



Appeal Decisions

Inquiry Held on 19-22 & 26-27 September 2017

Site visit made on 18 & 27 September 2017

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 November 2017

Appeal No. 1: Appeal Ref: APP/W0340/W/17/3177099

Land north of Irish Hill Road, Kintbury, West Berkshire, Hungerford RG17 9TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Endurance Estates Strategic Land against the decision of West Berkshire Council.
 - The application Ref 17/00756/OUTMAJ, dated 15 March 2017, was refused by notice dated 24 May 2017.
 - The development proposed is outline application for the erection of up to 32 dwellings and associated access.
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Appeal No. 2: Appeal Ref: APP/W0340/W/17/3158306

Land north of Irish Hill Road, Kintbury, West Berkshire, Hungerford RG17 9TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Endurance Estates Strategic Land against the decision of West Berkshire Council.
 - The application Ref 15/03346/OUTMAJ, dated 9 December 2015, was refused by notice dated 11 March 2016.
 - The development proposed is outline application for the erection of up to 72 dwellings and associated access.
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Decisions

Appeal No. 1: Appeal Ref: APP/W0340/W/17/3177099

1. The appeal is dismissed.

Appeal No. 2: Appeal Ref: APP/W0340/W/17/3158306

2. The appeal is dismissed.

Procedural matters

3. Both planning applications were submitted in outline with all matters save access reserved for future determination. The appeals have therefore been determined in like manner.
4. In respect of appeal No.2 the appellant has sought to revise the access arrangements so that they accord with those subsequently presented in Appeal No. 1. Two revised plans (Indicative Masterplan E174-33-1A and Peter Brett

drawing 37787/2001/001 Rev: P1) were presented with a request that they be accepted as minor amendments under the 'Wheatcroft' principle.¹ During the Inquiry it also became apparent to the appellant that there had been an error in the drafting of the 'red line' demarcation on the submitted plans in respect of the precise area of the ownership of the site. To regularise this further revised plans were presented² indicating a revision to the boundary of the respective sites and revisions to the layout of the indicative masterplans illustrating that the broad arrangement in both cases could still be maintained.

5. There is a written objection to the revised access plans, although this is more an objection to the principle of amending appeal proposals rather than a substantive objection on the grounds of people's interests being compromised. Furthermore, the amended access plans have been the subject of thorough consultation, have in any case been considered in detail in respect of Appeal No. 1 and the Council afforded the opportunity to consider them in respect of Appeal No.2. I also took the opportunity to ask at the opening of the Inquiry if there were any further representations to be made on this matter and there were none. I asked the same question in relation to the site boundary revisions with the same response.
6. With these matters in mind, I concluded no party's interests in relation to both appeals would be compromised by my acceptance of them. I have therefore taken them into account in respect of the relevant main issues on which they may bear.
7. A signed and dated unilateral undertaking has been presented in respect of each appeal making provision for affordable housing and open space and its future management. These are considered below.
8. Subsequent to the closure of the Inquiry two appeals decisions the subject of a request for Planning Statutory Review in the High Court (Siege Cross and Henwick Park, Thatcham) and referenced by the parties in evidence in relation to this appeal, have been delivered³. Both parties were formally notified of the initial judgements and invited to comment, each confirming their respective positions that they have no bearing on the outcome of these appeals.
9. The signed and dated Statement of Common Ground (SoCG) agrees that Appeal No 1, at 32 dwellings should not, for the purposes of paragraph 116 of the National Planning Policy Framework (the Framework), be considered major development. It similarly agrees however that Appeal No 2, at 72 dwellings, should be. The appellant helpfully sets out the evolved thinking on this matter in relation to both proposals. I have no basis to disagree with these conclusions and the main issues and subsequent reasoning are cast in light of this below.

Main Issues

10. These are a) the effect of the proposed development on the safety and convenience of highway users in respect of traffic movements in relation to Newbury Street, Station Road and the proposed mini-roundabout for access to the sites; b) the effect of the proposed development on the character and appearance of the village of Kintbury and the wider special landscape character of

¹ Bernard Wheatcroft Ltd v. Secretary of State for the Environment [1980] 43 P&CR 233.

² IDs 10, 11, 12 and 13.

³ High court ref CO/4122/2017.

the North Wessex Downs Area of Outstanding Natural Beauty (NWDONB); c) the effect of the proposed development on the setting of the Kintbury Conservation Area, a designated heritage asset; d) the effect of the development on the setting of Kintbury Park (a Grade II listed building); e) the effect of the proposed development on local green infrastructure, including trees on the site and f) whether there are any material considerations that would justify the appeal being determined other than in accordance with the policies of the development plan and, in respect of appeal No. 2, whether exceptional circumstances can be demonstrated.

Reasons

Description of the appeal site

11. The appeal sites (the greater site) are located on elevated ground to the east of the historic settlement boundary of Kintbury. Both are bordered by C20 suburban housing to the south, residential curtilage to the west and farmland and open countryside to the north and east. Topographically the site overall falls gently to the north, with the declination being most evident in the north western corner of the combined site. At present the greater site is strongly demarcated by boundary planting, with mixed tree belts and hedges to the west and south, an open avenue of semi-mature trees to the east and stands of tall conifers forming a very distinctive boundary to the north. The greater and lesser sites are also divided by a coterminous stand of conifers running north to south.

Proposals

12. Both appeal proposals are for residential development and open space with a mix of affordable and market housing, Appeal no.1 being for 32 dwellings located within the western enclave of the site, Appeal No. 2 being for 72 dwellings encompassing that of Appeal No.1 and the adjacent eastern field. The matter of access being for consideration in both cases, details are presented of a fourth arm to the existing mini-roundabout at the junction of Newbury Street, Burton's Hill and Holt Road/Irish Hill Road. In order this is appropriately accommodated visibility splays and profiled landscaping are proposed, replacing the existing section of verge, bank and treed hedge. Supplementary evidence indicates reserved matters would incorporate extensive landscaping and planting here to mitigate the effects of the development.

Highway safety - Newbury Street, Station Road and their junction

13. It is the case that both appeal proposals will generate additional pedestrian, cycle and vehicular movement along Newbury Street; the scale of this multi-modal trip generation is broadly agreed between the main parties. There would be a maximum increase of between 1 and 5 pedestrian movements and between 11 and 25 vehicular movements during the peak hours. This would be in addition to a current level of pedestrian activity of between 11 and 24 movements at peak hours and between 231 and 295 vehicular movements at the same time. By any reasonable comparative analysis, this does not represent a significant increase in combined transport related activity on the road network.
14. That said, even if one were aspiring to design a shared surface environment as a highway engineer, one would not produce a result similar to that existing in Newbury Street. Road width is variable, the footpath widths are sometimes

below anticipated modern standards, these are intermittent along the length of the street, there is irregular on-kerb parking in places and the 20 mph speed limit is at times exceeded. Listening to local residents, some with ambulant impairment, it is understandable that some may find this a challenging environment in which to navigate the street on foot at peak traffic times.

15. However, as I was repeatedly reminded, this circumstance is within a rural village context. Trip frequency is relatively low, as are vehicular speeds. These are in the main repeat local trips by those generally familiar with the driving and walking environment who will generally anticipate the constraints and modify their behaviour accordingly. Moreover, these constraints also serve to reduce vehicular speeds and offer opportunities for pedestrians to navigate their path, anticipating oncoming traffic movements. From my experience during the site visits, this was borne-out as both a driver and pedestrian, and from observing the behaviours of those others using the street in such modes of travel. Neither would this environment appear to intimidate the road users, including commuters, school children and cyclists from using the route to Station Road and thence the Station in the morning. Such a conclusion is also borne out by the absence of any statistical evidence for personal injury having been incurred in these environs.
16. Even if some future residents, like those who spoke at the Inquiry, felt apprehensive at the prospect of Newbury Street, the alternative route available along Burton's Hill, Gainsborough Avenue and Hop Gardens, the open space and Inkpen Road, is a credible alternative for access to the settlement services. Whilst the initial uphill approach of Burton's Hill might seem a counterintuitive preference to the fall of Newbury Street, this is more than compensated for by the tranquillity and openness of the alternative route thereafter.
17. It is the case that the junction of Newbury Street and Station Road is restricted, especially in relation to visibility to the right, which has the effect of drawing cars into the junction in order to achieve visibility, thus restricting flows at the junction to a degree at peak times. Moreover, such is the nature of these historic road network arrangements that the presence of agricultural traffic or a delivery vehicle, in coincidence with peak hour travel flows, may acutely but only occasionally lead to significant disruption to the flow of traffic.
18. It is agreed that traffic movements associated with Appeal No.1 would have no material impact on the functionality of the Newbury Street/Station Road junction. Anticipated additional car numbers as a result of the Appeal No.2 development would also be limited in this respect, with 10 additional right turn movements in the am peak and 1 in the pm at the junction. Nor has any evidence been presented that the junction is at the present time over-capacity. Indeed, as with Newbury Street, there is no accident or personal injury record that might support the assertion that the junction at present represents a risk to highway safety.
19. For all these reasons therefore the proposals would not result in any increased risk to pedestrian and cycle users on Newbury Street, Station Road and their junction. There would therefore be no conflict with policy CS13 of the West Berkshire Core Strategy (WBCS), which inter alia, seeks to reduce the need for travel and promote opportunities for healthy and safe travel. As such both appeal proposals are consistent with the objectives of paragraph 32 of the

Framework, which only seeks to prevent development on transport grounds where the residual cumulative impacts are severe.

Highway safety – the mini-roundabout proposals

20. Both appeal schemes now present access proposals that include the provision of a fourth arm on the existing mini-roundabout at the Newbury Street junction. As part of this provision the access will also include the necessary visibility splays and the reconfigured roundabout will have enhanced ancillary features such as signage and increased profiling to the central dome and to dividing splitter markings.
21. Whilst there is a range of guidance available on the use of mini-roundabouts in relation to new development, including TD 54/07⁴, Manual for Streets 2⁵ and mini roundabouts good practice guidance⁶, the former relates to trunk roads and its application in relation to these proposals must be calibrated accordingly. The over-arching concern expressed in all the guidance is that in a four arm scenario where traffic flows on each arm are unbalanced there is a risk that drivers will have an expectation of 'free-flow conditions'. This implies they will not observe the constraint of the roundabout, and drive through it. The resultant risks to other road users in these circumstances are readily understood, and most transparently in relation to such circumstances on trunk roads with high traffic volumes and greater speeds. The tipping-point of such a hazard is suggested where there are less than 500 vehicle trips per day or minor arm flows are less than 15% of those of the major road.
22. The comparative evidence in respect of vehicle numbers and flows is instructive insofar as minor adjustments to a range of inputs readily offer an outcome both within and outwith the tolerances identified above. If nothing else, this suggests to me that the arguments are reasonably finely balanced and an applied assessment of the circumstances prevailing in relation to this particular scenario is appropriate. The three-arm roundabout was created as a means of reducing traffic speeds at this approach to the settlement. From my observations during the site visits this was its effect. Traffic travelling towards the village slowed as the driver became aware of the multiple arms of the roundabout and braked accordingly in anticipation of the presence of other road users. This is despite the continuous line of the northern hedge/bank that affords a strong sense of visual continuity consistent with the 'free-flow' conditions of the preceding section of lane.
23. In my view, with its visibility splays, signage and enhanced surface treatment, the proposed fourth arm would break-down this visual continuity, enhancing the calming effect of the existing installation. Moreover, visibility is already good here, traffic speeds are relatively low and the existing flows commensurately so. Again, the absence of any reported accidents or personal injury suggests there is no material hazard at this location at the present. These circumstances are very readily distinguishable from the trunk road scenario anticipated in TD54/07, and even if the Council's assessment of the fourth arm numbers being below or marginally below the 500 measure is correct, this proposed access would not represent a materially increased risk to highway users. There is therefore no conflict with policy CS13 of the WBCS,

⁴ CD11.3.

⁵ CD11.5.

⁶ CD11.4.

which inter alia, seeks to promote opportunities for healthy and safe travel. As such both appeal proposals are consistent with the objectives of paragraph 32 of the Framework, which again only seeks to prevent development on transport grounds where the residual cumulative impacts are severe.

Effect of the proposed development on the character and appearance of the village of Kintbury and the wider special landscape character of the North Wessex Downs Area of Outstanding Natural Beauty

24. Both main parties advise that their evidence in respect of this matter is based on current best practice, carried out in accordance with the Guidelines for Landscape and Visual Impact Assessment (third Edition). As is well established, these guidelines set out a framework for understanding the value of any given landscape and an approach for assessing its sensitivity to development proposals. My reasoning below draws on the two approaches but concludes in my own terms as to the outcome in relation to local and national policy.
25. Prior to understanding the effect of the proposals on the NWDAONB it is necessary to understand the extent to which the greater appeal site contributes to the purposes of its designation, amongst the highest status of landscape protection in national policy terms.
26. The western part of the greater appeal site is enclosed by the two stands of conifers on its northern and eastern boundaries, whilst the remaining two boundaries are densely treed, enhancing the sense of enclosure. It is also the case that the eastern boundary of the site is defined by an open avenue of trees that have the effect of demarking the boundary and at present filtering views into it from the east.
27. Moreover, it is the case currently that residential development extends along the southern side of Irish Hill Road along the south eastern section of its boundary, and although this is in part screened by hedges along the lane, the upper superstructure of the dwellings are apparent from it. It is also a matter of fact that this modern residential development, whether pre or post-dating the initial designation of the NWDAONB, is clearly visible in views from the lanes and footpaths to the east of the village, strongly defining the modern urban form of the settlement to the south of Irish Hill Road.
28. It must also be remembered that previous landscape assessments, commissioned by the Council to inform potential housing site allocations, have identified the southern and western part of the site as it abuts the settlement. Here a linear plot of land was identified for limited development without adverse impact on the landscape character of the NWDAONB. Taken together these considerations mean that the greater appeal site may not be held to express the highest defining landscape characteristics of an area designated for its natural beauty.
29. However, that is not to say the site and its environs and the sum of their attributes do not make a significant contribution to what makes the greater NWDAONB *beautiful*. Equally, whilst the conifer planting is certainly conspicuous and mutually agreed to detract from the quality of the landscape here, this can be easily overstated. They are there, it is proposed they will be removed in greater part and with their intended purpose redundant in light of the proposals, their longevity limited. Additionally, whilst the southerly residential development is visible and clearly a component of the character of this part of the settlement

and landscape, its northerly edge and abutment with open countryside is very well defined. This is especially apparent in views from the east and north, where the line of the hedge on Irish Hill Road, with the extended band of tree cover forming the westerly backdrop to the scene beyond the conifers, clearly demarks the contrast between settlement and countryside.

30. Aside from its intrinsic attributes of treed boundaries and status as agricultural land, the greater appeal site also performs two further key functions in contributing to landscape quality here. As has been noted by both parties, the NWDAONB washes-over Kintbury, as it does with other settlements within its designation. This is a clear reflection of the role such historic settlements play in defining landscape character, and as contributors to its intrinsic picturesque beauty. This relationship is an important one, not just in visual terms but in also underpinning the close ties between the settlement and the making and management of the rural landscape on which its occupants depended, and indeed depend still. This relationship is epitomised by the location of Kintbury Park Farm, located at the very edge of the village, with its dependent land holding spreading into the open countryside beyond.
31. Although the western part of the appeal site is at present enclosed with tree planting, the greater site plays an appreciable role in forming the context, or interface between settlement and open countryside. This is most saliently apparent from the network of footpaths to the east of the site, where this open prospect can be seen, spreading from the border of the residential development to the south, across the plateau at the crest of the higher land, before descending towards the river valley floor to the north; it is a quintessential North Wessex Downs landscape tableau.
32. The site also performs a very specific role in relation to the immediate relationship between settlement and open countryside. Although the junction of Newbury Street, Irish Hill Road, Burton's Hill and Holt Road is to a degree characterised by residential built form, it can by no means be said to dominate it. Indeed, as the sequential views of these approaches provided by the appellant show, there is a constant and pervasive presence of the countryside in all these aspects. This is no more strongly typified than in the case of the approach along Burton's Hill. Here, although initially characterised by dwellings, the view is nevertheless progressively framed by green, and is in fact terminated by a wall of verdant greenery, clearly heralding the immediate presence of the agrarian landscape beyond. In the macro and micro sense then, the appeal sites plays an important role in defining the intrinsic character and scenic beauty of this part of the NWDAONB. Thus the effects of the two appeal proposals need to be considered very much within this context.
33. Because each of the schemes is of a different scale and extent, and because they rely in different ways on the retention and deployment of landscape treatment, what I term the macro landscape effects of each have to be considered separately. Where the micro effects, that is how both relate to the access and immediate juxtaposition of development with the settlement, are considered, these being the same, I assess them together.
34. I consider Appeal No.2 first. Although the amendment of the site boundaries renders an element of the northern conifer belt outside of the appellant's control, the remainder of this screen is relied upon in the early life of the development to mitigate its visual presence from the north. This, it is agreed,

will be felled as and when the replacement deciduous planting has achieved parity in screening terms. However, the north/south stand dividing the appeal sites, for the purposes of Appeal No.2, is lost. To mitigate visual impact from the east this scheme relies on a deep band of landscaping with structural planting on the eastern border.

35. This landscape planting is heavily relied upon to deliver the visual mitigation considered by the appellant to be necessary in order that the scheme may be considered acceptable in valued landscape terms. Because of its nature and make-up, this planting will take time to mature and this is fully acknowledged by the appellant in their assessment of the effects of the development set out in their evidence. It should properly be acknowledged that this planting, when considered from the east at a maturity of 15 years, does, to some degree, achieve the screening objective desired. However, even at this stage of maturity the roofs and gables of the development would be clearly discernible, sustaining the spread of built form already established to the south along the plateau. Whilst it may not be judged as 'spilling down the valley side' towards the valley floor to the north, it can still nevertheless be perceived to begin a degree of visual descent in that direction, giving the clear sense of development extending beyond the lip of the plateau. Moreover, expectations about the maturation of this cover may prove over-optimistic and none of the views allows for deciduous leaf-fall, which, for a considerable part of the year, will significantly reduce the effectiveness of the screening.
36. Although opportunities to see the development from the tow path of the canal would be limited, in light of the potential greater visibility of the development through the defoliated season, this too has the capacity to increase the sense of creeping urbanisation at the crest of the ridge when viewed from the valley floor looking south.
37. The result would in my view be the clear and apparent extension of the southern settlement across the plateau beyond the cusp of its descent to the valley floor beyond. This would have the demonstrable effect of urbanising the current limits of the settlement, diminishing the sense of rurality and eroding the delicate interface of historic settlement and open landscape beyond.
38. It is the case that the proposals presented in Appeal No. 1 would be, in its initial stages and in the wider landscape context, contained by the existing coniferous boundary planting to the north and east, and by the existing hedge to Irish Hill Road. However, the visualisations presented in the appellant's landscape evidence do not extend to illustrating the transition for the coniferous cover to the maturation of the deciduous planting belts envisaged to take on the task of screening the development. Although the Council accept that such a boundary treatment would afford some containment, this performance would again be diminished in the winter months and the similar though lesser degrees of visibility of the site when viewed from the east and north east have to be a possibility. Although the broader landscape impact of Appeal No.1 would be significantly less than that of Appeal No.2 in the initial phase, I conclude it would still have the capacity longer term to adversely affect the key existing relationship of settlement to landscape previously identified as a contributor to landscape character.
39. Both schemes now propose a common access by adding a fourth arm to the existing mini-roundabout at the junction of Newbury Street and Irish Hill Road

and Burton's Hill. The works associated with this have been described above. Again, in both schemes this access arm becomes the arterial route into the respective developments, and although the details are reserved, it is a reasonable assumption that further details would have to elaborate this arrangement with houses on both sides of the approach as it heads northward into the site.

40. This access would be located at more or less the point where the key sense of transition between settlement and landscape is perceived as one leaves, enters or skirts the settlement on its eastern road network. In both cases a significant extent of mature verge/bank and hedgerow would be lost and replaced by the measured engineered curves, splays and graded banks of an access portal necessary to safely access such a development. In addition, the signage and road markings would give added emphasis to the existing junction. Moreover, as this access point is approached from each of the key directions, the residential, not to say suburban characteristics of the development would become apparent. On leaving the settlement at this point, where currently Newbury Street rises and curves to the right, affording an increased perception of rurality, this would be replaced by the new and forceful dominance of built form⁷. As one descends Irish Hill Road at this point towards the settlement, the currently rising green presence of the bank dominating on its northern side would be replaced by an open prospect of the junction, splays and residential development below the access road. Although the starkness of this juxtaposition will be lessened with the maturation of planting, the shift in character will still be discernible and permanent. Again, in the winter months this mitigation would be significantly diminished.
41. However, perhaps the starkest shift in the landscape character of this critical interface between settlement and more open countryside is understood in the perspective down Burton's Hill looking north⁸. Here the curtain of green formed of the verge/bank/hedge spans across the view strongly contrasting with the run of houses forming the perspective along the road and heralding the agrarian character of the landscape beyond. In both proposals this would be replaced by the broad mouth of the access with its attendant footpath, splays and verges and the deep perspective of the arterial road flanked by dwellings and their domestic landscaping. Whilst the planting proposed would, over the extended 15 year period, soften this stark suburbanism, even this cannot mitigate the structural effects that would result. The sense of suburban development in depth would remain, effecting a permanent and quantum shift of character at this most sensitive of points between settlement and countryside.
42. I have accounted for the fact that the Council accept that some limited development on part of the site may be considered acceptable. I also acknowledge that the landscaping in place and which is proposed will, over time, help to mitigate the effect of the development in some measure. Nevertheless, considering the sum of effects of both schemes, the outcomes defined above would be in clear conflict with policies CS14 and CS19 of the WBCS which both seek to ensure that proposed development respects and enhances the character and appearance of an area and that local distinctiveness and landscape character are conserved. More specifically in

⁷ Site entrance visualisation 3 &4 viewpoint 12 Appendix 15 Cook.

⁸ Site entrance visualisation 1 Appendix 15 Cook

relation to the NWDAONB designation, the proposals would also conflict with policy Area Delivery Plan Policy (ADDP) 5, which anticipates development will again conserve local distinctiveness and sense of place, while responding to local context and respecting identified landscape features and components of natural beauty.

43. For the same reasons both proposals would be inconsistent with paragraph 17 (bullet point 5) of the Framework which anticipates that planning decisions should take account of the intrinsic character and beauty of the countryside. They would also be in conflict with paragraphs 109 and 115 of the same, which anticipate the planning system (and therefore development) enhancing the local and natural environment by protecting and enhancing valued landscapes and with great weight being given to the conservation of the landscape and scenic beauty of AONBs. Again, for the same reasons, both proposals would fail to conserve or enhance the natural beauty of the AONB, a purpose of the Act⁹ to which I am required to have regard, and any breach of which I am also required to apportion substantial weight.
44. There is no disagreement on the locational sustainability of the proposals, the site being well placed in terms of community facilities, services and sustainable transport modes. However, ADPP1 of the WBCS, also makes clear that the acceptability of development in any given location will inter alia also be dependent on character and surroundings. For the reasons set out above, both proposals would have significant adverse effects on their surroundings and its character. I therefore also find conflict with policy ADPP1 in this regard. Moreover, policy C1 of the West Berkshire Housing Site Allocations DPD (WBHSADPD) also makes clear that planning permission should not be granted where a proposal harms or undermines the existing relationship of the settlement within the open countryside. Insofar as I have identified harm expressly in relation to this precise matter, both proposals also conflict with this policy.

The effect of the proposed development on the setting of the Kintbury Conservation Area, a designated heritage asset

45. Both parties set out in some detail their analysis and understanding of the significance of Kintbury as an historic settlement, recognised in the designation of its core and hinterland as a conservation area in 1971. The architectural and historic interest of the settlement is well understood, and one of its recorded attributes is the approaches to the village from the east and west.¹⁰ These approaches are not a pristine transition between historic settlement and countryside. In both cases, and more specifically in relation to the eastern one, the approach is transitioned by C20 development, some dating from the first half of the Century with others being relatively recent infill. This pattern is most obviously expressed along the southern side of Irish Hill Road and at the junction with Burton's Hill.
46. Nevertheless, this eastern approach, which quickly becomes Newbury Street within the boundary of the conservation area, remains very much rural in character. Whilst the suburban housing to the south is perceptible, the register from the road is one predominantly of a gentle linear descent from open countryside, flanked by hedges into the closer built confines of Newbury Street.

⁹ Section 85 (1) of the Countryside and Rights of way Act 2000.

¹⁰ Draft Kintbury Conservation Area Statement, Appendix JV02.

Moreover, and perhaps counter-intuitively, despite the presence of the dwellings on the higher ground at the junction of Burton's Hill, the sense of rurality is heightened at the very limits of the conservation area. Here first the rising verge and then hedge overhanging the lane and thence the rustic brick wall bearing the continuing mature hedge above, amplify the naturalistic characteristics of this immediate entry to the historic settlement.

47. There is a similar experience from Holt Road, where the suburban character of its south west side is first perceived but then gives way to a heightened sense of verdancy at the junction with Burton's Hill. Moreover, whilst the initial approach along Burton's Hill to towards the junction is one of suburban character, this is consistently visually checked by the tall curtain of green formed by the verge, hedge and tree canopy beyond the mini-roundabout – a strong visual reminder that the naturalism of the open countryside is never far away. Even in the leafless months of winter these underpinning characteristics would still prevail. This is by no means a unique experience on the approach to the settlement. Whilst Station Road has some conspicuous though not unattractive modern infill, the sense here too is of the strong linear visual draw of the road lined first with buildings but also lengths of verdant cover, with the open countryside beyond the lateral breaks of the river, canal and railway.
48. It must be acknowledged that the settlement has been extended considerably beyond its historic core in the C20, especially to the south, where this process has continued and consolidated subsequent to the designation of the conservation area in 1971. This is most evidently apparent when traversing the modern settlement from east to west through Gainsborough Avenue to the more recent Hop Gardens. However, this is an experience largely discrete from the perception of the conservation area, and one is not readily perceived in conjunction with the other. This is helped by the retention of key areas of open space between the two distinct components of the settlement.
49. Thus whilst the conservation area is in part abutted by more recent residential development, in key areas the immediacy of its relationship with the surrounding countryside is still strong. Given the undisputed historic interrelationship between agrarian community and the land on which it largely depended, this visual relationship of open land to settlement is an important component of the latter's setting, and so to the significance of the conservation area as well.
50. The appeal sites abut the easternmost boundary of the conservation area where the limit of the historic settlement is demarked by the former access lane to the service range of Kintbury Park and Kintbury Park Farm, which runs to the north.
51. The indicative layouts of the two appeals anticipate the same arrangement of dwellings to the west of the access road. This layout is supported by the photo montages presented in the landscape evidence of the appellant that illustrate the visual presence of development here from Newbury Street and as it is perceived from views over the proposed mini-roundabout. These arrangements have been described above. In order that the access and splays be accommodated a length of approximately 20-30 metres of verge, bank, hedge and trees running from approximately the end of the brick wall on Newbury Street to its junction to Holt Road will need to be removed.

52. It is the case that the programme of landscaping and planting indicated by the appellant as achievable in the evidence will, to a degree, ameliorate the presence of the access at the roundabout and the form of the residential development to its west, north and east¹¹. The tell-tale geometry of the visibility splays and the stark presence of the dwellings, over the projected 15 years maturation, will be softened. However, this will be a long time coming, and the deciduous screening on display in the photomontages will not be sustained throughout the winter months. Despite these efforts the engineered geometry of the access and visibility splays will be clearly evident in the street scene, whilst the grouped forms of what will inevitably be seen as modern suburban development will be apparent in the key views leaving and approaching the settlement, and would confront the viewer full-on when approached from Burton's Hill.
53. Moreover, it is not just what would be seen here, but also what would be lost in its creation. The tall green edifice of verge, bank, hedge and trees marking the point of arrival and departure from the village would be replaced with further burgeoning suburban development. Moreover, this tall curtain of greenery viewed from Burton's Hill, would be replaced with a deep perspective of the residential estate beyond, betraying the depth of the development beyond the filter of the hedges bordering the greater site, an outcome common to both appeals.
54. The result would be the demonstrable suburbanisation of this key interface between historic settlement and open countryside at the very boundary of the conservation area. Given the importance and sensitivity of this relationship, such an outcome would cause significant and material harm to the setting of the conservation area, a designated heritage asset. On these terms both appeal proposals would therefore conflict with policies CS14 and CS19 of the WBCS, both of which seek to conserve diversity and local distinctiveness and promote high quality design. Most relevantly they specifically seek to ensure proposed development is appropriate in terms of the context of existing settlement form, pattern and character and that heritage assets and their settings are conserved.
55. Historic England makes clear in *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3 (2015)*¹² that 'in primary legislation, the setting of conservation areas is not a statutory duty'. This is consistent with a precise application of the wording of section 72 (1) of the Act, which makes explicit reference to 'buildings or land *in* a conservation area' and to the desirability of enhancing 'the character or appearance of *that* area'. Whilst the character or appearance of that area may be affected where a designed or incidental view looking from within that area is compromised by development, this does not amount to some clear equivalence to a requirement to have regard to the setting of the conservation area in the same way expected of section 66 (2) of the Act as it relates to the setting of listed buildings. Section 72 of the Act is not therefore engaged for the purposes of these appeals and the statutory duty in respect of conservation areas has no application here, or in any consideration of the final planning balance.
56. The proposals would nevertheless cause material harm to the setting of the conservation area, a designated heritage asset. As such they are in conflict

¹¹ Cook PoE Appendix 15.

¹² CD13.1.

with the clear expectation of paragraph 132 of the Framework, which anticipates that great weight should be given to the conservation of such assets and their setting. When this sum of effect is considered in relation to the special interest and significance of the conservation area as a whole, in accordance with the considerations of paragraphs 133 and 134 of the Framework, the magnitude of this harm can properly be judged less than substantial. Where on the scale of less than substantial harm this may lie is not a question the Framework asks. However, it is clear to me that there is no reasonable basis for concluding, when considering the sum of the significance of the conservation area and its setting as a whole, that this degree of harm could be characterised as being near the upper or top end of the less-than-substantial spectrum. More appropriately I consider this magnitude of harm should be judged as somewhere towards the middle of this lesser paragraph 134 classification.

57. Paragraph 134 also requires that identified harm to heritage assets is balanced against any public benefits the development might bring. As is set out below in greater detail, both developments would bring forward market and affordable housing now, would also bring collateral economic benefits and would help sustain the village of Kintbury as a rural settlement. All these attributes, in the context of paragraph 134, may rightly be considered public benefits. However, although I have characterised the harm here as less than substantial, it should be remembered that less than substantial harm should not be equated with less than substantial planning objection, particularly in light of the entreaty of paragraph 132 that great weight should be given to the asset's conservation. The harm to the setting of the designated heritage asset here is significant and material. These identified public benefits, especially in the context of the Council being able to demonstrate a five year supply of housing land, do not outweigh the harm identified.

The effect of the development on the setting of Kinbury Park

58. The effect of the development on the setting of Kintbury Park was not a matter identified in the reasons for refusal of either decision, though this is a matter raised in both the Council's and the appellant's evidence. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that the decision maker have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
59. Kintbury Park is evidently a multi-phased building of some age. Whilst its earlier development remains uncertain, its remodelling in the late C18 or early C19 is clearly evident in the front elevation, where the use of the distinctive *Gothick* detailing of the fenestration give it a distinctive picturesque character. This picturesque aesthetic is still legible in the immediate landscape context of the house with immaculate lawns and some spectacular specimen trees leading down to the canal. It is these elements of setting that most evidently contribute to significance of the house as an heritage asset.
60. The land rises to the south behind the house and this has been adapted for modern residential purposes. There are garden areas, pool and tennis court all screened by dense coniferous and broadleaf tree cover. Cumulatively this element of landscape forms a dense buffer between the house, the significant elements of its setting and the appeal sites. There would be no significant

inter-visibility between the two, and therefore the setting of the listed building would be preserved. Some of the map evidence suggests the possibility of some historical or associative relationship of the house to the adjacent farm and attendant farmland. However, no documentary evidence to substantiate any such link was presented. In respect of both appeals therefore the setting of the listed building would be preserved and there would be no conflict with either the expectations of the Act, paragraph 132 of the Framework or local development plan policies that seek to underpin these national statutory and policy objectives.

The effect of the proposed development on local green infrastructure

61. It is the case that hedges are not recorded amongst the list of what is defined as green infrastructure in paragraph 5.123 of the supporting text of Policy CS18 of the WBCS. It is also the case that although there is no definition of the term offered, the predominant focus of such infrastructure relates to open spaces. However, the list is not defined as a closed one, and includes such provision as green roofs and walls, which cannot be held to have an open functional purpose. Moreover, the supporting text refers to such infrastructure as that which 'supports the natural and ecological processes, and is integral to the health and quality of life of sustainable communities'. Paragraph 5.125 goes on to stress that 'the multi-functional nature of GI... is important for many reasons', noting that 'it contributes significantly to the conservation and enhancement of biodiversity...'.
62. It is accepted that the bank and hedge forming the southern boundary of the site is an important boundary feature. That it is of some considerable age, either judged by the extensive map evidence presented, or by the essentially unchallenged methodology of Dr Hooper applied to its species-related dating, is clear. Moreover, its physical extent, form and ecological diversity do make it a conduit that 'supports natural and ecological processes'. On this basis, and given the scope of the definition of 'GI' in the WBCS, I conclude the hedge may properly be considered green infrastructure and therefore within the ambit of policy CS18.
63. The precise extent of hedgerow loss is not defined, though considered to be between 20m – 30m in extent. On the other hand, the banks adjacent to the new access would be re-profiled and planted, and indeed additional biodiversity would be provided across the wider sites. Nevertheless, a considerable section of venerable bank and hedge would be lost and the linear continuity of the corridor broken by the access and splays. Such an outcome would, I conclude, result in the loss of a limited though significant piece of local green infrastructure, thus conflicting with policy CS18 of the WBCS.

Whether there are any material considerations that would justify the appeal being determined other than in accordance with the policies of the development plan and, in respect of appeal No. 2, whether exceptional circumstances can be demonstrated.

64. The reasoning above clearly establishes conflict with the development plan policies in key regards. It is however right, in the light of the axial principle of the Framework, that any such conflicts are considered against any other benefits the proposed developments may bring. This is considered below.
65. Both appeal proposals offer to bring forward significant numbers of market and affordable housing now. In the context of paragraphs 47 and 50 of the

Framework, as well as the current national picture of housing supply, this is a consideration that merits significant weight in support of the proposals. Moreover, the provision of affordable housing at 40% of the total number proposed, in the context of concerns over future delivery and achieving identified targets of affordable housing, and overriding concerns of affordability in the district, mean significant weight may be afforded this provision in the planning balance. Indeed, the collateral economic benefits the development would bring, both in the short and longer term, also merit weight in the final balance. There is an expectation that policies and development management decisions will enhance or maintain local rural services, and these schemes would undoubtedly contribute to that aim, thus meriting further limited weight in favour of the proposals in the planning balance. In both the social and economic sense then the proposals are consistent with the two of the three strand definition of sustainable development set out in paragraph 7 of the Framework, and merit a measure of support as such.

66. Beyond this straightforward measure of housing provision however, a considerable amount of Inquiry time, and rigorously presented argument, was spent considering the current housing land supply position in the district and the chronological status of related development plan policy. This came as no surprise, as there is a long record of debate on this matter in planning and appeal decisions, including those determined by the Secretary of State, in the district. It is also the case that much of the debate on this matter revolves around the genesis of the current WBCS and its initial provisions for housing, its subsequent augmentation through a published Strategic Market Housing Assessment (SHMA), elaboration through the adoption of a subsequent site allocations DPD (2017) and now consideration of its replacement by a new local plan, anticipated in around 2020.
67. The appellant argues that although the Council may at present be able to demonstrate a five year supply of housing land, this is no panacea for defending the development plan's up-to-datedness. It is argued that the WBCS 2012 housing number (10500 units at 525 per annum) is out of date, notwithstanding the validity of the revised SHMA housing number (13300 units at 665 per annum) or the adoption of the allocations DPD, which in any event is predicated upon the WBCS number. Moreover, it is argued, the cap of 2000 dwellings set for the number of dwellings within the NWDAONB as part of the WBCS housing number has not moved-up with the SHMA revisions and is now too rendered not up-to-date in the context of Framework expectations.
68. To compound these issues it is further argued, the current five year land supply position is fragile, and not projected to be long sustained against future projections, thus falling short of the wider expectations of paragraph 47 of the Framework in maintaining a supply of housing land going forward in the years 6-6 and where possible in the years 11-15. Lastly, it is contended that the Council's expectations that this deteriorating supply position and the structural weaknesses of the evolved development plan will be resolved through the provision of a new local plan in the near future are misplaced. The reality, it is said, is that no such plan will be in place before 2020 at the earliest.
69. There is clear and legitimate purpose in the pursuit of these arguments on behalf of the appellant as, if the out-of-datedness of relevant policies of the development plan and/or their inconsistency with those of the Framework is demonstrated, the decision maker is then required to engage the weighted or

tilted balance presented in paragraph 14 of the Framework. Here at the fourth bullet point it makes clear that 'where the development plan is absent, silent or the relevant policies are out of date permission should be granted unless any of the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the development plan as a whole'. In such circumstances the presumption in favour of sustainable development is engaged. Such an outcome would also support the argument in relation to major development in the NWDAONB (in respect of Appeal No. 2) that exceptional circumstances existed to help justify them being allowed.

70. However, the fourth bullet point of paragraph 14 also states that permission should be granted unless 'specific policies in this Framework indicate development should be restricted'. Here also footnote 9 sets out some examples of such policies, which include those relating to Areas of Outstanding Natural Beauty and designated heritage assets. Moreover, as the Supreme Court makes clear in relation to the Suffolk Coastal judgement, such policies constraints should also include those relevant policies of the development plan¹³.
71. In light of the debate around housing land supply and development plan policy in the district currently prevailing¹⁴, it is entirely reasonable for the appellant to pursue such a line of argument, seeking to demonstrate the out-of-datedness of the development plan and thus the engagement of the tilted balance set out in paragraph 14. But any such approach has to be conditioned by the hope and expectation that no specific policies of the Framework or development plan that indicate development should be restricted are engaged, or much more importantly, breached. For if they were to be, the tilted balance of the fourth bullet point would not be engaged, so *righting* the planning balance.
72. This is the case here, and consideration of the out-of-datedness of the policies of the development plan is therefore a sterile one, as in fact the policies of the development plan and Framework clearly determine that development should be restricted here. For the very detailed reasons set out above in respect of the NWDAONB and the setting of the conservation area, a designated heritage asset, I have concluded that not only are these specific policies engaged, but they are clearly also manifestly breached by both appeal proposals. In the case of the latter, through a balancing exercise also required by the Framework. The presumption in favour of sustainable development anticipated in paragraph 14 of the Framework is not therefore engaged. Such a conclusion thus also significantly diminishes any such argument that there may be exceptional circumstances (in the form of meeting a shortfall in housing delivery) that could help justify development in the case of Appeal No 2.

Other matters

73. The unilateral undertakings make provision for affordable housing at 40% of the total of units in respect of each case. This meets policy expectations and delivers a mix of tenures that supports the principle of creating inclusive and mixed communities. Similarly the undertakings make provision for the setting-out and management of public open space within each scheme. These

¹³ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37.

¹⁴ Numerous appeal decisions, including those made by the Secretary of State were submitted in evidence in relation to this matter, some of them now also the subject to challenge in the High Court.

obligations would make the development proposed acceptable in development terms, they would be proportionate and they are directly related to the development. If I were to allow one or both the appeals I could have reasonably taken these into account.

Planning balance and conclusion

74. Both proposals offer significant amounts of market and affordable housing now. They also offer collateral economic benefits and would underpin and sustain the rural village community through the use of existing local services. Accordingly, taken together, and judged against paragraphs 17, 28 and 47 of the Framework, they may be afforded substantial weight. Furthermore, locationally both proposals are well sited in relation to local services and sustainable transport modes. Moreover, I have found there to be no harm in respect of all highway matters or with respect to the setting of Kintbury Park, whilst the unilateral undertaking, through mitigating planning harms, are rendered neutral in the planning balance.
75. However, these benefits (which again may be understood as public benefits for the purposes of paragraph 134 of the Framework) are very substantially outweighed by the significant harm to the NWDAONB in both the wider and local landscape context, to the setting of the Kintbury Conservation Area and to a lesser degree the harm to local green infrastructure. Finally, in the context of these conclusions, the demonstration by the Council of a five years supply of housing land and the absence of other compelling evidence, I find no exceptional circumstances that would justify the grant of planning permission for the proposal presented in Appeal No. 2 in the NWDAONB, in accordance with paragraph 116 of the Framework.
76. Having considered all matters raised in evidence and at the Inquiry, I therefore conclude that both appeals should be dismissed.

David Morgan

Inspector

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She called:

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INTERESTED PERSONS:

Councillor Mr Anthony Stansfield, West Berkshire
Council (WBC)
Councillor Cole, WBC
M Trigwell Kintbury Parish Council
Mrs Kadzidlo (resident)
Ms Adams Tee – (resident)

Documents submitted at the Inquiry (IDs)

- 1 Opening submissions – Appellant
- 2 Council’s Appeal and Inquiry notification letters
- 3 The Willersley appeal decision (3121622)
- 4 Conservation Principles – Historic England
- 5 The Bolsover appeal decision (Secretary of State) (2212093)
- 6 Community services map
- 7 AO plan showing Newbury Street widths
- 8 AO plan roundabout – Appeal 1
- 9 AO plan roundabout – Appeal 2
- 10 Revised red line plan (appeal 1)
- 11 Revised masterplan (appeal 1)
- 12 Revised red line plan (appeal 2)
- 13 Revised masterplan (appeal 2)
- 14 The Garden Close Lane appeal (3153899)
- 15 Opening submissions – Council
- 16 W Berks landscape sensitivity map
- 17 Extract from Manual for Streets 2 (MsF2)
- 18 Statement – Mrs Kasidzlow (resident)
- 19 Statement - Mr Trigwell (Parish Council)
- 20 Statement - Councillor Cole
- 21 Statement – Ms Adams Tee – (resident)
- 22 Paper on tree growth 2007
- 23 Page 101 GLVIA 3
- 24 Page 113 GLVIA 3.
- 25 Print out 1966 planning permission
- 26 High Court judgement 9CO/2919/2017)
- 27 Page 067 Mini roundabouts (MsF2)
- 28 Page 017 Context (MsF2)