The Planning Inspectorate

Appeal Decision

Inquiry held on 16 & 17 May 2017

Site visit made on 18 May 2017

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 19 June 2017

Appeal Ref: APP/R3650/W/16/3163050
Wheeler Street Nurseries, Wheeler Lane, Witley, Godalming GU8 5QP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Michael Stephens, Castle Land and Development LLP against the decision of Waverley Borough Council.
- The application Ref WA/2016/1067, dated 10 May 2016, was refused by notice dated 4 November 2016.
- The development proposed is "outline application with all matters reserved for demolition of all existing buildings and clearance of all previously developed land and redevelopment with up to 20 dwellings (30% affordable (up to 6 dwellings)) with access from Wheeler Lane".

Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Mr Michael Stephens, Castle Land and Development LLP against Waverley Borough Council. Due to time constraints this application was handed in at the end of the Inquiry with an agreement between the parties that it would be dealt with by exchange of written statements. This application is the subject of a separate Decision.

Procedural Issues

3. The application was made in outline. However, contrary to that stated as the description of the proposal on the application form and set out in the heading, it was confirmed that 'access' is for consideration at this stage. I have considered the proposal on that basis. A drawing showing an illustrative layout was also submitted which I have also taken into account in those terms.

4. The Council refused the application for four reasons. However, it withdrew the second reason for refusal relating to loss of employment land, and indicated that the third reason for refusal relating to the effect on leisure and education facilities in the area could be resolved through a Planning Obligation. The Council, while considering that the fourth reason for refusal relating to the provision of affordable housing should be dealt with through a Planning Obligation indicated that it would be content for this to be dealt with through a planning condition, although there were concerns over the drafting proposed by the appellant.

5. At the opening of the Inquiry a completed Planning Obligation by way of Unilateral Undertaking under Section 106 of the Town and County Planning Act 1990 (as amended) (the 1990 Act) was submitted dated 8 May 2017. However, in light of discussions between the main parties the appellant indicated that it wished to revise this and a timetable was agreed for this. A revised Planning Obligation dated 25 May 2017 was subsequently submitted. In addition a Planning Obligation by agreement with Council dated 30 May 2017 under Section 106A of the 1990 Act was submitted confirming that the original Planning Obligation dated 8 May 2017 was discharged and no longer had effect. I will discuss this revised Obligation below.

Main Issues

6. As the site is within the Green Belt the main issues are:

- whether the proposal would be inappropriate development in the Green Belt having regard to any relevant development plan policies and to the National Planning Policy Framework (the Framework);
- the effect on the openness and purposes of the Green Belt;
- the effect on the living conditions of the occupiers of neighbouring properties;
- whether the proposal makes adequate provision for affordable housing and the effects of the development on education and leisure facilities; and
- would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

7. The Waverley Borough Local Plan 2002 (the WLP) Policy C1 indicates in the Green Belt there is a general presumption against inappropriate development which will only be permitted if very special circumstances exist. The policy indicates that in all circumstances any development which would materially detract from the openness of the Green Belt will not be permitted. The policy states that the construction of new buildings will be inappropriate unless it is for the essential requirements of certain specified uses. The proposal does not fall within any of these uses and consequently the proposal is contrary to this policy.

8. The appellant argued that because the proposal was in accordance with other policies of the WLP it could not be said to be contrary to that plan as a whole. However, it seems to me that there are a number of fundamental policies, such as those relating to the Green Belt, which set the matter of principle with others relating more to matters of detail. I consider that the principle relates to the overall "wholeness" of the consideration of the proposal against the plan, including preventing inappropriate development in the Green Belt. Thus the proposal is contrary to the WLP as a whole.

9. The Framework, in paragraph 89, states that the construction of new buildings in the Green Belt should be regarded as inappropriate subject to a number of specific exceptions. These are cast differently to those set out in Policy C1 of

the WLP and additionally, at the sixth bullet point, includes the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. As such Policy C1 is not consistent with the Framework and, in line with paragraph 215 of the Framework, lesser weight should therefore be given to this policy.

10. The Council has submitted the Waverley Borough Local Plan Part 1: Strategic Policies and Sites (the LPP1) to the Secretary of State for examination by an Examining Inspector (the ExI). As an emerging plan, in line with paragraph 216 of the Framework, weight can be given to relevant policies depending on the stage of preparation, the extent that there are unresolved objections, and the degree of consistency in the emerging plan to the policies in the Framework.

11. While accepting that weight should be given to the LPP1 the parties took different positions as to the amount of that weight. The appellant said that it should be given "some" weight, while the Council took the view that this weight should be "significant". It seems to me that different levels of weight may apply to different parts of this emerging plan depending on an assessment of the particular element of the plan against the criteria set out in the previous paragraph.

12. Policy RE2 of the LPP1 deals with the Green Belt. This policy is in a number of sections, and I am of the view that the sections which confirm the continuation of a Green Belt and the approach to development within it can be given significant weight as they are in accordance with the policies in the Framework. On 5 April 2017 the ExI issued a document entitled "Matters and Issues for Examination". In addition to various questions the ExI set out a number of areas where he considered that he had sufficient information. While the ExI confirmed he had sufficient information to conclude that exceptional circumstances exist for releasing land from the Green Belt, he did raise concerns about the extent of that release. I am therefore only able to give the part of the policy releasing land from the Green Belt limited weight.

13. While it is indicated that land within the Rural Settlement Boundary of Witley is to be released from the Green Belt under the terms of Policy RE2 of the LPP1 and there will be changes to the Green Belt around Witley in Local Plan Part 2 (the LPP2), at this time the site lies within the Green Belt and the proposal should be considered in this light, and the proposed alterations to the extent of the Green Belt can only be given limited weight.

14. As such, as the main parties concurred, the proposal should be judged against the sixth exception under paragraph 89 of the Framework set out above and this involves consideration as to whether the appeal site represents previously developed land and, if so, consideration against openness and the purposes of the Green Belt.

15. The appeal site is made up of an area of approximately 0.7 ha of generally flat land to the north of Wheeler Lane in Witley. As well as accessing the appeal site the access road also serves a dwelling, Malora, and land to the north. The appeal site forms part of a larger area of open land which continues to the north. Although there is a low wire fence marking part of the northern boundary of the appeal site, the majority of this boundary is not delineated on

the ground. A terrace of four residential properties, 1 to 4 Redvers Cottages and their gardens, which are accessed separately from the west, is surrounded on the north, east and south by the appeal site.

16. Apart from a residential bungalow which is located on the eastern side of the appeal site, there are various single storey buildings on the appeal site and on the land to the north. Some are in a good state of repair and are being actively used; others are in varying states of dilapidation and some are partially used. On the appeal site the buildings generally have the appearance of large greenhouses, although there are a number of buildings constructed from timber and a building with a roof in a plasticised material covering a hooped metal frame. The buildings are generally between approximately 3 and 4 metres high, although one of the glasshouse buildings is slightly taller. There were also a number of open but hardsurfaced areas, for example where parking takes place and to provide routes around the site.

17. At the time of my site visit the south eastern portion of the site was being used for retail sales purposes principally of horticultural products, although there were some other products such as fruit and vegetables and pet food. There was a parking area in the south west portion, and the majority of the area of the appeal site, along with the area of land to the north of the appeal site, was used for the growing of plants. In addition, there was some storage and some areas were not being used for any active purpose, having brambles growing. The "private" area was separated from the "public" area making it clear to me where the public should not go. The bungalow is at the side of the retail area with no intervening land between them, although there is a small strip of land to the rear of the bungalow which appeared private to the occupiers, although readily seen from the "public" area.

18. The definition of Previously Developed Land in the Glossary to the Framework states, as far as is relevant for the purposes of this appeal, "land which is or was occupied by a permanent structure, including the curtilage of the developed land … and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; … land in built-up areas such as private residential gardens... ." The definition of "agriculture" in the 1990 Act includes "horticulture".

19. The essential dispute between the main parties was whether the appeal site was being used, lawfully, for agriculture, or as a mixed use, or as a number of separate planning units. If not being used solely for agriculture it was agreed that the land would represent previously developed land. A Statutory Declaration was submitted in support of the appeal describing the planning history and use of the site and I have taken this into account in my conclusions giving it significant weight due to its status.

20. The appeal site has been the subject of three planning applications. Two, from 1974, related to the construction of the bungalow. The third, from 1981, was for "Intensification of existing retail use to include the sale of imported fruit and vegetables and horticultural products". The rubric on the decision notice granting planning permission indicated planning permission was granted "for the development specified in the form of application". There was a dispute as to the proper interpretation of this, although there was no dispute that the permission had been implemented.

21. The Courts have held in *Telford and Wrekin Council v Secretary of State for Communities and Local Government*[1] that where the decision notice itself incorporates the form of application regard should be had to the form in construing the permission. There was then a dispute over what represented "the form of application". The appellant accepted that the document entitled "Application for Permission or Approval to Develop Land – Part 1 All Applications" (the Part 1) was the form, but did not accept that this included the document entitled "Application for Permission or Approval to Develop Land Etc – Part 2 Additional Information required in respect of all applications for Industrial, Office, Warehousing Storage or Shopping Development" (the Part 2).

22. It seems to me that this Part 2 document was part of the "form of application" for the purpose of the application. This is because it is entitled "Application" and is clearly through its nature a form to be completed, and in any event this was referred to on the Part 1 in response to 10 which asked "List all drawings, plans, certificates, documents, etc; forming part of this application".

23. The Part 2 form in response to the question (again No 10) "Enter the following floor spaces (To nearest Sq metre/Sq Foot)" was given the answer "400 sq.ft" to both "Existing (if any)" and "Proposed New". That the figure was the same in both boxes is not surprising as it was agreed that development had already taken place and the application was to regularise the situation.

24. Among the other documents referred on the Part 1 form is "4 site plans"[2]. For the same reasons as set out above in respect of the Part 2 form I am of the view that this document was incorporated into the application and thus the permission. There is a single plan stamped "Permitted", and although reproduced via the mechanism of a microfiche and in black and white this shows a thick line around the whole of the appeal site and the adjoining land to the north. There are no other marks on this plan other than the stamp and the application reference number to indicate that anything applies to a smaller area than the whole of this area.

25. Where there is a disagreement between a written document and a plan the normal convention is that the written document prevails. However, as there is nothing to indicate where or what the "400 sq.ft" might relate to, and the Council was not able to indicate where on the site this might be I am satisfied that the permission related to the whole site, rather than as was suggested just to, or part of, the "public" areas referred to above, which in any case is larger than the 400 sq.ft..

26. The permission was to "include" the sale of imported fruit and vegetables as an "intensification" of the existing retail use. In my view this represented the lawful material change of use to a mixed use of agriculture (horticulture) and retail. As the permission also related to the area of the bungalow on site, I am also satisfied that this was incorporated into the overall mixed, or composite, use. That one of the conditions limited the goods sold[3] does not affect this, as this related to the nature of the goods not where they were produced.

[1] [2013] EWHC 79 (Admin)
[2] The "4" refers to the total number of copies submitted
[3] To "the sale of agricultural or horticultural produce" only

27. Whether the planning application fee paid related only to the construction of a building or a material change of use involves the consideration of extrinsic evidence not referred to on the face of the decision notice and is not relevant.

28. Neither the appellant nor the Council asserted that there had been a subsequent lawful material change of use of any part of the site following the 1981 permission and consequently I am satisfied that on the basis of the 1981 permission that the lawful use consists of a mixed use. This means that following the definition in the Glossary to the Framework the appeal site represents previously developed land.

29. Consequently the conclusion of whether the proposal represents inappropriate development depends on an assessment of whether or not the proposal would have a greater impact on the openness of the Green Belt and the purposes of including land within the Green Belt.

Openness and Purposes of Green Belt.

30. The Court of Appeal in *John Turner v Secretary of State for Communities and Local Government*[4] indicated that "[t]he word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs (in the context of which, volumetric matters may be a material concern, but are by no means the only one) and factors relevant to the visual impact on the aspect of openness which the Green Belt presents" (paragraph 14).

31. The appellant emphasised the layout plan submitted with the proposal was illustrative and that the proposal was for "up to" 20 dwellings. However, if permission were to be granted, then it would permit something at least close to that number of dwellings. A planning permission for a considerably lower number of dwellings would be materially different. Put the other way around an application for approval of reserved matters to be made pursuant to this outline proposal if permitted, would have be for something numerically close to 20 dwellings, otherwise it would not be pursuant to that permission. It is therefore reasonable to take the illustrative layout as something that would approximate to the form of development.

32. It was not in dispute that the proposal shown on the illustrative layout would result in a smaller floor area of approximately 558 m^2 (or a reduction by approximately a quarter of the existing floorspace) when compared with the existing situation, and I would estimate the roadways and parking areas within the site would be equivalent to the existing parking areas and roadways.

33. The proposal is for two-storey houses. The floor areas shown on the illustrative layout are for this form of development and seeking to consider it in any other way, for example as bungalows, would not deliver the quantum of development proposed. There was some discussion at the Inquiry about the maximum height of such buildings and the appellant indicated that, if necessary, setting the maximum height about 8 m above ground level of would be appropriate. No volumetric analysis had been undertaken by either side,

[4] [2016] EWCA Civ 466

with the appellant stating this was because of the inherent uncertainties of an outline application with neither scale nor layout for consideration.

34. I have noted above that the existing buildings are generally between approximately 3 and 4 metres high, although one glasshouse in the centre of the site is taller due to its 'double width' when compared with others on the site; some others have started to collapse in upon themselves. The glazed nature of the majority of the buildings also reduces their presence. Compared with this would be the markedly taller and solid buildings spread across the whole of the area of appeal site and the sub-division of the area into individual curtilages. The result of this would be to reduce the openness of the appeal site taken as a whole when compared with the existing situation, including when assessed in visual terms, even though the site could only be seen from private land.

35. The majority of the buildings on the site, particularly away from the retail and residential area on the south eastern part of the site exhibit an agricultural character. This is not to say that they are used agriculturally, but rather they show their agricultural history. The quantum and amount of the more urban form of residential development proposed would increase urban sprawl and encroach into the countryside. This would be contrary to the fundamental aim of the Green Belt as set out in paragraph 79 of the Framework and the third purpose in paragraph 80.

36. My conclusion therefore is that the proposal would reduce openness and be contrary to one of the purposes of the Green Belt. As paragraph 87 of the Framework makes clear, inappropriate development is, by definition, harmful to the Green Belt, substantial weight should be given to that harm, and should not be approved except in very special circumstances.

Living conditions

37. A local resident attended the Inquiry and expressed his objections to the proposal because of, as he saw it, the effects on the living conditions of the occupiers of dwellings around the perimeter of the site, and in particular 1 to 4 Redvers Cottages. The particular concerns relating to noise and disturbance and light pollution within the site when compared to the existing situation.

38. Currently the existing operation is open to the public between 09:00 hours and 17:00 hours seven days a week. The introduction of up to 20 dwellings would result in an increase in activity over a greater period, including on the access drive past the dwellings fronting on to Wheelers Lane. However, I am satisfied that there would be sufficient separation from the dwellings around the site, so that the increase in noise and disturbance would not be such to give rise to an unacceptable effect on the living conditions of those occupiers. While 1 to 4 Redvers Cottages are set back from Wheelers Lane, and thus have a quieter environment than those properties facing that highway, the location is still close to the rural settlement of Witley and is not inherently quiet.

39. As to lighting, while there would be a change, I consider that if permission were to be granted then it would be possible through planning conditions to ensure that there was not an unacceptable effect on the living conditions of the occupiers of adjoining dwellings in this regard.

40. As such, there would be no unacceptable effect on the living conditions of the occupiers of neighbouring properties, Therefore the proposal would comply with Policy D1 of the WLP which seeks to ensure there is no loss of general amenity, including disturbance resulting from the emission of noise, light or vibration. It would also comply with paragraph 17 of the Framework which seeks a good standard of amenity for all existing occupants of land and buildings.

Affordable housing and leisure facilities

41. Regulation 122 of the CIL Regulations states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.

42. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.

43. In all cases while making provision for contributions under the terms of the Planning Obligation the delivery of the contribution is contingent on me finding that the contribution complies with the CIL Regulations.

Affordable housing

44. The WLP is silent as regards the provision of affordable housing outside settlements apart from rural exception affordable housing. However, the Council has, as part of the preparation for LPP1, undertaken a 'West Surrey Strategic Housing Market Assessment' (the SHMA) and this identifies a need for affordable housing. This has resulted in Policy AHN1 of the LPP1 which has sought a minimum provision of 30% affordable housing on sites such as the appeal site. The appellant did not dispute the need for such provision and I am satisfied that, in line with paragraph 50 of the Framework, that such a provision is necessary.

45. At the opening of the Inquiry the dispute centred on whether the provision could be delivered through a planning condition or should be delivered through a Planning Obligation. However, by the end it was agreed that provision could be made through a condition and subject to appropriate wording I would agree with this. In doing this, any permission would make adequate provision for affordable housing.

46. However, there was then a dispute over the wording of the condition. Given my overall conclusion on this appeal, I need not resolve this. Having said that the proposal would only deliver a provision needed to make the scheme policy compliant and consequently the affordable housing would deliver no additional beneficial weight.

Education and Open space

47. Policy D13 of the WLP indicates that development will only be permitted where adequate infrastructure, services and facilities are available, or where the developer has made suitable arrangements for the provision of infrastructure, services and facilities directed made necessary by the proposed development. Policy D14 goes on to set out the principles behind the negotiation of planning obligations required in connection with new development. Policy ICS1 of the LPP1 makes similar provision.

48. The proposed development would result in an increase in population on the appeal site and thus have an effect on the requirement for education facilities and playing pitches, children's play equipment in the vicinity of the appeal site.

49. In support of the LPP1 the Council has published an Infrastructure Delivery Plan (the IDP) setting out need for infrastructure to support the development identified in the LPP1. As the delivery of the appeal site would fall within the timeframe of the LPP1 the IDP this provides justification for infrastructure necessary to support development or for contributions towards that infrastructure.

50. As regards education the contribution sought has been justified in respect of the in scale and kind to the development through the use of the Surrey S106 Education formula. While the IDP indicates that there would be temporary primary 'bulge' class at Witley Infant school, this was shown to have been needed in 2014 and thus should have been provided. There is no additional primary provision shown in the IDP in the vicinity of the appeal site. There is no proposed increase in capacity at the relevant secondary school shown either temporary or permanent. As such, it has not been shown to me that that there is currently or a forecast shortfall in the facilities available at either the primary or secondary schools within appropriate distances from the appeal site so that a need for the contribution has been made out. It has therefore not been shown that a contribution is necessary or reasonably related to the development to be permitted and consequently this would not comply with Regulation 122 of the CIL Regulations.

51. As regards leisure facilities the IDP sets out the overall need. Two schemes have been identified at the Witley Recreation Ground in the Playing Pitch Strategy and the Play Area Strategy for enhancements to the adult football pitches and play equipment. I am therefore satisfied that contributions towards such facilities are necessary and are directly related to the development. The contributions sought are in scale and kind appropriate to the increase in population and consequently would comply with Regulation 122 of the CIL Regulations. I am advised that the contributions would comply with Regulation 123 and accept this.

52. Consequently, the proposal, subject to conditions and the Planning Obligation as amended through my findings above, would make adequate provision for affordable housing and the effects of the development on education and leisure facilities. It would therefore comply with Policies D13 and D14 of the WLP and Policy ICS1 of the LPP1 as set out above.

Other considerations

53. Although not considering that the proposal represented inappropriate development in the Green Belt, in the event that I did find this to be the case, as I have done, the appellant put forward three other considerations which it considered represented the very special circumstances necessary to allow the development. These were, it was asserted, a failure to deliver the Objectively Assessed Need (the OAN) for housing in the district; a shortfall in the Five Year Housing Land Supply (the 5YHLS); and the need to release sites from the Green Belt, in what was described as the "direction of travel" of the emerging Local Plan as a whole. It is convenient to take each in turn.

Objectively Assessed Need

54. The appellant criticised the Council's OAN figure based on criticisms from the ExI in his note of 5 April 2017. In this the ExI has set out preliminary findings as to the scale of uplift needed to improve affordability and a number of other points including whether unmet need from outside the district should be met within the district. The Council has produced a response dated 12 May 2017 (the May 2017 response) which seeks to further justify the OAN figure of 519 dwellings set out in the SHMA and thus the LPP1. The appellant did not put forward another figure as an alternative.

55. There was a criticism that the 5YHLS supply had only gone back four years, rather than five, and therefore did not take account of any deficiency in delivery prior for that year. However, it seems to me that the calculation should be based on the base date of the LPP1, that is 1 April 2013, and that the OAN figure should take any shortfall, if it exists, into account through the market signals adjustment[5].

56. The Courts have held it is not for an Inspector in a Section 78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, and should thus use the best information available to the Inspector. Other than the generalised criticisms set out above, which the Council does not accept, I do not have any further information on this topic and it will be the ExI to consider all the evidence, including from those not party to this appeal, in coming to his conclusions. Therefore, on the basis of the information in front of me, I consider that the use of an OAN figure of 519 dwellings is sufficiently robust to allow me to use it to undertake the assessment.

Five Year Housing Land Supply

57. I have been provided with a number of recent appeal decisions relating to sites in the district from the early months of 2017. Particular reference was made to decisions at Hewitt's Industrial Estate, Cranleigh[6] (Hewitt's), the Former Weyburn Works, Elstead[7] (Weyburn Works) and Backward Point, Cranleigh[8] (Backward Point). In each of these cases the Inspectors concluded that the Council could not demonstrate a 5YHLS based on a number of factors including the appropriate buffer needed to ensure choice and competition in the market for land (see paragraph 47 of the Framework).

[5] See paragraph 2.38 of Appendix 1 to the May 2017 response.
[6] APP/R3650/W/15/3141255
[7] APP/R3650/W/16/3150668
[8] APP/R3650/W/16/3150906 & APP/R3650/W/16/3150910

58. In all three appeal decisions the Inspectors concluded that there had been a record of persistent under delivery of housing and that a 20% buffer was appropriate. Notwithstanding this the Council continued to maintain that at a 5% buffer was appropriate, citing the 5 April 2017 note by the ExI who considered that the methodology of calculating the 5YHLS put forward by the Council was appropriate ("Sedgefield" plus 5%).

59. During the first day of the Inquiry (16 May 2017) the ExI published an "Inspector's note regarding 5 year housing land supply 'buffer'". In this he refers specifically to the Hewitt's and Weyburn Works Inspectors' conclusions, and explains, by reference to the Planning Practice Guidance (the PPG) that in his view that having read all the submissions "[w]hen it comes to an assessment of the 5 year housing supply position, I will work on the basis of a 5% buffer and will not spend discussion time during the hearings on the subject". Although the ExI does not reference the Backward Point decision, which post-dates the other two, the logic in that decision was as for the other two decisions.

60. Although the consideration of a 5YHLS is not a policy, I consider that parallels can be taken with paragraph 216 of the Framework and in particular the second bullet point. The ExI has looked at all the evidence in the round and made a conclusion. I therefore consider that substantial weight can be given to that conclusion. I concur with him that in in line with the advice in the PPG[9] the assessment should be taken in the longer term in order to take account of the peaks and troughs of the housing market cycle and that consideration should be taken of performance prior to the 2008/09 recession and that delivery was supressed thereafter. Prior to this completions were ahead of the then planned requirement. I therefore am of the view that a 5% buffer is appropriate.

61. The Council's May 2017 response was published just before the Inquiry opened. This document references the three appeal decisions cited above. It asserts that taking in to account the sources of supply criticised in those appeal decisions and updating the 5YHLS to 1 April 2017 that it is able to demonstrate a 5YHLS. It does this in two alternative ways, firstly by including a number of sites outside settlements identified in the Land Availability Assessment (LAA) which it believes will be delivered within 5 years. Using this approach the Council maintains it can demonstrate a 5.84 years housing land supply. Secondly, if no account is taken of these sites the Council considers it can demonstrate a 5.30 year housing land supply.

62. The Backward Point decision is the latest of the three, although it was heard before the decision at Weyburn Works had been issued. This considered, reiterating concerns expressed by the Inspector in the Hewitt's decision, that due to these sites "not being currently part of a development plan allocation; not tested at Examination yet as part of the emerging Local Plan and thus may be subject to change; and they do not benefit from an extant planning permission" (paragraph 44) that there are significant reservations about the full deliverability of those sites.

63. In the May 2017 response the Council makes clear that while it accepts that providing housing on greenfield sites or rural brownfield sites is necessary, it does not wish to prejudge allocations in either LPP2 or Neighbourhood Plans. I

[9] Reference ID: 3-035-20140306

was not provided with timetables for these plans. While the LAA sites outside settlements would each deliver less than 100 dwellings and it would be reasonable to assume that they would be delivered within 5 years of permission being granted, there is still considerable uncertainty that these sites will deliver within the five years from 1 April 2017. I therefore conclude that the LAA sites outside settlements should not be included within the 5HLYS calculation.

64. The Housing Supply promoted by the Council is also predicated on the delivery of sites allocated in the LPP1. While I would accept that there is a degree of uncertainty for this given outstanding objections and the need for examination, I consider that given the number of sites identified in the LPP1, and the figure of 421 included within the supply calculation is less than 10% of the total expected delivery on strategic sites[10] I consider that this is reasonable and can be included.

65. There was a dispute relate to the Dunsfold Aerodrome site and whether this can make a contribution towards housing supply in the relevant five year period. Although the Council has resolved to grant planning permission this application has been recovered by the Secretary of State for his own decision. I was advised that the Inquiry was scheduled for this summer. The Council's own Housing Trajectory only noted completions in the last three years of the five year period, but in light of the 'call-in' of the application, and the number of other queries raised by the ExI in his note of 5 April 2017 relating to this site, notwithstanding the Council's subsequent response, I consider that at this time this can only be considered optimistic, and this site should not be included within the calculation.

66. The 5.30 year housing land supply referred to above is based on a 'surplus' of housing supply of 225 dwellings against requirement in the relevant period. To achieve this Dunsfold Aerodrome is shown as delivering 273 dwellings. As the projected delivery for Dunsfold Aerodrome exceeds the 'surplus' I can only conclude that the Council is unable to demonstrate at this time a 5YHLS, although this is not a large deficit.

"Direction of Travel"

67. It is evident from the LPP1 that there will be releases from the Green Belt upon adoption and that is to continue in detailed form in LPP2. In relation to the current appeal, it is proposed in LPP1 as currently drafted that the existing rural settlement of Witley would be removed from the Green Belt. However this does not include the appeal site. In LPP2 certain changes, including around Witley, will be made to the Green Belt to be defined following consultation with local communities [my emphasis]. The LPP1 at Plan 5 also shows an asterisk ("*") located in the general vicinity of the appeal site although slightly to the west for "Broad area for potential adjustment to Green Belt boundary".

68. However, any such changes are some way off, and will need to be considered in the light of a number of factors. There are no policies published as yet forming LPP2 and consequently I consider that I can only give this very limited weight. It may be that the appeal site is removed from the Green Belt in due course, but equally this may not happen. That there may be sites redeveloped

[10] See Table 18.1 of the LPP1

on previously developed land both within and outside the Green Belt is not, of itself, contentious. However, at this point in time, there is nothing to say that this site (or nearby land) will be removed from the Green Belt and that an assumed direction of travel is happening to the extent promoted by the appellant.

Other matters

69. The appeal site lies adjacent to the Witley Conservation Area to the east which includes a number of listed buildings. It was not in dispute, and I agree, that the proposal would preserve the settings of the listed buildings and therefore the proposal would comply with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) that requires that special regard should be had to the desirability of preserving the listed building or its setting. In addition the proposal would preserve the setting of the Conservation Area.

Planning Balance and Conclusion

70. The proposal is contrary to the policies of the development plan in the WLP as a whole. It is then necessary to consider whether there are any material considerations which indicate that the determination should be made otherwise to that plan.

71. The WLP is out-of-date in that it does not address the housing needs of the area. As such, in line with paragraph 14 of the Framework, as explained by the Supreme Court in *Suffolk Coastal District Council v Hopkins Homes Ltd and another, Richborough Estates Partnership LLP and another v Cheshire East Borough Council*[11] the 'tilted balance' should apply unless specific policies of the Framework and the development plan indicate development should be restricted. Footnote 9 specifically refers, *inter alia*, to those relating to Green Belts.

72. For the reasons set out above the proposal represents inappropriate development in the Green Belt, because even though it is located on previously developed land the proposal would adversely affect openness and be contrary to the purposes of the Green Belt. It is therefore by definition harmful to the Green Belt, and the relevant sections of emerging Policy RE2 of the LPP1 to which I have given significant weight. Paragraph 88 of the Framework indicates that substantial weight should be given to Green Belt harm, and this I do.

73. The PPG specifically states[12] that unmet housing need is unlikely to outweigh the harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development on a site within the Green Belt. This is reinforced as policy in the Written Ministerial Statement of 17 December 2015 relating to Green Belt protection and intentional unauthorised development.

74. Of the three 'other considerations' put forward by the appellant two relate to housing land supply and thus housing need and I give this only moderate weight, particularly as I have concluded that the extent of the deficiency is not large and is being addressed through the LPP1. The third can only be given

[11] [2017] UKSC 37
[12] Reference ID: 3-034-20141006

limited weight for the reasons explained. I give moderate weight to the benefit of providing additional housing, including a proportion of affordable housing.

75. The Framework reminds that inappropriate development should not be approved except in very special circumstances. I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances needed to justify the development do not exist. As such the proposal would not represent sustainable development and the determination should be made in accordance with the terms of the development plan.

76. I appreciate that this is a different conclusion to the decision in the Weyburn Works appeal. In particular, in that case the Inspector attached significant weight to the redevelopment of a brownfield site which is no longer required for employment purposes; a consideration it was agreed does not apply in this case. I therefore find that there are material differences between the two schemes.

77. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

R J Jackson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Dr Ashley Bowes	of Counsel, instructed by Waverley Borough Council
He called	
Mr Brian Woods BA(TP) MRTPI	Managing Director, WS Planning & Architecture

FOR THE APPELLANT:

Mr Graeme Keen	of Counsel, instructed by Mr Paul Collins, Phoenix Planning Consultancy
He called	
Mr Paul Collins BA MRTPI	Sole Planning Practitioner, Phoenix Planning Consultancy

INTERESTED PERSONS:

Mr Ben Jones	Local Resident

INQUIRY DOCUMENTS

IQ1 Tree Reference Plan CAS20322-01 at A1 size
IQ2 Completed Planning Obligation dated 8 May 2017
IQ3 Response by Mr Collins to Inspector's Pre-Inquiry Note
IQ4 Copy of Judgement – *Suffolk Coastal District Council v Hopkins Homes Ltd and another, Richborough Estates Partnership LLP and another v Cheshire East Borough Council* [2017] UKSC 37
IQ5 Copy of Judgement – *Telford and Wrekin Council v Secretary of State for Communities and Local Government* [2013] EWHC 79 (Admin)
IQ6 Copy of Judgement – *R (on the application of Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404
IQ7 Copy of Judgement – *John Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466
IQ8 Copy of Judgement – *Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476
IQ9 Response by Waverley Borough Council to Waverley Borough Local Plan Part 1: Strategic Policies and Sites Inspector's Matters and Issues for Examination dated 12 May 207
IQ10 Opening on behalf of Appellant
IQ11 Opening on behalf of the Council
IQ12 Waverley Borough Local Plan Part 1: Strategic Policies and Sites – Pre-submission version
IQ13 Waverley Borough Local Plan Part 1: Strategic Policies and Sites Inspector's Note regarding 5 year housing land supply "buffer" dated 16 May 2017
IQ14 Justification Statement from Surrey County Council on Education Infrastructure
IQ15 Responded letter to Head of Planning Services, Waverley Borough Council regarding Leisure Contributions
IQ16 Email chain relating to Leisure Contributions concluding 15 May 2017

IQ17 Extract from Planning Practice Guidance on housing need – Reference ID: 3-034-20141006
IQ18 Written Ministerial Statement 17 December 2015 relating to Green Belt protection and intentional unauthorised development
IQ19 Appendices to IQ9
IQ20 Email chain relating to Affordable Housing condition concluding 11 May 2017
IQ21 Closing submissions on behalf of the Council
IQ22 Closing submissions on behalf of the Appellant