



APPEAL BY BOWBRIDGE HOMES (NANPANTAN) LIMITED

LAND OFF LECONFIELD ROAD, NANPANTAN, LOUHBOROUGH

**IN RELATION TO THE REFUSAL OF PLANNING PERMISSION BY CHARNWOOD
BOROUGH COUNCIL REFERENCE P/20/2199/2**

**OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT WITH
ASSOCIATED INFRASTRUCTURE FOR UP TO 30 DWELLINGS, INCLUDING
DETAIL OF ASSOCIATED POINT OF ACCESS. ALL OTHER MATTERS
(LANDSCAPING, SCALE, LAYOUT AND APPEARANCE) RESERVED**

Proof of Evidence: Mr. Sam Salt MPlan MRTPI

Acting on behalf of Charnwood Borough Council

Planning Inspectorate Reference: APP/X2410/W/22/3304644

Local Planning Authority Reference: P/20/2199/2

February 2023

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1 QUALIFICATIONS AND EXPERIENCE

- 1.1 I am Sam Salt, Associate Director at Heaton Planning Limited (Heatons). Heatons is a planning and design consultancy with an experienced team of planners and ecologists. Heatons has acted on behalf of local planning authorities across the Midlands & Derbyshire regions to assist in public inquiries and in the determination of house holder and minor development proposals.
- 1.2 I graduated from Sheffield Hallam University in 2014 with a Master in Planning (MPlan) degree. I am a Chartered Member of the Royal Town Planning Institute (2017) and have spent almost a decade practicing with a range of private consultancies providing a range of planning services for clients across the United Kingdom including submission of minor and major planning applications, Environmental Statements and written representation appeals.
- 1.3 I was instructed by Charnwood Borough Council in January 2023 to represent the local planning authority at the Inquiry. Heatons (planning and ecology) accepted an instruction to act on behalf of the local planning authority with the agreement that we were able to undertake further assessment work and a site visit in order to draw our own conclusions. The ecology team visited the site as a group in early February 2023, and I visited the site independently on 17th February 2023.
- 1.4 The evidence which I have provided for this appeal is true and is given in accordance with the guidance of my professional institution of the Royal Town Planning Institution. I confirm that the opinions given are my true and professional opinion.

2 SCOPE OF MY EVIDENCE

- 2.1 My evidence considers the grounds on which planning permission has been refused. It summarises and weighs the factors that need to be considered in accordance with the adopted Development Plan, National Planning Policy Framework and other material considerations.
- 2.2 A draft Statement of Common Ground has been agreed with the Council and I therefore rely on the provisional agreement to matters which are not currently disputed between the parties.

- 2.3 My Proof of Evidence is structured as follows:
- Section 3 The appeal site and its surroundings
 - Section 4 The appeal proposals
 - Section 5 The planning history relevant to the appeal
 - Section 6 Planning policies relevant to the appeal
 - Section 7 The case for the Local Planning Authority
 - Section 8 Conclusion

3 THE APPEAL SITE AND SURROUNDINGS

- 3.1 A full description of the Appeal Site and its surroundings are set out in Section 3 of the Statement of Common Ground (SoCG). Further details on the site context are provided in the Planning Statement (CD.1.8), the Design and Access Statement (CD.1.9) and the Plans Committee Report (CD.3.1).

4 THE APPEAL PROPOSALS

- 4.1 The appeal site is situated off Leconfield Road, Nanpantan, and measures approximately 1.69 hectares in size. The appeal relates to an outline planning application for the erection of up to 30 dwellings with all matters reserved (appearance, landscaping, layout, scale) except for access.
- 4.2 The Application (reference P/20/2199/2) was accompanied by a Site Layout to show an illustration of how the development might be accommodated on site and includes indicative areas of open space and surface water drainage attenuation.
- 4.3 The Application was refused by Members of the Council's Plans Committee on 24th February 2022 against the officer recommendation of approval, which was subject to a series of conditions and a legal agreement. The Minutes of the Meeting are included as Core Document CD.3.3 and the Decision Notice which was issued on 2nd March 2022 is included as Core Document CD.3.4.
- 4.4 The reasons for refusal are:
1. The proposed development would fail to protect and enhance the unique landscape character of the site and surrounding area. The development would be contrary to the requirements of Core Strategy Policy CS11 and National Planning Policy Framework paragraph 174 and the identified harm would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole.

2. The proposed development would result in significant adverse biodiversity impacts that would be contrary to the provisions of Core Strategy Policy CS13 and National Planning Policy Framework paragraphs 174 and 180.

5 PLANNING HISTORY RELEVANT TO THE APPEAL

5.1 The planning history of the appeal site is set out the Plans Committee Report at Page 7. The Site has been the subject of the following planning applications:

- P/88/2599/2 – Outline Planning Permission for Residential Development – Refused – 15th December 1988
 - Reason 1: Substantial detriment to the landscape character and visual amenity of the area;
 - Reason 2: Loss of privacy to existing neighbouring properties; and,
 - Reason 3: Impact on the local highway network
- P/07/1974/2 – Formation of an agricultural access – Granted with Conditions – 26th October 2007
 - Concerns raised by Councillors regarding the access being a preamble to a planning application for housing;
 - Concerns raised from ecology regarding the recorded bat roost along Leconfield Road.

6 PLANNING POLICIES RELEVANT TO THE APPEAL

6.1 Section 38(6) Planning and Compulsory Purchase Act 2004 states that determination must be made in accordance with the Development Plan unless material considerations indicate otherwise.

The Development Plan

6.2 The Development Plan for Charnwood Borough Council comprises:

- The Charnwood Local Plan 2011 to 2028 Core Strategy (adopted 9th November 2015), (The Core Strategy).
- Saved Policies of the Borough of Charnwood Local Plan 1991-2006 (adopted 12th January 2004), where these have not been superseded by the document listed directly below, (The Local Plan).

Charnwood Local Plan Core Strategy 2011 to 2028 (November 2015)

6.3 The following policies are of relevance to the appeal. The full wording of each policy is not repeated here.

- Policy CS1 – Development Strategy
- Policy CS2 – High Quality Design.
- Policy CS3 – Strategic Housing Needs
- Policy CS11 – Landscape and Countryside
- Policy CS13 – Biodiversity and Geodiversity
- Policy CS14 – Heritage
- Policy CS16 – Sustainable Construction and Energy
- Policy CS17 – Sustainable Travel
- Policy CS18 – The Local and Strategic Road Network
- Policy CS24 – Delivering Infrastructure
- Policy CS25 – Presumption in favour of sustainable development

The Borough of Charnwood Local Plan (2004) (saved policies 2007)

- Policy ST/2 – Limits to Development
- Policy EV/1 – Design
- Policy TR/18 – Parking in New Development

Other Material Considerations

National Planning Policy Framework (2021)

6.4 The NPPF sets out the Government's view of what sustainable development means. It is a material consideration in planning decisions and contains a presumption in favour of sustainable development.

6.5 Paragraph 11 confirms that both plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 6.6 Footnote 7 to Paragraph 11(d)(i) confirms that the policies referred to are those in the Framework, rather than those in the development plan, relating to, but not limited to, irreplaceable habitats.
- 6.7 Footnote 8 to Paragraph 11(d) includes applications for the provision of housing where local planning authorities cannot demonstrate a five year supply of deliverable housing sites.
- 6.8 Paragraph 174 requires that planning policies and decisions should contribute to and enhance the natural and local environment by (amongst further criteria):
- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
 - b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits.
- 6.9 Paragraph 180 - When determining planning applications, local planning authorities should apply the following principles:
- a) If significant harm to biodiversity resulting 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;
 - b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;
 - c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and,
 - d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design,

especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

National Planning Practice Guidance (PPG)

6.10 The National Planning Practice Guidance (PPG) reinforces and provides additional guidance on the policy requirements of the Framework and provides extensive guidance on design and other planning objectives that can be achieved through getting good design.

6.11 PPG provides guidance on the deliverability of housing sites in the context of plan making and decision taking, expanding on Annex 2 of the NPPF. The definition contained within PPG¹ sets out the evidence which would be required for sites to be considered deliverable.

The Emerging Development Plan

6.12 As highlighted within the Council's SoC (CD.4.3.1), the appeal site currently sits within the settlement limits of Loughborough (saved Policy ST/2) where built development will be confined to either allocated sites or land within the defined Limits to Development. This is subject to the individual merits of each planning application having regard to all other policies of the Local Plan.

6.13 The site was included within the Emerging Local Plan (CD.6.3) as a potential housing allocation but was subsequently removed due to its biodiversity value (CD.5.3.5). The site is also removed from the area covered by the Limits to Development and is therefore covered by Countryside policies (therefore emerging policies C1 and DS1 are relevant).

6.14 At the Examination hearing sessions in February 2023, the full scope of the submitted Local Plan was discussed (Matters 1 to 9). The next stage in the adoption process is the receipt of the Inspectors letter in which the Council anticipate the Inspector setting out what modifications are needed to ensure the plan is found sound, and that subject to that letter the Council will proceed to main modifications stage. Adoption of the Local Plan is anticipated in September 2023.

6.15 In relation to emerging Policy DS1, during the hearing sessions in October 2022 in relation to Matter 10, and the hearing sessions in February 2023, the Council

¹ Planning Practice Guidance Paragraph: 007 Reference ID: 68-007-20190722

presented its justification for maintaining the spatial strategy and site allocations as an approach that meets local needs and the modest apportionment of housing and employment form Leicester City. Emerging Policy C1 (Countryside) can be given moderate weight in the determination of the appeal proposal as the plan is at an advanced stage and Policy C1 is considered to be consistent with NPPF Paragraphs 11, 16, 20, 23, 80, 84 and 174.

6.16 The emerging Local Plan has been through Examination in Public and the Schedule of Proposed Main Modifications (February 2023) (CD.6.9) suggest changes to emerging Policy EV9 which seeks to protect all existing open space, whether such space is identified on the Policies Map. Emerging Policy EV9 was considered at the Local Plan examination hearing sessions in June 2022 and a small policy wording change was agreed (CD.6.4).

6.17 It is considered that moderate weight can be given to Policy EV9 as it is now at an advanced stage and is consistent with the NPPF Paragraphs 84, 93, 98 and 99.

6.18 Whilst the development does not conflict with saved Policy ST/2 of the current adopted Local Plan, whether the development of the site itself would constitute “sustainable” is a question dependent on the assessment of the proposal based on the technical matters below.

7 THE CASE FOR THE LOCAL PLANNING AUTHORITY

7.1 As detailed in the Statement of Common Ground, the reasons for refusal do not relate to the overall principle of development on the site, open space provision, heritage impacts, archaeological impacts, residential amenity, highways impact, loss of agricultural land, ground conditions and contamination, and air quality.

The Key Issues

7.2 The main materials consideration in the determination of this appeal are:

- 1) Impact on landscape character (Reason for Refusal #1)
- 2) Biodiversity impacts (Reason for Refusal #2)
- 3) Whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

Reason for Refusal 1: The proposed development would fail to protect and enhance the unique landscape character of the site and surrounding area. The development would be contrary to the requirements of Core Strategy Policy CS11 and National Planning Policy Framework paragraph 174 and the identified harm would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole.

- 7.3 The reason for refusal identified by the Borough Council relates to the identified impact of the development on the landscape character and surrounding area. I would refer to the Council's Statement of Case for a detailed breakdown of their findings.
- 7.4 I would refer the Inspector to the Landscape Proof of Evidence prepared by Mr Simon Higson of Felstone Consulting which deals with the issue. In determining the level of impact on landscape character and visual impact, the Proof of Evidence provides a comprehensive assessment of the impact and I rely entirely on the evidence presented by Mr Higson.
- 7.5 In summary of this evidence, Mr Higson concludes the following:
- Major/moderate adverse visual effects for local residents with direct views onto the site and other users of Leconfield Road,
 - Moderate adverse effects for other residents within and around Leconfield Road,
 - Moderate/minor effects for road users
 - Minor adverse effects for recreational users of nearby Public Right of Way Network;
 - The potential influence of landscape treatments is not anticipated to significantly reduce the overriding loss of an open grassland field and introduction of permanent built form regardless of scale.
- 7.6 Policy CS11 of the adopted Core Strategy (CD.6.1) is one of the key policies in considering the appeal proposal. The policy sets out certain criteria to be met in order to preserve the landscape character and countryside. The policy in itself does not control the location of development. Policy CS11 is not out of date and is considered to attract significant weight. Further, conflict is also found with emerging Policy EV1 which can be afforded moderate weight.
- 7.7 Policy CS11 requires "new developments to protect landscape character and to reinforce sense of place and local distinctiveness by taking account of relevant local Landscape Character Assessments." It is considered that this policy is consistent with the aims of the National Planning Policy Framework (Paragraph

174) which requires planning decisions to contribute to and enhance (my emphasis) the natural and local environment by protecting and enhancing valued landscapes. Further, a comparable objective is set out in emerging Local Plan Policy EV1 (CD.6.3) as proposed to be modified in the Schedule of Main Modifications (CD.6.9). Emerging Policy EV1 was considered at the Local Plan examination hearing sessions in June 2022 and a small policy wording change was agreed. It is considered that moderate weight can be given to this policy as it is at an advanced stage and is consistent with the NPPF Paragraphs 20 and 130.

- 7.8 The evidence presented by Mr Higson, alongside the Council's Statement of Case (CD.4.2.1) demonstrates that, in the context of the identified landscape character and visual impact and harm, the Appeal proposal would result in unavoidable harm to the natural and local environment and cannot be seen to contribute to or enhance its intrinsic character and beauty and as such, is contrary to Policy CS11 and NPPF, Para 174(b) and the guidance contained within the PPG.
- 7.9 In comparison, the Council's Statement of Case (CD.4.2.1) at Paragraph 7.25 gives the view that the LVIA (CD.2.12) submitted with the outline planning application "downplays the impact of constructing dwellings on this elevated landform."
- 7.10 Whilst the proposal would be adjacent to existing built form, the specific characteristics of the site and its relationship with the ancient woodland to the west would not be retained or enhanced, as required by Policy CS11 and NPPF Para. 174.
- 7.11 The Landscape Character Assessment shows the site to be within the Charnwood Forest Landscape Character Area, the characteristics of the site are set out in the Council's Statement of Case (CD.4.3.1) and Proof of Evidence (CD.4.3.3) provided by Felstone Consulting. There are several such characteristics present on this site, including:
- i) A distinct landform;
 - ii) Strong character associated with the ancient woodland
 - iii) Transitional pastures from grassland to woodland;
 - iv) Visually distinctive skyline views across Loughborough;
 - v) Semi-natural habitat features;
 - vi) A strong historical association with the Grade II listed Burleigh Farmhouse.

7.12 Whilst it is appreciated that landscaping and layout are reserved, the requirement for a 15m buffer from the edge of the ancient woodland, a suitable 30m buffer from the established badger sett, and the relocation of the open space on site outside of the green corridor buffer and at least 20m away from the nearest dwelling will provide the applicant with a challenge in reaching its stated aim of 30 dwellings on site. The Parameters Plan (CD.2.5) indicates the north-east corner, the lowest point of the site, is reserved for attenuation ponds which adds further layout constraints.

7.13 In taking all these factors into account, the developable area of the site becomes significantly reduced which adds further limitations to design scenarios that could be presented at Reserved Matters stage. Based on the above, an Outline planning permission for up to 30 dwellings will most likely result in a site which appears cramped.

7.14 It is therefore considered that the appeal site would be contrary to adopted Policy CS11, NPPF Paragraph 174(b) and emerging Policy EV1 as the proposal would not preserve or enhance the landscape character of the area.

Reason for Refusal 2: The proposed development would result in significant adverse biodiversity impacts that would be contrary to the provisions of Core Strategy Policy CS13 and National Planning Policy Framework paragraphs 174 and 180.

7.15 The Council's Statement of Case (CD.4.3.1) notes that the two ecological appraisals (CD.2.16 & CD.2.19) submitted to support the application were both significantly flawed for reasons set out in Paragraphs 7.42 to 7.47.

7.16 An additional Biodiversity Impact Assessment was submitted (CD2.21) which was conducted using the Warwickshire County Council Metric V19.1 and shows a net loss of 69%.

7.17 The development would lead to an adverse ecological impact through the loss of an area of acid grassland which represents a local priority habitat which is both characteristic of and rare within Charnwood Forest (CD.5.2.13). Such loss is considered to be significant. Beyond the direct impacts, the Council found an indirect impact on Burleigh Ancient Woodland through additional recreational uses.

7.18 The second reason for refusal is addressed in the Proof of Evidence prepared by Ms Walsh of Heatons to assist the Inspector in the consideration of this matter.

7.19 I summarise this Proof of Evidence (CD.4.3.4) below:

- i) The Appellants ecological assessment does not provide sufficient information for the local planning authority to determine the likely scale of impact to Burleigh Ancient Woodland;
- ii) Loss of priority (semi natural) habitats
- iii) Loss of semi-natural habitat adjacent to Burleigh Wood Ancient Woodland;
- iv) Loss of broadleaved woodland;
- v) Adverse impacts upon irreplaceable habitat;
- vi) Inadequacy of proposed ancient woodland buffer;
- vii) Underestimation of recreational impacts;
- viii) Impact of increased pet ownership on the woodland;
- ix) Noise impacts;
- x) Hydrological impacts;
- xi) Air pollution impacts;
- xii) Inconsistencies in ecological assessment and calculation of biodiversity net gain (BNG); and,
- xiii) Impacts upon protected species (badgers and bats).

7.20 In exercising independent professional judgment, I am entitled to wholly rely on the findings of the assessments of both the Council and the Proof of Evidence by Ms Walsh.

7.21 In addition, consideration has been given to the site within the emerging Draft Plan, following a landscape sensitivity study assessment of SHLAA sites. The biodiversity study (evidence base) confirmed that the site has significant ecological constraints. Due to the progression of the emerging Local Plan (and evidence base) emerging Policy EV6 can be afforded moderate weight.

7.22 As noted above, Paragraph 11d of the NPPF applies and the tilted balance is engaged, and planning permission should be granted unless (i) the application of policies in this Framework that protect areas of particular importance provides a clear reason for refusing the development proposed. Footnote 7 confirms that the policies referred to relate to, inter alia, irreplaceable habitats.

7.23 In my opinion, given the above factors, even with a Construction Environment Management Plan (CEMP), Biodiversity Impact Assessment (BIA), and the policy compliant minimum amount of open space secured by conditions, the development would result in an encroachment into the standing advice buffer

zone (Forestry England and Natural England Standing Advice, 2022) (CD.5.3.1) and would result in a deterioration of the biodiversity value of the site, in particular the detrimental impact on irreplaceable habitats. Further, a CEMP would only mitigate against ecological impacts during the construction phase, and the scope of the document would not cover any recreational impact once the development is occupied.

7.24 Whilst the Appellants have indicated an intention to incorporate biodiversity offsetting for the appeal site, where irreplaceable habitats deteriorate because of development, they by definition cannot be offset, unless wholly exceptional circumstances are demonstrated².

7.25 The Framework, at Paragraph 180(c), confirms that development resulting in the loss of irreplaceable habitats should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.

7.26 Footnote 63 of the NPPF indicate types of exceptional examples and requires that public benefits should clearly outweigh the loss or deterioration of habitat.

7.27 The appeal proposal does not constitute exceptional reasons nor does the application package demonstrate a suitable compensation strategy. A strong and clear conflict is found with adopted Policy CS13 and Paragraph 174 and 180 of the NPPF. Further, conflict is found with the emerging Local Plan Policy EV6 seeks to conserve, restore and enhance the natural environment.

8 PLANNING BALANCE

8.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

8.2 The starting point for decision taking is the local development plan which includes the adopted Core Strategy (CD.6.1) and saved policies of the Local Plan (CD.6.2).

8.3 I have set out below an assessment of each key material consideration followed by a conclusion of whether the benefits outweigh any adverse impacts when taken as a whole.

² Planning Practice Guidance Paragraph: 033 Reference ID: 8-033-20190721

Social Benefits of the Appeal Scheme

- 8.4 The Appellant makes reference to other recent appeals within the Borough for residential development which have been considered substantial benefits (CD.4.2.1). Whilst I appreciate there should be a degree of consistency in decision making, there are fundamental differences, and each site must be determined on its own merits.
- 8.5 At the time of writing, the local planning authority cannot demonstrate a five-year housing land supply (3.04 years as of April 2022). Therefore, Paragraph 11(d) of the National Planning Policy Framework is engaged and a tilted balance is applied in favour of granting planning permission unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 8.6 Footnote 7 follows on from Paragraph 11(d)(i) and states that the policies referred to are those in the Framework which relate to, inter alia, irreplaceable habitats (as defined by the NPPF below).
- 8.7 The development would provide up to 30 homes of both market and affordable tenures. Whilst there is no dispute as to the extent of the housing shortfall, based on this position, the development as proposed is expected to deliver a best-case scenario of 1.2% towards its remedy (a Reserved Matters submission may be for fewer dwellings).
- 8.8 Further, the local planning authority are now in advanced stages in the adoption of the new Local Plan (whereas in the determination of the appeals referenced above, the new Local Plan was afforded limited weight).
- 8.9 The current shortfall is likely to be addressed in the near future (within the next 6 months) following the adoption of the emerging Local Plan which has been through Examination in Public and is at the Main Modifications stage. The new Local Plan is expected to be adopted in September 2023 as per the latest Local Development Scheme (CD.6.10).

- 8.10 Such a small housing contribution is considered to be a **modest** benefit from the delivery of both market and affordable homes on the site.
- 8.11 There has been substantial third-party comment on the loss of open space. Whilst this is not a reason for refusal, the NPPF defines 'open space' as all open space of public value and includes land that can act as a visual amenity. The matter of whether the site is privately owned is not for consideration.
- 8.12 The Parameters Plan (CD.2.5) includes areas of publicly accessible open space and the amount is secured by condition (CD.4.1.1). With this in mind, I also acknowledge the comments made by the CBC Open Spaces Team (CD.4.3.1) contained within the Council's Statement of Case, which requires the POS to be away from the ancient woodland buffer zone and away from residential plots to avoid noise disturbances.
- 8.13 In light of the above, this is considered to constitute a social benefit of **limited weight**.

Economic Benefits of the Appeal Scheme

- 8.14 The proposal would provide some economic benefit in terms of construction, local spend, council tax and home bonus. The economic benefit arising from the construction of the development is short term. The spend of council tax from future residents is cost neutral. Other benefits, from the future of residents is limited to the occupancy of up to 30 dwellings. These economic benefits are expected from the development of any site and are not unique to the appeal site. Such benefits are afforded to any site subject to a housing development and therefore, the economic benefit of the appeal site is afforded **limited weight**.
- 8.15 The benefits are standard for all development proposals for housing and are not unique to the development of this site. Such benefits are afforded **limited weight**.

Environmental Benefits of the Appeal Proposal

- 8.16 It is agreed that the site is in a sustainable location with good access to local public transport links, providing an alternative option to future residents other than the private car. Although it is disputed whether the bus services provide a realistic alternative to the public car for most journeys. A matter to be considered further by the Inspector.
- 8.17 This benefit is considered to constitute **moderate weight**.

8.18 The Appellant claims that the appeal proposals would result in the delivery of biodiversity net gains (BNG) more than the required 10% being introduced by the Environment Bill. However, as for reasons outlined above, the deterioration of irreplaceable habitat has not been fed into the Appellants metric and discredits any claim that the development would deliver a biodiversity net gain. As such, this is given **no weight** at this time.

Harms Identified by the Appeal Scheme

8.19 NPPF Paragraph 11(d) states that planning permission should be granted unless the requirements of either alternative is met, if either (i) or (ii) is satisfied, the presumption in favour of sustainable development does not apply. Therefore, for reasons set out above, Footnote 7 is engaged, and the tilted balance is not applied.³

8.20 Paragraph 180(c), forming the core of Reason for Refusal 2, confirms that development resulting in the loss or deterioration of irreplaceable habitats should be refused unless there are wholly exceptional reasons.

8.21 The NPPF, at Annex 2, defines irreplaceable habitats as habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, considering their age, uniqueness, species diversity or rarity. This includes the deterioration of ancient woodland, ancient and veteran trees.

8.22 Having Paragraph 180(c) in mind, Footnote 7 is engaged, as the deterioration of an irreplaceable habitat provides a clear reason for refusing the development proposal.

8.23 The loss of a priority habitat, leading to a deterioration of an ancient woodland, is given significant **negative weight** in the balance. As such, conflict is found with adopted Local Plan Policy CS11, Paragraph 180(c) of the NPPF, and emerging Local Plan Policy EV6.

8.24 The appeal site has a distinct landform with a characteristic of natural transition from grassland into woodland. The site is therefore considered to have a strong landscape character associated with the ancient woodland. It is naturally the

³ Monkhill Limited v MHCLG & Waverley Borough Council [2019] EWHC 1993

case that the development would result in the loss of an open greenfield site which results in harm to the landscape character of the area.

- 8.25 Whilst there are viewpoints around the area where the proposed development would not be readily visible, there are others from which the site would be a highly prominent feature, against the backdrop of ancient woodland which would exacerbate the change in character.
- 8.26 With reference to Policy CS11, and NPPF Paragraph 174(b), and emerging Policies EV1 and EV4, it is considered, for the reasons above, that the site would not enhance the natural or local environment. The degree of harm on the intrinsic character and beauty of the site is considered to be permanent and significant which attracts **significant negative weight** in my assessment.
- 8.27 Whilst it is appreciated that landscaping and layout is reserved, for reasons outlined above, there is no substantive evidence to suggest that the site can comfortably accommodate 30 dwellings in an acceptable form.
- 8.28 There are currently no known technical constraints that would preclude the development of the site. Any matters such as flood risk, access and highways remain neutral in the balance and are **not afforded weight** at this stage.

9 CONCLUSION

- 9.1 Since the determination of the application and the preparation of the Council's Statement of Case, the emerging Local Plan has progressed in that the remaining scheduled examination hearing sessions have taken place in February 2023.
- 9.2 The weight that can be attributed to emerging policies has therefore increased and this has been highlighted above.
- 9.3 The Council and the Appellant have agreed minor revisions to the Statement of Common Ground to be submitted alongside the Council's proofs of evidence. The Statement of Common Ground highlights in paragraphs 6.13-6.15 (agreed on 17th November 2022) that the emerging Local Plan is progressing and that the Inspector will be updated on progress during the course of the appeal. This proof of evidence has provided the latest position on the emerging Local Plan policies.

- 9.4 Overall, when assessed against the policies of the local plan and NPPF when taken as a whole, the appeal scheme does not demonstrate **significant** benefits which are unique to the development of the site and the adverse impacts outlined above, demonstrably outweigh any benefits of the proposed scheme.
- 9.5 As noted above, whilst policies of relevance are absent from the reasons for refusal (e.g. relating to heritage and open space) it does not alter the relevance of such policies and the proposal should still be considered against these requirements. The appeal should therefore be dismissed.