme housing need with "*seriously poor and deteriorating housing affordability*"[69]. The local plan itself recognizes that over half the borough's households will not be able to buy a home without subsidy and that affordability has worsened rather than improved since the last inquiry and since the local plan examination.

98. The need for and shortage of all forms of housing is exceptional but the need for affordable housing is severe.

99. It is unfortunate for the Council's witness to brush the issue away as a matter addressed in the local plan.[70] The local plan examination revealed the true need for affordable housing at 517 homes pa. but the Council has delivered an average of 39 pa in the last 6 years. And none in the last year.[71] Waiting lists are growing in length and years.[72]

100. Similarly attempts to suggest that the need does not arise or cannot be met in part in Effingham are shameful.[73]

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[68] ID 08, Town Legal Advice to GBC
[69] CD 6.1 Local Plan Examination Inspector's Report, paragraph 33.
[70] Jarvis para. 5.2.11, and repeated again during XX
[71] Rhodes paras. 7.26 and figure 2.
[72] Rhodes Appendix 4 para. 5.25 and appendix 4a para 2.6
[73] The extent of need that could be satisfied in Effingham was explained in evidence by Mr Rhodes and can be seen at Rhodes Appendix 4a paras 2.6 to 2.8.

SCHOOL NEED

101. This issue is (or at least should be) uncontroversial. **Paragraph 95** of the NPPF assists as a good starting place to understand the guiding policy for school development. At the inquiry, GBC and EPC have tried hard to read their own case in the words of the NPPF but paragraph 95 is clear and compelling. We are told very straightforwardly that 'great weight' should be attached to the need to create, expand and improve schools. LPAs are told to take a *'proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education.'*

102. As accepted in Xx by CYKC, the Planning for Schools Policy statement remains current and relevant policy.[74] Here too we are told to understand the issue of needs as threefold; **(a)** the basic demographic need to ensure the sufficiency of places; **(b)** the need for greater choice, namely to expand popular schools so that the same choice is offered to more people; and **(c)** the need to raise educational standards, namely to expand good schools so that more children can benefit from attending good schools. This expression of "*need*" in policy clearly goes far beyond the mere "*sufficiency*" that is the statutory duty of SCC. The need and policy support are expressed in clear and strong terms because there can be few greater objectives than to enhance the education prospects of the nation's children.

103. Others have taken time arguing the law on the approach to take to ministerial statements as compared to policy.[75] Three points in response. **First,** it is common ground that the schools policy statement remains in place and not withdrawn. **Second,** the previous Inspector attached weight to what it seeks to achieve and there is no reason why the same does not apply here. **Third,** this is a Ministerial Statement, provided as a statement to government policy. No amount of legal submissions can make it anything else. Mr. Jarvis didn't even include reference to it in his own evidence, despite the weight placed on it by the last Inspector and the Secretary of State.[76] When a Council's case requires it to undermine the weight of a Ministerial Statement that was itself relied on by the

[74] CD 6.6 – See IR 459 to 464 and SoS 27.
[75] Mr. Streeten's analysis on the law (51) behind weighting policy and ministerial statements speaks to tangential distractions of the Council; they wish to look in the opposite direction of what matters and what's before them. He later continues by conceding that *'Little, however, turns on any of this'* (52)
[76] CYKC XX

Secretary of State at the last inquiry, something is plainly wrong. Mr Jarvis must have known about it given the previous inspector referenced it several times in his conclusions.

104. The Appellant's case presents (again) a comprehensive justification for the need to expand Howard of Effingham, with a view to meeting all three areas of need. Indeed, it is worth once again repeating that the school is consented, with RMs approval, with the need being explicitly supported by the Council[77] and their witness SF[78].

105. HoE is a good school, as affirmed by Ofsted, and expansion in line with the JMS would contribute to the need to raise educational standards. It is a popular school, as evidenced by the oversubscription, and therefore the expansion would contribute to the need to offer greater choice. Mrs. Iles' assertions did not do anything to displace this fact, no matter the cherry picking a single year of applications where applications dipped (2021). Mrs Barnfield explained how Covid 19 had an adverse affect on school attendance across the country. The most recent evidence (2022) confirms that this was an outlier, and in fact the school is full, oversubscribed with a waiting list.

106. **On these facts,** (and on the basis of policy) **there is no need to demonstrate any demographic need for expansion.**

107. Nevertheless, if this was a test it is also met, as recognised by SCC who have the statutory duty to ensure sufficient places in the area. Contrary to the comments made by Mrs. Iles that births have fallen nationally, this is not the case in the school catchment, with the most recent data indicating that they may now have risen – notwithstanding the reality that migration may be just as significant to demand as births with many families choosing to move to the area.[79]

108. The School Organisation Plan provides only a broad snapshot of past projections at a wider borough or district level, and does not include specific detail on requirements locally. However more up-to-date and more locally-specific projections from SCC[80]

[77] CD 8.1, GBC's Statement of Case 7.33
[78] SF Exhibit 5.16B
[79] BS PoE, Section 6, pages 13-14
[80] BS PoE, Section 8, pages 17-18

show a clear and ongoing shortfall in capacity is expected in this area, a fact reinforced by SCC's clear support for the school and for the need to expand it.

109. The need for an additional two forms of entry has been clearly demonstrated:

a) 7 children admitted this cohort of September 2022 over and above published admission number of 240;[81]

b) 12 children still on the waiting list who wish to be admitted but for whom there is currently no space;[82] the majority of the other cohorts are also oversubscribed;

c) 4 additional places per year group associated with the Cullum Centre, once the new expanded school comes forward;

d) 15 places per year group that would accommodate children in the housing proposed as part of the school redevelopment (based on SCC's standard assumptions for child yield from new housing).

e) 15 places per year group (5% of PAN 300) needed to ensure a standard 5% buffer of capacity, to allow for variability and choice.

110. Together these amount to 53 additional places needed in *each school year*, which would be accommodated within the proposed additional two forms of entry (a standard 60 places in each school year). In addition, there are housing proposals in the school's catchment, detailed in Mr. Stringer's proof, that would generate demand for a further three forms of entry of demand locally. There are currently no other realistic or concrete plans to cater for this growth in demand.

111. Furthermore, as accepted by the Council's witnesses under XX, a new school building with better facilities (enabling a wider range of subjects) and more capacity would also be expected to increase applications significantly. For example:

[81] RB Evidence to the inquiry on the stand
[82] RB Evidence to the inquiry on the stand

a) Parents are more likely to choose this area to bring up their families, as was discussed how inward migration is significant within the HoE catchment;
b) Parents may choose this state school when they would otherwise have chosen independent education
c) Parents may choose this school when previously they would have been put off by lack of places or poor facilities.

112. Indeed, this is exactly what is intended by national policy that seeks to increase choice by expanding good schools, as affirmed by the Secretary of State in his decision on the previous appeal.

113. Mrs. Iles evidence does not advance knowledge for the benefit of understanding this issue. Mr. Stringer was able to contradict her evidence by showing that in 2022, the Leatherhead secondary school planning area there were 654 children on the roll in Year 7, and only 660 places. The Locrating website she was relying upon provides little explanation on the detailed nature of the data available, the site itself is not an official source of data for school planning, and the data it provides is incomparable to the official data provided by the ONS and SCC.

114. Mrs. Iles also attempted to suggest that additional capacity had already been provided in the area, however under XX conceded that these were not actually within the secondary school planning area used by SCC to determine need for places at HoE. Mrs Iles then submitted a further document on the expansion of St Andrews Catholic School, but that same document[83] confirms that the change in admission number is merely a reflection of existing practice rather than creation of actual new capacity.

115. Mrs. Iles suggested that the order of preference in which parents had listed schools somehow indicated the school was **not** a popular choice. This claim is in obvious contrast to the reality that the school is oversubscribed and has a waiting list of parents wishing to join. Admissions criteria are not intended to deliberately exclude choice, they exist simply as a way to prioritising admissions when a school is oversubscribed. Expanding a good school that is oversubscribed will, by definition, provide more parents with a choice that they prefer, which is the clear objective of policy.

[83] ID09, Statutory notice, long, St Andrews Catholic School, page 2, Question 4

Cullum Centre

116. As to the Cullum Centre, BS demonstrated[84] that the services that would be provided by it were in great need in general, but also specifically in this locality. The evidence established that the existing school site cannot provide the environment required and that Cullum Centre needs to be established at a secondary school site, with all its facilities. Mrs. Iles suggests that the Cullum Centre could instead be built within the existing grounds of the school, without addressing the serious impact this would have on an already inadequate school site or the environment it would create for pupils with special needs. HoE's consented site is ideal and the CC has been carefully planned and located to optimise its suitability for those in significant need. This was already accepted by the previous Inspector and is not now seriously disputed by any party. The weighting to be given to this is dealt with in more detail below.

117. GBC have consistently maintained that there has been some double counting on SEN places, namely within the 10FE school, and also within the CC. This is absolutely right and speaks to the whole point of the CC – this is to ensure that children can be taught within the mainstream setting but *also* to ensure that they have space in the CC for the extra support they need when they feel unable to cope in mainstream classes. There is clearly a justified basis to provide in both places.

Sixth Form

118. It was suggested that the proposed sixth form design could be squeezed so that it was no-longer able to accommodate up to 500 pupils. It is very likely that the improved 6th form facilities, and wider choice of subjects that enables, would attract significant additional children – providing the benefit and the choice that policy puts such great weight on.

119. GBC presented a note from SCC[85] with some illustrative 6th Form calculations based on past rolls. However the status of this note is unclear – it does not state on whose

[84] BS PoE, Section 9, pages 19-20
[85] SF PoE, Exhibit 5.16B

behalf, on what basis or for what purpose it has been produced, it does not claim to be a forecast, it does not state what SCC's position is on the proposed 500 place sixth form, nor does it suggest any particular size as being appropriate or inappropriate. It merely offers some speculative "what if" calculations by way of illustration of one scenario. No weight can be placed on it.

120. Additional evidence provided by Mrs. Barnfield[86] shows that two thirds of HoE's Year 11 pupils stay on into Year 12. With a planned size of 300 places at Year 11, that equates to 200 retained at Year 12. In addition, and in accordance with the external PAN of 50, the school will continue to offer the current 50 places available to outside applicants, meaning around 250 places are needed in each of Year 12 and Year 13, making a sixth form size of 500 places.

121. Mrs. Barnfield also provided evidence that the most common reason for students who do not take up the offer of a place in HoE's 6th form is the lack of facilities, indicating that the improvements provided by the consented school scheme would significantly increase demand. Providing for up to 500 pupils is a reasonable and proportionate provision. It would also contribute towards the policy objective to improve standards by expanding a sixth form rated Outstanding by Ofsted.

122. Every effort made extraordinarily to reduce the scale or quality of the 6th form is an effort made to reduce the choice and quality of facilities available to local children – and an effort made to contradict government policy.

GBC case in Closings[87]

123. Like SCC, GBC accept the need for the school, and for its expansion.

124. This accords with the Inspector and Secretary of State at the previous inquiry. As was repeated many times during the inquiry by CYKC, he school is already consented and has reserved matters approved by GBC.

[86] ID19 HoE Sixth Form Numbers 290922
[87] Please consider Annex B for other points rebutted against GBC and EPC

125. Yet GBC's case now seems to rest on reopening the design of the already consented school and starting the whole process again:

- **Firstly** GBC suggests that THPT should not base its offices at its principal school, despite the fact that this is the current situation at HoE, and the offices will clearly need to be re-provided.

- **Secondly** GBC suggests that HoE should no longer have caretaker accommodation, despite the fact that this is simply reprovision of an existing facility, one that is legally required in the caretaker's contract. The caretakers home was clearly evident on the plans before the 2017 inquiry. Plainly viewed by the Council as acceptable and appropriate when it granted the RM approval.

- **Thirdly**, GBC suggest restarting the design of the school in order to shave a few places from the 6th form, despite the evidence given above that the proposed size is a reasonable provision. It is agreed by all parties, however, that responsibility for planning a school's intake now rests with the Academy itself, and it is not for GBC or the planning system to "go-behind" the school's own reasonable plans, which Surrey County Council support.

126. None of these arguments against the consented design really stand up to scrutiny. The school has been planned reasonably, and the new provision is already consented.

SCHOOL DESIGN & COSTING[88]

127. THPT is a well-respected and successful Multi Academy Trust with an excellent track record. Government has put academies at the centre of policy, with responsibility for planning their own intake. In the case of HoE THPT has taken on that responsibility, and made plans that address the current inadequacies of the site, while also meeting national policy priorities of need including choice and improving educational standards. THPT is unapologetic about seeking to provide a good school facilities for its pupils, parents, staff and the needs of the local community, and improve facilities in line with the JMS, at no cost to the public purse.

[88] Please consider Annex B alongside these submissions for other points rebutted against GBC and EPC

128. THPT's organisational values start with Integrity, it is central to what they do, and Mrs Barnfield (awarded a CBE for services to education), has worked tirelessly to improve the facilities the school can offer local children who are not in private schools.

129. Contrary to the implication of Mr Fishlock, there is nothing gold plated about these proposals, simply a good level of educational provision to which local children can reasonably aspire. In contrast, his whole approach clarified in XX was revealing about the whole basis of his approach to this case and the Council's case at this inquiry:

> **CYKC**: *Are these facilities too good for the school?*
>
> **Mr. Sean Fishlock**: *It is an excessive need…*
>
> **CY**: *Are they too good for the children?*
>
> **SF:** *Yes.*
>
> **CY**: *These facilities are too good for the children, that's your evidence?*
>
> **SF**: *Yes, because there are 15 million other children who have only standardised teaching setting.'*

130. On this issue of the school design, the evidence from the Council's witness Mr. Fishlock was troubling.

131. SF did describe the current **school conditions** as 'unacceptable'. Mrs. Iles described them as 'not fit for purpose'. They are both right, and they accord with what the SoS found. And SF's evidence does not grapple at all with current government guidance on what to do in this situation; which is to seek to encourage the expansion of good schools and the improvement of facilities.[89] Worse than this, he admitted during XX that the improvement in the facilities offered as 'excessive' and 'too good' for the children of the Howard of Effingham. This astonishing assertion was followed by the false justification that 15 million other children were getting '*standardised teaching setting'* when we know that in Surrey plenty in other schools are getting better (in the private and public sector).

[89] CD 6.6: *"The Government wants to enable new schools to open, good schools to expand and all schools to adapt and improve facilities."*

132. What both Pidwill and Fishlock have told the inquiry in this is quite clear; that these standards are 'too good' for the pupils in Effingham, or that what they're being offered is excessive. That we should actually be designing a school that is not just cheaper, but one which is not seeking to meet high standards, in fact the opposite; to lower standards, to have smaller classrooms, narrower corridors, reduced playing fields and other facilities speaks volumes about their position.

133. It cannot be overstated that this is a school that's fully supported by the County Council, the body with statutory duty to ensure sufficient school places. The school is a self-funded project, not a DfE / EFSA funded project. The Trust has a degree of autonomy and considerable executive authority in project delivery. It has 13 schools (14th in the pipeline) under its MAT umbrella. The point is well explained by the inspector in IR 450 and 451. As he concluded, given the content of the NPPF and the JMS, it is difficult to see how the school and its size can be subject of objection unless the Local Education Authority are objecting.

134. **The only architect proposing actual design solutions and giving evidence at this inquiry is Mr. Olliff.** Mr. Pidwill has submitted evidence aimed at criticising the consented design, but has not offered any solution other than to say that the current school is not '*unfit for purpose'* – in contradiction of the previous Inspector, the SoS and all other witnesses. He conceded that he had not taken the time to meet the Headteacher, the staff and students in order to properly appreciate the deficiencies they have to overcome on a daily basis. It was depressing to hear this evidence apparently given on behalf of the parish council, especially from someone who has never actually designed and delivered a whole new school in his long career. Mr. Pidwill may well have worked on extensions or new blocks for schools, but with the greatest possible respect to his experience and perspective offered little to the inquiry. Crucially, he accepted that he gave evidence to the inquiry as someone picked based on his bias towards refurbishment rather than building a new school[90]

135. The matters in dispute as regards the costs are as follows:

[90] As accepted during XX his evidence was all about the CABE paper from 2009

(i) The Pupil Numbers and the Corresponding Size of the School

136. The question of whether the correct number for pupils is 2,000 or 1,935 is a complete red herring wasting precious inquiry time. SCC is responsible for ensuring sufficient pupil places at the County level (except for the 6th form where it merely contributes with other bodies), but is not responsible for determining the capacity of individual schools. The 2018 permission neither limits nor prescribes what the correct figure should be, and it would have been wrong to do either. The MAT is responsible for deciding its own capacity setting for the Howard.

137. Despite the lengths taken to assert that the school is over-specified, even on SF's case the BB 103 allows for the range sought by the school, on the very figures proffered by SF.[91] As was explained, and demonstrated below, the area of 14,964sqm is only 614 sqm over the minimum area set out in BB103, and comfortably within the range of 14,350sqm – 16,750sqm.

138. That range is explained in the BB103 on pages 6 and 8 "The buildings" The graphs reveal all. For gross internal area, which is what we are looking at, secondary schools one takes the top two lines – a range of 10, 500 to 12,000 for 1,500 children ages 11 to 16. For a sixth form of 500 one takes the figure for 300 (again to the top two lines – a range of 2,400 to 2,800. Then one adds to that the figures for 200 9again the top two lines – a range of 1,750 to 2,000). Crucially, the top of the range gives rise to a combined figure of 16,750 sqm. That is just the school. Not the offices etc.

139. The guidance in this document is clear that the requirement should be "at least the minimum" see the top of page 8. In direct contrast, is not the slightest hint that the top of the range is in anyway unacceptable or not to be relied upon. So taking the top of the range of these figures we have an acceptable school standard of 16,750 sqm which is vastly larger that the proposed school. The school itself is just 14,964 sqm. So it is nearly 2,000 sqm (1,786 sqm) smaller than it could be. He agreed these numbers and the maths in XX. He then attempted to try and suggest the school was over 16,000 sqm. But he was not talking about the school properly understood At most one might include

[91] CD 11.20, BB103 A and B – Area Guidelines for Mainstream Schools, see pages 10-11

the Cullum Centre at 474 sqm. That means the school is still around 1,300 sqm smaller than the permissible maximum. The offices and the nursery are not part of the teaching school. Mr Fishlocks attempts to continue to refer to a school of some 16,000 sqm were seeking to mislead and obfuscate. He kept trying to say the school was over 16,00 sqm whilst also saying the offices and nursery and part of the Cullum Centre were not a legitimate part of the school.

140. To be clear:

i. The school is 14, 964 sqm.
ii. The Cullum Centre is 474 sqm
iii. The Trust offices are 594 sqm
iv. he Nursery is 155 sqm

141. Even if Mr Fishlocks own case of 1935 student, he accepted that the upper part of the range in BB103 would be 16,250. It's the same maths as above, only instead of the 2,000 for the last 200 6th formers, it would be the lower figure of pretty clearly 1,500 sqm– see the line running up from the 135 (on top of the 300 – making 435 6th formers) on the top graph on page 11 of the BB103. That makes a school which is around 1,300 sqm (1,286 sqm) larger than the RM approval. Even with the Cullum Centre included 474sqm it is still larger but over 800 sqm.

142. In the 120 pages of written evidence from Mr Fishlock there is not a hint of what the BRE actually says about there being a range. That is completely unacceptable. He should have drawn attention to it. It renders his evidence completely unfair. No amount of chastising the Appellants witness round the head as regards the absence of RICS declarations and reference and consideration of professional guidance, can hide the fact that that what Mr Fishlock did was mislead the inquiry about the BRE guidance. In claiming the school is too big he should have drawn attention to this guidance. The figures undermine his whole case about the size of the school

143. In the table below, it is clear to see the evidence of MO and how he compares to the standards as described by SF.

	Space Standards	**Current Consented Design**	variance to standards
Howard of Effingham School	14,350sq.m - BB103 MINIMUM for 2,000 places	14,964sq.m for 2,000 places	+614sq.m
Cullum Centre	310sq.m – BB103 for a designated unit for 20 ASD pupils	474sq.m	+164sq.m
THPT Offices	700sq.m - BCO recommends 56 @ 10sq.m/ person nett lettable area and 80% nett to gross	594sq.m	-106sq.m
Nursery	137sq.m based on National Standards for Early Learning and Childcare	155sq.m	+18sq.m
	15,497sq.m	**16,187sq.m**	**+690sq.m (+4.45%)**

144. Mr. Fishlock's approach to this, frankly, has been to start with a conclusion (namely to find ways of reducing the cost of the school) and then work back to ensure that his workings out fit the picture he's been asked to paint. None of what he told the inquiry was foreshadowed in the Council's statement of case. An example of this is despite confirming the 2,000 pupils figure in his evidence (5.1.2) he goes on to stick to the 1,935 figure, ostensibly on the basis that it is what was required by SCC. He had done the same thing with the sixth form places ('around 434-436').

145. In the final analysis, this is a school supported by the statutory body responsible for school places, it is what is needed by the MAT, and the District Council's Officer appraising this scheme over a number of years agrees – as did the previous Inspector. This body of comprehensive evidence flies in the face of what SF told the inquiry.

146. For all the reasons explained in the Appellant's evidence. The figure of 2,000 is appropriate, with 500 places at the sixth form, mindful of the additional places likely to be attracted based on a new and improved school facilities.

(ii) Cullum Centre

147. The Cullum Centre is an integral part of what is being offered here. It is cost neutral to the scheme itself. The National Autistic Society ("**NAS**") had the following to say, *'with generous financial support from the Cullum Family Trust, the National Autistic Society together with partner Local Authorities are developing purpose-designed and built specialist centres in schools across the UK. The Centres will provide specialist support from trained staff, such as learning in small groups and therapies within a calm setting to retreat to while having the opportunity to regularly engage in typical mainstream school activities as appropriate for each student."*

148. The Centre is a dedicated facility which has been funded by Mr. Peter Cullum, a private benefactor, to the tune of £925k, and is not to be treated as an integrated Specialist Resource Provision (SRP) as has been done by Mr. Fishlock. The Centre is in fact close to a Designated Unit for ASD which attracts additional facilities over and above the standard BB103 area allowance and cannot be accounted as an integrated SRP for the purposes of downgrading this provision.

(iii) The All Weather Sports Pitches and the Running Track

149. Mr Fishlock accepted this is required by the outline planning permission. He disputes the size. It is churlish. This is a large school and one that will be used by local sports clubs. There can be no sensible objection to this.

(iv) THPT Offices

150. The Council's submission on this is that the offices are an excessive and over the top grotesque provision that comes at the expense of teaching facilities. The following is said in summary by way of response to the points.

a) THPT's existing main offices are at HoE now, and in rebuilding the school the reprovision of these offices is a clear operational necessity.

b) Every employee within the 13 THPT schools and each in Shared Services is a Trust staff member. Each school has its own complement of teaching and

support staff to meet the needs of the children and young people in that school. Shared services Trust Staff provide the 'back office' central functions with economies of scale, as explained by RB.

c) HoE is the lead school of the MAT, with the majority of the THPT Shared Services staff being based there. With office space designed for 56 members of that team undertake the roles of Finance, HR, IT, Estates and senior leadership, as would be expected from the school at the top of the organisation. There are now 13 schools within the MAT, and a 14th in the pipeline stage of a DfE funded Free School Special School;

d) The Trust employs 1,417 members of staff of which there are 580 teachers, 837 support staff (including teaching assistants). These numbers include all layers of leadership and management in schools and the central Trust. On behalf of the MAT, the lead school now carries the kind of function that would have been carried out by the former LEA's from large offices in the local county hall;

e) RB explained how some Trust support staff are currently being housed in disparate accommodation on other school sites, due to the space constraints, because Shared Services have given up the ground floor space of the Eco-building to accommodate the necessary additional Howard 6th form study space. Collocation across the MAT, and economies of scale also again at work here;

f) The Trust offices were included in the outline scheme consented by the Secretary of State[92] and they are included in both RM consents on the first floor above the Cullum Centre, which will help to provide passive supervision and safeguarding;

g) Mr. Fishlock fails to appreciate the need, still less engage with what it means to the Trust. He is not in a place to authoritatively comment on the space needs of the MAT, he has not worked in one, and especially in light of the clear evidence heard from RB.

[92] See the illustrative floor plans contained within application 14/P/02109 (drawing numbers Tp(10) 001, 101 and 201), and CD 1.29c, 2018 appeal Design and Access Statement p55-57 (PDF pages 1-3)

EFSA Approval Process

151. Mr. Rhodes explained that the EFA approval is necessary for the school to proceed. The Secretary of State has to approve all disposals of publicly owned schools and be satisfied that value for money is being achieved. In other words, the concerns expressed by Mr Fishlock were not only shown to be entirely misplaced, they are not even matters for this inquiry. They are matters covered by other legislation and, in accord with NPPF para 188, this inquiry is entitled to assume that other regulatory processes will perform their function.

152. The Inspector was reassured as part of the inquiry that there is a process, outside the planning context, that will consider the school in more detail. EFSA has consented to the project in March 2017.[93] It was confirmed there that the school project was being delivered on a self-funded basis, with the explicit requirement of EFSA's consent that there is to be no financial contribution now or in the future from EFSA / DfE.

153. At this point, there is no identified Govt money for the computers and furniture in this arrangement. The contract is clear Berkeley have to pay – see the contract attached which Berkeley are happy to put into the public domain to settle this issue. The contract makes clear Barkeley will pay for it all save for existing loose equipment which can re-used as appropriately (i.e if it is suitable it can be carried across). Please see paragraph 9 of the Appdx 4 (Exchange Specification) which is the relevant specification and which Berkeley have given us permission to disclose attached to this closing. The Council of course have this already and know what it says. Paragraph 12, which is what the Council now rely upon does not undo that commitment and nor could it. It merely makes clear that Berkeley will not pay for that existing equipment which is carried across where appropriate.

154. It has been made clear throughout the inquiry that this is not a Building Schools for the Future (BSF) nor a Priority School Building Programme. And so the applicable procurement parameters and how they compare to this case are hardly useful. The MAT has a degree of autonomy and considerable executive authority in project delivery, under the scrutiny of EFSA to ensure the agreed specifications are adhered to clearly.

[93] ID 24

Similarly, it has not been questioned that the Trust appointed consultants, lawyers and advisors have experience in this type of project delivery, with particular capacity and expertise invested in them. As explained by JR, EFSA has appointed its own project monitor. Crucially, EFSA's project monitor will work with the Trust's team in the final stages of the design and specification.

155. Mrs. Iles on behalf of the Parish sought to share her concerns about the school, and as to the facilities, she told the inquiry 'who wouldn't want a shiny new school…' but that it is was 'just the housing' that she was clearly against. That puts into stark context her evidence, as well as the evidence we have heard from Mr. Fishlock.

Miscellaneous (£1.99m)

156. Mr Fishlock then tries to suggest there is £2m more that should be deducted. His explanation of it in the table is impossible to follow. The real answer as Mr Britton explained is that nearly all of it is comes from Mr Fishlock's misuse of the BCIS figures. He has used £2,590 per sqm for the Secondary school. Both Mr Britton and Mr Oliffe know this to be wrong. Mr Britton explained it very clearly. What Mr Fishlock's has done is 713.8 in the standards which is for extension of schools as all the examples in that section show. That is the wrong figure to use here as Mr Britton explained. The correct standard to use if 713 which is for new schools. The costs of which are more per sqm than extensions.

157. The cost in the 713 figure is £2,731 per sqm. That is the BCIS median figure. Even Mr Fishlock says the median is the right figure to use – referrable to an appeal decision.

158. But of course, Mr Britton has not used that as his detailed costings show that the school designed by Mr Oliffe is actually only £2,709 per sqm. That is the correct and detailed figure to use here – see the top of the third page of the Scott Schedule to see this point explained in the evidence.

159. The end result is that there is a difference between £2,709 and £2,590 of £119sqm. And that accounts for a difference across the 14,964 sqm of £1,780,716.

160. The school is an appropriate size in all regards. Mr Fishlock's attempts to undermine it have been a spectacular waste of time. They are based on a misleading approach to BB103, misleading costs figures, and attempt to obscure the RM approval of the actual teaching area of the school size by continuinally focussing on a figure of over 16,000 reference and suggesting improved facilities should be removed. Or that facilities well known about at the time of the 2008 decision, namely the offices should also be removed. It is all highly inappropriate.

161. **Annex B contains details of a number of points rebutted against GBC and EPC following the receipt of their respective closings.**[94]

VIABILITY

162. The Council's submission are that the school is over-specified and that these unnecessary costs inflate the sums in a way which has been used to falsely justify the current appeal proposals. The case is unfounded, as the evidence has convincingly shown. To recall the details; as demonstrated above and in the evidence, the school is being built within the preferred range in guidance (BB103 area), and in particular its functionality and quality.

163. Before examining again the detail of the viability evidence before this inquiry, there are two important matters by way of background:

1. The viability of the scheme was independently appraised by reputed viability and cost consultants appointed for that purpose and the appellant's position was comprehensively endorsed; and
2. The history timeline shows that the appellants have worked hard and consistently to deliver their commitment to the Trust, but to do so efficiently and economically.

164. Accounts of these matters feature strongly in the closings from EPC and aspects of them will be elaborated in the Appellant's claim for costs against the Council, but there are some matters which should be dealt with briefly here.

[94] Please consider Annex B for other points rebutted against GBC and EPC

165. Understandably, over the years, various cost estimates have been produced for the school as time and inflation has taken its toll. Ironically, if planning consent had been granted for the 2014 application (as the Secretary of State judged it should have been), the new school would be built now for something close to its original cost estimate and the application for 114 additional homes would not have been necessary to pay for it.

166. Officers were provided with and reviewed the FVA submitted at that time, took specialist advice and withdrew the viability reason for refusal (which had related to the less than 40% affordable housing offer). The Parish Council has exercised a conspiracy theory since that time and that lives on today. Instead of recognizing that the application before this inquiry has been supported by a full cost and viability appraisal, which has bene independently reviewed and endorsed, the concern focuses on re-examining the 2014 appraisal and seeking to update and index it. With respect, that is not a helpful approach. There can be no better evidence than an up to date appraisal, objectively and professionally prepared by respected experts, reviewed and endorsed by independent experts. It doesn't properly fall to members to disbelieve that evidence, with no countervailing evidence available to them and to refuse consent in the blind hope that someone will come to their rescue and endorse their prejudices.

167. Similarly, whilst the events of the timeline (JR Appx 5) excited much comment and cross examination, would an objective reading of them conclude anything other that that they tell a story of Berkely Homes working hard and consistently to deliver on their promise to the Howard Trust? Inconsistently with the criticisms, the appendix JR 5 shows that the Appellant closely, constantly, regularly and forcibly ensured that the costs of the school were kept in check. There are multiple references to evidence that.

168. Of course, there wasn't a fixed budget for the school in 2014. As planning delays impacted on delivery, so costs rose through building cost inflation – not through the school specification. But Berkeley worked hard to keep them under tight control. The evidence shows those efforts to be successful as they are below the appropriate (713) BCIS median figures. What Berkely could not control was its inability to achieve planning permission in a timely way. Millions of pounds have been spent keeping faith with the Trust. Berkeley's commitment and approach have been exemplary.

169. EPC even suggest that Berkeley had a secret plan all along to apply for more homes, failing to recognize that the timeline records that the current appeal site was not in their control or ownership until the end of 2019. Berkeley have not gone about their business of striving to deliver the school secretly. As the timeline shows, as soon as it became apparent that delivery could not viably be delivered from the 2018 consent, Berkeley went to see the Council, and the Parish Council. The need for the additional homes has been openly demonstrated in the submitted FVA; it was reviewed and endorsed by the Council's independent consultants. They agreed the additional homes are necessary. That is what the evidence shows.

Profit

170. It was acknowledged by Andrew Jones ("**AJ**") that the blended return on GDV in his proposed scheme appraisal for the appeal proposals (once corrected for the additional costs for Astro-turf pitches of c. £700k in the Fishlock cost plan) equated to c. 19.23%. AJ acknowledged that this would fall within the reasonable profit range identified in the PPG on viability (15% - 20%). That was a clear concession

171. In oral evidence AJ stated that the PPG would not apply in this case because this was an enabling development. This is quite an odd comment for a number of reasons. **First**, this was not an argument raised once by AJ in either his Proof, Rebuttal or Replacement Rebuttal. To have done so was to essentially make it up on the hoof. **Second**, and in direct contradiction to his Rebuttal/Replacement Rebuttal, AJ uses the PPG to argue that the target profit we have used in our appraisal (20%) is too high as it as at the upper end of the scale identified in the PPG.

172. **Thirdly**, when pressed, when further XX was allowed on this new attempt to explain away the relevance of 15-20% bracket AJ stated that he thought the PPG on this was completely irrelevant. That of course is completely wrong and part of the costs submission.

173. This was an admission forced out of him because he knew that his core case (that the consented scheme can be delivered on a 12% profit) would fall apart if he accepted that the PPG was the guidance to follow.

174. Mr Rhodes took the inquiry to the terms of the **NPPF para 58**, which require all viability assessments to reflect the recommended approach in national guidance, including standardized inputs. The PPG is clear – see paras, 18, 07, 08 and 10 – that this applies both to appraisals undertaken for plan making and to those used to inform planning decisions. The Council's case is in conflict with that policy and guidance.

175. BNPP used a return of 17.5% on GDV to test the deliverability of the appeal scheme. So did Mr Turner. John Turner (JT) on behalf of the Appellant, on the other hand, clarified that although our appraisal showed a low actual developer return (11% on GDV) the developer was contractually committed to the scheme and therefore the scheme in this sense would be deliverable even though this fell outside of accepted reasonable profit margin benchmarks.

176. Crucially, it was also confirmed by both witnesses that we are in extremely challenging economic times; one of the most uncertain periods over the last 50 years. The country is widely predicted to be heading into recession, whilst building cost inflation is rampant. The Appellant is taking on substantial risk. This in itself substantially increases the risk of development projects such as this one and justifies a higher target margin requirement; on this basis a 20% target profit on market GDV is reasonable in line with national guidance and policy.

Programme

177. There are two factors affecting the programme, which in turn leads to a difference in finance costs between the JT and AJ assessment of c.£6m. **First,** there is the school, if SF's costs increase, so too do the finance costs for AJ. The **second** is the programme for selling phase 1 whilst the school is being built out. AJ assumed the developer could achieve off-plan sales before any development has taken place thus off-setting finance costs at the start of the programme. To justify this he used as evidence a Berkeley development in Leatherhead – Princes Chase. No reference was made to the numbers of such sales – which was in fact only 5 units. Mr Jones should have brought that to the inquiries attention.

178. To reinforce this point the Inquiry was provided with a note which showed how there was a broad consistency in terms of finance assumptions and outturn cost between TM and Berkeley Homes/BNP in the 2021 viability negotiations. The one outlier is the cashflow of AJ which indicates he has made unachievable assumptions in an effort to improve viability.

Overall School Costs

179. Once AJ amended his appraisal model on Thursday evening of the second week, the surplus in his proposed scheme model was c. £7m. That is the surplus said to be created when all Mr Fishlock's items which he says should be excluded have been removed. That is the circa £14m.

180. Crucially, this surplus figures relies, as he explained in evidence on three profit levels. 17.5% for the market housing; 15% for the discounted market sale and 6% for the other forms of conventional affordable. That level of profit is of course acceptable. What is absurd is to then suggest that 11.33% is acceptable when the scheme is mostly market housing and the figure allowed for that is lower than the figure Mr Jones has assumed for the discounted market sale ("DMS"). How can the DMS which is easier to sell because precisely because it is discounted in price afforded a higher level of risk than the market housing which is not discounted and is then full exposed to the conditions of the market. Mr Jones evidence is internally inconsistent.

181. As noted during the Friday session when considered the amount of additional costs that would be needed to add back into the Fishlock school costings to remove this surplus, we don't just have to consider school costs but associated finance costs.

182. During the course of the session this was estimated at 42% additional cost. So on this basis, if Mr Fishlock is wrong about just c.£4.950m of costs and the Inspector concludes these should be added into the AJ appraisal model/Fishlock school cost, this would equate to an total cost including finance of c. £7m.

183. On this basis therefore, the Inspector could agree with the AJ appraisal modelling assumptions entirely, and simply assume that Fishlock is wrong on just £4.950m of his

envisaged cost savings, and this adjustment, on its own, would change the AJ conclusion for the proposed scheme from being viable to non-viable.

184. The school size issue is as the table put in by Mr Fishlock shows worth £3.6m. With interest that rises to £5.1m because the interest is £1.5m (in XX CYKC suggested around £1m as a broad figure and an underestimate). The office are a further £2.1m and wit interest that is £1.5m. And there in just two items is the problem for the Council. The £7m surplus disappears and Berkeley is simply making 17.5% profit on the market houses, 15% on the DMS and 6% on the other affordable housing. And there is no surplus left. The other deductions Mr Fishlock makes are equally inappropriate. But one does not need to explore those at all if the 17.5% profit figure is used on the market housing. The other deductions, which are not appropriate either, are the reason Barkeley are now down to just 11.3% profit. What drives that is not an overly large school. But a good school with expanded facilities, the cost of which has grown primarily because of the price of raw materials.

185. The PPG is clear about the level of acceptable profit. It is between 15- 20%. No inspector should be seen to vary from that without very good reason. The fact Berkeley will only make 11.23% on todays prices is not an answer to that. It is a consequence of the contractual position they now find themselves in.

186. The cost which Mr Britton were taken to were as said to be inflated where different. Thy were £11m. but those were based on BCIS costs from last year which are of course completely out of date now.

Conclusion

187. In light of that background and comprehensive information, the Inspector is invited to accept this compelling case. Facing this is the Council's odd attempt at reconfiguring a school with consent from the SoS and its own Officers, with a view to inviting you to chop off units based on calculations done on the hoof.[95]

[95] To **GBC closings** at para 28 and 81: you cannot simplistically 'remove' the sums: the £2.14m FFE figure also includes fixed FFE which BH are providing (and contribution of £321k for loose FFE) along with the ICT infrastructure which cannot be repurposed.

188. This approach offers nothing to the inquiry other than to continue the persistent display of intransigence, seeking to take away from a unique opportunity to expand the school, and enable for much needed housing to be built.

DESIGN MATTERS

189. Context is once again important here, but so is analysis, based on evidence.

190. The North Lodge Farm site is located on the east side of Effingham Common Road to the south of Thornet Wood. This is to the north of the approved development for housing at Lodge Farm, and to the west of the proposed new Howard of Effingham School. As Mr. Grover made clear in writing and during evidence, the appeal site forms an extension to the consented Lodge Farm scheme to the immediate south; accessed off Effingham Common Road and totals 6.7ha in area, with 2.4 ha of built development.

191. Mr. Johnson, drafted in late on behalf of the Council, was concerned about 'lost opportunities' and how the DAS failed to take into proper account the context of this development. By contrast, however, the DAS was strongly complimented in the officer's report – in the section of the report apparently written by Mr Johnson's firm.

192. Mr Johnson's evidence appeared to assume a character of Effingham which is not found on the ground. As section 2 of Mr Rhodes' rebuttal evidence points out, Effingham does not have a dense core which gradually reduces in density as one moves away from the centre. In cross examination Ms Hogger was taken to the Neighbourhood Plan at page 86 [96] and its endorsement of the development of Middle Farm Place at a density of 34.6 dph, which is directly comparable to the appeal proposals and which is held up in the Neighbourhood Plan to provide "*an indicator of appropriate dwelling density for residential development within the village settlement*." Middle Farm Place also adjoins open countryside – although there the countryside is not formed by a dense woodland. A fair eye would also see that the attention to detail and to local distinctiveness is much more readily apparent in the appeal proposals than manifest at Middle Farm Place (photo in the Neighbourhood Plan at page 86).

[96] CD 5.7

193. The case made in closing by GBC asserts that the appellant's proposals are not derived from an analysis of the character of the area – a criticism directly at odds with the Officer's Report which recognizes the requirements of the NPPF and the National Design Guide (page 141) and then advises:

"*The detailed contextual analysis set out in the Design and Access Statement provides a sufficient description of the residential character of Effingham. It evaluates the key characteristics, including; the approved development at phase one, the village character and the detail palettes and heritage assets*."

194. The Officer's report also references the LVIA submitted with the application and advises that "the architectural language of the proposed homes borrows from the locally distinctive characteristics of Effingham." (page 142).

195. As set out there, and as explained in the notably unchallenged evidence of Mr Rhodes at his paras. 5.5 to 5.14, the effect of the appeal proposals on the character of the village has been the subject of extensive analysis. This is EIA development, supported by a full Environmental Statement. If you have any doubt about the extent of analysis undertaken, please refer to the application documents, including the Landscape and Visual Impact Assessment which contains a full analysis of local policy and of local character, including a detailed review of the Landscape Character Assessments asserted in closing for GBC not to have been considered.

196. Notably, the heat of this point made in closing by GBC goes to a barrister's point about process and the alleged lack of analysis – a point inappropriately made if the application documents are understood. Far less is made of the substance – you have heard very little by way of evidence to suggest that these proposals have not been well designed to respect local distinctiveness and less still to persuade you that the Planning Officer was wrong to advise members:

i. On landscaping, '*…It is considered that the proposed landscape scheme greatly assists in softening the proposed development layout.'*[97]

ii. On design, *'…it is considered that the design of proposals achieve, broadly, a high quality design that responds to distinctive local character reinforced*

[97] CD 4.1, page 144

already through the phase one permissions and therefore the proposals meet the requirements of policy D1.'[98] And *'The design of the proposed dwellings has been carefully considered, and although it does not quite match the level of detailing of that already approved, it is considered that the design respects the character of the phase one development, responds to the vernacular, and results in dwellings results in* ***that sit cohesively alongside the phase one approved scheme.***[99]

iii. Overall: "*the proposed development has been* ***carefully considered*** *and the design of the proposed dwellings* ***respect the local vernacular*** *and ensures the character of phase one continues through into this phase two development, to provide* ***a seamless connection between the two schemes***." (emphasis added)[100]

197. The design of the phase one development referred to, of course, is the design approved by this Council.

198. Issues of design and, particularly of the impact of the development on the character of the area were directly considered at the previous inquiry. Mr Rhodes explains this in his proof from para. 5.18, which was again unchallenged. There he records the careful analysis undertaken by the Inspector and the conclusion that "*no material harm would result*" (IR para. 405).

199. Important in this context is the relatively limited visibility of the 2018 proposals and of the current appeal proposals. In respect of the housing on the western side of the 2018 appeal site (immediately south of the current appeal site), the Inspector found that …"*the greater part of this enclave would not be highly visible in general views of the greater settlement of Effingham*." (IR para 405).

200. The screening provided by Thornet Wood (described in the DAS as "*an obvious and unambiguous boundary*" [101] and by Effingham Common Road create a similar context for the current appeal site.

[98] CD 4.1, page 145
[99] CD 4.1, page 147
[100] CD 4.1, page 148
[101] Rhodes proof para 5.9

201. That common sense view is not unique to Mr. Rhodes or Mr. Grover:

"*the application site is relatively well screened from public views and viewing it in isolation (ie without the – permitted - appeal scheme) would be difficult*" (Officer's Report) [102]

"*…long distance views are largely screened by the enclosure provided by Thornet Wood and are simply not visible from identified key views ….*" (Mr. Johnson) [103]

202. The weight of this background is compelling. Unhelpfully for EPC and GBC, there is no evidence to mark out this site or views of it as particularly sensitive. The application LVIA systematically considered 28 viewpoints and assessed the landscape locally to be of relatively low sensitivity and the effect on views to be negligible, neutral or beneficial. [104] The Neighbourhood Plan identifies 'valued views and landscapes' under its policy ENP-G2 and Schedule A, but a view of the appeal site is not one of them. [105]

203. This is high quality design which fully takes account of and respects its setting.

VERY SPECIAL CIRCUMSTANCES[106]

204. Bringing this all together, the inquiry had the benefit of hearing from Mr. John Rhodes (JR) on behalf of the Appellant, Mr. Nigel Jarvis (NJ) on behalf of the Council and Mrs. Liz Hogger (LH) for the Rule 6 Party. As was clearly apparent from the evidence given, JR was authoritative, clear and comprehensive in bringing clarity to the issue of how to undertake the planning balance. In reality, however, his approach simply follows that adopted by the Inspector and SoS last time.

205. JR demonstrated how NJ had clearly got the wrong approach in failing to weigh each of the harms or benefits in their own right, and by conflating the harm against the benefits.

[102] CD 4.1, page 142 and 164
[103] Johnson para 4.26
[104] Rhodes 5.12
[105] CD 5.7, pages 27-33.
[106] Consider Section 8 of Mr. Rhodes' POE for the full 'Very Special Circumstances' (26-29).

206. For example, it cannot be right to conclude that 'no significant weight' can be given to the need for or benefits of the new school because NJ does not agree that the houses are justified (Jarvis paras 5.3.7 and 6.4.12). The school is a more detailed version of the same school before the last inquiry. It generates the same benefits to which the Secretary of State attached very substantial weight. It is extraordinary that the appellant will provide a new secondary school to meet that need at no cost to the public purse. To attach no significant weight to that is fundamentally wrong.

207. Similarly, it is simply not right for Mr Jarvis to attach less weight to affordable housing because it is in the Green Belt (Jarvis 5.2.11, 5.2.12). The designation of the land does not affect the value of the homes to 83 households in genuine housing need. Again, at the last inquiry, the Inspector and the Secretary of State rightly saw and weighed the inherent benefits of the affordable homes proposed (see for example IR 470). Green Belt harm is weighed separately on the other side of the balance.

208. Despite GBC's closings, the "*principal policy test in this case is clear. The NPPF (at paragraph 148) requires very substantial weight to be given to any harm to the Green Belt and identifies that very special circumstances will not exist to allow development within the Green Belt, unless the potential harm to the Green Belt by way of inappropriateness, and any other harm is clearly outweighed by other considerations*." That was JR's evidence at his proof para. 8.1.

209. As the policy (and JR) state, 'other considerations' may be relevant and an important issue in this case is that the housing is necessary to pay for the school, which will not otherwise be provided. But the test is 'very special circumstances'. The NPPF does not set a test of necessity.

210. At the previous inquiry, the Inspector and the Secretary of State did not set a test of necessity. They properly weighed the benefits and the harms of the proposals before them, attaching appropriate weight to each and concluded that the benefits 'clearly outweighed' the harm. [107]

[107] Decision letter para 39 and IR para 527

211. We have already addressed the question of alternatives on which the case made against these proposals completely depends. If the case is approached this time, consistently with the way in which it was approached by the Inspector and the Secretary of state last time, and appropriate weight is attached to the actual harms and the actual benefits, we respectfully suggest that the case for the grant of planning permission is compelling.

212. At the end of JR's written evidence, the Inspector will find Figure 3 (page 26) where the issue, the weighting and what each topic contributes to the necessary balance are clearly set out. This approach replicates and updates the approach taken in the 2018 decision. If the distortion of the Council's alternatives case is put to one side, we submit that table represents a fair reflection of the evidence and of the weight to be attached to each topic on its merits. We suggest that those judgements in themselves were not seriously challenged at the inquiry. We explain ourselves further below.

213. It is common ground that the decision in this case, needs to weigh all of the harms arising both from the current appeal and from the proposals approved by the Secretary of State in 2018 (Officer's report p.102, Rhodes 8.4 and Jarvis 5.1.2). Unfortunately, Mr Jarvis did not accept that is also necessary to weigh all the benefits, at least not in his proof but the point is so obvious that it was inevitably agreed in XX.

214. The 2018 decision provides a starting point. It sets a benchmark – making clear that the harms from the 2018 proposals were clearly outweighed by the benefits. Those harms must not be forgotten but it is sensible to consider the incremental harms and benefits of this appeal, to consider whether other matters have changed, and then to redraw the balance.

The Harms

215. Despite the attempts to say otherwise in the closing submissions for GBC, the Appellant's evidence is clear about the harms. JR's Section 8 attaches substantial weight to inappropriateness and also to the effect on the openness of the Green Belt. This is explained in his proof at paras. 4.3 and 4.7 and 4.10 where he explicitly accepted the conclusions of the previous Inspector in relation to Green Belt harm and is clear that additional harm to openness arises from this appeal to which substantial weight

should be attached. He was clear in evidence that it was no part of his case to suggest that anything other than substantial weight be given to that harm.

216. The case of the Council and the Parish Council is that the Inspector found that the previous proposals would result in "*a very significant degree of reduction in openness*" (IR para. 372) – a finding which JR directly accepts (JR 4.2).

217. However, despite the significance of the harm to the Green Belt, both the Inspector and the Secretary of State found that the harm was clearly outweighed by the benefits. That shows two things:

- that the harm was fully understood (it is not news for this inquiry, it was fully taken into account); and
- that the benefits must be very substantial if they clearly outweighed that harm.

218. Incremental additional harm arises in this case both by way of inappropriateness and because, of course, the openness of this site would be substantially impacted by the appeal proposals.

219. But it must be right (and indeed it is required) that we ask if there is other harm to the Green Belt so that can also be weighed. Despite the criticisms made in closing, that is exactly what JR has done in section 4 of his evidence, by analyzing the contribution which the appeal site makes to the Green Belt and the harm that would be caused to that contribution. No other evidence does that – the evidence for GBC and EPC asserts the principle of harm without that analysis.

220. It is in that context that the issue arises about defensible boundaries – not because the appellant is trying to redraw the boundaries at this appeal but because it is obviously relevant in this case that the surrounding countryside is insulated from the appeal site by the clear, defensible boundaries of Effingham Common Road and Thornet Wood. Harm to the surrounding Green Belt is reduced as a result. Urban sprawl is prevented and no risk arises that the development would contribute to the coalescence of settlements. Para 143 of the NPPF recognizes the significance of physical features that are readily recognizable and likely to be permanent for this reason.

221. It is in that context that the relative lack of visibility of the site from the Green Belt is also relevant.

222. And in that context that reference is made to the Council's Green Belt and Countryside Study (the GBCS).[108] The Study provides an independent review by the Council's appointed consultants of the contribution that sites make to the Green Belt and their potential suitability for development. Para. 10.7 of the GBCS Vol III explains that Potential Development Areas (PDAs) were identified. PDAs are defined as opportunities to accommodate development "*without significantly compromising the purpose of the Green Belt*". The wider area of Effingham is located by the study as parcel D10 but, within that parcel, PDA D10A is identified – and explained (on page e.37) as follows:

"***D10-A:*** *D10A is surrounded by defensible boundaries including woodland at Thornet Wood to the north, hedgerows at Water Lane to the east, partial tree cover on Lower Road to the south, with hedgerows, residential gardens and treebelts following Effingham Common Road to the west of the PDA*."

223. That review is consistent with the Appellant's evidence. Those boundaries do mean that development can take place without "*significantly compromising the purpose of the Green Belt*". That conclusion does not reduce the weight that arises by way of inappropriateness or through the additional loss of openness, but it does mean there is limited additional Green Belt harm to be added to the balance.

224. As JR explained, the additional harm caused by these proposals is not different in character from that already considered by the Secretary of State, and crucially does not raise additional issues of principle or a different nature of harm to the Green Belt. Notwithstanding this, the harm arising should be given substantial weight. Since the last inquiry the existing school site and Brown's Field have been removed from the Green Belt but the weight to be attached to Green Belt harm is nevertheless substantial.

225. On the heritage harm, particular weight should be given to any harm, but the degree of additional harm in this case is plainly very limited. As was the case at the previous

[108] CD

inquiry, and recognizing the harm caused at Browns Field, the weighting to be attached is **medium weight.**

226. As to the harm to the character and appearance, the only logical conclusion would be to find that the degree of any additional harm is at most very limited so that the weighting applied in 2018 is unchanged – **medium weight.**

Very limited weight was attached to any conflict with local policy last time. Matters have moved on as described by Mr Rhodes [109] but it is common ground that, if VSC are demonstrated in this case, there is no conflict with local plan policy P2. As the Officer's report found, the appeal proposals comply with the development plan as a whole.[110] [111]

Benefits

227. The benefits of these proposals are **overwhelming.** All of the benefits apparent to the Secretary of State in 2018 are relevant again here and it is not necessary to reassess them. They attract the **substantial** and **very substantial weight** that they did before.

[109] Rhodes evidence section 2, Table 1.
[110] CD 4.1 page 169.
[111] A surprising amount of space is taken up in EPC's closing with the issue of whether Neighbourhood Plan policy ENP-G-1 is consistent with national policy. it is scarcely fair to accuse Mr Rhodes of raising this "at the last minute" when he was the last witness, responding to a question about whether the NDP should be given full weight. He was not asked about each policy. He was not asked that question about ENP-G-1. If this was an important point for the Parish Council, he should have been. The re-examination sought to put that general point in context with regard to ENP-G-1. On its face, the policy restricts development outside the village boundary, unless it is appropriate development. There is no VSC test and in that important respect the policy is inconsistent with the NPPF and the LPSS policy P2. The EPC response appears to be that, whilst the words are missing, the policy must be read in the context of national policy, so that the VSC test does apply. That is fine. Because that is what the Appellant says as well. And those circumstances, no issue arises. Of course, it does not actually say that. There is no reference to VSC in the policy. But if the Parish are arguing it should be implied, despite the absence of clear wording, then the result is the same. The important point is that no-one is arguing that ENP-G-1 is breached if the VCS test is passed. The Appellant does not need to rely on the idea that the policy should be given less weight, which appears to be behind the Parish Council's concern. The Appellant case is very firmly based on providing the benefits amount to VSC. The Parish complaint is procedural. But it does not address the substance of the issue, which is whether the policy is compliant with the Local Plan and the NPPF. That is a matter the inspector would normally have to address in any event. But the Parish's approach of seeking to imply the VSC test into the policy obviates the need to do so.

228. But there are additional benefits arising from the appeal proposals, which derive from the 114 homes proposed and the commitments set out in the conditions and section 106 obligation.

229. The proposals would enable the delivery of 405 homes, rather than 295 – including 83 affordable homes, rather than 61.

230. For reasons set out earlier, there is an extreme housing need in the borough. Compared to the position at the time of the last inquiry, it is relevant to recognize:

i. affordability has deteriorated further; [112]
ii. the Housing Waiting List has grown and the waiting time for those in housing need has increased; [113]
iii. evidence is available of the strength of Effingham s a location suitable to meet local housing needs; [114]
iv. the full scale of affordable housing need has become apparent (at 517 homes pa) whilst the Council's inability to deliver even the limited amount promised in the Local Plan has also become clear; [115]
v. it is apparent that the Local Plan is not able to deliver the strategic sites relied upon last time and at the Local Plan inquiry as a medium term relief from years of under-delivery.

231. These conclusions do not depend on the availability or otherwise of a 5 year housing land supply. However, the evidence is clear (see Annex A) that the Council cannot demonstrate a sufficient supply.

232. For all these reasons, the need for and benefits of the housing proposed is at least as strong as it was in 2018 and, in the Appellant's view, stronger. In the light of the extreme local need and the Government's policies for housing, this is a matter which attracts **very substantial weight**.

[112] Rhodes paras. 7.8, 7.9 and 7.20
[113] Rhodes appendix 4 para 5.25 and appendix $A paras 2.6 to 2.8
[114] Ibid
[115] Rhodes 7.11 and Figure 2.

233. The Planning Officer and JR agree that there are other important benefits that would be secured if this appeal is allowed and it is disappointing that NJ was not prepared to accept what on any fair interpretation are clear and significant benefits. JR set these out in evidence and they can be summarized here as follows:

i. The additional open space – including the community open space and gardens adjacent to Thornet Wood and the new village green on Lower Road. The appellant also proposes to create community open space on the school playing fields. Whilst this is now under appeal following the decision by MVDC to refuse consent because open space is said to be 'contrary to Green Belt policy', that open space can only come forward if this appeal is allowed.

ii. 5.9% biodiversity net gain, together with the gain that would be achieved at the open space in Mole Valley and at the Long Reach SANG. It makes no sense to discount these benefits because they comply with policy (NJ 6.4.23). The fact that these gains comply with policy shows that they are required and valued in planning terms. They will not arise if the appeal is dismissed.

iii. £2.46m dedicated to provide a substantial new community facility at the King George V sports fields in the centre of the village. The importance of this provision can be judged from the support it receives in the Neighbourhood Plan.[116];

iv. Multiple transport benefits contained within the existing and the proposed Section 106 obligations. These were enumerated in evidence by Mr Rhodes and are listed in the Section 106 agreements. They include an extensive programme of traffic calming, cycleway and footpath enhancements directly in accord with the Neighbourhood Plan objectives.[117] They also include enhanced bus stops in the Street and Manor House Lane, cycle parking at Effigham Junction station and subsidy of local bus services for the village, which might otherwise be at risk. [118]

[116] CD 5.7 Policy ENP-C2 at page 72.
[117] CD 5.7 Policy R2.
[118] CD 4.1 page 155

234. Taken together, these are significant benefits that would bring genuine enhancements to the village and, in the overall balance, should be afforded a **medium degree of benefit.**

235. Finally, as JR made clear, there is only these proposals before the Inspector. He is being invited to determine the issue before him which stands and falls on its own merits. It's impacts are clear to understand and its benefits overwhelming.

CONDITIONS & SECTION 106

236. All the conditions are now agreed.

237. As to the legal obligation, the Section 106 Agreement is agreed, finalised and signed by the main parties to whom it relates.

OVERALLCONCLUSION

238. The merits of this case are overwhelming. It is as simple as that. They clearly amount to VSC. They did in terms of the scheme grant planning permission by the Secretary of State in 2018. The only matter that has changed is the additional 114 homes on land very screened by Thornets Wood and the rest of the proposal, which provides the extra finance for the school which now costs substantially more than could ever have been anticipated in 2018 and even in 2021.

239. The Reserved Matters approval should be approved. The Members and the Parish Council have raised a very minor point, which does not bear scrutiny when one applies paragraph 202 of the NPPF, as all agree the Inspector must.

240. The Inspector is respectfully requested to allow the appeals.

CHRISTOPHER YOUNG K.C.

HASHI MOHAMED

17 October 2022

ANNEX A

Disputed Sites

Guildford Car Park
(Capacity = 260 dwellings, Council's 5YHLS = 80 dwellings, Appellant's 5YHLS = 0 dwellings, Difference = 80 dwellings)

This site had full planning permission for 160 dwellings and a multi-storey car park, which the landowner (Guildford Borough Council) allowed expire[119]. The definition of deliverable explains that category a) sites should be considered deliverable until permission expires[120].

The Council's evidence is now that a new planning application is being prepared for 260 dwellings and no car park. However, this is contrary to the allocation in the Local Plan, which is for approximately 160 dwellings and a multi-storey car park with approximately 450 spaces[121]. MM could not confirm whether this would be an outline or full planning application but did explain that there is no developer[122]. Therefore, there is no written agreement between the LPA and a developer confirming their anticipated start and build-out rates, which is one of the examples of clear evidence given in the PPG[123].

The evidence the Council has provided is "scant" in detail[124] and does not demonstrate that a "realistic assessment of the factors concerning the delivery has been considered"[125]. The site fails to meet the definition of deliverable[126] and should be removed, resulting in a deduction of 80 dwellings in the Council's supply.

[119] BP PoE Appendix EP1, page 008, paragraphs 1.7-1.9
[120] NPPF, Annex 2 – Glossary, page 66
[121] CD 5.4 – Guildford Local Plan, page 159
[122] MM XX
[123] PPG – Paragraphs 68-007
[124] CD 7.3, Rudgwick Appeal Decision–, paragraph 13
[125] CD 7.11, Great Torrington Appeal Decision, paragraph 57
[126] NPPF, Annex 2 – Glossary, page 66

Land at Guildford Cathedral

(Capacity = 124 dwellings, Council's 5YHLS = 93 dwellings, Appellant's 5YHLS = 0 dwellings, Difference = 93 dwellings)

This site does not have planning permission. Whilst an application was made in October 2015 and officers recommended it be approved, it was refused by members for 8 reasons[127]. A further application has been made but this is subject to a significant level of objection from residents, a community group and the local MP[128]. One of the reasons for the objections is that the proposal of 124 dwellings is more than the 100 dwellings it is allocated for[129].

Whilst the Council refers to pre-application discussions, a planning performance agreement and public consultation before the application was made, this has not led to resident / community support or a successful scheme as the latest evidence is that changes to the planning application (submitted 10 months ago) are required, including a reduction in dwellings[130]. MM confirmed at the inquiry that the February 2023 committee date was now being targeted for its determination.

It is not known what the changes to the application are, when they are going to be submitted or whether they will be acceptable or whether the application will be approved by members given the objection to it and the history of the site. Therefore, no clear evidence that housing completions will begin on site by 31st March 2026 has been provided and the site should be removed, resulting in a deduction of 93 dwellings.

Weyside Urban Village

(Capacity = 1,550 dwellings, Council's 5YHLS = 60 dwellings, Appellant's 5YHLS = 0 dwellings, Difference = 60 dwellings)

This is another site owned by the Council that has not delivered any dwellings to date. Outline planning permission was granted in March 2022[131] but a reserved matters application for

[127] BP PoE Appendix EP1, page 012, paragraph 1.25 and Appendix EP4B
[128] BP PoE Appendix EP1, page 013, paragraph 1.27
[129] CD 5.4, Guildford Local Plan, page 169
[130] MM Rebuttal – appendix R3
[131] BP PoE Appendix EP1, page 015, paragraph 1.42 and Appendix EP5B

residential development has not been made. There is no developer to verify that any of the timescales or build rates put forward by the Council are realistic or to sign a written agreement with the LPA to confirm the same. Even if a reserved matters application for phase 1 is made by the Council, it is not known whether the details or design would be acceptable to a developer or would need amending adding further delay.

There are contractual timescales and milestones set by Homes England but the details of this have not been provided and MM accepted that it is likely that Homes England would be willing to revise its expectations should there be reasonable reasons why timescales are not met.

This is a large site which includes an existing sewage works. The proposed development relies on its relocation to a new site (to the north of the application site) but the application for the new sewage works is yet to be determined by Surrey County Council. Even if it is approved, it will be years before the new sewage works are operational and the existing works can be decommissioned. The application documents started that the new works would be operational in January 2026, but that assumed a start on site in summer 2022[132].

The proposed first phase of development does not require land occupied by the existing sewage works, but it is immediately adjacent to it and no clear evidence has been submitted by the Council to demonstrate that it is acceptable for there to be new residential development adjacent to an existing, operational sewage works. MM accepted that it is unlikely new residents would want to live there until it had been decommissioned[133].

This site does not meet the definition of deliverable and should be removed. This results in a deduction of 60 dwellings from the Council's supply.

[132] BP PoE Appendix EP1, page 016, paragraph 1.47
[133] MM XX

Land to the north of West Horsley
(Capacity = 120 dwellings, Council's 5YHLS = 120 dwellings, Appellant's 5YHLS = 35 dwellings, Difference = 85 dwellings)

Part of this site has full planning permission for 35 dwellings and is not disputed by the Appellant. The remainder of the site does not have planning permission. At the inquiry, MM explained that an application had been made by Persimmon for the remainder of the site but the application had not been validated. No further details were provided in relation to the application. No clear evidence has been provided by the Council that even if it becomes validated, the application addresses the flooding and drainage issues identified in the LAA[134]. In the absence of clear evidence, this part of the site should not be included in the deliverable supply and this results in a deduction of 85 dwellings.

Land at Garlick's Arch
(Capacity = 550 dwellings, Council's 5YHLS = 250 dwellings, Appellant's 5YHLS = 170 dwellings, Difference = 80 dwellings)

The difference on this site is in relation to lead-in times and build rates. The Council relies on an email by Countryside[135] which explains that development on site has not started yet. The Council has taken the comments made by the developer on face value although MM accepted it is unrealistic that 47 dwellings will be delivered in 2022/23 as proposed by the developer given that a start on site has not yet been made[136].

The Appellant considers that the Council should have applied a realistic lead-in time based on actual experience elsewhere in the Borough. These are set out in Appendix EP2 of BP's PoE, The Council should have also applied a build rate of 50 dwellings per annum, which it applies to other sites in its trajectory[137] and as has proved to be realistic on other sites in the Borough[138].

[134] BP PoE Appendix EP1, page 020, paragraphs 1.68 and 1.69
[135] MM Rebuttal – appendix R8
[136] MM XX
[137] CD 6.3, LAA – Appendix 7
[138] BP PoE Appendix EP2

Once realistic lead-in times and build rates have been applied, 140 dwellings could be considered deliverable by Countryside in the five year period. These are in addition to the 30 dwellings to be delivered by Nicholas King Homes, meaning 170 dwellings in total and a reduction of 80 dwellings in the Council's five year housing land supply.

Land west of Winds Ridge and Send Hill
(Capacity = 40 dwellings, Council's 5YHLS = 40 dwellings, Appellant's 5YHLS = 0 dwellings, Difference = 40 dwellings)

This allocated site is partly owned by the Council and does not have planning permission, nor is a planning application pending determination. There is no developer and therefore there is no written agreement between them and the LPA to confirm build out rates, lead in times or what any application for residential development at this site would look like or include or when it will be prepared or submitted. This site fails to meet the definition of deliverable and should be removed from the supply, resulting in a deduction of 40 dwellings[139].

Land rear of the Talbot
(Capacity = 26 dwellings, Council's 5YHLS = 26 dwellings, Appellant's 5YHLS = 0 dwellings, Difference = 26 dwellings)

This site is allocated, a planning application was made and officers recommended it be approved. Members refused the application[140] and now the applicant intends to appeal the decision and submit a revised planning application. Given that it has refused planning permission on the site, it is surprising that the Council maintains that it should be considered deliverable. No clear evidence of either the appeal or the resubmission have been provided and it is not known whether either would be successful even if they are made. This site should not be included in the deliverable supply and this results in a deduction of 26 dwellings.

[139] BP PoE Appendix EP1, pages 025-026
[140] BP PoE Appendix EP1, pages 027-028 and EP8A

Land at May and Juniper Cottages
(Capacity = 93 dwellings, Council's 5YHLS = 93 dwellings, Appellant's 5YHLS = 55 dwellings, Difference = 38 dwellings)

This site has outline planning permission for 100 dwellings. A reserved matters application was submitted in May 2021 but has still not been determined[141]. The latest position is that revised plans have been submitted to reduce the number of dwellings to 93 but it is unknown whether the amendments are acceptable and when the application is going to be approved. The site should be considered deliverable, but an extension to the lead in time should be applied to allow for the reserved matters application to be determined, a start on site made and completions to take place. This results in a deduction of 38 dwellings in the Council's deliverable supply.

Land north of Keens Lane and Tangley Lane
(Capacity = 148 dwellings, Council's 5YHLS = 67 dwellings, Appellant's 5YHLS = 60 dwellings, Difference = 7 dwellings)

The 7 dwellings disputed on this site had outline planning permission for self-build units but an application was not made so the outline permission has expired. Whilst a full application for 6 open market dwellings was made in April 2021, it is not known whether it will be approved and the marketing information submitted to demonstrate that the self-build plots could not be delivered is acceptable. Therefore, 7 dwellings should be removed.

[141] BP PoE Appendix EP1, pages 032-033

Calculations under different scenarios (if of use)

Table 1 – Figures at the close of HLS evidence

	Requirement	**Council**	**Appellant**
A	Annual adopted housing requirement	562	
B	Five year requirement (A X 5 years)	2,810	
C	Shortfall at 1st April 2021	828	1,011
D	Extent of shortfall to be addressed in five year period	320	1,011
E	Total five year requirement (B + D)	3,130	3,821
F	Five year requirement plus 5% buffer (E + 5%)	3,287	4,012
G	Annual requirement plus 5% buffer (F / 5)	657	802
	Supply		
H	Supply to 31st March 2026	3,785	2,940
I	Supply in years (H / G)	**5.76**	**3.67**
J	Surplus / shortfall against the five year requirement plus 5% buffer (H - F)	**498**	**-1,072**

Table 2 – Sedgefield applied to both positions – but with student completions as per respective evidence

	Requirement	**Council**	**Appellant**
A	Annual adopted housing requirement	562	
B	Five year requirement (A X 5 years)	2,810	
C	Shortfall at 1st April 2021	828	1,011
D	Extent of shortfall to be addressed in five year period	828	1,011
E	Total five year requirement (B + D)	3,638	3,821
F	Five year requirement plus 5% buffer (E + 5%)	3,820	4,012
G	Annual requirement plus 5% buffer (F / 5)	764	802
	Supply		
H	Supply to 31st March 2026	3,785	2,940
I	Supply in years (H / G)	**4.95**	**3.67**
J	Surplus / shortfall against the five year requirement plus 5% buffer (H - F)	**-35**	**-1,072**

Table 3 – Liverpool applied to both positions – but with student completions as per respective evidence

	Requirement	**Council**	**Appellant**
A	Annual adopted housing requirement	562	
B	Five year requirement (A X 5 years)	2,810	
C	Shortfall at 1st April 2021	828	1,011
D	Extent of shortfall to be addressed in five year period	320	390
E	Total five year requirement (B + D)	3,130	3,200
F	Five year requirement plus 5% buffer (E + 5%)	3,287	3,360
G	Annual requirement plus 5% buffer (F / 5)	657	672
	Supply		
H	Supply to 31st March 2026	3,785	2,940
I	Supply in years (H / G)	**5.76**	**4.38**
J	Surplus / shortfall against the five year requirement plus 5% buffer (H - F)	**498**	**-420**

ANNEX B – RESPONSES TO GBC & EPC

These rebuttal points are not meant to be exhaustive; and they're offered to assist the Inspector's clear understanding of events. Any points not explicitly rebutted should not be assumed to have been conceded. References to *paragraphs* are to relevant closings.

GBC Closings Response:

30 (f) (i) – Factually incorrect. MO has shown where were referred to on plans and in DAS
(ii) – Factually incorrect. Caretakers House was shown on plans and DAS pages 53/54
(iii) – The application form doesn't describe every aspect of the scheme, but it does refer directly to the DAS for additional information, which clearly states that the school is expanding to 2000. This was not being challenged at the previous inquiry.

Para: 55 – The CC are not a statutory consultee in the planning process for the detailed design. They don't have officers that can carry out this role. We have consulted the body responsible for setting the admission levels – THPT. GBC's closings speaks to a profound misunderstanding as to what an architect actually does.

Para: 65 – The final sentence of point (e) though "*In this regard, as an architect he does not like "always to say no".* Factually inaccurate and a characterisation that is unfair.

Para: 69 (a) – There is plenty of evidence set out above and heard in the inquiry to contradict this.

Para: 69 (b) – MO explained how he used them on many occasions, and why the additionally resourced space was left blank and the rationale behind it.

Para: 69 (c) – that is the correct way to fill in BB103. You don't manipulate the school capacity to input into this field. The capacity range is to recognise flexibility in the design as the school expands. You don't use up this planning contingency at briefing stage.

Para: 69 (e) – Some numbers the Appellant does not recognise. To clarify what set out above, school is 14,964 and 614 over BB103 minimum. School + Cullum + Offices = 16,032 which is 1,068 over what DfE would fund if they were funding just the replacement school. The Cullum is a separately funded provision and the Offices are part of this contract to be provided on this site.

Para: 69 (f) – Incorrect facts. SCC are the body responsible for pupil place planning at county level. THPT are the body responsible for setting the admissions criteria at individual school level.

Para: 73 (a) (i) – Area is 594
(ii) (iii) - The offices were in the original Outline permission.
(b) (iv) – that is part of an iterative design process? It was in the Outline permission.

Para:74 – Final sentence is factually incorrect. It was part of the 2018 consent.

Para 78, 79 and 95: Mr Britton simply agreed that two statements put to him were at odds with each other. He made clear that DfE funding model does not assist a great deal given the school is to be funded by Berkeley. It is not right to characterise his evidence as having accepted that (a) the school must be directly comparable with DfE funding allocation and (b) it is the best way to benchmark whether a design is good value for money.

EPC Closings Response:

It has been consistently been demonstrated that we are designing to the published government standards – area (BB103), functionality and quality (Facilities Output Specification)

Para 119: – This introduces the point that the Option 3Bv2 was produced "*in the limited time available*" and then goes on to say that this piece of work is sub-standard. "*doubtless Mr Olliff would not want Option 3Bv2 to be represented as the best and most creative approach to on-site transformation that he and his practice could produce."* This is a clearly **misguided and clearly wrong assertion.** Given the moment the Parish Council decided to introduce their odd points, Mr. Olliff was able to respond efficiently and effectively. It is quite the submission to make about the work of a highly respected and distinguished architectural practice that's been working on this scheme for many years, in the face of what Mr. Pidwill was able to offer in the end. MO dedicated a significant amount of time, at the expense of other ongoing projects, to produce detailed evidence and material to answer odd points that have ultimately wasted inquiry time. He was able to demonstrate what a waste it would be to attempt a full extension, remodelling and refurbishment scheme. It was not a serious option at the previous inquiry, much less so on this occasion. **It is worth recalling that Mr. Pidwill has produced no options, no drawings, no serious assessment at all.**

Para 122 – We heard from Mr. Pidwill that the costs for temporary classrooms should only be **£500k**. He then admitted that this was based on his experience 5 years ago; and that was based on some purported 40 standard classrooms. In this case, we have a need for 109 classrooms two thirds of which need specialist equipment. Added to that are all the toilets, offices, kitchens etc that you need to run a school. **Mr. Pidwill's evidence on temporary classrooms was demonstrated to be completely false, unserious and should be disregarded.**

Para 124 – The existing site is just too small to accommodate a 2000 place school both in built areas and playing fields. **This is common ground.** This is the fundamental issue that cannot be overcome by *"more thought and creativity"*

Para 125 – For "*creative transformation*" replace with "accepting space, functionality and specification that are below the published government standards". There is no degree of creativity that can fit a new 2000 place school on this site and construct it safely, without damaging student's ability to learn.

Para 126 – BB103 is the benchmark to which we are all working.

Para 127 – And odd comment that speaks to how the Council has approached this: *"If the school fabric was not 'fit for purpose' there would not be children there."* ? The school is not fit for purpose and the fact that there are children there is a huge cause for concern. There are very real breaches of statutory regulations that the school is attempting to manage on a daily basis which cannot continue to be left unresolved indefinitely.

Para 131-134 – At no point did MO compare the current design with a Bentley. This was analogy introduced by Mr. Stemp. It was a theoretical analogy to address the line of questioning about levels of specification. MO actually said that following a car analogy you can have 2 completely different cars with different levels of specification and trim that carry out the same function. Where the design for the Howard sits on a spectrum of levels of specification is where the government has set the standard as being appropriate for state funded school developments. We are not producing a Bentley level of specification, nor was the same asserted.

Para 135 – *"(and clearly establishing that until that point the Appellant has had no regard whatsoever to embodied or operational carbon)"* is not only factually incorrect, but speaks to the desperation of the Parish case. MO demonstrated in XX that regard was had to embodied carbon in the design of the new school and have incorporated many initiatives to reduce. It is right to say that this is the first time a comparison came forward in a scientific manner the levels of embodied carbon between a new build option and a refurbishment/ remodelling and extension option.

Para 138 – Completely incorrect on all levels. It wasn't a "*theoretical school"* – the floor plans, site plans, sections, elevations and visualisations all demonstrate that it was a RIBA Stage 2 – Concept Design for this specific site. Simon Britton has also explained to the enquiry how the costs were calculated. To suggest that costs were retrospectively adjusted to make the "*cheapest option*" is incorrect and is, again, desperate.