The Planning Inspectorate

Appeal Decisions

Inquiry held on 1 and 2 November 2016, and 1, 2, 3, 7, 8, 9, 14 and 15 March 2017

Site visit made on 2 November 2016

by Wendy McKay LLB Solicitor (Non-practising)

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

Decision date: 19 July 2017

Appeal A, Notice A Ref: APP/X0360/C/15/3141001
Land at Pineridge Caravan Park, Nine Mile Ride, Wokingham, Berkshire, RG40 3ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Felix Cash (Senior) against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 23 November 2015.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from agriculture and forestry to the stationing of mobile homes for the purposes of human habitation together with associated domestic paraphernalia including parking of vehicles, and the creation of associated hard surfacing and fencing.
- The requirements of the notice are: (i) Cease the use of the land for the siting of caravans for human habitation; (ii) Remove all caravans and associated domestic paraphernalia, including vehicles, from the land; (iii) Break up and remove the hard standing from the land, cover with topsoil to a depth of 20 cm and sow with grass seed using amenity-grass seed mix at 50 grammes per square metre; (iv) Remove all fencing from the land; (v) Remove from the land all materials resulting from compliance with steps (i) to (iv) above.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Appeal B, Notice B Ref: APP/X0360/C/15/3141000
Land at New Acres, Nine Mile Ride, Wokingham, Berkshire, RG40 3ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Felix Cash (Junior) against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 23 November 2015.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from agriculture and forestry to the stationing of mobile homes for the purposes of human habitation together with associated domestic paraphernalia including parking of vehicles, and the creation of associated hard surfacing and fencing.
- The requirements of the notice are: (i) Cease the use of the land for the siting of caravans for human habitation; (ii) Remove all caravans and associated domestic paraphernalia, including vehicles, from the land; (iii) Break up and remove the hard

standing from the land, cover with topsoil to a depth of 20 cm and sow with grass seed using amenity-grass seed mix at 50 grammes per square metre; (iv) Remove all fencing from the land; (v) Remove from the land all materials resulting from compliance with steps (i) to (iv) above.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Preliminary Matters

1. At the Inquiry, the Appellants submitted copies of a completed section 106 agreement for each site dated 15 March 2017 made between the Council and Felix Cash to secure the provision of a 'SAMM' contribution towards access management of the Thames Basin Heaths Special Protection Area (SPA). They also provided copies of a completed agreement for each site made pursuant section 111 of the Local Government Act 1972 to secure the provision of a contribution towards funding delivery of Suitable Alternative Natural Green Space (SANGS). I have taken those agreements into account in reaching my decisions.

2. At the outset of the Inquiry, the Appellants sought a ruling that an appeal against the refusal of planning permission for a shop to serve the appeal sites and the wider lawful Pineridge and New Acres sites should be linked to the current appeals. That was on the basis that the outcome of the shop appeal was relevant to the sustainability of the appeal sites in locational terms and it would be highly prejudicial to the Appellants for the appeals not to be dealt with together. Such an application had previously been made direct to the Planning Inspectorate but had been refused. After having given consideration to the submissions made by the main parties, I concluded that the appeals should not be linked for the reasons explained at the Inquiry.

3. The Appellants had initially indicated that a section 106 agreement would be provided during the course of the appeal to ensure that, subject to planning permission being granted, the aforementioned shop would be built and would be retained for a minimum period of five years. In the light of the evidence submitted by the parties to the Inquiry on the matter of locational sustainability, the Appellants subsequently chose not to put forward such an agreement for my consideration.

4. At the Inquiry, the recent appeal decision dated 2 March 2017 relating to *Land West of Park Lane*[1] was submitted in evidence and the main parties had the opportunity to comment on it. At that time, the Council indicated that it was seeking to challenge that decision in the High Court. Following the close of the Inquiry, it was subsequently drawn to my attention that the Council was not in fact pursuing its challenge to that appeal decision which I have taken into account as a material consideration in these appeals.

5. After the close of the Inquiry, the Appellants submitted to the Planning Inspectorate a copy of an appeal decision[2] dated 7 June 2017 relating to land at Broughton, Heath Ride, Finchampstead wherein that Inspector concluded

[1] Appeal ref: APP/X0360/W/15/3130829
[2] Appeal ref: APP/X0360/W/15/3131732

that Wokingham Borough Council was unable to demonstrate a five year supply of deliverable housing land. The Appellants requested that this decision be placed before me as being of relevance to my decisions in these appeals. By letter dated 12 June 2017 written comments were invited from the parties within three weeks in respect of this new evidence and in relation to the Supreme Court judgment in the case of *Suffolk Coastal District Council v Hopkins and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council [2017] UKSC 37* which also post-dates the close of the Inquiry. I have had regard to that appeal decision, judgment and the comments submitted to the Planning Inspectorate in reaching my decisions.

6. At the Inquiry, the oral evidence was given on oath with the exception of two of the Council's witnesses, namely, Emily Circuit and Chris Howard. The Appellants' representative confirmed at the Inquiry that no issue was taken with the truthfulness and honesty of the evidence given by those individuals.

The appeal on ground (d)

Background matters

7. On ground (d), it is for the Appellants to demonstrate, on the balance of probabilities, that the material change of use alleged in the notices has existed for a period in excess of 10 years prior to the date of issue of the notices and continued actively throughout the following 10 year period. There can be no '*dormant'* periods in the 10 year period. The Appellants must show when the change of use first occurred and demonstrate that it had continued actively throughout the relevant period, to the extent that enforcement action could have been taken against it at any time. The relevant date for the purposes of these appeals is the 23 November 2005.

8. The Appellants' own evidence does not need to be corroborated by "*independent*" evidence in order to be accepted (*FW Gabbitas v SSE and Newham LBC [1985] JPL 630*). If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellants' version of events less than probable, there is no good reason to refuse the appeals, provided their evidence alone is sufficiently precise and unambiguous to show the existence of a lawful use through the passage of time "*on the balance of probability."*

9. The Appellants assert that the use of the land for the stationing of caravans for residential purposes was commenced at the beginning of November 2005 and has continued since that time so as to become lawful prior to the issue of the notices. The Council takes the view that the Appellants' evidence is not "*sufficiently precise and unambiguous*" to support the ground (d) claims.

The evidence of the parties on ground (d)

The aerial photographs

10. The Council has submitted in evidence three aerial photographs of the appeal sites, dated respectively 12 July 2005, 3 November 2006 and 12 March 2007. There is a marked contrast in the extent of vegetation and hardstanding shown on the 2005 photograph compared with the later ones. No caravans can be seen on the site in the July 2005 photograph. However, there is some dispute between the parties as to what can be seen on the site after that. The Council contends that they reveal only a single mobile home sited on the Pineridge

appeal site and a touring caravan in various positions within the New Acres site during 2006 and 2007. Mr Cash Senior considers that one other caravan can be seen on each site.

11. Whilst I have taken into account Mr Cash's familiarity with the sites, I am unable to interpret these photographs in a similar manner. I concur with the Council as to what they reveal. In any event, these photographs can only represent a snapshot of what was on the site at a given moment in time and there are significant gaps between the dates when they were taken. Although they show the presence of caravans in different positions on the sites in 2006 and 2007, the physical presence of a mobile home or caravan does not reveal how it was actually being used, if at all.

Mr Felix Cash Senior's evidence

12. The evidence of Mr Felix Cash Senior is that he started to negotiate with the landowner, Norwood Schools[3], to purchase the appeal sites in 2004 and those negotiations were still continuing in 2005. It was intended to be a condition of the sale that he dug a large drainage ditch around the southern boundary of the sites. Although the negotiations were ongoing it was agreed that he could start work on the ditch and the sale of the land would be finalised at the same time. He started work on digging the drainage ditch at the end of September 2005 and this was completed by the second week of October 2005. He claims that as soon as the drainage ditch was complete and hardcore was laid down he brought caravans onto the land. He asserts that the first caravans were brought onto the land during the last week of October 2005 and people started living in them at the very end of October or the beginning of November 2005 and that the use has continued since then.

13. Felix Cash Senior recalls that Ezra Louden-Barratnew lived in a mobile home on the Pineridge site at the beginning of November 2005. For a short time, in October 2006 to the end of that year, there was just Ezra living in a mobile home on the site and most other residents were in tourers at that time. In February 2008, Ezra moved from his original mobile home to another mobile home on the site due to the poor condition of the former which needed to be replaced. At that time, Ezra stopped paying cash-in-hand and started to claim housing benefit, so a proper tenancy contract was drawn up.

14. Mr Cash Senior also specifically mentions Mr John Bowers, who is the son of Leanna Bowers, moving onto the land at the start of November 2005 and living in caravans on both the Pineridge and New Acres sites for about two years; Mr Rooney who lived on a caravan on the site for six months; Mr John Murphy who lived in a caravan on the site for two to three months and Sam Connors who lived in a caravan on the site for 12 months.

15. In cross-examination, Mr Cash accepted that he had no written records to support the occupation of the appeal sites during the period 2005-2008. The only witness who gave evidence to the Inquiry claiming that he lived on the site from November 2005 was Mr Ezra Louden Barratnew. Mr Cash stated that he did not know how to get hold of Mr John Bowers and that he and the other occupants mentioned for that period were from Gypsy and Traveller families who came and went. They would "*just turn up on the evening and go in the morning*".

[3] Also referred to as Ravenswood by some witnesses

Rebecca Hawksley's evidence

16. Rebecca Hawksley, Mr Felix Cash Senior's solicitor at the relevant time, gave evidence in support. She was first instructed by him on 27 September 2005. At that time, he told her that he was in negotiations with Ravenswood for the purchase of a bit of land adjoining the New Acres caravan site and his own land. He explained that the land had a drainage problem and that as part of the purchase he was negotiating with the school that a ditch would be dug to improve it. She also saw Mr Cash on 21 November 2005 and her attendance note records that he had dug the ditch by then.

17. The Council does not seek to challenge that Mr Cash was negotiating with Norwood Schools to buy the appeal land in 2005, or that it was intended that the ditch would be re-routed. There is also no dispute that the work started in September 2005, or that, once the ditch works were complete, the appeal sites were covered with hardcore. However, the Council does dispute the date of commencement of the unauthorised residential use of the land.

18. On that matter, Rebecca Hawksley's evidence provides little assistance. She confirmed in cross-examination that she did not seek to give any evidence as to the nature or extent of occupation of the appeal sites, or the identity of any occupants and she did not actually visit the appeal sites in the period 2005-2008. Her contemporary notes of the meetings on the 27 September 2005 and 21 November 2005 make no mention of any occupation of the appeal sites taking place at that time.

Mr Ezra Louden-Barratnew's evidence

19. The only witness of fact who actually claims to have lived at either of the appeal sites in late 2005 and 2006 was Mr Ezra Louden-Barratnew. His evidence was that during 2005, he lived at 76 Pell Street, Reading with his partner at that time. The housing benefit was paid by Reading Borough Council to their landlord. Following his split with his former partner, she remained with her child at the Pell Street property and he moved to Pineridge Park Homes in October 2005. He did not notify Reading Borough Council that he had moved out and the housing benefit continued to be paid direct to the landlord. In the second week in November 2005, he moved into a mobile home on another part of the Pineridge Park Homes site which had just finished being developed. He claims that he paid cash-in-hand to live there until 2008 when he lost his job and started to claim housing benefit. To assist with that claim a tenancy contract was drawn up.

20. The Council submits that Mr Louden-Barratnew's claim that he occupied the appeal site between 2005 and 2008 is not supported by any of the documentation before the Inquiry. In response to the requisition for information served by the Council dated 3 July 2015, Mr Louden-Barratnew put down the date he first moved into the caravan/mobile home on the land as being the 15 February 2008.

21. The letter from Green Planning Studios dated 13 August 2015 was sent in response to the Planning Contravention Notice (PCN) dated 3 July 2015. In response to question 7, "*How many caravans on "the Land" are occupied for human habitation and when did that use commence?"* it states that: "*There are 6 occupied caravans on the land within Mr Felix Cash's control"*. For question 8 which asks: "*Who occupies each caravan and how long have they occupied*

them?" the response given lists the 6 caravans and includes: "*Number 7 – Mr E Louden-Barratnew since 25th February 2008.*"

22. The Appellants submit that that represents an appropriate response to the question put and the February date is the date when the replacement caravan was brought onto the land. Although that response corresponds with his having occupied that particular caravan since that time, it is at the very least surprising that there was no mention in this letter of any previous occupation of a caravan on the appeal site by Mr Louden-Barratnew before 2008.

23. The e-mail to the Council from Reading Borough Council dated 22 July 2016, advises that Mr Louden-Barratnew was in receipt of housing benefit from Reading Borough Council between 1 May 2004 and 19 June 2006. It also states that he was living at Pell Street in Reading from 1 May 2004 onwards and that housing benefit was paid to him in full "*for the entire of 2005 and into 2006*".

24. The Council's own Housing Benefits section has provided an e-mail to Marcia Head of the Enforcement Department dated 22 June 2016. This advises that Mr Louden-Barratnew's housing benefit application form stated that he first moved to the appeal site on 1 September 2008 and that before then, he had been living at 20 Lysander Close, Woodley. At the back of the housing benefits application form, there is a Tenancy Agreement with a start date for occupation by Mr Louden-Barratnew of 25 February 2008. No other documentary evidence in support of Mr Louden-Barratnew's occupation of the appeal sites has been provided.

25. The Appellants submit that Mr Louden-Barratnew has adequately and logically explained this contradictory evidence relied upon by the Council. The explanation given by him in his oral evidence to the Inquiry was that he had been trying to avoid Council Tax during the period 2005 to 2008. His housing benefit claim form used a postal address, namely, 20 Lysander Close which is his mother's address. He considered himself to be technically homeless and did not have enough money to pay Council Tax.

26. The e-mail from Reading Borough Council to A1 Property Management dated 29 September 2016 indicates that it is seeking to recover an overpayment of housing benefit from Mr Louden-Barratnew as the former tenant of A1 Property Management. The e-mail from the latter of the same date states that "*…what few records I still hold on this account confirm that he was still a tenant in 2006*". The Appellants suggest that the fact that Reading Borough Council are seeking to recover money from Mr Louden-Barratnew shows that they accept that he had vacated the property at the relevant time and this lends support to their case. Taking the correspondence as a whole, I am unable to agree that such a conclusion can be drawn. Indeed, it would seem that the only records of A1 Property Management support the proposition that he remained a tenant of the Pell Street property after the relevant date.

27. The Council submits that the evidence given by Mr Louden-Barratnew was unreliable and should be given little weight. There are certainly clear contradictions and inconsistencies in his evidence in the light of the various documents and correspondence that indicate that he was actually lived in either Reading or Woodley in the period from November 2005 to February 2008. The housing benefits claim form which he submitted contains a declaration which advises that the Council may prosecute the claimant, if they

give false information, or if they provide false or altered documents with the claim, or if they withhold information including a change in their circumstances. This declaration has been signed by Mr Louden-Barratnew. The housing benefits documentation is inconsistent with what he now claims to have been the position. The explanation that he seeks to advance is that he sought to avoid Council Tax. To my mind, such a casual and disingenuous approach to the completion of official forms calls into question the accuracy and reliability of his evidence generally. Whilst I recognise the distress caused to him by the break-up of his relationship with his former partner, given the contradictions and inconsistency in his evidence on this crucial matter, I believe that it would be unsafe to place much reliance upon the explanation that he now gives on this topic.

Mr Paul Blackett's evidence

28. Turning to the evidence of other ground (d) witnesses, Mr Paul Blackett has lived at the Pineridge Park Homes site since October 2000. He recalled seeing the ditch being dug in September 2005 and the laying of hardstanding around mid-October 2005. He also recalled that Gypsy and Traveller families visited the appeal sites in the period 2005-2007. He commented that they "*came and went at all times of the day and night*" and that the nature of the occupation was "*very transient*". He did not know Mr Louden-Barratnew and was unable to provide any evidence as to the identity of any person living on the site on a permanent basis from 2005.

Leanna Bowers' evidence

29. Leanna Bowers recalled visiting the Pineridge Park site in September 2005 and seeing a ditch being dug at the south end of the site. She visited again in early October 2005 and saw that work was being done to level the ground and put down hardcore. Her next visit was in the middle of November 2005 and she claims to have seen caravans on the land with people living in them. However, she confirmed in cross-examination that when she mentioned permanently placed mobile homes in the years 2005-2008, she meant the six mobile home units to the north of the Pineridge part of the appeal sites that could be seen on the 2006 aerial photograph. As regards Gypsies and Travellers, she "*saw them vaguely*" coming on and off the appeals sites but did not know the names of anyone who did so.

Daniel Ager's evidence

30. Daniel Ager moved into No 25 Pineridge Park Homes in July 2005. He confirmed that he saw the ditch being dug at the end of September 2005. Thereafter, hardcore was put down and mobile homes were brought onto the land with people starting to live in them pretty much straight away after that. He knew Mr Louden-Barratnew as a neighbour and stated that he moved onto the site in October to November time. He recalled that it was about one to two weeks between the mobile home being brought onto the land and Ezra living there. However, he was not aware of the nature of Mr Louden-Barratnew's occupation; for example, how often he was living at the appeal sites or whether he was living elsewhere whilst visiting the appeal sites from time to time. He also remembered Gypsy and Traveller families coming and going but could not identify any of them or how long they were there.

Carol Winton's evidence

31. Carol Winton moved into No 1 Pineridge Park Homes in April 2005. It was at the end of September or the beginning of October 2005 that she noticed works going on at the ditch along the south edge of the site. After that, hardstanding was laid down and mobile homes were brought onto the area. She asserts that by the first week of November 2005 there were mobile homes being lived in on the appeal sites.

32. She knew Mr Louden-Barratnew, as they both had dogs, and she stated that he was probably one of the first to live there. In cross-examination, she stated that she "*wouldn't have known if he had an address elsewhere*" and that she "*wouldn't have known if he was living there full-time or not*" and confirmed that she could not say how long he stayed there at a time. In re-examination, she stated that she "*wouldn't know if he was staying or what was happening"*. Her genuine honest recollection was that he was "*living there some of the time, maybe trying to patch up his relationship.*"

33. She did not know how many caravans would have been at the appeal sites at any time and could not identify who any of the occupants might have been or how long they would have stayed at the sites. She was aware of Gypsies' and Travellers' caravans coming on and off the sites in the early years and said that "*we called them transients*". They went down through the New Acres site to access the appeal site and she did not go over to New Acres. She confirmed that it was only in later years that people started living there full-time. In re-examination, she then stated that people started living there in 2005 on a regular basis. However, no details were provided as to the nature or extent of any such occupation. Furthermore, the point had been very fairly put in cross-examination. There would seem to be no obvious reason for this contradiction in her evidence which leads me to question her general reliability as a witness.

Marilyn Brown's evidence

34. Marilyn Brown was formerly a resident of No 4 Pineridge Park Homes. She recalled the ditch being dug at the end of September 2005 and the hardcore being put down about two weeks after the ditch was complete. Her recollection was that the caravans were first brought onto the land around the turn of the month between October and November 2005 and people moved in straight away. Mr Louden-Barratnew kept himself to himself. She knew he was there and used to see him on the site but had no idea if he was living there full or part-time. In cross-examination, she stated that she just assumed he lived there as she had seen him on the site and did not know if he had a home elsewhere. She said, in examination-in-chief, that the Gypsy and Traveller caravans would visit the appeal sites on an ad hoc basis in the years 2005-2008 but she would not have known how many of them were there at any time or how often they came or went or who occupied them.

Wendy MacNeil's evidence

35. Wendy MacNeil is the mother of Debbie Wilkins, who has lived at Pineridge Park since August 2004 and has been the Park Manager at Pineridge from August 2006. Since the summer of 2005, she has visited her daughter at Pineridge Park many times. In her written statement, she said that during a visit in mid-October 2005, her daughter took her down to the bottom of the site and she saw that hardcore had been put down. However, when giving her oral

evidence, she could not recall how she knew it had been 2005. She did not go down to the site very often and her daughter had told her about the works. She recalled there being a couple of mobile homes on the land but could not say what happened to Mr Louden-Barratnew in 2005/2006

36. In cross-examination, she confirmed that she had no idea as to the identity of any Gypsy and Traveller visiting the appeal sites and she did not go down to that end of the Park in the period 2005-2008. She would not have known how often caravans appeared at the sites or how long they stayed there. She had no idea whether Mr Louden-Barratnew stayed a night, a week or for any other period at the site or whether he lived at the time in accommodation elsewhere. She could not remember if anyone was living in the two mobile homes she mentioned.

Debbie Wilkins' evidence

37. Debbie Wilkins lives at No 6 Pineridge Park Homes and is the Park Manager for Pineridge Park Homes. She has lived there since August 2004 and became the site manager in August 2006. In her written statement, she said that since the end of October 2005, there had always been mobile homes and people living in them on the appeal sites. In examination in chief, she recalled that initially there were a couple of mobile homes on the Pineridge site with the first one in the bottom corner being occupied by Mr Louden-Barratnew but she could not say if he was staying there all the time. At that time, he was paying Mr Cash directly in cash. He started claiming benefit in 2008 and the caravan was changed for a newer one. She did not know if he had a tenancy agreement before 2008. She acknowledged that he might have been living in two places. She could not say how many days a week he was living there.

38. She accepted that she did not know the numbers or identity of any visitors to the bottom end of Pineridge; she did not visit or speak to anyone on the sites in the period from 2005 to August 2006 when she first became Park Manager. She did not meet Mr Louden-Barratnew before then and could not give evidence in relation to the nature of his occupation of a caravan in the period before August 2006. She could not give evidence in relation to any units occupying the New Acres side of the sites at any point during 2005-2008.

The Council Tax records

39. The Appellants draw support from the fact that the Council's records show that Council Tax was being paid on six pe***r***manent residential plots from 13 June 2007 but have not provided details as to the names in which the 2007 Council Tax benefits claims were made and paid. They suggest that the Council's lack of reliance upon these records indicates that they are corroborative of the Appellants' case. However, those records are not before this Inquiry and I am unable to place much reliance upon such speculation or draw the same inference from their absence. It is a factor to which I attach little weight.

Conclusions on ground (d)

40. Taking the evidence of these witnesses as a whole, although Mr Louden-Barratnew was seen at times during the relevant period by some Pineridge Park residents, none of them could provide reliable supporting evidence as to the precise nature of his occupancy. Indeed, most were clear that they had no idea how often he visited the site or how long he stayed there or whether he

actually lived elsewhere at the time. These occasional sightings and the vague and uncertain nature of their evidence in relation to his occupation provide little support for the Appellants' case. In contrast, the conclusion that his occupation of the appeal sites between 2005 and 2008 was occasional and on a casual basis is entirely consistent with the only available documentary evidence.

41. The evidence relating to other occupants during that period is that Gypsies and Travellers would "*turn up*" at the sites on a sporadic and intermittent basis. They would come to and from the sites and stay for an indeterminate period. The Inquiry has not heard from these visitors and no other witnesses gave precise and coherent evidence that would indicate that this residential occupation amounted to more than a casual, occasional and insignificant occurrence. I find the Appellants' evidence relating to the use of the site by Gypsy and Traveller families to be imprecise and lacking in the necessary detail.

42. Although at times over the years the sites have accommodated mobile homes and caravans used for residential purposes, the available evidence indicates that until 2007 this was on an irregular and sporadic basis. I am unable to find, as a matter of fact and degree, that the extent and pattern of the use of the caravans for human habitation would have amounted to a material change of use prior to the relevant date. Even if such a change could be regarded as having taken place, there was no active continuation of any use for human habitation such that the Council could have taken enforcement action against it at any time. The Appellants' claim that the site has been used continuously since early November 2005 is not supported by the balance of the evidence. I conclude, on the balance of probabilities, that a continuous 10 year use during the relevant period has not been demonstrated. The development is not therefore immune from enforcement action. The appeals fail on ground (d)

43. For the avoidance of doubt, in reaching my conclusions on this ground of appeal, I do not rely upon the Council's alternative arguments that there was a material change of use of the appeal sites by way of an intensification of use within the relevant 10 year period.

The appeals on ground (a) and the deemed applications for planning permission

The Development Plan and other policies

44. The Development Plan for the area includes the Wokingham Borough Local Development Framework Core Strategy adopted 2010 and the Wokingham Borough Managing Development Delivery Development Plan Document (MDD) adopted 2014. The relevant Core Strategy policies are CP1 – Sustainable Development, CP3 – General Principles for Development, CP7 – Biodiversity, CP8 – Thames Basin Heaths Special Protection Area, CP9 – Scale and Location of Development Proposals, and CP11 Proposals outside development limits (including countryside).

45. The relevant MDD DPD policies are CC01 – Presumption in Favour of Sustainable Development, CC02 – Development Limits, CC03 – Green Infrastructure, Trees and Landscaping, CC09 – Development and Flood Risk (from all sources), TB21 – Landscape Character, and TB23 – Biodiversity and Development.

46. The Local Plan Update that will provide the strategy for the Borough from April 2013 to March 2016 is in the issues and options consultation stage. The Council's updated Local Development Scheme dated 29 July 2016 anticipates an adoption date of May 2019 for the Local Plan Update.

47. The Council has also published the Wokingham Borough Design Guide in 2012 as supplementary design guidance. The Council places reliance upon paragraph RD1 which sets out the contribution that new development and associated landscaping should make towards the landscape character and biodiversity of the area.

48. The South East Plan has been revoked with the exception of Policy NRM6 relating to the Thames Basin Heaths SPA and the Oxfordshire Structure Plan Policy H2.

49. Turning to national policy, the Government issued the National Planning Policy Framework (the "Framework") in March 2012. It explains that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.[4] Paragraph 211 of the Framework advises that, for the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. Paragraph 215, requires that due weight be given to relevant policies in existing plans according to their degree of consistency with the Framework. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. The degree of consistency of individual policies with the Framework will be considered later on under the relevant topic headings where this is a matter of dispute.

50. The Planning Practice Guidance (PPG), provides guidance on a variety of topics including the provision of housing in the light of the Framework and housing and economic land availability assessments.

The Planning History of the site and wider Pineridge Park Homes site

51. On 26 June 2009, an enforcement notice was issued alleging without planning permission the installation of services and utilities and the creation of 22 areas of hardstanding on land adjacent to the lawful Pineridge Park Homes site. A second notice was issued on 11 February 2010 alleging the change of use to use for the stationing of mobile homes for the purposes of human habitation and the erection of a timber fence. The enforcement notices were upheld on appeal subject to corrections and variations. Challenges to the decisions were unsuccessful and the notices have taken effect.

52. On 7 December 2009, an application for planning permission was submitted for the use of that adjacent land at Pineridge Caravan Park for the stationing of 22 mobile homes for residential purposes together with the formation of additional hardstanding (the "22 pitch site"). This application was refused by the Council in February 2010. The subsequent appeal was dismissed by a decision dated 11 February 2015.

53. On 4 December 2015, an application for the use of the land for the stationing of 15 mobile homes for residential purposes together with the formation of

[4] Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

additional hardstanding and landscaping and the erection of a shop/site office was submitted. The Council declined to determine this application by way of notification on 4 March 2016.

54. On 4 December 2015, an application for the erection of a shop/site office was submitted on the wider Pineridge Park Homes site. This application was refused on 4 March 2016. This application was refused on 4 March 2016 and at the time of the Inquiry was subject to an appeal.

55. On 25 July 2016, an application for a certificate of lawfulness for the use of land for the stationing of caravans for residential purposes on the appeal sites was submitted to the Council. That application was refused on 15 October 2016.

The Main Issues

56. The main issues are as follows:

- Whether it can be demonstrated that there is a five year housing land supply in the borough?
- The effect of the development on the character and appearance of the site and surroundings having regard to landscape character, visual impact and heritage assets.
- The need to contribute towards mitigation measures relating to the Thames Basin Heaths SPA.
- Ecology and biodiversity - the impact upon other local habitat and protected species.
- Whether the development would be sustainable in this location?
- Affordable housing and viability issues.
- The flood risk implications of the development.
- The local need for housing.
- The availability of suitable, affordable, alternative accommodation to meet identified housing need.
- Whether there has been a failure of local planning policy in relation to the supply of housing in the Borough?
- Economic benefits of the development.
- The personal circumstances of the current site occupants.
- Human rights of the site occupants and the best interests of any children living on the site.

Reasons

Whether the Council has a five year housing land supply?

The national planning policy background

57. The Framework, paragraph 47, explains the steps that local planning authorities should take to boost significantly the supply of housing, including

that they should identify and update annually a supply of deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, the buffer should be increased to 20%. Paragraph 49, states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

The Park Lane appeal decision

58. The recent appeal decision dated 2 March 2017 relating to Land West of Park Lane[5] (the "*Park Lane* decision"), found that the Council could not demonstrate a five year housing land supply in relation to site specific allocations and that the shortfall was significant. That conclusion was reached without the need to apply a 10% lapse rate or the combination of site specific deductions and lapse rate of the Inspector in the earlier *Stanbury House* appeal[6].

59. In the light of the *Park Lane* decision, the Appellants submit that the baseline position in respect of the evidence before that Inspector has not changed dramatically and the Council cannot demonstrate a five year supply of deliverable housing sites. The Council has considered its position in the light of that decision but maintains that it does have a five year supply of housing land, even when calculated against the *Park Lane* Inspector's objectively assessed need (OAN) figure of 894 dwellings per annum (dpa). Both parties agree that a 20% buffer should be applied to the housing need figures.

The Broughton appeal decision

60. The appeal decision dated 7 June 2017 relating to land at Broughton, Heath Ride, Finchampstead, Wokingham[7] (the "*Broughton* decision"), found that the Council was unable to demonstrate a five year supply of deliverable housing land, and that the shortfall was not insignificant. Likewise, that conclusion was reached without the need to consider the application of a 10% lapse rate to the housing supply figures to take account of non-delivery of dwellings or sites.

61. The Appellants point out that the hearing for the *Broughton* decision was held just a few weeks after the Inquiry in this case. The Appellants in both instances were represented by Green Planning Studio and the evidence presented was broadly identical. They point out that the *Broughton* decision is the fourth recent appeal decision in which the conclusion has been reached that the Council is unable to demonstrate a five year housing land supply.

62. Notwithstanding the *Broughton* decision, the Council maintains that it does have a five year supply of deliverable housing land. It submits that, overall, the Inspector's findings in the *Broughton* decision strengthen its case in the current appeals.

Frequency of the five year housing land supply statement

63. The Appellants submit that the Council's assessment is out-of-date as its most recent published position in relation to the five year housing land supply is

[5] Appeal ref: APP/X0360/W/15/3130829
[6] Appeal ref: APP/X0360/W/15/3097721
[7] Appeal ref: APP/X0360/W/15/3131732

provided within the Strategic Housing Land Availability Assessment (SHLAA) at 31 March 2016.

64. The Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites. They should have an identified five year housing supply at all points during the plan period. The PPG states that: "*Once published, such assessments should normally not need to be updated for a full 12 months unless significant new evidence comes to light or the local authority wishes to update its assessment earlier*."

65. The Council acknowledges that its housing land supply calculation base date was some 11 months old, as at the date of the Inquiry. The Council indicated that it would shortly be undertaking the process of a full update of the SHLAA to reflect the approach of the new monitoring year. I do not find any basis for concluding that a 'live' assessment of deliverable supply should be maintained or that the current assessment fails to meet the expectations of national policy and guidance in that respect. I concur with the Inspector in the *Broughton* decision that the Council's reliance on data spanning the period 2016 to 2021 is reasonable and proportionate.

The OAN

66. The Core Strategy, Policy CP17, sets out sets out phased housing requirements from 1 April 2006 to 31 March 2026. The five year period from 31 March 2016 provides for an OAN of 723 dwellings. The Council accepts that the housing requirement within the Core Strategy is now out-of-date. A Strategic Housing Market Assessment (SHMA) was published in February 2016 which sets out an OAN of 856 dpa for Wokingham. This OAN has been adopted by the Council within the SHLAA republished on 9 December 2016. The Appellants accept that the SHMA's OAN of 856 is preferable to the Core Strategy figures. However, they have made a number of criticisms of the SHMA and submit that the OAN figure should be higher than provided for therein.

67. The Appellants contend that the Council has adopted an inadequate OAN and a flawed approach in seeking to reset the baseline with the March 2013 SHLAA. The Council's position is that a market uplift of 9.18% should be applied to give an OAN of 856 dpa and a total requirement of 6,322. The Appellants submit that the entire Development Plan backlog should be included together with a market uplift of 9.18% giving a total requirement figure of 8,047 or, alternatively, a market uplift of 19.13% should be applied giving a total requirement of 7,071.[8] At the very least, they contend that the Council has not provided evidence to rebut the *Park Lane* Inspector's position that a market uplift of 14.03% should be applied to give an OAN of 894 dpa and a total requirement of 6,686.

The Core Strategy 'backlog'

68. The Council does not accept that, for the purposes of calculating the five year housing land supply, the backlog of housing from 2006 to 2013 should be included. It submits that any shortfall should only apply from 2013 onwards which represents the base date of the SHMA. This is because any shortfall in housing delivery prior to 2013 has been considered and taken into account in the adjustments to the OAN and to add on an allowance for under-provision of

[8] See Table setting out various positions with regard to housing need set out at paragraph 28 of the Appellants' Closing Submissions

housing prior to the SHMA would represent double-counting. The Council draws support in this respect from the *Stanbury House*[9] and *Sandpit Cottage*[10] appeal decisions and the case of *Zurich Assurance Ltd v Winchester County Council and South Downs National Park Authority [2014] EWHC 758 (Admin).*

69. In the *Zurich Assurance* case, one point in issue was whether there had been a methodological error by the Inspector in his assessment of the proposed housing requirement and whether an earlier shortfall against a previous estimate should have been added onto their own modelled estimates for new homes for the relevant period. Mr Justice Sales, in giving judgment, stated: "*In my view, they would clearly have been wrong if they had tried to do so. Their own modelling for 2011-2031 is self-contained, with its own evidence base, and would have been badly distorted by trying to add in a new figure derived from a different estimate using a different estimate base. That would have involved mixing apples and oranges in an unjustifiable way*".

70. The Inspector in the *Stanbury House* appeal decision stated: "*Any backlog of unmet housing need from during the Core Strategy plan period up to the start of the SHMA period should be taken into account in establishing the objectively assessed need for housing. On that basis, if there is perceived to be a backlog, it should not be added to the five year housing land supply calculation as to do so would be double counting. In other words, any shortfall should be captured as part of the SHMA housing need data such that it should not be added.*"

71. In the *Sandpit Cottage* appeal decision, the Inspector in considering a similar argument to that which the Appellants now put forward in these appeals, states at paragraph 11: "*In setting its OAN, the Council used the base date of 2013, reflecting the most up to date household projections. In response, Mr Rudd stated at the Hearing that there was no law or policy guidance that allowed a 'reset of the clock' to occur for OAN, as the Zurich case referred to by the Council related to a Core Strategy that had been adopted. Furthermore, the appellant calculates that the Council would make provision for 1,365 fewer houses than the CSDCO minimum requirement. However, adding in a 'backlog' of housing not completed prior to 2013 would result in double counting.*"

72. These two appeal decisions therefore support the Council's approach that to add in the 'backlog' of housing not completed prior to 2013 would result in double-counting. Similarly, in the appeal decision relating to *Land off Muxton Lane, Muxton, Telford*[11] both parties accepted that, in the light of the *Zurich* case, no shortfall from before the base date of the OAN needed to be added on. Furthermore, the Inspector in the *Broughton* decision considered that the inclusion of a separate backlog rate relating to under-supply accrued up to 2013 would be inappropriate.

73. The Appellants contend that the *Broughton* Inspector failed to give sufficient consideration to the shortfall being addressed in the current plan period during which it has been accrued. Her approach would allow the shortfall from the current plan period (2006-2026) to be addressed in the emerging plan period. The *Broughton* Inspector had considered the application of the market signals uplift rate of 72 dpa applied over the period up to 2036 which would deliver over 1,600 dwellings, thereby exceeding the accrued housing deficit to 2013 of

[9] Appeal Ref: APP/X0360/W/15/3097721
[10] Appeal Ref: APP/W1525/W/15/3138723
[11] Appeal ref: APP/C3240/W/15/3010085

some 1,438 dwellings. The Appellants calculate that for the current plan period 2006-2026, the market signals uplift of 72 dpa would lead to an increase of only 936 dwellings prior to 2026. They have similar concerns in relation to the Core Strategy requirement for the period 2017-2022. They submit that there is a long-standing and persistent shortfall that is essentially wiped out by commissioning a new OAN study and the approach of the Council in "*re-setting the clock*" is logically flawed.

74. They place reliance upon the case of *Draper v Forest Heath District Council.*[12] In that case, consideration was given to the issue of the appropriate backlog where there is no Examination in Public (EIP) of the relevant figures. The Inspector states, at paragraph 12, that: *"Accordingly, and in dealing with housing shortfall against previous year delivery rates, little evidence is before me as to why the Council has wholly disregarded any deficit accrued between the start of the plan period to 2011. Furthermore, it has not sufficiently explained why housing shortfall from 2011 to 2015 has not been added to the housing requirement figure of 1700 as is normal practice to do so, as opposed to deducting it from the supply figure. No sufficient explanation is offered as to why the buffer has not been added to the combined figure of the OAN plus the shortfall."*

75. The Council acknowledges that the Inspector in the *Draper* case considered that a backlog prior to the base date of the OAN calculation should be included. However, the Inspector also states that: *"At the Hearing, the Council was unable to sufficiently explain or justify the approach taken because advice on said matters had been obtained by a private consultant, who was not present to discuss them".* I concur with the Council that it is difficult to know what evidence that Inspector had in front of him and whether he gave consideration to the *Zurich* judgment in coming to his decision. The *Broughton* Inspector noted that the Inspector in the *Draper* case had highlighted the lack of evidence before him and she attached limited weight to that decision. In reaching my decision in the present case, I have had the benefit of the *Zurich* judgment and there has been an in-depth discussion at the Inquiry on the topic with experienced professional witnesses representing the main parties.

76. The SHMA, paragraph 39, states that: *"The uplift to the OAN on the basis of market signals effectively takes into account historic (pre-2013) unmet need in each local authority. As this is a response to an historic supply and demand imbalance any further uplift to address historic under delivery would in effect be double counting. This approach aligns to the high court decision in the Zurich Assurance v Winchester case."*

77. Thus, the SHMA considers past housing provision and any shortfall in housing delivery prior to the 2013 starting point has been taken into account in the adjustments to the OAN. It explains that it would be inappropriate to make separate uplifts for both market signals and historic under-delivery as they are intrinsically linked. Although the parties agree that the Core Strategy figures are now out-of-date, there is not yet a new adopted Local Plan and the SHMA and the figures contained therein have not been tested by an EIP. The Appellants submit that it is inappropriate in those circumstances to "*write off*" the backlog and adopt the SHMA figure. They contend that the *Zurich* case does not provide authority for local authorities to re-set the clock every time

[12] Appeal ref: APP/H3510/W/15/3139292

they produce a new OAN; it is only authority for the ability of local authorities to re-set the clock in terms of housing need figures when a new plan is adopted, following careful and thorough examination of the figures with a view to adoption.

78. Nevertheless, as was the case in the *Sandpit Cottage* appeal, although the Appellants are critical of the SHMA and it has not been tested at EIP, it represents the best figure available for the purposes of deciding this appeal. Whilst the *Zurich* case was a challenge to the adoption of a plan rather than an appeal situation, as a matter of common sense, the same principle should apply for both plan-making and appeals. I concur with the Council that it is simply not reasonable to mix and match figures from different evidence bases. Given the way in which the SHMA OAN has been derived and the adjustments which have already been made in that process, I consider that to add on an allowance for under-provision of housing prior to the start of the SHMA would indeed represent double-counting. In the same way, as was recognised by the court in the *Zurich* case, to simply add on the pre-existing backlog to the new figure in the SHMA would represent mixing figures from different sources in an unjustifiable way. I conclude that it would be inappropriate to include the backlog of need from the Core Strategy pre-2013 when calculating the OAN using the SHMA.

The need for an additional general market signals adjustment

79. The Appellants also submit that the OAN should include a higher adjustment for market signals for other reasons such as affordability and concealed households. They refer to both the *Stanbury House* and the *Park Lane* appeal decisions in this respect. In those cases, the Inspectors suggested that a market signals adjustment should be closer to 14% rather than the 9.18% used in the SHMA. This would give a need for 894 dpa instead of the 856 figure in the SHMA. At the Inquiry, Mr Green, on behalf of the Appellants, set out his arguments as to why a market uplift of 19.13% should apply resulting in an OAN of 934. He submits that regard should be had to the link between market uplifts and the backlog position and the market uplift should allow for suppressed households and improving affordability. The Appellants' position is that, in any event, the market uplift of 14.03% adopted by the *Park Lane* Inspector must be the minimum position adopted in this appeal. The Council rejects that approach.

80. The PPG,[13] advises that the household projections published by the Department for Communities and Local Government (DCLG) should provide the starting point estimate of overall housing need. However, that estimate may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Relevant signals may include land prices, house prices, rents, affordability, rate of development and overcrowding.

81. In the light of the PPG, any uplift should be measured against the 'start point' which at the time of the SHMA[14] was a need for 680 dwellings per annum. The

[13] See paragraphs 2a-019 and 2a-015
[14] See table on page 26 of the SHMA

Council contends that a figure of 856 therefore represents a 26% uplift above the start point which is a reasonable and substantial uplift to the OAN. The latest DCLG household projections now show a lower starting point for analysis of 542 dpa. The Council submits that the OAN of 856 represents an uplift of 58% from this figure and in reaching that figure the SHMA has taken into account the relevant factors highlighted by the PPG.

82. Although the 'start point' at the time of the SHMA was 680 dpa, an initial uplift was applied to account for migration trends and economic needs[15] which resulted in a requirement for 784 dpa. The SHMA then applied a further upwards adjustment to account for market signals of 9.18%. All these adjustments taken together provide the 26% figure referred to by the Council. However, it is necessary to consider whether an appropriate and reasonable upwards adjustment has actually been made by the SHMA or whether any further uplift over and above that is required having regard to the PPG guidance and the relevant components of 'market signals', as opposed to factors which simply reflect economic growth.

83. The Inspector in the *Park Lane* appeal concluded that, given the combination of increasing affordability ratios combined with a constricted supply of housing, a market signals uplift of 14% would be reasonable, proportionate and justified. Likewise, the Inspector in the *Stanbury House* appeal decision considered that a more substantial market signals uplift in the range of 10% to 14% would be reasonable, proportionate and justified and that the OAN lay in the range of 862 to 890 dpa. Furthermore, the Inspector in the *Broughton* decision considered that a market uplift of some 14% would be reasonable, equating to an OAN of 894 dpa.

84. The Appellants contend that a larger increase should have been applied in the *Broughton* appeal, particularly given the issue of concealed households and shortfall in supply within the plan period. As regards concealed households, the SHMA had regard to the significant growth in concealed households between 2001 and 2011with people living in shared and overcrowded households. It sets out the implications of market signals, including a supply and demand imbalance which is likely to have contributed towards restricting household formation, particularly in younger age groups.

85. The Inspector in the *Broughton* appeal notes that the SHMA data on concealed households is derived from national data sets and she considered that it provided a suitable basis for assessing housing needs. The Appellants criticise the reliance placed upon 2011 census and the definition of a "Concealed Household" that would have been used. However, it seems to me that the national data relied upon by the SHMA provides the most reliable basis for making an assessment rather than the somewhat speculative reliance upon the experience of another local authority area to which the Appellants refer.

86. The Council submits that it is unclear exactly how the conclusion in the *Stanbury House* appeal was reached. As regards the expected rate of employment growth, the SHMA findings on the scale of employment growth were not just based on the Cambridge Econometrics (CE) base forecasts but upon expected jobs growth 43% higher than the CE forecasts having considered historic employment trends across a number of timeframes. The SHMA'S conclusions on economic growth in Wokingham Borough sit midway

[15] The London and economic uplifts

between the 2013 baseline CE forecasts and the 2015 Oxford Economic forecasts before the *Stanbury House* Inspector. The Oxford Economic forecasts for UK economic performance in the short to medium term have since been downgraded. In the light of the Council's explanation as regards the use of the CE forecasts, I am satisfied that they have not in fact had the effect of unduly suppressing the OAN in the SHMA.

87. The *Stanbury House* Inspector, at paragraph 40, commented on the backlog of unmet housing need at the start of the SHMA period and the cumulative shortfall of 919 homes in the Borough over the two and a half years from the start of the SHMA period to the Mid-Year SHLAA. The Council does not agree that an under-delivery since the start of the assessment period in 2013 is relevant to the OAN, as under-delivery against an OAN over this period would be expected to be "*made up*" in the following years adopting the "*Sedgefield*" approach. The *Broughton* Inspector noted that the *Sedgefield* approach to dealing with the shortfall accrued since the start of the Plan period is supported by the PPG.

88. Although the SHMA does build in a substantial uplift compared with the 'start point', it is relevant to have regard to the latest available evidence on the relevant signals suggested by the PPG including affordability. The *Park Lane* Inspector had regard to the worsening position in relation to affordability and the increasing deficit in overall housing completions within the SHMA period. He considered that: "*… the under delivery of new homes in Wokingham is likely to have a detrimental effect on affordability and would also be likely to restrict the delivery of affordable units in the Borough which in turn would further exacerbate affordability*."

89. That seems to me to be a logical approach. I do not consider that to have regard to this effect of the under-delivery since the start of the assessment period in 2013 on a factor relevant to the appropriate market signals adjustment represents double-counting. I find no reason to disagree with the conclusions of the *Park Lane* Inspector that the application of a 14% uplift resulting in an OAN of some 894 dpa would be reasonable, proportionate and justified. This also accords with the rate applied by the Inspector in the *Broughton* decision. In reaching this conclusion, I have had regard to the practical effects of the existence of a backlog in relation to the provision of housing. However, I do not believe that the Appellants' suggestion of an uplift of 19.13% would be proportionate or justified in this instance. Their submissions in relation to concealed households and shortfall in supply within the plan period do not persuade me otherwise.

Housing supply

90. The Framework, paragraph 47, indicates that there should be a "*realistic prospect that housing will be delivered on the site within five years*". Furthermore, footnote 11 provides that: "*sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within the five years, for example they will not be viable, there is no longer a demand for the types of units or sites have long term phasing plans."*

91. The PPG, paragraph 31, indicates that this includes sites with outline or full planning permissions that have not yet been implemented. The PPG, paragraph 23, advises that: "*On the largest sites allowance should be made for*

more than one developer to be involved. The advice of developers and local agents will be important in assessing lead-in times and build-out rates."

92. The SHLAA 2016 indicates that the Council can demonstrate a supply of deliverable sites with a capacity of 6,965 dwellings for the five year period 1 April 2016 to 31 March 2021. The Council has reconsidered its supply of dwellings in the light of the *Park Lane* appeal decision. It accepts that a deduction of 56 dwellings should be made reducing this to 6,909 dwellings. This comprises a deduction of 16 dwellings from the North Wokingham SDL and 30 from the South of the M4 SDL. The Council also accepts that a further deduction should be made of 146 dwellings on 'land west of Shinfield' which also forms part of the South of the M4 SDL. The total effect of these deductions is to reduce the supply to 6,763 dwellings.

93. The Appellants dispute that this level of supply could be achieved and have provided their own assessment of the likely housing supply. They consider that the deductions to be made reduce the supply figure to 6,051 dwellings. The detailed argument of the parties in relation to specific sites and the anticipated supply of dwellings will now be considered in the light of national policy and guidance on this topic.

Site specific analysis

94. The Core Strategy identifies four Strategic Development Locations (SDLs) from which a substantial proportion of the Borough's planned housing delivery is to be derived. These are the Arborfield Garrison, North Wokingham, South of the M4 Motorway and South Wokingham SDLs. The *Park Lane* Inspector considered the likely deliverability of these sites in reaching his conclusions on the five year housing land supply. At the Inquiry, the Council provided new information on these SDLs which now fall to be considered in turn.

Arborfield Garrison SDL

95. Core Strategy Policy CP18, allocates the Arborfield Garrison SDL for the phased delivery of around 3,500 dwellings by 2026. The Arborfield Garrison SDL is effectively split into two sections, namely, the North (Arborfield Garrison) and the South (Hogwood Farm).

96. In relation to the North site, the *Park Lane* Inspector noted that the main dispute between the parties was that the Council had stated that rates of delivery would double in the last year of the five year period from 100 to 200 homes without adequate justification. He found this to be inconsistent with the SHLAA, table 3.2 (p11), which asserts that calculations are made based on 55 dpa from each developer where there are multiple developers. He stated: *"… there was no substantive evidence at the Inquiry that demonstrates that the developer (Crest) are currently marketing other parcels of land on the site for development or that they are likely to come forward within the five year period."* Based on the evidence before him, he concluded that it would be appropriate to make a deduction amounting to 90 dwellings to ensure broad consistency with the delivery rates of the published SHLAA from the northern area.

97. For the North site, the *Broughton* Inspector considered that, overall there was some uncertainty regarding the Council's estimated delivery rates and that

delivery estimates should be reduced, in line with the Appellant's proposal, by 83 dwellings within the five year period.

98. As regards the South site, the position at the time of the *Park Lane* Inquiry was that, although the Council had resolved to grant outline permission for Hogwood Farm, there was no executed s106 obligation and no planning permission. Furthermore, in terms of ownership, the South site differed from the North site in that it was being promoted directly by the landowners, meaning that it was likely that there would be a significant delay in its implementation. The Inspector considered it appropriate to deduct 150 dwellings from the supply, since the Council had not adequately demonstrated that there was a realistic prospect that the full quota of housing identified within the SHLAA would be delivered on the site within the five year period.

99. Likewise, the *Broughton* Inspector considered that, although outline planning permission was gained in January 2017 for development in the southern section of the Aborfield Garrison SDL, commencement was unlikely until 2019/20. She concluded that a reduction of 150 dwellings over the five year period was justified but did not accept the Appellant's proposition to reduce the supply by 265 dwellings.

100. For the purposes of this appeal, the Appellants submit that 83 dwellings should be deducted from the North site[16] and 265 dwellings from the South site. The Council contends that comparing current progress with the five year housing land supply outlined in the SHLAA, there is no significant new evidence that would alter the projected delivery. It does not accept that any deduction should be made for either site.

101. The Council's evidence[17] to the Inquiry provided updated information as regards delivery following detailed discussions with the developers and landowners across the SDL site. There are 3,500 dwellings that have permission in the SDL with 463 of those having detailed approval and about 30 have been completed. Crest will develop 50% of the 2,000 approved units on the Defence Infrastructure Organisation land and this will be delivered by two separate entities within the company, namely, Crest Nicholson Regeneration and Crest Nicholson South. Thus, two separate entities of Crest Nicholson are developing the site. The remaining half will be sold to other developers on the open market. Redrow Homes has already purchased parcels H-J and has recently submitted a reserved matters application for 179 homes on those parcels.

102. The Appellants are critical of the Council's reliance upon its own build-out rate. They submit that the sample taken is extremely small and skewed by the exclusion of various sites. A study of Housing Supply Research by Parsons Brinkerhoff for CPRE reviewed various other researches and concluded that about 50 units per annum could be achieved on average with 25 units in the first year. They also draw support from the House Builders' Federation (HBF) approach which considers a vast array of sites and developers and submit that 50 dpa is a nationally accepted completion figure.

[16] Parcels A-G, 01and T, and H-J
[17] Table 1 to the proof of evidence of Nick Chancellor, his rebuttal proof and oral evidence to the Inquiry and the Council's response to the *Park Lane* appeal decision.

103. The Council explains that it uses the best available information to undertake its assessments, drawing on information supplied by the agent/developer. Where this is not available, the projected delivery is based on historic delivery rates for recent developments within the Borough. The Council submits that the CPRE publication and the research upon which it draws are not of any significance to this appeal. They are neither recent nor locationally specific to Wokingham Borough or the immediate area. Likewise, the HBF figure is not locally specific. In contrast, the Council's delivery rates are objective, geographically relevant, based on actual completions and are up-to-date.

104. Although the Council's sample is small numerically, comprising two sites with at least two developers operating and five sites with one developer operating, these figures have the benefit of being derived from a locally based sample of sites developed in recent years. I consider the Council's approach to be preferable and more likely to reflect what will take place on other large sites in the area. I am satisfied as to the reliability of the anticipated build-out rate adopted by the Council.

105. The deduction sought by the Appellants from the North site from 220 to 83 dwellings has been calculated as follows: for the North site, with just Crest Nicholson involved for Parcels A-G, completions would be likely to commence in 2018/19 and at the rate of 50 dpa they would allow construction of 150 dwellings on this site during the 5 year period. For Parcels 01 and T, Crest Nicholson Regeneration is the developer and construction has already commenced at Parcel 01. The Appellants accept that all dwellings on Parcel 01 will be completed within the five year period. However, they consider that this will impact on Parcel T's delivery. They submit that Crest Nicholson Regeneration is likely to finalise this site prior to substantive development commencing on Parcel T and that completions on that parcel would not occur until 2018/19. They therefore contend that based on a delivery rate of 50 dpa, Parcels 01 and T would provide 250 dwellings over the 5 year period with Parcels A-G providing 150 and Parcel H-J providing 100 giving a total of 500 dwellings, as opposed to 583 dwellings in the SHLAA.

106. At the Inquiry, the Council gave evidence to the effect that planning conditions are not holding up delivery for this site and all relevant pre-commencement conditions have been complied with. The development of Parcels A-G commenced in February 2017 and completions are expected this year. This is earlier than anticipated by the SHLAA. As indicated above, I consider that it is reasonable to apply the Council's own build-out rate derived from local information. On that basis, it is realistic to anticipate the completion of 220 units by 2020/21. Parcels 01 and T would be undertaken simultaneously and not consecutively as anticipated by the Appellants. Furthermore, it is expected that Parcel T would be commenced in 2017 and all dwellings would be completed within the five year period. For Parcels H-J, it is envisaged that anticipated that approval for the reserved matters application would be secured by Summer 2017 and that building would commence in Autumn 2017, consistent with the timeline achieved by Crest Nicholson at Parcel 01 in 2016. Whilst I note that the SHLAA'S calculation of housing delivery assumes the average time from planning application validation to completion is 29 months, given the latest available information for this particular site, I consider that it is not unrealistic to expect the Council's anticipated timescales to be met.

107. The Council's updated evidence in relation to the South site is that since the *Park Lane* Inquiry, outline planning permission had been granted at Hogwood Farm on 9 January 2017 for 1,500 dwellings following completion of a section 106 agreement. The Council has been advised by the landowner's agent that a planning application for the first reserved matters phase for the first residential parcels will be submitted in 2017 followed by the commencement of the development in 2018.

108. The Appellants do not accept that the development of the South site will proceed in accordance with the Council's evidence. Outline planning permission has been granted but there are substantive conditions to be complied with before a reserved matters application can be submitted. They also point out that this site has a private owner which could delay any sale. They contend that any completions will not commence in 2017/18 and should be pushed back at least 12 months. Assuming that there would be a single developer at the rate of 50 dpa they seek a reduction of 265 dwellings for this site. They assume a timescale of two years from the date of the Inquiry to achieve completions and one developer on the site.

109. The Council's evidence is that work could begin on the first parcels without substantial infrastructure being put in place. Some of the parcels off Park Lane could come forward before the need for larger infrastructure items is triggered. They are not small parcels and, in the meantime, infrastructure work could be going on in the background. The capacity of these parcels is sufficient to deliver at least the 10 dwellings projected by the SHLAA for 2017/18. In the light of this further information, I consider that it is not unrealistic for development to commence and the first completions to take place as projected by the Council.

110. The Council also anticipates there being a number of different developers engaged across the site. The Development Delivery Team is not aware of any reason why delivery at the Hogwood Farm site would be limited to just one developer. Since this is a large site, that is not an unreasonable approach in the light of the PPG advice. There is no reason why, having regard to the evidence presented to the Inquiry, the rate of delivery ought to be limited to 55 dpa for this site. Given the Council's up-to-date information and the experience gained on the North site, I do not find the Council's anticipated timescale for its development to be unrealistic.

111. In conclusion, for the North site with three confirmed developers involved, the SHLAA projections at Arborfield Garrison are feasible and realistic. This, together with the purchase of parcels H-J by Redrow and the submission of a reserved matters application for that land represent material changes in circumstances compared with the position at the time of the *Park Lane* appeal when it had been assumed that there would only be one developer. The Council's latest evidence cannot be dismissed as being little more than anecdotal. For the South site, there is now an executed s106 obligation and outline planning permission has been granted with the imminent prospect of a reserved matters application being submitted.

112. The updated information provided by the Council to the Inquiry and the consideration of that evidence at the Inquiry provides clarity in relation to the derivation of the trajectory totals. I do not therefore have the same concerns as regards uncertainty as was the case for the *Broughton* Inspector. In

relation to the South site, whilst I have reached a different conclusion from the *Broughton* Inspector, I have had the benefit of detailed evidence from the Council as regards the prospect of the first reserved matters application being pursued in 2017 and the likelihood of development commencing and the first completions being achieved in 2018.

113. In conclusion, it is clear that substantial progress has been made in terms of delivery and enabling subsequent phases of development across the Arborfield Garrison SDL such that the test in the NPPF, paragraph 47, footnote 11, is now met. The evidence before me does not support the deduction of any of the five year supply to be provided by this SDL.

North Wokingham SDL

114. Core Strategy Policy CP20 allocates the North Wokingham SDL for around 1,500 dwellings as part of a sustainable mixed use development. Furthermore, planning permission has been granted for 128 and 300 dwellings respectively at Bell Farm and Keephatch Beech, despite those sites not being specifically identified for housing development by the Core Strategy.

115. The Council's evidence to the Inquiry[18] provides updated information as regards delivery following detailed discussions with the developers and landowners across the SDL site. This indicates that 1,879 dwellings have permission in the North Wokingham SDL including the 128 dwellings approved at Bell Farm and an additional 10 dwellings approved as Phase 1 of the Kentwood East development.

116. The *Park Lane* Inspector had concerns that the Council's build-out trajectory for the Matthews Green Farm site was inconsistent with the SHLAA. There was no substantive evidence to support the conclusion that the build rates would rise as claimed in the last three years of the five year period. Nor was there evidence to suggest that there would be more than two developers operational on the site. He therefore concluded that 106 dwellings should be deducted to ensure broad consistency with the delivery rates in the SHLAA. For the purposes of this appeal, the Council accepts a deduction of 16 dwellings from the North Wokingham SDL. In contrast, the Appellants seek a net deduction of 67 dwellings across the SDL.

117. The Council acknowledges that there is some potential for slippage at the Matthews Green Farm site. At the Inquiry, the Council provided new projected build-out rates from the developer which was not available to the *Park Lane* Inspector. There are now 514 dwellings projected to be completed within the five year period with a further 246 dwellings to be completed beyond this. The SHLAA projected the completion of 687 dwellings within the five year period and 73 beyond. The Council therefore accepts that there should be a deduction of 173 dwellings for the Matthews Green Farm site.

118. The Appellants consider that the deduction for the Matthews Green Farm site should be 224 not 173 dwellings, based on a build-out rate of 50 dpa for the site being developed by Bovis Homes and point to the past performance of the developer in this respect. They submit that a greater deduction than that applied by the *Park Lane* Inspector is appropriate.

[18] Table 1 to the proof of evidence of David Smith, his rebuttal proof and oral evidence to the Inquiry and the Council's response to the Park Lane appeal decision.

119. However, the Council's anticipated build-out rate is based upon new projections provided by Bovis for this site. As previously indicated, I do not find the build-out rate applied by the Council of 55 dpa to be unreasonable. The past performance of this particular developer in this respect does not dissuade me from that view. Furthermore, the Council also points out that each of the development parcels includes blocks of apartments which could potentially be a reason for higher delivery rates than forecast. Given the local context, I find the Council's proposed deduction for this site to be entirely reasonable. This also accords with the conclusion of the *Broughton* Inspector, who considered that the deduction for the Matthews Green Farm site should be 173 dwellings and not the 224 dwellings put forward by the Appellant in that case.

120. The Council contends that the two planning permissions for Bell Farm and Phase 1 of the Kentwood East development mean that a further 138 dwellings should be included within the five year period. The Appellants accept the addition of 128 and 10 dwellings respectively for those sites. I note that the additional agreed supply is not referred to by the *Broughton* Inspector.

121. In addition, the Council has reason to believe that delivery from Kentwood Farm West will be faster than previously projected in the SHLAA. Applications have now been made for reserved matters and for pre-commencement conditions discharges. The Council anticipates that these applications will be presented to the relevant Committee by April 2017. The build-out rate experienced by the same developer, Crest Nicholson, for Kentwood Farm East equates to 62 dwellings per annum which would lead to an additional 19 dwellings in the five year period. The Appellants accept that a higher than average delivery rate has been shown at Kentwood Farm than elsewhere and the addition of 19 dwellings for this site is not disputed.

122. In conclusion, there has been a material change in circumstances applicable to the North Wokingham SDL since the *Park Lane* decision and the *Broughton* decision can also be distinguished. I concur with the Council that the appropriate deduction to be made from this SDL is 16 dwellings during the five year period.

South of the M4 Motorway SDL

123. Core Strategy Policy CP19, allocates the South of the M4 Motorway SDL for around 2,500 dwellings by 2026 as part of a sustainable mixed use development. The SDL is sub-divided into different areas.

124. The Council's evidence to the Inquiry[19] provides updated information as regards delivery following detailed discussions with the developers and landowners across the SDL site.

125. The *Park Lane* Inspector considered that a deduction of 14 dwellings should be made in respect of the 'Non-consortium land north of Hyde End Road' in the light of the actual numbers proposed by the developer of the site in a current planning application.

126. The Council accepts that that application provided for a reduced capacity of four dwellings but submits that the *Park Lane* Inspector failed to recognise that

[19] Table 1 to the proof of evidence of Christopher Howard together with his rebuttal proof and oral evidence to the Inquiry and the Council's response to the Park Lane appeal decision

the site is comprised of more than one parcel. It is made up of three sites with a total capacity of 50 dwellings. In total, four units have been approved on this land and planning permission is pending for another 36 units. It is likely that these applications will be brought forward with a positive recommendation. However, the Council accepts that a deduction of 10 dwellings should be made from this area of the SDL. This figure is agreed by the Appellants.

127. The *Park Lane* Inspector also considered it appropriate to deduct 30 dwellings from the land north of Hyde End Road/Croft Road/Spencers Wood to reflect the planning application process. He did not consider that it had been demonstrated that there was a realistic prospect of the development delivering a first completion in the first nine months of 2017/18. The Council acknowledges that a reserved matters application was received in January 2017 for 363 dwellings which is slightly less than the 374 assumed in the SHLAA. The Council also accepts that the later receipt of the reserved matters application is likely to impact on the programme. It therefore agrees that a deduction of 30 dwellings should be made from this area of the SDL. This figure is agreed by the Appellants.

128. The *Park Lane* Inspector anticipated that the housing delivery for 'land west of Shinfield' was likely to be around the trajectory advanced in the SHLAA. The Council now proposes a deduction of 146 dwellings from 'land west of Shinfield' given the latest projections for this site. The Appellants accept that this deduction figure is correct but also proposes that a further deduction of 25 dwellings should be made from the 'Land East of Three Mile Cross'. This is on the basis that the Council's evidence confirms that a planning application for land north of Church Lane, Three Mile Cross is under consideration for 175 dwellings and the developer has indicated that enabling works which have full permission will start on site in March/April. However, the SHLAA provides for 200 completions by March 2021.

129. The Council rejects that suggestion, as the land is to be developed in two parcels. It is expected that 'land south of Church Lane' will also come forward during the five year period. This will, in part, be served for construction purposes by the development parcel north of Church Lane which also comprises a lot of apartment buildings which tend to be built more quickly. Having regard to all the available evidence, the completions for this site provided for by the SHLAA do not seem unrealistic. I do not consider that it would be appropriate to make the additional deduction of 25 dwellings proposed by the Appellants. In conclusion, it would seem that the appropriate deduction to be made from this SDL as a whole is 186 dwellings during the five year period.

South Wokingham SDL

130. Core Strategy Policy CP21, allocates the South Wokingham SDL for around 2,500 dwellings as part of a sustainable, mixed use development. The South Wokingham SDL is effectively split into two sections, namely, to the north and south of the railway line. There is no dispute between the parties in relation to delivery from land to the north of the railway.

131. As regards the land to the south of the railway line, the SHLAA forecasts that no dwellings will be delivered before 2019/20 with a total of 270 by March 2021. The Council does not consider that any deduction should be made for

this SDL, whereas the Appellants submit that there should be a deduction of 270 dwellings.

132. The *Park Lane* Inspector made a deduction of 240 dwellings to reflect the delay in the submission of the outline application and noted that his conclusions were broadly consistent with the findings of the Inspectors in the *Beech Hill Road* and *Stanbury House* appeal decisions. At the time of the *Park Lane* Inquiry, there had been no outline application received by the Council. The Inspector found that there was no substantive evidence to demonstrate that the provision of 300 homes within the five year period without reliance upon the distributor road or rail crossing was anything more than a theoretical possibility.

133. The *Broughton* Inspector had regard to the fact that an outline planning application had not been made and the particular infrastructure complexities of developing the site. She considered it unlikely that any dwellings from this site would be delivered within the five year period and made a deduction of 270 dwellings.

134. The Council's evidence[20] to the Inquiry provides updated information as regards delivery following detailed discussions with the developers and landowners across the SDL site. This indicates that for the land to the south of the railway line up to 1,100 dwellings could be delivered using existing highway connections in parallel with the new rail bridge and eastern section of the Southern Distributor Road (SDR) and in advance of the western section of the SDR being completed. The Council's current projections are based on delivery starting on the eastern side of the SDL and do not rely on delivery of the entire SDR in advance of housing or early delivery of housing on the western side of the SDL.

135. The Council's evidence reveals that Network Rail has been contracted to design the road-over-rail bridge and is working with the Council with a view to submitting a planning application in late Summer 2017 for delivery by summer 2019. It is anticipated that an application from the consortium of developers for the land to the south of the railway line will follow soon afterwards. No Network Rail land is required for the construction of the bridge. The issue of shared value arising from the formation of the new link over the railway facilitating development has been resolved. The Council confirms that the bridge does not need to be approved, let alone have been constructed, before master planning of the southern part of the SDL can progress and this has now commenced.

136. The *Cooper Estates* appeal decision dated 20 June 2016 makes reference to a letter from Miller Homes dated 9 March 2016 written on behalf of the consortium of developers for the land to the south of the railway line. This sets out a range of considerations affecting this land and concludes that the earliest that completions could be expected from this site would be late 2019. However, that letter set out a position at a particular point in time. The Council's updated evidence is that progress has been made on the two key obstacles mentioned in that letter, namely, clarification of the amount of development that is achievable in advance of the western link of the SDR to the

[20] Table 1 to the proof of evidence of Emily Circuit together with her rebuttal proof and oral evidence to the Inquiry and the Council's response to the Park Lane appeal decision

wider network and the extent to which delivery of housing by the developers would be tied to delivery of the road.

137. The Council does not therefore accept the *Park Lane* Inspector's conclusion that delivery of dwellings for the land to the south of the railway line is only a theoretical possibility. The evidence provided on behalf of the Council by Emily Circuit gives a greater level of explanation than that which was available to the *Park Lane* Inspector. The development consortium comprises five developers, namely, Miller Homes, Gleeson, Kier, Persimmon and Croudace and each developer will build a proportion of homes within each phase. Following engagement with the development consortium, the outline application anticipated in Autumn 2017 will include details of the design of the distributor road within the application site. The Council will deliver the road within the application site and from the remaining area to Finchampstead Road.

138. The Council has submitted e-mail correspondence between itself and Croudace Homes on behalf of the consortium to provide evidence as to the approach agreed between the parties. The e-mail from Croudace sets out the revised strategy for dealing with the Consortium/Croudace applications. This confirms, on the basis that the revised strategy is acceptable to the Council, that they are happy to re-instruct consultants and that it is realistic to anticipate planning applications in Autumn 2017 with physical completions in accordance with the SHLAA projections of 30 in 2019/20 and 240 in 2020/2021.

139. At the Inquiry, the Appellants raised concerns that the e-mail from Croudace Homes had gone through a number of revisions and submitted that to give it any weight the entire e-mail trail would need to be seen. The Council provided additional e-mail correspondence which reveals that Emily Circuit on its behalf questioned the omission of a reference to the Infrastructure Delivery Plan from the revised strategy. This was confirmed by Croudace Homes as being an accidental omission and was re-inserted in the e-mail relied upon by the Council. I do not find the revision of the e-mail by the developer in response to her query detracts from the reliability and integrity of the correspondence in any way.

140. The Appellants point to the practical obstacles that remain associated with the delivery of 270 homes by March 2021. The Council explains that all the developers within the consortium would develop a proportion of each phase of the development so that there would be five builders on-site delivering in parallel. There would be one outline application followed by a number of reserved matters applications. The Council also confirmed that there would be no capacity constraints. The Infrastructure Delivery Plan would set out the infrastructure required to be delivered and how a fair share by developers would be achieved.

141. The Appellants submit that the position remains as it was at the time of the *Park Lane* appeal and the delivery of 300 homes from the land to the south of the railway line site is no more than a theoretical possibility. Although this Inquiry has been told that a planning application for outline permission could be expected by Autumn 2017, that application would need to be considered and there would need to be subsequent reserved matters applications. They contend that it is extraordinarily unlikely that there would be 270 completions in the first year of build and draw attention to the passage of time, absence of

any agreement on the bridge details and/or submitted planning application, likely timescales for compliance with conditions and determination of both outline and reserved matters applications.

142. Nevertheless, although an outline planning application is not expected until later this year, there has been significant progress made on a number of matters that were outstanding at the time of the *Cooper Estates* and *Park Lane* appeal decisions. I have also had the benefit of the latest information provided to the Council from the developer in relation to anticipated commencement and completions for the site and the delivery of infrastructure. There is no mention of such detailed information in the *Broughton* decision. The Council has explained the relationship between the provision of the SDR and the commencement of development on part of the SDL. In the light of the progress that has been made in resolving outstanding matters, I consider the Council's anticipated delivery rate to be realistic and achievable and no deduction from the delivery anticipated by the SHLAA is required.

Non-SDL site at Hatch Farm Dairies

143. The Appellants also submit that in addition to the SDLs, a further 20 dwellings should be deducted from the non-SDL site at Hatch Farm Dairies. This figure represents the difference between the two build-out rates put forward by the parties for the remaining years of the five year period.

144. The Council explained that two developers are involved in the delivery of the Hatch Farm development. Both the outline and reserved matters applications were submitted on behalf of Persimmon Homes and Bovis Homes. These applications have been granted planning permission. The projected delivery is based on advice provided by the developer. The Council has submitted in evidence an e-mail from the developer dated 9 September 2016 which indicates that 35 units would be provided in that calendar year with thereafter an average of between 60 and 75. The Council has used the lower of those two figures. In the light of this information, the permissions granted and the involvement of two developers, I find no basis to reduce the projected delivery for this site. This also accords with the findings of the *Broughton* Inspector who concluded that the five year supply estimates for this site, as expressed in the SHLAA, were broadly reasonable.

Lapse rate

145. The Appellants submit that a non-implementation or lapse rate of 10% should be applied to the net supply figures and that this is separate and distinct from the 20% buffer required by the NPPF. They contend that it is unrealistic to expect that every site will be delivered to the projected capacity within the five year period, for a variety of reasons that may be out of the control of the Council and the developers.

146. The Appellants refer to the case of *Bloor Homes* where the court found that the approach and the reasonableness of its application in a particular case was "*essentially a matter of judgment of the inspector*". The Appellants also draw support from a number of appeal decisions where a lapse rate has been applied, including the *Stanbury House* decision and submit that for the same reasons as given in that decision a 10% non-implementation rate should be applied in this appeal.

147. The Council disputes the application of a general lapse rate and points out that the *Stanbury House* decision is the first and only time such a lapse rate has been applied in the Borough. In the *Park Lane* decision, it was not necessary for the Inspector to consider the application of a 10% lapse rate as he found that the Council could not, in any event, demonstrate a five year supply of housing.

148. The Council submits that the inclusion of a lapse rate would have the same effect in terms of achieving the planned housing supply as the 20% buffer required by the Framework. It would also be against the Framework, paragraph 47, footnote 11, presumption that sites with planning permission should be considered deliverable until permission expires.

149. The Council draws support from two appeals where the Secretary of State found no evidence to support the application of a lapse rate, namely, *LS Easton Park Investments Ltd* on land west of Great Dunmow[21] and *Paul Corbett* on land at Wells Meadow, Wells Street, Malpas[22]. In the former decision, the Secretary of State concluded that: *"… there is no evidence to justify a general allowance, or lapse rate, for delivery*." In the latter decision, the Inspector concluded that in addition to being arbitrary, applying a 10% discount would: "*…result in double counting in that the 20% buffer would also allow significant slippage or non-implementation. In any case the detailed monitoring being undertaken by the Council also allows for a realistic appraisal of when and whether sites will be delivered such that no additional slippage or discounting is justified."*

150. The Inspector in the *Stanbury House* decision, at paragraph 47, states: "*There is no apparent reason why the fact that past forecasts have proven to be mistaken or the evidence of previous slippage in delivery, should alone necessarily lessen the weight that attaches to the current SHLAA. This does nonetheless indicate that the forecasts should be viewed as tending to present a 'best case scenario'"*. He considered that a lapse rate of 10% was warranted on the evidence before him. The reasons given by him included the potentially over-optimistic character of the Council's projections for the sites considered; its record of tending to over-predict delivery and the likelihood that the lead-in times employed in the Mid-Year SHLAA were artificially constrained. That conclusion was reached against the background that the degree of verification from developers/agents appeared to be rather limited.

151. The Appellants' table at page 34 of their January 2017 'Assessment of Five Year Housing Land Supply' compares the Council's projected completions in the adopted MDD and the 2014, 2015 and 2016 SHLAA's. The table includes completions for 2015/16 and the two previous years but not for 2016/17. They submit that this table shows that the Council has consistently failed to accurately project the delivery of sites within its housing land supply trajectory and that this provides clear justification for the inclusion of a 10% lapse rate.

152. The Appellants make the distinction between the buffer which operates to address historical failings and the lapse rate which serves to address future unpredictability. They contend that the application of a lapse rate where appropriate does not represent double-counting with the 20% buffer.

[21] Ref: APP/C1570/A/14/2213025
[22] Ref: APP/A0665/A/14/2214400

153. Although there is no specific reference to a lapse rate in the Framework, the Council accepts that, as an exception, where a local authority does not make robust assessments of deliverability, a non-implementation rate can be justified. Whilst the Appellants' table does, indeed, show that the Council's forecasts in the recent past have been optimistic and there has been slippage in delivery as against the projected figures, in this appeal the Council has made considerable efforts to assess the deliverability of sites and has used its contacts with developers to carefully assess future delivery. The Council has provided up-to-date information on the deliverability of each of the SDLs. It has adjusted the projected delivery on specific sites in response to new information from developers. I find the latest update of projections presented by the Council to this Inquiry to be realistic and not over-optimistic. That conclusion has been reached against the background of a considerable degree of verification from developers/agents and taking into account the evidence presented by the parties in relation to lead-in times.

154. The Council's evidence is that the actual 'lapse' rate of dwellings with permission within the Borough, as opposed to sites where implementation is delayed, is typically less than 1% of permitted dwellings. In this case, I believe that there would be an obvious overlap between the purpose of the 20% buffer and the application of a non-implementation rate. The buffer is required by the Framework to: *"…provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land."* The Council points out that the application of a non-implementation rate in this case would result in deductions in supply even where all parties were in agreement as regards deliverability. Given the careful approach taken by the Council to assess deliverability, I do not consider that the application of a lapse rate to address future unpredictability would be reasonable or could be justified for these appeals.

Conclusions on the five year housing land supply

155. The Core Strategy sets out phased housing requirements. For the five year period from 31 March 2016, it provides an OAN of 723 dwellings. There is no dispute that the housing requirement within the Core Strategy is now out-of-date. The 2016 SHMA sets out an OAN of 856 dpa for Wokingham. The SHMA's OAN of 856 is preferable to the Core Strategy figures. However, for the reasons set out above, I consider that a market signals uplift of 14% should be applied. This results in an OAN of some 894 dpa. When the SHMA period deficit and a 20% buffer are applied this gives a total requirement of 6686 dwellings over the relevant period.

156. Turning to the supply side, the starting point for housing delivery is the SHLAA 2016 which projects a supply of deliverable sites with capacity of 6,965 dwellings for the five year period. The net effect of deductions to be made results in a supply figure of 6,763 dwellings. As indicated above, I do not consider that it would be reasonable or justified to apply a 10% or any other figure for a non-implementation rate deduction to that supply total. I conclude that there is an overall five year supply of deliverable housing land in the Borough in accordance with the objectives of paragraph 47 of the Framework. The tilted balance set out at paragraph 14 of the Framework is not therefore engaged and it follows that the Development Plan policies which constrain the supply of housing should not be regarded as being out of date for that reason.

The effect on the character and appearance of the site and surrounding area including landscape character, visual impact and heritage

Planning policy

157. The Framework sets out twelve core land use planning principles which should under-pin both plan-making and decision-taking. One of those principles is to: "*take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it*".

158. Core Strategy Policy CP1 states that planning permission will be granted for development proposal that, amongst other criteria,"*… maintain or enhance the high quality of the environment*."

159. Core Strategy Policy CP3 includes a general principle that development should have: *"no detrimental impact upon important ecological, heritage, landscape (including river valleys) or geological features or water courses."*

160. Core Strategy Policy CP11 sets out criteria for development proposals outside the development limits in order to protect the separate identity of settlements and maintain the quality of the environment. The development does not fall within any of the categories identified by Policy CP11 as being acceptable in such locations.

161. The Appellants criticise Policy CP1 as requiring a level of protection that is inconsistent with the Framework and CP11 as going beyond the requirement of paragraph 58 of the Framework to "*respond*" to local character. The Inspector in dealing with the 22 pitch site found Policy CP1 to be consistent with the focus in the Framework to deliver sustainable development. In relation to Policy CP11, she also found its approach to be consistent with the Framework. I find no reason to disagree with her conclusions on those matters. Although the policies pre-date the Framework, their broad aims in relation to the environment and the character of the countryside and the delivery of sustainable development remain consistent with its core planning principles. I consider the Appellant's criticism of them to be overstated and overall they have a high degree of consistency with the Framework. I do not therefore believe that the weight to be afforded to them should be reduced.

162. The MDD post-dates the Framework. Policy CC02 defines the settlement limits and the appeal sites fall outside those limits. Policy CC03 sets out criteria for development proposals including, "d*) Protect and retain existing trees, hedges and other landscape features"*. Policy TB21 makes specific reference to the Council's Landscape Character Assessment and requires proposals to, "*retain or enhance the condition, character and features that contribute to the landscape."*

Landscape character

163. The appeal sites lie within an area of countryside between Wokingham to the north and Crowthorne to the south. They are located within the Thames Basin Heaths Area as identified and described in the National Character Area Profile No 129 (February 2014) produced by Natural England.

164. The Berkshire Landscape Character Assessment 2003 covers the wider Berkshire area. The site is considered to be within the area defined as, "*Type I: Forested Sands"*. One of the key issues in this character area is stated to be: "*Pressure for further expansion and infill of settled area (and consequent loss of woodland), particularly along the long, linear connecting roads*".

165. The Wokingham Borough Landscape Character Assessment 2004 (the "LCA") identifies the site as falling within landscape type M. Although the appeal sites are not specifically mentioned, Nine Mile Ride is noted in Character Area M1: Finchampstead Forested and Settled Sands. In describing the landscape quality this states: "*The Finchampstead Forested and Settled Sands (M1) is judged to be a landscape of high quality. The combination of built and natural elements in this area combine to create a landscape of strong character, which is in good overall condition*." The LCA also notes the medieval park at Ravenswood as being one of only four in the whole of the district.

166. The LCA defines landscape quality on a three point scale – high, moderate and poor quality. A high quality landscape is defined as having: *"… a strong character with most individual elements in good condition and overall it is considered to be in a good condition."*

167. Although the LCA recognises that much of the area has a 'surburban' character it highlights the strong sense of place and distinctive pattern of elements and, away from the areas of settlement, the landscape exhibits a distinctly remote character. The key characteristics of this landscape area are identified as including:

- An elevated landscape comprising a shelving plateau, underlain by acidic sands strongly influencing land cover and ecological character.
- A landscape dominated by interconnected forestry and woodland.
- A predominant absence of farmland.
- Long straight roads, such as Nine Mile Ride, projecting strong linear character to the landscape.
- Strong settlement character – with residential properties of post war and modern suburban character in a variety of styles, largely aligning the long linear rides.
- A strong sense of enclosure and disorientation afforded by the often continuous swathes of large coniferous woodland mass.
- A landscape offering a sense of remoteness and solitude.

168. The Appellants submit that there is nothing in the LCA which suggests that objective analysis places greater value on this landscape over the rest of Wokingham. They contend that the LCA cannot be relied upon to support the view that the appeal sites are located within a 'valued' landscape for the purposes of paragraph 109 of the Framework. They criticise the LCA as being out-of-date and submit that it should be afforded limited weight.

169. The LCA predates the appeal developments and is supported by adopted Local Plan policy. It recognises the landscape as being one of high quality. Whilst it is now some time since the assessment was carried out, the evidence before me indicates that the only significant change since that time is the

unauthorised development which has taken place on the appeal sites. I do not regard the LCA as being out-of-date. It is a factor of significant weight in these appeals.

170. The Appellants submit that the landscape requirement of Policy CP3 does not apply to these appeals, as the sites are not designated as an 'important' landscape. The background to that policy indicates that areas that are important to the Borough's landscape include Areas of Special Landscape Importance and Sites of Urban Landscape Value. The appeal site does not fall within either of those designations. However, the policy background also states that proposals should take account of the Council's LCA which finds this particular landscape to be of high quality.

171. The appeal sites also lie within the boundary of the historic Ravenswood Park which is recorded on the Heritage Gateway website. The Babtie Report commissioned by Berkshire County Council includes reference to Ravenswood Park. It explains that it has been included on the Wokingham Sites and Monuments Record but is not included in English Heritage's Register of Parks and Gardens of Special Historic Interest. However, it states that:"…*as the park still retains its essential historic integrity it is considered as being an historic park of local importance*."

172. The Babtie Report concluded that the inclusion of Ravenswood in the list of parks of local importance in the Wokingham Local Plan Deposit Draft was justified and the former Policy WHE9 applied to the site. Ravenswood Park was specifically referred to in the supporting text to Policy WHE9. That policy was subsequently replaced by MDD Policy TB26. Ravenswood Park was not included as an Area of Special Character and no longer benefits from specific local plan policy protection.

173. The Appellants' landscape expert accepts that the Park has historic merit and that it is a feature which contributes to the landscape. The Inspector for the 22 pitch site described Ravenswood Park as, "*an historic parkland of local importance*". I find no reason to disagree with that conclusion. I consider that the appeal sites are appropriately regarded as falling within an 'important' landscape as applied by Policy CP3. The fact that Ravenswood Park no longer has any specific local plan policy protection does not dissuade me from that view.

174. The Council accepts that there is a hierarchy of landscape and that the appeal sites do not fall within one of the nationally designated landscapes which are specifically referred to in paragraph 115 of the Framework. Nonetheless, given the identification of this landscape as being of high quality, the reference to the LCA in MDD Policy TB21 and the location of the sites within the historic parkland, I consider that this landscape is appropriately categorised as a 'valued' landscape for the purposes of paragraph 109 of the Framework.

175. The Appellants have assessed the landscape impact in accordance with the methodology set out in the Landscape Institute 'Guidelines for Landscape and Visual Impact Assessment' (LVIA). However, they acknowledge that they have not carried out a full formal LVIA and consider that such an approach would be inappropriate for smaller sites such as these. They submit that the Council's failure to adopt any form of measured assessment significantly undermines its case.

176. The Council's approach is that the harm caused by the appeal developments is so, "*blatantly obvious*" that such an assessment is not required. The LCA provides an assessment of landscape character and the impacts upon that character of these small developments can clearly be seen and assessed. Given the size of the sites, the information provided by the LCA and the nature of the development which has taken place, I do not find the approach of the Council's landscape expert to be inappropriate or inadequate.

177. The Appellants' landscape assessment concludes that the sites are not isolated and the character of the area is that of residential development within clearings in the woodland. They submit that the change to the landscape would be entirely in keeping with neighbouring development in terms of the nature of the land use, scale and appearance. The overall significance in terms of the effect on landscape character is assessed as minor.

178. The Inspector for the nearby 22 pitch site had regard to the fact that that mobile home park had been developed as an extension to an existing mobile home park, close to a well-established caravan site and the residential development on Nine Mile Ride. Although she found that the scale of the development, the type of homes and domestic activity on that site were in keeping with the lawful mobile home sites, she considered that an assessment of its effect on landscape character needed to take account of the site specific features and the wider context.

179. That is clearly the most appropriate approach. I consider that the LCA categorisation more accurately reflects that context, rather than the Appellants' narrower view of the character of the area. Whilst the current appeal sites adjoin the lawful Pineridge and New Acres sites which form part of the character of the surroundings, regard must also be had to the impact upon the character of the wider area, as assessed by the LCA.

180. The Inspector for the 22 pitch site, pointed to the depth of the woodland blocks strengthening the remote woodland character of the area and sense of enclosure in this location. She noted that the assessed landscape character was associated with a very strong sense of place and distinctive pattern of elements. She found that the 22 pitch site would fail to reinforce the linear pattern of development along Nine Mile Ride because of its position set well back from the Ride and the depth and shape of the site. She considered that it would consolidate the in-depth, atypical settlement form of the adjacent mobile home parks and, consequently, cause harm to landscape character.

181. There are distinctions which can be made between that site and the appeal sites. For example, unlike the appeal sites, the 22 pitch site is the subject of a woodland Tree Preservation Order (TPO) and that development resulted in the clearance of trees protected for their amenity value. Nevertheless, I believe that similar considerations apply to the appeal sites in terms of the consolidation of the in-depth, atypical form of the adjacent lawful mobile home parks. Although the caravans are low in height, they have relatively little space between them and, together with associated residential paraphernalia, serve to accentuate the intrusion of urban and domestic elements into the countryside.

182. The Appellants' landscape expert sought to distinguish the 22 pitch site as being a whole new branch of linear development, whereas she viewed the development of the appeal sites as being small extensions to existing linear

development and regarded the impact upon Nine Mile Ride as a site specific difference between the developments. However, it seems to me that the presence of the existing lawful development does not justify the extension of its atypical form into the countryside in a manner that would result in serious and obvious harm to this area of high quality landscape character. That is a factor to which I attach significant weight.

Visual impact

183. As regards visual impact, the Appellants point out that the sites are not visible from public viewpoints. The development is positioned about 250m to the south of Nine Mile Ride beyond the lawful caravan parks. There are no views of the unauthorised caravans from that public highway or other public viewpoints. There are distant views of the sites which can be obtained from the developed part of Ravenswood Park. Having observed the sites from these private viewpoints, I agree with the Appellants that there would continue to be minor visual impact when seen from the wider parkland, if the caravans were removed from the appeal sites. For residents of the lawful caravan sites, with the existing layout and means of enclosure, there would be little impact upon their private views and the outlook from their mobile homes. Nevertheless, the adverse impact upon landscape character identified above remains a matter of serious concern.

Non-designated heritage asset

184. Although the Appellants note that Ravenswood Park is listed on the Heritage Gateway, they question whether it should be regarded as a non-designated heritage asset. The Council asserts that Ravenswood Park is locally listed being included on the Berkshire list and recorded as such on its Planweb map. The Framework, Annexe 2, provides a definition of 'Heritage Asset'. In the light of that definition, I consider that Ravenswood Park is appropriately regarded as a non-designated heritage asset. In accordance with paragraph 135 of the Framework, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

185. The Ravenswood Park site was surveyed on 19 June 2000. The purpose of that survey was to identify and assess the survival of early features and to assess the overall integrity of the Park. The Babtie Report concludes that: "*The principal historic features as depicted in Walter's Map of 1823 survive today. The external boundaries are intact, the driveway still in use as a footpath albeit somewhat overgrown compared to 1823 and open grassland is still predominant in the interior.*" It is also noted that the boundaries are strongly defined by trees and the presence of the village which occupies an area of higher ground within the park. It describes the buildings as being, "*… of a very modern design but are low and unobtrusive.*"

186. The Appellants overlay of the historic map with the current OS map[23] shows the line of the ditch crossing the Pineridge boundary at the north-west corner of the site and then going north across or alongside the lawful development at New Acres to the location of the original carriageway to Ravenswood Park. Later maps show the ditch line running along the northern boundary of both sites.

[23] Appendix L10 to the proof of evidence of Ruth Reed

187. The Council refers to the filling-in of the boundary ditch as having destroyed an important feature of the historic park. The Appellants submit that there is nothing in the Babtie Report that attributes special archaeological significance to the ditches other than noting their existence. They contend that the significance of the ditch is low and any damage to it should carry very little weight in the balanced judgment required by paragraph 135 of the Framework.

188. The Council has provided a copy of the Enclosures Map of 1817 which shows the ditches marking the northern boundary to Ravenswood Park. The Babtie report refers to the principal surviving features as including the external boundaries. The Heritage Gateway extract mentions the line of the Park boundary being marked by streams and field boundary banks. I consider that the ditch and external boundaries comprises key historic elements of Ravenswood Park which is an asset of local importance. Although it no longer benefits from specific policy protection, I consider that it retains a fair degree of significance.

189. Paragraph 130 of the Framework provides that: "*Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.*" By the Appellants' own admissions, there is clear evidence of such deliberate damage having taken place and it is necessary to consider the site with the ditch intact.

190. However, it is the scale of the harm or loss caused by the development the subject of the notices that must be weighed in the overall balance. That harm or loss does not extend to the filling-in of the ditch, even though that is the action upon which the Council places a great deal of reliance. The filling-in of the ditch took place over 10 years ago before the development the subject of the notice began. Those works are regarded as being immune and no enforcement action has been taken in respect of them. The requirements of the notices do not require the reinstatement of the ditch. Given those circumstances, the continuing use of the caravan sites would cause limited additional harm to the historic ditch.

191. The impact of the appeal developments on the wider asset of Ravenswood Park must also be considered. The Council draws attention to the effect on the boundary setting of the Park, itself, and the intrusive effect of the caravans and other aspects of the use including the construction of the hardstanding and fencing within those boundary limits.

192. The Appellants draw support from the presence of the existing buildings of Ravenswood School and submit that there is nothing to distinguish those buildings from the appeal site development. My site visit observations confirmed the Council's evidence that the developed part of the park is reasonably well-contained and reflects its natural topography. However, the appeal sites are located away from the existing buildings within the Park close to the boundary. In contrast, the school buildings do not intrude upon the historic boundary feature of the Park.

193. The Appellants contend that the developments have not resulted in the loss of the grassland and have retained a wooded boundary to it. The loss of trees behind the boundary line pre-date the activities the subject of the notices and the majority of the grassland would remain intact. There remains vegetation along the edge of the open grassland area with some scope for further planting. However, the existing largely open area on which mobile homes are

sited is in marked contrast to the former dense and strongly defined tree-lined area along the boundary. Whilst the open grassland would still predominate in the interior of the Park, there would be an obvious and negative impact along this part of historic parkland boundary. The intrusion of the caravan sites into the edge of the Park in this way would detract from the essential historic integrity of the asset.

194. I conclude that, although the development would cause limited additional harm to the ditch and the removal of the trees was not the subject of planning control, there would still be a noticeable negative impact that would cause appreciable harm to the non-designated heritage asset of Ravenswood Park. Taking into account the significance of the heritage asset, this is a factor of modest weight to be weighed against any benefits. That aspect of the overall balancing exercise will be carried out later on following my consideration of the benefits.

Mitigation

195. As regards mitigation, no formal landscaping scheme has been put forward for consideration by the Appellants. However, they contend that the grant of permission for both sites would allow the imposition of planning conditions that could limit the number of caravans and require a landscaping scheme. Nevertheless, given the nature of the development and the space available within the site and along the boundaries, there are obvious limitations to what could be achieved in that way. Such a landscaping scheme would do little to overcome the consolidation of the atypical in-depth settlement form. The landscaping of the edge of the sites would not prevent harm to the integrity of the historic park at this point close to its external boundary. I do not consider that the harm to the intrinsic character of the landscape and historic parkland could be satisfactorily overcome by the imposition of planning conditions.

Conclusions

196. I conclude that the development would extend the atypical settlement pattern of the lawful Pineridge and New Acres sites into the open countryside. In so doing, it would materially detract from key characteristics and the quality of the landscape character as identified by the LCA. It would also result in harm to the non-designated heritage asset of Ravenswood Park. The development would not be in accordance with Core Strategy Policies CP1, CP3 and CP11 and MDD Policies CC03 and TB21.

The need to contribute towards mitigation measures relating to the Thames Basin SPA

197. The site is within 5km of the Thames Basin Heaths SPA designated for the protection of ground nesting birds. The South East Plan Policy MRM6 and Core Strategy Policy CP8 require proposals for additional dwellings to make a contribution to provide for SANG to mitigate the impact that the additional residents would place upon the SPA. As set out above in the preliminary matters, the requisite agreements under section 106 of the 1990 Act and section 111 of the Local Government Act 1972 have been provided to secure the necessary financial contributions. In the light of those contributions, the developments would not have an unacceptable impact upon the SPA and would be in accordance with Core Strategy Policy CP8.

Ecology and biodiversity - the impact upon other local habitat and protected species

198. The Framework, paragraph 118, sets out the principles that should be applied in determining planning applications in order to conserve and enhance biodiversity. These include that, if significant harm from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or, as a last resort compensated for, then planning permission should be refused.

199. Core Strategy Policy CP7, aims to safeguard nature conservation interests and for development which may cause harm to such interests, including county designated sites, requires tests to be met on the need for the development and for mitigation measures or appropriate compensation measures to be provided. Policy TB23 of the MDD identifies in more detail the circumstances in which development proposals might be approved. These policies broadly conform with and apply the policy in the Framework.

200. The 2002 Report on "*Land to the East and West of Sandhurst Road*" identifies the appeal sites as area 44, "*Dry Woodland at Ravenswood Park*" and provides a description of various features that were present at the time of that survey. The 2002 Report recommended that the appeal sites be included within the Wildlife Heritage Site[24] boundary. At the Inquiry, the Council's ecological expert, Mr Glencross, explained the various features within the survey description that reveal the longevity of the ecological interest. Mr Glencross is an experienced ecologist with a particular knowledge and experience of the wildlife sites in the area around the appeal sites. He was the only ecological expert to give evidence to the Inquiry and, as such, his evidence on ecological matters in dispute is to be preferred to that of the Appellants.

201. The Appellants point out that the 2002 Report does not include the area 44 habitat as falling within the Priority UK BAP Habitats that are listed on page 38 of that survey report nor were the sites included in the management recommendations. It also identifies the sites as "*dry woodland*", in contrast to the "*swamp woodland*" classification of the neighbouring area 46. They submit that, in the absence of evidence from the Council as to when that particular ecological habitat identified on the site in 2002 became a Priority UK BAP Habitat, there is nothing to show that the identified "*dry woodland*" became a Priority UK BAP Habitat prior to the updated list in 2007, subsequent to the Natural Environment and Rural Communities Act 2006 (NERC Act 2006). They contend that since this was after both the ditch and the appeal development works, no protected habitat has been lost.

202. Mr Glencross explained that the type of habitat that was identified as existing on the appeal sites was added at a later date and so did not appear on the 2002 list. The position would seem to be that, although not recorded as a Priority UK BAP Habitat before the development took place, that particular ecological habitat would now be classified as such. Whilst the sites might not therefore have enjoyed that formal status at the relevant time, the revision of the list at a later date to include such habitats provides an, albeit post-dated, indication as to their likely ecological value.

[24] These are now known as Local Wildlife Sites as explained by the background to MDD Policy TB23

203. The Appellants also submit that there is no evidence to support the assertion that there were protected species on the appeal sites prior to the development taking place. The 2002 Report did not identify that they were present on the sites and neither did the 2006 Phase 1 Ecological Survey and Multi Species Report covering the land directly adjacent to the appeal sites. That Multi Species Survey identified the presence of grass snakes, slow worms and a number of badger setts on the land directly adjacent to the appeal sites.

204. The Council contends that, prior to their development, the appeal sites would have supported a similar range of species as the adjacent site. Therefore, as a direct consequence of the loss of habitat from the appeal sites, there has been a loss from the sites of protected species. Nonetheless, the presence of protected species on the sites was not something that was actually identified prior to the development having taken place. On balance, I am unable to conclude that protected species were actually present on the sites at the relevant time.

205. The Appellants also submit that there is no evidence that the appeal sites are "*Local Wildlife Sites*" and, as they have no statutory status, they cannot weigh in the balance. At the Inquiry, Mr Glencross confirmed that, following the 2002 survey, the sites were included and designated as part of the Local Wildlife Site, that is to say, sites of County-wide importance. The Council also submitted, as part of the evidence of Mr Hannington, a plan derived from its Planweb database showing the Local Wildlife Site as including the appeal sites. The Council's Expediency Report considered by the Committee prior to the taking of enforcement action also refers to the development as having resulted in a reduction in the overall area of the Local Wildlife Site. There is, therefore, overwhelming evidence to the effect that the sites have been designated and form part of the Local Wildlife Site. In the light of that designation, and the explanation provided by Mr Glencross as to the ecological interest of various features within the 2002 description, I am satisfied that the sites would have made a significant contribution towards the biodiversity and ecological interest of the area.

206. The Appellants submit that the ditch works which are not enforced against are the key works in terms of the impact upon the existing habitat, rather than the development the subject of the notices. The Council could only ascertain what was on-site in 2002, as revealed by the survey undertaken at that time. Mr Glencross confirmed that he had not visited the sites between 2002 and the establishment of the residential uses. It is not in dispute that works were carried out on the sites between 2002 and the carrying out of the development the subject of the notices. Those works comprised the infilling of one watercourse on the sites and the creation of a new one along the southern boundary.

207. The Council's planning witness, Mr Varley, accepted, during cross-examination, that those ditch works would have been carried out from the appeal sites. The Appellants submit that the logical conclusion to be drawn is that the extent of the earthworks required for infilling and compacting of one watercourse and the creation of a new one would not have been insignificant works and would have damaged or destroyed any existing habitat. Their position is that any ecological value or biodiversity on the site, if it was lost, was lost at the point the land was cleared and the drainage ditch diverted, prior to the appeal development some 10 years ago. However, although they make

that assertion, they have not provided any cogent evidence as to the condition of the land at that stage and certainly no evidence from any ecological expert as to the likely effect of the ditch works on the long-term ecological value of the site.

208. Mr Glencross explained that the adjacent Local Wildlife Site is a mosaic of woodland and other natural and diverse areas of biodiversity interest. These areas consist of mixed deciduous woodland, mire, heathland and acid grassland communities. His evidence was that, if the notices were complied with and the sites were cleared and returned to grass, this would ultimately result in the restoration of habitats that would mitigate the ecological impacts of the development. In the absence of any ongoing grazing management, it is likely that the restored site would be recolonised by native tree species from the adjacent Local Wildlife Site which would eventually develop into mixed deciduous woodland which now comprises a UK Biodiversity Action Plan (BAP) Priority Habitat. In his view, a period of about 15 years represented a reasonable estimate to re-establish a truly woodland habitat, as opposed to scrub. In ecological terms, the regenerating woodland would assist the nearby woodland species in terms of increasing biodiversity interest.

209. The Appellants contend that, even if they were to comply with the notices, simply re-seeding an area with grass would not resolve the Council's concerns relating to any loss of biodiversity or ecological value. In those circumstances, the land would be put to grass and it is likely that Mr Cash would use it to graze horses and the regeneration anticipated by the Council would not occur.

210. At the Inquiry, the site owners, Norwood Schools Limited, did not give any evidence but were represented by Counsel who made submissions on their behalf. Their future intentions in respect of the appeal sites were stated to be: "*In the event that the Notices are upheld, Norwood will make all efforts to ensure full compliance. After having reinforced the boundary with the Appellants' land to the north of the Appeal Sites, Norwood envisages that the Appeal Sites will be left to regenerate naturally.*"

211. The Appellants submit that these untested written submissions of the landowner's advocate are neither evidence nor a "*statement*" and should be afforded little or no weight. Certainly, the Norwood submissions are untested and are not derived from any evidence that was presented to the Inquiry by witnesses on their behalf. Although I recognise that they were made by legal Counsel acting upon their instructions, there would be nothing that would prevent a change to that stated position in the future. I therefore attach limited weight to Norwood's submission to the effect that the sites would be left to regenerate naturally.

212. Nonetheless, Mr Glencross's evidence was that the ecological benefit would arise from the moment the caravans were removed from the sites and steady progress would be made after that. If the sites were returned to grass cover and grazed on an ongoing basis, they would still accumulate interesting acid grassland species in the area and various species would both migrate across the appeal sites and use them as habitat. Even without regenerating woodland cover, they would accrue ecological interest and assist to serve the nearby habitats. Therefore, in the event of the notices being upheld, beneficial ecological and biodiversity effects would occur.

213. In the light of Mr Glencross's expert evidence, I am unable to conclude that the sites had no ecological value prior to creation of hardstanding and siting of caravans. Although the ditch works would obviously have caused some damage, their ecological significance to the Local Wildlife Site particularly in the longer-term would not have been entirely lost or destroyed. The sites are contiguous with other similar sites and seed sources that would aid recolonisation. Neither the ditch works nor the subsequent works and activities the subject of the notices would prevent a recovery of ecological value to a greater or lesser degree depending upon whether the land was grazed. That would be the case, even for the New Acres site should the ground (f) appeal be successful and part of the hardstanding were to remain. The appeal developments have caused considerable harm in terms of the impact on ecology and biodiversity.

Mitigation

214. It has not been clearly demonstrated that the need for the development outweighs the need to safeguard the nature conservation importance, as envisaged by Policy CP7. However, leaving aside the question of need for the moment, since damaging impacts have occurred, Policy CP7 requires consideration of appropriate compensation measures to offset the scale and kind of losses. The proposed condition would provide for a scheme of ecology to include the provision of bird and bat boxes, the creation of reptile hibernation sites and log piles for stag beetles. This would, indeed, introduce positive ecological measures that weigh in favour of allowing this appeal. Nevertheless, such measures would not be sufficient to offset the harm caused by the developments. I do not consider that the mitigation measures proposed would satisfactorily overcome the damaging impacts that have occurred, nor have adequate and appropriate compensation measures been put forward.

Conclusions

215. The development has resulted in direct harm to the biodiversity and ecological value of the sites. In the event that the notices were to be upheld and the requirements complied with, beneficial ecological and biodiversity effects would occur. The continuation of the harm would be averted to a greater or lesser degree depending upon whether or not the sites were grazed, but even then there would be a beneficial effect. On the question of need for the development, there is a five year housing land supply and the homes do not fall within the definition of affordable housing. I conclude that the developments would not comply with Core Strategy Policy CP7 and MDD Policy TB23. This is a factor of considerable weight in these appeals.

Sustainability

216. The Framework explains that there are three dimensions to sustainable development, namely, economic, social and environmental. Core Strategy Policy CP1, amongst other things, requires proposals to demonstrate how they support opportunities for reducing the need to travel, particularly by private car. The appeal sites are located in the countryside outside the defined development limits. The unauthorised developments do not fall within any of the categories of development identified by Policy CP11 as being appropriate in such locations.

217. In dealing with the 22 pitch site, the Inspector concluded that this location was not compliant with the policy and pattern of development promoted by the Core Strategy. She stated that: "*The countryside location, although not isolated, is not one supported by the Framework. Residents' statements indicate that those without a car are restricted in their access to services and facilities.*" The Council submits that the approach on the locational sustainability of the current appeal sites is likely to be identical to that taken by the 22 pitch Inspector. For the Council, Mr Varley in his proof of evidence states that, "*the use would increase the number of vehicular movements to and from the site.*"

218. At the time of the Inquiry, an application for a shop on the wider Pineridge Park Homes site to the north of the appeal sites was under appeal. The Appellants indicated that a section 106 agreement would be provided during the course of the current appeals to secure the long-term retention of the shop. However, no such agreement was submitted and since the availability of the shop, if permitted, to site occupants could not be relied upon, this is a factor to which I attach little weight.

219. The Appellants' have provided details of distances from the sites to various services and facilities. For example, there is a Tesco Store about 2.3km from the site by road in Crowthorne. There is also a pharmacy some 3.1km to the east and a doctor's surgery in Crowthorne about 2.8km to the south east. The Wokingham Hospital is about 5.4km to the north. The St Sebastian's C of E School is some 400m to the east along Nine Mile Ride and various other schools are within a range of 3km. As regards public transport, there are bus stops within a reasonable walking distance of the sites including a stop which operates a school-route service.

220. The evidence before me indicates that, contrary to the finding of the 22 pitch site Inspector, even residents without cars would have reasonable accessibility to facilities and services. Nevertheless, that is not the only consideration when assessing whether a development would ultimately be sustainable. There are other dimensions to that assessment including the protection and enhancement of the environment and it is a topic to which I shall return in my overall conclusions.

Affordable housing and viability issues

Affordable housing

221. Core Strategy Policy CP5 includes percentages, thresholds and indicative tenure mix for new affordable housing. It requires all residential proposals of at least five dwellings (net) or covering a site area of at least 0.16 ha to provide up to 50% of the net additional units proposed as affordable dwellings, where viable. The Council's Affordable Housing Supplementary Planning Document (SPD) July 2013 provides further guidance on its approach to securing affordable housing through the planning process. It sets out, subject to viability, the minimum percentages of affordable housing sought on site by land type and location. It also explains that, for the avoidance of doubt, any application for dwellings exceeding the thresholds in Policy CP5, including mobile home sites, will need to deliver affordable housing in line with the Core Strategy.

222. The Framework, paragraph 50, indicates that where local authorities have identified that affordable housing is needed, they should set policies for meeting this need on-site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities. A definition of '*affordable housing'* is provided in Annex 2 of the Framework. It includes '*social rented'*, '*affordable rented*' and '*intermediate housing'*. It points out that housing outside the definition, "…. *such as 'low cost market' housing, may not be considered as affordable housing for planning purposes*."

223. The Council accepts that mobile homes are, by their very nature, more affordable than '*bricks and mortar*' accommodation. However, it submits that mobile homes are '*low cost market housing*' rather than '*affordable housing*' within the Framework definition. The 22 pitch appeal Inspector, at paragraph 74 of her decision, states: "*The development, subject to restrictions imposed through the planning obligation, is appropriately described as low cost market housing. It does not provide intermediate housing and in accordance with the Framework may not be considered as affordable housing for planning purposes.*" I find no reason to disagree with that conclusion.

224. Since the mobile homes do not fall within the definition of affordable housing, Policy CP5 and the SPD require a 40% contribution from sites of five or more homes towards affordable housing for this land type and location. The Council has calculated a payment in lieu of on-site provision of £108,000 index-linked payable for each of the appeal sites. The Council accepts that the affordable housing objection to the development could be overcome by the submission of a unilateral undertaking by the Appellants which includes such a commuted sum provision. However, no such undertaking has been forthcoming.

225. The Written Ministerial Statement (WMS) delivered in November 2014 states that: "*Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought*." It explains that: "*By lowering the construction cost of small-scale new build housing and home improvements, these reforms will help increase housing supply*."

226. This is now also reflected in the PPG: Planning Obligations which, in outlining the specific circumstances where contributions for affordable housing and tariff style obligations should not be sought from small-scale and self-build development, states: "*contributions should not be sought from developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area)*".

227. The WMS policy was considered by the Court of Appeal in the case of *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441*. The WMS was found to be lawful. However, in giving that judgment the court stated: "*…the WMS is not to be faulted on the ground that it does not use language which indicates that it is not to be applied in blanket fashion, or that its place in the statutory scheme of things is a material consideration for the purposes of s.38(6) of the 2004 Act and s.70(2) of the 1990 Act, and no more. It does not countermand or frustrate the effective operation of those provisions.*"

228. The Appellants place reliance upon the WMS and submit that it should be given very considerable weight. Both sites fall to be considered separately and each site falls under the WMS threshold. That was obviously not the case for the 22 pitch site which also accommodated twin units. In contrast, the Council submits that the greatest possible weight should be placed upon Policy CP5 in the circumstances of the current appeals and that the Appellants should be required to make the contributions sought, if planning permission is granted.

229. At the Inquiry, the Council referred to a letter from Ashley Gray of the Planning Inspectorate Customer Quality Team to the Planning Policy and Design Team Manager for Richmond and Wandsworth Councils dated March 2017. This letter sets out what the author regards as the correct approach regarding the weight to be applied to the WMS where affordable housing contributions are a material consideration. Although the letter does not, in itself, represent or carry weight as a statement of Government planning policy, I nevertheless concur with the view set out therein as to the correct approach to be applied in the light of the Court of Appeal judgment.

230. The starting point remains the development plan and more specifically in this instance Policy CP5. The Council points out that when that policy was adopted in 2010 setting a threshold of five dwellings or more, the normal national threshold was 15 dwellings. It was against that background that the Core Strategy examiner concluded that: "*Bearing in mind the very high level of demand shown in the SHMA, the generally high price levels throughout the Borough compared with the national average, I consider the lower threshold of 5 dwellings is justified*."

231. The SHMA 2015 shows a net need for affordable housing in the Borough of 441 dpa. It is clear that the background factors which justified the acceptance of Policy CP5 in that form remain. The local circumstances within the Borough are such that there remains a need for the lower threshold set out in that policy to be applied. The development would be in conflict with that policy, subject to viability.

Viability

232. The Framework, paragraph 173, states that plans should be deliverable and that the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened

233. The PPG advises that local authorities should ensure that the combined total impact of requests for contributions from developers does not threaten the viability of the sites and the scale of the development identified in the development plan.[25] It explains that there is no single approach for assessing viability and that a range of sector-led guidance is available.[26]

234. The Appellants submit that the imposition of the requested commuted sums for affordable housing would make the development unviable. They have provided a 'Note on Viability' which shows that the development generates about £36,855.00 in rent per annum but running costs and replacement costs reduce the yearly profit to around £11,354.53. They conclude that, if the affordable housing requirement of £108,000 is added to the development costs

[25] ID: 23b-002-20140306
[26] ID: 10-002-20140306

and the SPA contribution, it would take over 21 years before the development is paid for by the profit generated without taking into account financing costs.

235. The Council's valuation was carried out by experienced RICS surveyors using industry standard practices. The Council's approach is to examine the site value with the benefit of planning permission and compare this to the Existing Use Value of the land without planning permission to assess whether the scheme could support a policy compliant level of section 106 contributions and social housing. It submits that the viability assessment should not be on the basis of the business currently run by the Appellants but on the site value and possible profit that could be made, if planning permission were to be granted.

236. The Council's methodology for calculating an in-lieu payment is based on the approach detailed in the Affordable Housing Viability Study undertaken by Levvel Ltd in 2008. It is referred to in the SPD and in the Core Strategy Inspector's Report. A similar approach was put forward on behalf of the Council in relation to the 22 pitch scheme with the viability assessment being based on the relationship between the existing use value and the value of the land with the benefit of the planning permission sought. That Inspector noted: *"The Council's method of calculating a commuted sum has been researched and consistently applied and is based on the equivalence principle recommended in the Levvel's Viability Study*."

237. The Appellants contend that, given the low levels of rental income, it would be unviable to provide affordable housing. They place reliance upon the evidence of Mr Cash to the effect that he has operated in the same way across the remainder of the land that he owns which contains a significant number of lawful caravans. However, the Council points out that, in the event that planning permission were to be granted, there would be nothing to prevent the Appellants from replacing the mobile homes and increasing the rent or selling the appeal sites or selling or leasing the mobile homes sited on them. There would be no guarantee of future occupation by current tenants on the terms that they now enjoy.

238. The Appellants also put forward a comparable approach to viability in their submissions to the 22 pitch appeal. That Inspector noted: "*The viability assessment submitted by the appellant was informed by the particular circumstances of the site and the development in question and is based on the continuation of the current model of rented accommodation.*" However, she expressed the view that: "*The existing model of accommodation operated by the appellant does not lend itself easily to planning controls*." She concluded that: "*The full benefits of the low cost housing model operated to date would not be secured in the future*."

239. I have similar concerns as regards the absence of future controls over the manner in which the site would operate in the long-term, notwithstanding the stated intentions of Mr Cash at the time of the Inquiry. Given the inability to place such restrictions upon the future operation of the site, I consider that the Council's approach to viability is strongly to be preferred. Such a method would also reflect the SPD and industry standards and, as noted by the 22 pitch Inspector, has been researched and consistently applied.

240. A summary of the Council's viability assessment is set out in the evidence of Mr Kempton of Kempton Carr Croft.[27] The existing land use prior to the development taking place would have been as amenity/grazing land which carries an extremely low existing value. He concludes that the development would provide an additional surplus (once the affordable housing contribution has been deducted) of £220,765 for New Acres and £187,127 for Pineridge. These surplus figures are in addition to, and roughly the same as, the developer's profit of 20% which has already been allowed for in the appraisal.

241. For the Appellants, Mr Green, provided oral evidence on viability and has reworked the table at page 19 of Mr Kempton's proof of evidence. That reworked table indicates that for New Acres there would be a loss of £148,177.60 and for Pineridge there would be a loss of £122,894.74. That is on the basis that there would be three units on New Acres and five units on Pineridge Park. They submit that this represents a more robust and realistic viability calculation.

242. In support of their calculation, the Appellants produced two plans to show respectively how many caravans of different sizes could be accommodated on the sites in accordance with the relevant regulations, namely, the maximum size twin unit of 20ft by 60ft and also units 20ft by 40ft. The plan for the former size indicates that Pineridge would accommodate three units with two units on New Acres and the plan for the latter size shows the sites as accommodating five units and three units respectively.

243. In response to those two site plans, the Council submitted the written comments of Trina Froud of Kempton Carr Croft. She was unable to verify their accuracy in the absence of a measured survey. However, she reiterated that "*all of our calculations have been based upon single units, as currently existing, on the site…",* and that, as stated by Mr Kempton in his evidence: "…*each plot on the site whether single or double, makes so much profit that a full affordable housing contribution can be made, still providing the site owner with their full margin of profit*."

244. The Appellants criticise the details of the Council's viability assessment. They submit that the commuted sum is based upon all the existing mobile homes being replaced with twin units, which represents a flawed approach. They also raise concerns that Mr Kempton has based caravan costs on caravans for sale in North Yorkshire, Durham and Northumberland which could logically be expected to be cheaper than those for sale on the south-coast. His gross development value is based on what he describes as *"…the best comparable property…"* which is a twin unit for sale at Pinewood Caravan Park.

245. At the Inquiry, Mr Kempton confirmed that his approach had not been based upon replacing the existing mobile homes with twin units and the units valued on the appeal sites were both costed and valued on the basis of single as well as double units. He also pointed out that the caravans which are for sale in other parts of the country are available to purchase and transport to the preferred location. He explained how he had looked at a basket of evidence and took it in the round for the purposes of the viability assessment. Furthermore, irrespective of the number or type of units on the sites, the value of the site with planning permission for any number of mobile home units would be significantly higher than the Existing Use Value, even allowing for the

[27] See page 19 of his proof of evidence

full affordable housing contribution and section 106 payments. In the light of Mr Kempton' clear evidence on these matters, I am satisfied that he did not adopt an erroneous approach. He has valued and costed the units as single units, as currently exist on the appeal sites. I find his viability assessment to be thorough, reasonable and robust.

Conclusions

246. I conclude that the Council's approach to calculating the off-site contribution towards affordable housing is consistent with the Framework and meets the tests set out in paragraph 204 of that document. The development does not comprise affordable housing and no payment in lieu of on-site provision would be provided. Since it would be viable for such a contribution to be made, the development would not be in accordance with Policy CP5. This is a factor of significant weight. The WMS is a material consideration, but given the particular local circumstances in the Borough, I consider, on balance, that it is outweighed in this instance by the conflict with Policy CP5. In reaching that conclusion, I have had regard to the particular facts of this case, the nature of the appeal development and the purpose of the WMS.

Flood risk

247. The Technical Guidance to the Framework provides additional advice in relation to areas at risk of flooding which include land within Flood Zones 2 and 3. It sets out the sequential and exception tests to be applied. In terms of flood risk vulnerability classification, caravans, mobile homes and park homes intended for permanent residential use are classified as being 'Highly Vulnerable'. The Environment Agency (EA) Flood Maps identify the sites as being within Flood Zones 2 and 3 with the southern part of both sites being within Flood Zone 3.

248. The Appellants have submitted a Flood Risk Assessment (FRA) completed by Geosmart Information Ltd ("Geosmart") in January 2017. The FRA concludes that the sites are elevated above Flood Zone 3 and located within Flood Zone 2 where caravans can be acceptable in the event that the sequential and exception tests are met. The Appellants submit that those tests are indeed met and there is no harm that can be attributed to the location of the sites within Flood Zone 2.

249. The Council contends that the Appellants have used flood levels from a model that the EA has deemed not 'Fit for Purpose'. The EA's letter to Green Planning Solutions dated 5 December 2014, relates to its review of modelling information in support of the 22 pitch appeal. It states that: "*The model has been found to be not fit for purpose, and further work is needed to consider this model acceptable to enable it to inform the flood risk assessments conclusions. Therefore this site is considered to be in flood zone 2 and 3 in accordance with our flood map for planning.*"

250. The Council submits that the position remains as set out in the e-mail correspondence[28] between the EA and Mike Piotrowski from GeoSmart Solutions, the Appellants' flood risk consultant, that is to say, the EA do not have any detailed flood risk modelling for this location and they were unable to provide modelled flood levels and extents for the sites. The Council therefore

[28] See e-mail dated 15 December 2015 at 15.43pm

raises concerns that it has not seen any evidence to the effect that the EA has signed off the model for these sites. The flood zone designation falls within the remit of the EA and that organisation has not indicated that the Appellants' methodology is acceptable and that the flood zone has been or will be re-classified. The Council therefore contends that the flood zone classification as set out in the EA Flood Map should apply and this type of development should not be permitted within Flood Zone 3.

251. At the Inquiry, the Appellants' flood risk expert confirmed that no revised modelling work has been carried out. The FRA finds that the EA mapping does not adequately take into account the current site topography as revealed by the recent survey work but relies instead upon less accurate LIDAR data. The mapped 100 year flood level is 62.5 mAOD. The FRA relies upon a topographical survey of the sites and surrounding area which reveals the ground levels on the sites to be between 62.8 and 63.25 mAOD. The accuracy and reliability of that survey has not been challenged by the Council. In general, the ground surface on the opposite side of the watercourse is around 62 mAOD. It follows that should the level of water in the ditch rise, it would spread out over the opposite bank and it is very unlikely to reach the level of the caravan site.

252. The FRA, at pages 17 to 18, considers the effect of climate change. This states that, "*As no modelled flows have been provided by the Environment Agency and in the absence of any more details information, the potential impacts of climate change on flow and stage have been estimated using the results from hydraulic flow modelling (Prior, 2014) ….*". However, the Appellants do not rely upon the Prior Associates modelled flow to show that the sites would be safe. The FRA goes on to look at the worst case scenario by considering the 1 in 1000 years flood event and has mapped flood depths of 1-10cm on the sites. For that scenario, egress routes away from the sites would remain available to the north along Nine Mile Ride. The FRA concludes that: "*As long as mobile home threshold levels remain less than 10cm there should be no flood ingress to the mobile homes, which would be anchored to the ground to prevent movement*."

253. Although the sites are located within a flood risk area as identified on the EA Flood Map, the Appellants have provided a site-specific FRA. In my view, the FRA has appropriately identified and assessed the risks of all forms of flooding to and from the development. The FRA concludes that the sites are suitable, subject to conditions requiring flood mitigation measures to be implemented. The developments would incorporate SuDs and connection to the EA flood warning system and a scheme for securing the caravans with chains.

254. The Council's evidence on flood risk did not include consideration of the sequential and exception tests. In the light of the Appellants' evidence on these matters I am satisfied that those tests would be met. The Council did not seek to identify an alternative site for similar development with a lower probability of flooding. Given the low flood risk identified by the FRA, I consider that the, albeit limited, community benefits would outweigh that risk. The FRA also shows that the development would be safe for its lifetime and would not increase the risk of flooding elsewhere. I conclude that, in the light of the site-specific FRA and subject to the imposition of appropriate planning conditions, the development would not have any harmful flood risk implications.

The local need for housing

255. Core Strategy Policy CP5, relates to housing mix, density and affordability. The background to that policy explains that the provision of a variety of types and sizes of accommodation is desirable across the Borough so that the housing needs of as many householders as possible can be met. It also refers to the exceptional need for affordable housing in the Borough.

256. MDD Policy TB05, relates to housing mix. The background to that policy includes caravans and mobile homes within the range of types of accommodation that will be sought to meet the needs of all the Borough's residents.

257. The Appellants contend that there is a clear need for local housing in circumstances where there has been persistent under-delivery and the most pressing need is for housing at the lower end of the affordability scale. In support of this contention, they rely upon the reasons set out in their five year housing land assessment. They submit that the backlog created by the persistent under-supply means that there are families and individuals who are now in need of housing.

258. There is obviously a general need for more new homes in the Borough and there is evidence to support the view that the most pressing need is for housing at the lower end of the affordability scale. As indicated above, I consider that, at the current time, the Council is able to demonstrate a five year supply of deliverable housing land in the Borough. That includes the application of the 20% buffer in recognition of the Council's record of persistent under-delivery of housing. I have also given consideration to the Core Strategy backlog in reaching my conclusion on that topic.

259. The appeal developments currently provide low cost market housing, and the site residents have an immediate need for that type of accommodation. Nevertheless, the need for the development must be considered in the context of the Council having an identified five year housing land supply. Furthermore, the schemes do not fall within the definition of affordable housing, nor is the future occupation by current tenants on the terms that they now enjoy a matter that would be secured by the permissions sought. Thus, the sites continuing availability as low cost market housing could not be guaranteed. In the circumstances, I conclude that the contribution the sites would make to meet the local need for such housing is a factor to which I attach limited weight.

The availability of alternative affordable sites to meet identified need

260. The Appellants submit that the lack of a five year housing land supply results in an inadequate number of dwellings in the Borough and in order for the housing supply to be increased in the short-term, sites with planning permission need to come forward. If the appeals were to succeed, these sites would be in immediate use and would provide the lowest cost form of market housing.

261. In support of this claimed benefit, the Appellants again place reliance upon the absence of a five year housing land supply. As indicated above, I consider that reliance to be misplaced and the Council does have sufficient sites to enable a five year housing land supply to be identified. There is not therefore

the same need for the housing supply to be increased in the short-term through the grant of planning permission for additional sites such as these.

262. The mobile homes on the appeal sites are not categorised as affordable housing. However, they currently provide low cost accommodation for people who are under financial constraint. Whilst mobile homes are likely to be towards the lower end of the housing market in terms of cost, the current low rental format under which the sites operate would not be secured by any permission granted. Although the current low cost housing model has operated for some time and reflects the manner in which the Appellants operate other sites, that approach would not necessarily continue in the future. Furthermore, the current tenants have shorthold tenancies that do not provide them with long-term security of tenure.

263. Nevertheless, there are people living on the sites with limited financial resources who would obviously need to be accommodated elsewhere should the notices be upheld. I shall consider their personal need for accommodation later on when assessing their particular personal circumstances. The availability of alternative affordable sites to meet identified general need is a factor to which I attach limited weight.

Whether there has been a failure of local planning policy in relation to the supply of housing in the Borough

264. The Appellants submit that there is a significant and ongoing failure of local planning policy in relation to the supply of housing in the Borough, largely as a result of the Council's refusal to accept that it does not have a five year housing land supply. Since I have concluded that there is currently a five year supply of housing, the Appellants' proposition cannot be supported on that ground.

265. The Appellants contend that the best indicator of future performance has to be past performance. It is clear that there have been times in the past when the Council has been remiss in its response to the requirements of Government policy and guidance in relation to the provision of housing. However, the Council is now taking active steps to address the situation and to ensure that the necessary supply of deliverable sites in the Borough will be maintained in the future. The historic failure of policy on the part of the Council in relation to the supply of housing in the Borough is a factor to which I attribute limited weight.

Economic benefits

266. The Appellants submit that the appeal developments provide a long-term economic benefit to the area arising from the residents' economic contribution to the local economy.

267. That factor does represent a degree of positivity in terms of the economic limb of sustainability set out in the Framework. However, it seems to me that, given the scale of the development, any such contribution would be limited in scope. This is a factor to which I attribute little weight.

Personal circumstances

268. The site residents have provided details of their personal circumstances. These are outlined in their witness statements and oral evidence to the Inquiry.

The Appellants have also helpfully provided a table detailing the occupants of the sites and their personal circumstances on a plot by plot basis. They contend that the occupants of the sites have a clear personal need for housing and the sites currently provide accommodation for those who would otherwise most likely be homeless or at least struggle to find suitable affordable accommodation.

269. The individuals living on the site undoubtedly have a personal need for accommodation. There are clear benefits that having a settled home provides in terms of enabling people to access health and educational facilities. There are site occupants who currently require medical care and others who are healthy but might need to access health care in the future. There are children living on the site including those of school age who attend local schools. The best interests of those children are, of course, primary considerations. The Council accepts that the current occupiers of the appeal sites have a range of personal circumstances which indicate that they would benefit from staying at the appeal sites. The appeal sites are situated conveniently close to places of employment, schools, medical and other facilities.

270. As regards the prospects of those residents finding suitable affordable alternative accommodation should the notices be upheld, the Council gave evidence to the effect that any occupier of the 22 pitch site who approached it asking for accommodation was given the necessary help and asserts that all the occupants of the 22 pitch site were provided with alternative accommodation either by it or by Mr Cash Senior. The Council confirms that, in relation to the appeal sites, it would meet its obligations under the Housing Act 1996. However, the Council's note submitted to the Inquiry relating to its duties in that respect does not state that the residents would be re-housed, just that it would carry out individual assessments to determine whether it has a duty to re-house. No details of any likely alternative accommodation have been provided and I note that the Council ultimately sought an injunction to remove the residents from the 22 pitch site.

271. The Council acknowledges that duties to a vulnerable person (dependent children) are likely to be different to people with no vulnerability (for example many single people). The site residents include those who might not be classified as vulnerable, such as single healthy adult males, but who would nevertheless be likely to experience particular problems in seeking alternative accommodation due to their limited financial resources. Nevertheless, there is scope for advice and assistance to be provided to those persons that do not benefit from any duty to be re-housed. As was the case for the 22 pitch site, there is uncertainty around the availability of alternative accommodation. The reasons why people are living on these sites and the shortage of affordable housing in the area indicate that they would experience difficulties in securing new affordable homes. However, taking into account the statutory duties of the Council and given a reasonable period of time within which to seek alternative accommodation, I consider that it is highly unlikely that any residents would ultimately become homeless and not have a suitable settled base from which to access facilities and services.

272. Furthermore, the Appellants do not seek the grant of a personal planning permission in favour of the current named site occupants. The Council points out that there would be nothing to prevent, upon the grant of permission, the sites being sold or some or all of the mobile homes being sold. The grant of a

permission that was not conditioned in that way would mean that new tenants without similar personal issues could occupy the site in the future. In addition, the terms upon which residents currently occupy the sites, including their security of tenure would not be protected. Given that background, I consider that only limited weight should be attached to the particular personal circumstances of the current site occupants. If, contrary to the Appellants wishes a personal condition were to be imposed, then I believe that moderate weight should be attributed to these personal factors. It would not prevent termination of their tenancies in accordance with the shorthold agreements, although any new tenants would be in breach of that condition.

The planning balance

Permanent permission

273. There is an overall five year supply of deliverable housing land in the Borough. The tilted balance set out at paragraph 14 of the Framework is not therefore engaged. Development Plan policies which constrain the supply of housing should not be regarded as being out of date for that reason. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

274. The developments would extend the atypical settlement pattern of the lawful Pineridge and New Acres sites into the open countryside. In so doing, they would materially detract from key characteristics and the quality of the landscape character as identified by the LCA. There would be serious and obvious harm to this area of high quality landscape character. This is a consideration of significant weight. They would also result in appreciable harm to the non-designated heritage asset of Ravenswood Park. However, applying a balanced judgment in accordance with paragraph 135 of the Framework, only modest weight can be attributed to this factor. I conclude that the developments would not be in accordance with Core Strategy Policies CP1, CP3 and CP11and MDD Policies CC03 and TB21. These harms could not be satisfactorily overcome by the imposition of planning conditions.

275. In the light of the contributions which have been secured by planning obligations, the appeal developments would not have an unacceptable impact upon the SPA and would be in accordance with Core Strategy Policy CP8. However, the developments have resulted in direct harm to biodiversity and the ecological value of the site as part of the Local Wildlife Site. In the event that the notices were to be upheld and the requirements complied with, beneficial ecological and biodiversity effects would occur. The mitigation measures proposed would not be sufficient to offset the harm caused by the developments. The schemes would not comply with Core Strategy Policy CP7. This is a factor of considerable weight.

276. The developments do not comprise affordable housing and no payment in lieu of on-site provision would be provided. Since it would be viable for such contributions to be made, the developments would not be in accordance with Policy CP5. Given the particular local circumstances in the Borough, the WMS is outweighed by the conflict with Policy CP5. In the absence of the necessary contributions, this is a factor of considerable weight.

277. In the light of the site-specific FRA and subject to the imposition of appropriate planning conditions, the developments would not have any harmful flood risk implications to be weighed in the balance.

278. To weigh against the conflict with the Development Plan, the Appellants rely upon a number of other material considerations. The developments currently provide low-cost market housing and the site residents have an immediate need for that type of accommodation. Nevertheless, the need for the developments must be considered in the context of there being an identified five year housing land supply. Furthermore, the schemes do not fall within the definition of affordable housing, nor is the future occupation by current tenants on the terms that they now enjoy a matter that would be secured by the permissions sought. I conclude that the contribution the sites would make to meet the need in the Borough for such accommodation is a factor to which limited weight should be attached.

279. The Appellants also rely upon their analysis of the five year housing land supply to question the availability of alternative affordable sites. However, since a five year housing land supply has been identified, there is not the same need for the housing supply to be increased in the short-term had that not been the case. The availability of suitable, affordable, alternative sites to meet identified general need is a factor to which I attach limited weight.

280. The Council is now taking active steps to address the housing situation and to ensure that the necessary supply of deliverable sites in the Borough will be maintained in the future. The historic failure of policy on the part of the Council in relation to the supply of housing in the Borough is a factor to which I attribute limited weight.

281. The economic benefits to the area arising from the residents' economic contribution to the local economy represent a degree of positivity in terms of the economic limb of sustainability set out in the Framework. However, given the scale of the developments, any such contribution would be limited in scope. This is a factor to which I attribute little weight.

282. The site residents have a personal need for accommodation. There are also clear personal benefits that would result from their having a settled and stable home base in terms of enabling them to access health and educational facilities. The Council accepts that the current occupiers of the appeal sites have a range of personal circumstances which indicate that they would benefit from staying at the appeal sites. Even so, whilst they would prefer to stay at the sites, it is highly unlikely that any residents would ultimately become homeless and not have a settled base from which to access similar facilities and services in the event of the notices being upheld.

283. The Appellants do not seek the grant of a personal planning permission that would restrict occupancy to the current residents of the sites. The grant of a permission that was not conditioned in that way would mean the future occupancy of the sites would be open to other persons regardless of their personal circumstances. Furthermore, the terms upon which the current residents occupy the sites under their shorthold tenancies would not be secured in the long-term.

284. Given that background, I consider that only limited weight should be attached to the personal circumstances of the site occupants in the context of a

permanent permission with no personal occupancy condition attached. If, contrary to the Appellants wishes, a personal condition were to be imposed, then I believe that moderate weight should be attributed to these personal factors.

285. On the question of sustainability, the appeal sites are located in the countryside outside the defined development limits. The developments do not fall within any of the categories of development identified by Policy CP11 as being appropriate in such locations. I consider that in terms of locational sustainability the sites would provide residents with reasonable accessibility to facilities and services. There is also a degree of positivity in terms of the economic limb of sustainability set out in the Framework. Nevertheless, there are other dimensions to sustainable development that need to be taken into account. The developments have clear and obvious shortcomings in terms of the environmental dimension of sustainability given the conflict with relevant Development Plan polices identified above. Overall, in the light of the Framework policies taken as a whole, the developments would not be sustainable.

286. Having weighed the various factors in support of these appeals in the balance of planning considerations, my firm conclusion is that there are no other material considerations that would outweigh the conflict with the Development Plan. The grant of full planning permissions for the developments would not be appropriate. That is my assessment of the planning balance, subject to human rights considerations and the proportionality assessment which I shall consider later on in these decisions.

Temporary and personal permission

287. In the event that I disagree that a permanent permission should be granted, the Appellants seek a temporary permission for a period of four to five years. That is on the basis that that would represent a long enough period to allow an expected change in planning circumstances, namely, when additional housing in sufficient numbers becomes available following the adoption of the Local Plan Update. That plan is due to be adopted in 2019 at the earliest. They submit that the change would be the increased provision of housing in general and affordable housing in particular, such that the accommodation outcomes of those living on the sites could be addressed with greater certainty. In those circumstances, a personal permission might also be appropriate.

288. The material considerations to which regard must be had in granting any permission are not limited or made different by a decision to make the permission a temporary one. However, the balancing exercise to be carried out when considering a temporary planning permission is clearly different to that of a permanent planning permission. The harm resulting from a temporary planning permission would not endure permanently. The Council recognises that the current occupants would like to remain on the sites and would benefit from a longer period of occupation. Nevertheless, there would still be harm to landscape character, the non-designated heritage asset and ecology for the duration of the permission granted. There would remain conflict with Development Plan and Framework policies to promote sustainable forms of development in terms of their effect on the environment, even for the temporary period.

289. The benefits associated with the grant of a temporary permission and the change in planning circumstances relied upon by the Appellants fall to be considered in the light of my conclusions on the five year housing land supply, housing need, the current availability of alternative affordable sites and the likelihood of residents becoming homeless should the notices be upheld. These matters have all been taken into account in the overall assessment of the planning merits.

290. The temporary grant of planning permission would potentially allow more time to enable site residents to seek suitable, affordable, alternative accommodation. This would provide some benefit to their home and family lives given the inherent stress associated with the process of finding a new home. However, the 22 pitch site Inspector noted, in relation to that site, that when a mobile home was vacated it was let to new tenants. In the event of temporary planning permissions being granted for the appeal sites, there would be nothing to prevent a similar change of occupants on those sites within the temporary period. Therefore, at the end of the temporary period the anticipated change and advantage would not have materialised and the temporary period would not have served its intended purpose.

291. The grant of a temporary and personal planning permission would restrict occupants to be named persons and so any new residents would be in breach of that personal condition. Nevertheless, those current occupants would still be subject to the terms of their tenancy agreements. The grant of a personal permission would not ensure that their current terms of occupancy would continue or that they would not have their tenancies terminated by the site owner within the temporary period.

292. In the event of a temporary and personal permission being granted, the enforcement notices would be quashed and their requirements would not take effect upon the expiry of the temporary periods. I do not consider that the prospect of the new Local Plan Update being adopted or the benefit of allowing more time to enable site residents to seek suitable, alternative accommodation justify the grant of temporary and personal permissions. It seems to me that the extension of the compliance periods set out in the notices represents the best approach for achieving that end, rather than the grant of temporary and/or personal planning permissions.

293. I conclude that the considerations relevant to the grant of temporary and/or personal permissions do not significantly alter the overall balance of considerations. It would not be appropriate to grant such permissions in this case, subject to human rights considerations and the proportionality assessment which I shall now consider.

Human rights and the best interests of the children

294. The rights of the site occupants including the children, under Article 8 of the European Convention on Human Rights (ECHR)[29] must be taken into consideration. This includes respect for their home, private and family life. There are six mobile homes on the Pineridge site and seven on the New Acres site. These mobile homes are all residentially occupied. The notices require the cessation of the unauthorised use and the removal of the caravans from the land. The dismissal of the appeals, and the upholding of the enforcement

[29] The ECHR protections have been codified into UK law by the Human Rights Act 1998

notices, would therefore be likely to result in the eviction of these occupants from the sites thereby interfering with their home and private and family life.

295. The interference with the rights of the site occupants must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8. The overall harm identified above, represents a serious objection to the developments which could not be overcome by planning conditions. There is a need for restrictive policies to be applied to such areas and this restriction is an appropriate proportional response to that need. This legitimate aim could only be safeguarded by the refusal of planning permission and compliance with the notices. The relevant planning objectives could not be achieved by means which would interfere less with the rights of the individuals living on the sites. Nevertheless, it is necessary to consider whether such interference in each case would be proportionate to the legitimate public end sought to be achieved.[30]

296. The Appellants do not suggest that the proposed interference is unnecessary or not in accordance with the law. However, they submit that a dismissal of the appeals would be disproportionate. They contend that the best interests of the children that live on the site could only properly be met by the grant of a permanent planning permission. In the alternative, a temporary permission is advocated.

297. There are a number of children living on the sites, either permanently or for periods during parental access visits. For those families with children, the best interests of those children represent a primary consideration and although they will not always determine the outcome of a case, no other factor should be given more weight.[31] It is necessary to assess whether any adverse impact upon them would be proportionate. The relevant considerations relating to their respective rights of enjoyment of family life and a home are set out in their statements and oral evidence given to the Inquiry. In summary, the relevant details, followed by my proportionality assessment are as follows:

298. Natalie Peacock occupies Plot 7, Pineridge Park. She has two children aged 12 and 9 years old. She moved onto the site in December 2016 after the date of issue of the notice and was aware that the site was subject to an enforcement notice before she moved onto it. She ceased living in private rented accommodation in September 2016 due to rent arrears. She is involved in ongoing litigation with her former local authority area in a London Borough where she had been refused bed and breakfast accommodation. She was homeless and staying with friends before moving onto the site. The family does not have any particular health problems and they are registered with a local doctor. One child attends St Sebastian's School on Pinewood Drive and the other catches the school bus from outside the site to go to St Crispin's School. Now that the children are settled, she would like to remain in the Wokingham area. She does not consider that she could not afford alternative private accommodation in the area on her part-time wage. She believes that it is likely that she would be made homeless, if she had to move off the Pineridge site.

299. In my assessment, the site currently provides a stable base for this family from which they have the opportunity to access health and educational services

[30] AZ V SSCLG and South Gloucestershire District Council [2012] EWHC 3660 (Admin)
[31] ZH(Tanzania) v SSHD [2011] UKSC 4

and other facilities. It would be in the best interests of the young children living on this plot to continue to enjoy the current stability in education and home life that their home provides. Natalie was aware of the ongoing enforcement action and appeal proceedings when she moved onto the site. However, she had no home of her own at that time and in those circumstances it is understandable that knowledge of the enforcement notice did not deter her from taking up the offer of a mobile home. Given her recent past experience with housing issues and her limited finances, it is likely that she would face considerable difficulties in seeking a suitable, affordable new home in the area.

300. There would be a very serious interference with their home and family life, if they had to leave Pineridge Park. Nonetheless, the identified harm to the proper planning of the area must be balanced against the interests of this family. Taking all these factors into account, I do not consider the upholding of the notice with a reasonable compliance period would have an excessive or disproportionate effect upon them.

301. Marcin Chomontowski, Danuta Chomontowski and Yvonna Chomontowski (mother-in-law to Marcin) occupy Plot 4, Pineridge Park. They moved onto the site in February/March 2015. Prior to that, they had been living in a rented room in Wokingham on a temporary basis. Their evidence is that they cannot afford other private rented accommodation in the area. If no affordable accommodation could be found, the family might have to move back to Poland.

302. In my assessment, no particular vulnerabilities through age or ill-health have been identified for this family. They have previously rented accommodation in Wokingham but that was only a room. There are affordability issues that would make it more difficult for them to find suitable, alternative accommodation and, as a last resort, they would return to Poland. The interference with their rights would be serious, but is outweighed by the wider public interest. The upholding of the notice with a reasonable compliance period would not have an excessive or disproportionate effect upon their interests.

303. Steven Parker occupies Plot 9, Pineridge Park. His son does not live with him but visits every weekend. He moved onto the site in November 2009 from a house in Wokingham. He does not have any particular health problems and is registered at the New Wokingham Road Surgery, Crowthorne. He has a full-time job doing general warehouse work in Bracknell. He has had confirmation from the Council that he is on the waiting list for housing. He was informed in 2015 that the waiting list period was 7 to 10 years. He has been looking for alternative accommodation since the New Year but has not found anything suitable and affordable. He does not think he could afford private accommodation in the area and anticipates that it is likely that he would be made homeless, if he has to move off the Pineridge site.

304. In my assessment, the best interests of his son would be served by Mr Parker having a permanent home where he can visit him and stay on a regular basis. The appeal site currently serves that purpose. He has financial constraints that are likely to make it difficult for him to find suitable, alternative accommodation in the area that he can afford. Although he is on the housing list, his particular circumstances are unlikely to make him a high priority. There would be very serious interference with the rights of this family should the notice be upheld. However, subject to the upheld notice having a

reasonable compliance period, that interference would be necessary and proportionate when balanced against the wider public interest.

305. Tony Coates occupies Plot 17, Pineridge Park. He moved onto the site in 2008. Before then, he was homeless for about 12 months. He has been on the Council's waiting list for 10 years during which time only one unsuitable place was offered to him. He works as a labourer on building sites and has no other source of income. His evidence is that he could not afford local private accommodation and it is likely that he would be made homeless, if he had to move off the Pineridge site. He does not have any particular health problems and is registered with a doctor's practice in Wokingham.

306. In my assessment, Mr Coates has no health issues which would make him particularly vulnerable. However, his financial circumstances limit what he can afford to pay for accommodation and his present arrangement of living on the appeal site suits him. He has been on the housing waiting list for many years without a suitable offer and, as a single adult male with no health issues, he is likely to remain a lower priority for the Council to accommodate. The loss of his home would represent a serious interference with his rights but that is outweighed by the identified harm to the public interest. The upholding of the notice with a reasonable compliance period would not have an excessive or disproportionate effect upon him.

307. Brian Bowyer occupies Plot 18, Pineridge Park. His son Fraser, aged 13 years, lives with him permanently. His other son, Zac, aged 15 years, stays with him every weekend and throughout the school holidays. He moved onto the site about eight years ago from a Council house in Reading. He has been signed off work for medical reasons and lives off benefits. They are registered with the New Wokingham Road Surgery. He has been on the Council's waiting list for over a year, but was informed in December 2016 that the Council did not have any available two bedroom accommodation for him and his son. He has been offered assistance with deposit and rent payments for accommodation at £800 a month but the few places that are available in the Wokingham area at that price do not accept someone who is on benefits. He anticipates that he and his son would be homeless, if they have to move from the site.

308. In my assessment, it would be in the best interests of Fraser to have a stable, lawful and permanent home. The appeal site currently performs that function. Zac visits and stays at the site and it enables him to see his father on a regular basis. It would also be in his best interests for his father to remain in appropriate accommodation where he can continue to visit him. The Council has so far been unable to provide his father with such a home. There are also medical issues which increase Mr Bowyer's vulnerability and restrict his ability to work. There would be very serious interference with the Article 8 rights of this family, if the notice were to be upheld. Nonetheless, provided the notice contains a reasonable compliance period, that interference would be necessary and proportionate when balanced against the wider public interest.

309. Simon Lewington occupies Plot 19, Pineridge Park. He moved onto the site in November 2007 having left a house in Basingstoke due to his divorce. He has two daughters, aged 21 and 19 years old, who sometimes come to stay with him. One is at University and the other has finished her formal education. He does not have any particular health problems and is registered with the New

Wokingham Road Surgery. He is currently on the housing waiting list but has been informed by the Council that it would take about six years to find housing. Since he is a single adult male, he is a very low priority on the housing list. He works as a chauffeur with a lot of that work being seasonal. He needs to be within about 20 miles of Heathrow to keep his job. He does not consider that he could afford the deposit or rent for other private accommodation. His evidence is that he would have nowhere else to go and would be homeless, if he had to move off the Pineridge site.

310. In my assessment, Mr Lewington has no particular age or health issues that would render him vulnerable. His present accommodation enables his daughters to visit and stay with him which contributes to the quality of his home and family life. However, they are no longer children. His work requires him to live near Heathrow and that, in turn, impacts upon the affordability of the accommodation that is available to him. His status as a single adult male is likely to render him a very low priority on the housing list. In the event that the notice is upheld, he is likely to experience difficulties in seeking suitable, affordable, alternative accommodation notwithstanding any assistance the Council might provide. There would be serious interference with his rights by reason of the loss of his home but that would not outweigh the harm to the wider public interest. However, that interference would be necessary and proportionate, provided the notice contains a reasonable compliance period.

311. Malgorzata Lechonczak and Pavel (her boyfriend) occupy Plot 20, New Acres. She has lived there for some five years and before that lived in a single room flat in Slough which cost about £100 per week. They presently pay some £550 per month for the mobile home. Although they are both working and do not claim benefits, they cannot afford local housing in the area, even though they would prefer to live in a house. They do not have any health problems and are registered with the New Wokingham Road Surgery. Before that they were registered with a health practice in Slough. Since they do not have any children, she suspects that they would be a low priority on the Council's housing list. They are not currently on that list, as she does not believe that they would get a Council flat. She has been aware of the enforcement action for about a year. She does not know what she would do if she had to move from New Acres and anticipates being homeless. If she could not find affordable accommodation then she would return to Poland to live with her parents.

312. In my assessment, neither Malgorzata nor Pavel has any particular age or health issues that might render them vulnerable. They do not have any children dependent upon them. They are likely to be a low priority on the Council's housing list. Their previous accommodation in Slough was cheaper than their home on New Acres but that was only a single room. There are financial constraints that would restrict their ability to find suitable, alternative accommodation. They would have to return to Poland, as a last resort. The interference with their rights would be serious, but is outweighed by the wider public interest. The upholding of the notice with a reasonable compliance period would not have an excessive or disproportionate effect upon their interests.

313. Andrew Scott occupies No 20a, New Acres. He moved onto the site in January 2011 when he was declared bankrupt and had to sell his house in Crowthorne. When he left that house, he was homeless for a while. At one

point, between selling his home and getting the sale proceeds, he was sleeping outside for a week or so. He suffers from numerous medical complications and is registered with the Wokingham Medical Practice. He has been living off the remainder of the money from the sale of his house. He has known about the enforcement action for about a year. He does not think that he could afford the rent for other private accommodation in the area, as it would cost almost double what he now pays. He currently pays £500 per month plus bills and he would have to pay some £850 per month plus bills elsewhere. If he had to move from the site, then he considers that it is likely that he would be homeless.

314. In my assessment, Mr Scott's ill-health adds to his vulnerability and prevents him from working. He has previously been homeless for a short period at a time when he had no funds available to him. His financial issues would make it more difficult for him to find suitable private accommodation that he can afford in the area. There would be very serious interference with his Article 8 rights. However, the substantial harm to the proper planning of the area outweighs that interference. The upholding of the notice with a reasonable compliance period would not have an excessive effect upon his interests. The interference would be necessary and proportionate when balanced against the wider public interest.

315. Rafal Maka and his wife, Gabriella, occupy Plot 21, New Acres. They have two children, Christian, aged 13 years, and Fabian, aged 10 years. Both children attend school in Bracknell. They do not have any particular health problems. Gabriella and the children are registered with a doctor in Bracknell and Rafal is registered with a doctor in Crowthorne. They were living in a room in Bracknell before they moved onto the site in November 2015. Both he and his wife currently work in the same warehouse in Bracknell. They previously paid about £700 per month plus bills for a room in Bracknell and now pay some £500 per month plus bills for the mobile home. He has known about the enforcement action for the past year or so. He has been looking for other accommodation but has found it to be too expensive. They are currently on the Council's housing waiting list but have not yet had any offer of housing. If they had to move from the site, they would have nowhere else to go.

316. In my assessment, the New Acres site provides the family with a settled base from which to access facilities and services. The parents work and the children attend educational and medical services in Bracknell. The site currently provides them with suitable, affordable accommodation. It would be in the best interests of the children to retain a settled base from which to enjoy stability in their education and home life. The family's current financial situation would make it more difficult for them to find suitable affordable alternative accommodation in the area. Since they have dependent children they are likely to have a greater priority need for rehousing by the Council. There would be a very serious interference with their home and family life, if they had to leave New Acres. However, the proper planning of the area in the wider public interest is of greater weight and, given a reasonable period for compliance with the notice, that interference would be necessary and proportionate.

317. Hristo Petrov occupies Plot 22, New Acres with his 17 year old nephew whose parents live in Wokingham. He moved onto the site in 2011 having come from Bulgaria. They both do property refurbishing work in the London

area and sometimes more locally. He has looked at other accommodation in the area but does not think he could afford the rent given his current financial situation. He also does not have funds for a deposit. Neither he nor his nephew have any particular health problems and are registered with the New Wokingham Road Surgery. He has recently put himself on the Council's housing waiting list and does not know where he would be in terms of priority. If he had to move off the site, he would ask the Council for assistance but he thinks it is likely that he would become homeless. In cross-examination, he agreed that, if they were made homeless, his nephew could go to live with his parents in Wokingham.

318. In my assessment, the New Acres site provides them both with a settled and stable base from which to go to work and access services and facilities. Although Hristo's nephew is already working, he is not yet an adult. It would be in his best interests for the present arrangement to continue and for him to have a settled home. Whilst it would seem that, in the event that they are evicted from the site, the nephew could return to live with his parents, the same does not apply to Hristo. Since he does not have any particular vulnerabilities, he is unlikely to be a priority for the Council to re-house. There are financial constraints that would make it more difficult for him to find suitable alternative accommodation in the area. The loss of their shared home would represent a very serious interference with their rights but that interference would not outweigh the harm to the wider public interest. Given a reasonable period for compliance with the notice, the interference would be necessary and proportionate.

319. Emilia Nosal is the occupant of Plot 23, New Acres. She lives there with her two children Julia, aged four years and Victor, aged three years. She also has her son 19 year old son, Piotr, temporarily living with them on the plot. She moved onto the site in January 2016 from Poland. She works as a cleaner and claims child benefit. She has also been to the Council to try and claim benefits to help with her rent. She has looked for other places to live but has found other private accommodation in the area to be too expensive and those that are affordable do not accept benefit payments. The family are all healthy and are registered with the New Wokingham Road Surgery. Julia goes to school at the local St Sebastian's and she would like Victor to go there as well when he is old enough. They are on the Council's waiting list for housing in Wokingham. If they have to move from New Acres they would have nowhere else to go and she anticipates them being homeless. She has lost her home in Poland and her parents have died.

320. In my assessment, the site provides a stable and suitable base from which this family can access services and facilities. Julia already attends a school very near to the site. The best interests of the children would be served by them retaining a settled base from which to enjoy stability in their education and home life. The site currently provides them with a suitable and stable home. There are obvious financial limits to what they could afford to pay for accommodation and that would make it difficult for them to find suitable, alternative accommodation in the area. They do not have any particular health issues. Since young children are involved, they likely to be given greater priority for housing through the Council, although that remains to be assessed on an individual basis. Overall, there would very serious interference with the rights of this vulnerable family. However, balancing the conflicting interests, that interference would not outweigh the harm to the wider public interest. I

conclude that, subject to the notice compliance period being reasonable, the restriction of their private rights in pursuit of the legitimate aim of restricting land use in the public interest would be necessary and proportionate.

321. Mariusz Gamza is the occupant of Plot 23, New Acres. He is the ex-husband of Emilia Nosal. No details regarding his personal circumstances were provided to the Inquiry.

322. In my assessment, the loss of his home would represent a serious interference with his rights. In the absence of further details regarding his personal situation, I find that such interference would be outweighed by the harm to the wider public interest. Given a reasonable period within which to comply with the notice, the interference would be necessary and proportionate.

323. Galya and Venelin Marinov occupy Plot 25, New Acres. They have two children living there with them, namely, Vladislav, aged seven years and Svetelena, aged two years. They moved to the UK from Bulgaria. Galya has been living at the site since January 2016. Her husband moved there in October 2015. Her husband works as a Uber taxi driver and they are not in receipt of benefits. They are all healthy and registered with the New Wokingham Road Surgery. Vladislav goes to Crowthorne Junior School and the family hope to send Svetelena there when she is old enough. They currently pay about £500 per month to live on the site. They have looked for another property but the rent would be higher. A two bedroom flat or house would be about double what they now pay. They have nowhere else to live and anticipate being homeless, if they have to move off the site.

324. In my assessment, their home at New Acres provides them with a stable base from which to access facilities and services, including health and education. The eldest child attends a local school. They do not have any particular health issues that might add to their vulnerability. It would be in the best interests of the children for the family to continue to enjoy the current stability in education and health services and home life that the site provides. There are affordability issues that are likely to make it more difficult for them to find suitable alternative accommodation in the area. Since they have dependent children they are likely to be a higher priority for the Council in terms of re-housing. Even so, the Council's duties in that respect will ultimately be assessed on an individual basis. There would be a very serious interference in the rights of this young family, if they had to leave the site. Nonetheless, the identified harm to the proper planning of the area must be balanced against the interests of this family. I do not consider the upholding of the notice with a reasonable compliance period would have an excessive or disproportionate effect upon them. That interference in pursuit of the legitimate aim of regulating land use in the public interests would be necessary and proportionate.

Overall conclusions

325. The appeal developments would be in conflict with Development Plan policies. The schemes would not represent a sustainable form of development when considered against the policies of the Framework as a whole. Although a primary consideration, the best interests of the children living on the site are a factor to which I attribute only moderate weight when considered in the context of this case. The consideration of human rights and the best interests of the children in conjunction with other benefits are strongly outweighed by

the harm identified. I conclude that the interference with the private rights of residents that the refusal of planning permission and dismissal of the appeals would entail would be proportionate and necessary and strike a fair balance. That conclusion applies to not only the grant of a permanent but also to a temporary and/or personal permission. The appeals on ground (a) must therefore fail.

The appeals on ground (f)

326. On ground (f), it is necessary to first establish what it is the Council is seeking to achieve by the notice. The reasons for issuing the notices include reference to Development Plan policy. It is clear from considering what is said in paragraphs 3, 4 and 5 of the notices, read as a whole, that the remedial requirements follow from sub-paragraph (a) of s.173(4) of the 1990 Act. The notices are directed at remedying the breach of planning control and what must be considered is whether the requirements exceed what is necessary to achieve that objective.

327. The Appellants assert that there is an extent of hardstanding and fencing that existed prior to the appeal development taking place that should not be enforced against. The hardstanding is identified on a plan[32] attached as Appendix A.19 to Mr Green's proof of evidence update. That area of hardstanding and the relevant section of fence fall entirely within the New Acres site.

328. The Council does not accept that the hardstanding was present before the development the subject of the notice took place. It submits that the hardstanding was constructed for the purpose of and is integral to the alleged breach of planning control and it should be removed in accordance with *Murfitt v SSE [1980] JPL 598.*

329. However, I am unable to agree with the Council's interpretation of the aerial photographs insofar as the hardstanding is concerned. I consider that the July 2005 photograph shows clear evidence of a pre-existing hardstanding on the part of the New Acres site identified by the Appellants. I am satisfied, on the balance of probabilities, that part of the hardstanding was not constructed solely for the purposes of facilitating the unauthorised change of use. It would therefore be excessive for the notice to require that part of the hardstanding to be removed and covered with topsoil and seeded with grass in accordance with requirement 5 (iii), as it did not represent the condition of the land before the development the subject of the New Acres notice took place.

330. The Council accepts that part of the fencing which would have been present at the southern boundary of the lawful New Acres site should be allowed to remain. The Appellant identified the relevant section of the fence at the Inquiry and it is shown on the Topographic Survey Overlay.[33] Likewise, it would be excessive to require the removal of that part of the fencing and requirement 5 (iv) of the New Acres notice will be varied to exclude its application to it.

331. I conclude that the requirements of the Pineridge notice do no more than is necessary to remedy the breach of planning control and, therefore, are not excessive. However, as indicated above, the requirements of the New Acres

[32] Plan reference 09_276D_016
[33] Plan reference 09_276D_016

notice are excessive in two respects and will be varied to reflect this. Since the variation of the terms of the notice in this way would only serve to reduce its scope, I am satisfied that no injustice would be caused to the Appellant. The appeal on ground (f) in respect of the New Acres site succeeds to this limited extent. The appeal fails on ground (f) in respect of the Pineridge site.

The appeal on ground (g)

332. On ground (g), the Appellants propose that the compliance periods should be extended from 9 months to two years to give current site occupants time to seek suitable, alternative accommodation.

333. The landowners, Norwood Schools Limited, request an extension of the compliance period to 18 months. They submit that given the activities that would need to be carried out, the nine month compliance period would be insufficient. This could result in them potentially facing criminal liability which, as a charity, could have serious consequences. Norwood also draw attention to their limited resources, the legal process that might be necessary to evict current occupiers and the time required to undertake the necessary steps set out in the notices once the appeal sites have been vacated.

334. The Council opposes any extension of the compliance periods. The tenants at the appeal sites occupy the mobile homes under assured shorthold tenancies and are subject to a one month notice period. Those appearing at the Inquiry have confirmed that they are aware of the enforcement notices and appeals, so have time to make future arrangements. The Council is confident that it would be able to deal with any approach made by current occupants of the appeal sites for housing to be provided by it on the basis of being made homeless within the nine month period set down in the notices.

335. In relation to the submissions made by Norwood, the Council indicates that it would insist on full compliance with the requirements of the notice from the Appellants and that it would use its full range of powers to ensure that compliance was achieved. The Council also draws attention to its power to under-enforce and indicates that it would take a reasonable approach to ensuring compliance, as against Norwood, should that prove to be necessary.

336. However, the approach that the Council has indicated that it would take in the pursuit of enforcement action against Norwood, in the event of the notices being upheld, is not a matter that is secured by any undertaking to that effect. Section 173A of the 1990 Act gives power to the local planning authority to extend the compliance period after the notice has taken effect. Nonetheless, the exercise of that power is a matter for the Council's discretion.

337. Whilst the physical task of ceasing the use and removing the necessary ancillary structures, and hardstanding from the site could be undertaken within the proposed timescale, the site occupants face the prospect of finding somewhere else to live. I consider that they were entitled to await the outcome of these appeals before making alternative arrangements in compliance with the notices. Although the Council has indicated that it would provide assistance in accordance with its duties under the relevant Housing Act, the extent of that assistance falls to be assessed on an individual basis. I believe that the task of finding suitable alternative accommodation is likely to take far longer than is anticipated by the Council. Given the personal circumstances and accommodation needs of the current site occupants, I

consider that it would be unrealistic to expect them all to be able to find suitable, affordable, alternative accommodation within the compliance period set out in the notices.

338. The extension of the time for compliance would help to alleviate some of the inevitable stress associated with the process of residents seeking suitable new homes. There is, of course, no guarantee that such alternative accommodation would be found for all occupants within a given timescale, although it is highly likely that that would be achieved given a reasonable period of time. The interests of the site occupants must also be balanced against the harm which I have identified. I consider that the period for compliance with the notices should, exceptionally, be extended to 18 months to give them further time within which to seek appropriate accommodation and this would not have a disproportionate impact upon them. Whilst their challenging personal situations must be recognised and consideration given to the best interests of the children living on the sites, I do not believe that any greater extension of the compliance periods could be justified.

339. An extension of the compliance periods to 18 months would also provide the landowners with a more reasonable period within which to comply with the notices. Given the legal action that might be necessary before they could begin to comply with the notices and in the light of their charitable status, I consider that an extension of the compliance periods in that way is entirely justified. I conclude that the extension of the compliance periods would be a proportionate response that strikes a fair balance between the competing interests of the wider public interest and the individuals in this case. The appeals on ground (g) succeed to this limited extent.

Formal Conclusions

Appeal A

340. For the reasons given above and having taken account of all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Appeal B

341. For the reasons given above and having taken account of all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

Formal Decisions

Appeal A, Notice A Ref: APP/X0360/C/15/3141001

342. The enforcement notice is varied by deleting from the time for compliance set out in paragraph 6 of the notice the word "Nine" and substituting therefor the word "Eighteen". Subject to these variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/X0360/C/15/3141000

343. The enforcement notice is corrected by attaching to the notice the plan attached to this decision marked "Plan No 3" and varied by inserting in paragraph 5 (iii) after the word "land" the words "except from that part of the land shown hatched black on Plan No 3 and" and by inserting after the word "cover" the words "the land from which the hardstanding has been broken up and removed"; by inserting in paragraph 5 (iv) after the word "Land" the words "except that part of the fencing along the northern boundary shown as a broken black line and identified as "Ground F Fence" on Plan No 3 and by deleting from the time for compliance set out in paragraph 6 of the notice the word "Nine" and substituting therefor the word "Eighteen". Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr Michael Rudd of Counsel

He called:

Felix Cash Senior
Ezra Louden-Barratnew
Rebecca Jane Hawksley
Paul Blackett
Leanne Lane
Daniel Ager
Carol Ann Winton
Marilyn Brown
Wendy MacNeil
Debra Wilkins
Steven Parker
Hristo Petkov
Simon Lewington
Emilia Nosal
Malgorzata Lechonczak
Andrew Scott
Rafal Maka
Galya Marinova
Natalie Peacock
Ruth Reed
Robert Sargent
Matthew Green

FOR THE LOCAL PLANNING AUTHORITY:

Mr Edmund Robb of Counsel

He called:

Chris Hannington
Boniface Ngu
Ian Bellinger
Justin Gardener
Nick Chancellor
Emily Circuit
Chris Howard
David Smith
Andy Glencross
Louise Strongitharm
Malcolm Kempton
Jason Varley

INTERESTED PERSONS:

Katherine Barnes of Counsel on behalf of Norwood Schools Limited

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Attendance Lists
2 Copy letters sent by the Council notifying local people of the Inquiry and circulation list
3 Copy agreement under s111 Local Government Act 1972 relating to the Appeal A site.
4 Copy agreement under s111 Local Government Act 1972 relating to the Appeal B site
5 Copy agreement under s106 of the Town and Country Planning Act 1990 relating to the Appeal A site
6 Copy agreement under s106 of the Town and Country Planning Act 1990 relating to the Appeal B site.
7 Statement of Common Ground – Appeals A and B
8 Statement of Common Ground – Appeals A and B – Housing Land Supply
9 Housing Benefit claim form for Ezra Louden-Barratnew dated 2008
10 Copy e-mail dated 22 June 2016 relating to the Housing Benefit claim of Ezra Louden-Barratnew
11 Copy e-mail dated 29 September 2016 from Reading Borough Council relating to Ezra Louden-Barratnew
12 Copy wildlife survey relating to land to east and west of Sandhurst Road dated 2002
13 Copy letter dated 5 December 2014 sent by the Environment Agency to Green Planning Solutions LLP
14 Curriculum Vitae of Bob Sargent
15 Environment Agency publication – 'Living on the edge'
16 Copy judgment Bloor Homes East Midlands Ltd v SSCLG and Hinckley and Bosworth Borough Council
17 Copy appeal decision dated 25 October 2016 ref APP/H3510/W/15/3139292
18 Green Planning Studios – Viability Assessment Table
19 Copy e-mail dated 1 March 2017 sent by Tom Jones of Green Planning Studios to Richard Vause of the Planning Inspectorate.
20 Copy e-mail correspondence between 2 September 2016 and 16 September 2016 between Tom Jones and the Planning Inspectorate
21 Google search result JNCC
22 Google search result JNCC UK BAP priority species and habitats
Copy e-mail correspondence dated 14 and 15 March 2017
23 between Jason Varley and Trina Froud
24 Copy e-mail correspondence dated 6 and 8 March 2017 between Simon Boakes and Emily Circuit
25 Copy e-mail correspondence dated 6, 7 and 8 March 2017 between Simon Boakes and Emily Circuit
26 Response to Land west of Park Lane appeal decision submitted by the Council
27 Housing Land Supply Update submitted by the Council

28 Appeal decision ref APP/X0360/W/15/3130829 relating to Land west of Park Lane
29 Copy letter sent by Ashley Gray of the Planning Inspectorate to Andrea Kitzberger-Smith
30 Note relating to Council duty to find housing
31 Extract Guidelines for Landscape and Visual Impact Assessment
32 Copy Environment Agency Model Review Report
33 Lists of suggested planning conditions
34 Table detailing occupants of the site and their personal circumstances by plot
35 Witness statement Emilia Nosal
36 Second witness statement Emilia Nosal
37 Witness statement Galya Marinov
38 Witness statement Hristo Petkov
39 Witness statement Simon Lewington
40 Second witness statement Simon Lewington
41 Witness statement Steven Parker
42 Second witness statement Steven Parker
43 Witness statement Malgorzata Lechonczak
44 Witness statement Andrew Scott
45 Second witness statement Andrew Scott
50 Witness statement Rafal Maka
51 Witness statement Marcin Chomontowski
52 Witness statement Brian Bowyer
53 Second witness statement Brian Bowyer
54 Witness statement Tony Coates
55 Witness statement Natalie Peacock
56 Witness statement Deborah Elizabeth Irene Wilkins
57 Witness statement Daniel Reginald Ager
58 Witness statement Marilyn Jean Brown
59 Witness statement Carol Ann Winton
60 Submission on behalf of Norwood Schools Limited
61 Closing submissions on behalf of Wokingham Borough Council
62 Closing submissions on behalf of the Appellants

PLANS SUBMITTED AT THE INQUIRY
A Topographic survey overlay showing position of ground (f) fence
B Plan showing site layout out for 40ft by 20ft caravans
C Plan showing site layout for 60ft by 20ft caravans
D Queen's Brook – existing Flood Map from JFlow [November 2010]
E Queen's Brook – LiDAR data
F Ravenswood Park – Screen snip from Council's Planweb map
G Plan showing footways and bridleways in the locality of the park

PHOTOGRAPHS SUBMITTED AT THE INQUIRY
1 Google Earth Image denoting locations of schools and services
2 Google Earth Image denoting locations of public footpaths

Plan No 3

This is the plan no 3 referred to in my decision dated: 19 July 2017

by Wendy McKay LLB Solicitor (Non-practising)

Land at: New Acres, Nine Mile Ride, Wokingham, Berkshire, RG40 3LZ

Reference: APP/X0360/C/15/3141000