



NOTICE OF MEETING

Meeting: Planning Enforcement Sub-Committee
Date and Time: Monday 17 October 2022 10.00 am
Place: Council Chamber
Enquiries to: Committee Services
Members: Blewett, Makepeace-Browne, Oliver and Southern

Joint Chief Executive

CIVIC OFFICES, HARLINGTON WAY
FLEET, HAMPSHIRE GU51 4AE

AGENDA

This Agenda and associated appendices are provided in electronic form only and are published on the Hart District Council website.

Please download all papers through the Modern.Gov app before the meeting.

- **At the start of the meeting, the Lead Officer will confirm the Fire Evacuation Procedure.**
- **The Chairman will announce that this meeting will be recorded and that anyone remaining at the meeting had provided their consent to any such recording.**

- 1 ELECTION OF CHAIRMAN**
- 2 ELECTION OF VICE CHAIRMAN**
- 3 MINUTES OF PREVIOUS MEETING (Pages 3 - 5)**

The Minutes of the meeting held on 1st July 2019 are attached to be confirmed and signed as a correct record.

4 APOLOGIES FOR ABSENCE

To receive any apologies for absence from Members*.

***Note:** Members are asked to email Committee Services in advance of the meeting as soon as they become aware they will be absent.

5 DECLARATIONS OF INTEREST

To declare disclosable pecuniary, and any other, interests*.

***Note:** Members are asked to email Committee Services in advance of the meeting as soon as they become aware they may have an interest to declare.

6 CHAIRMAN'S ANNOUNCEMENTS

7 REVIEW OF PLANNING ENFORCEMENT INVESTIGATIONS IN RELATION TO DEVELOPMENT AT HAWLEY PARK FARM, HAWLEY ROAD, BLACKWATER, CAMBERLEY (Pages 6 - 62)

This report is made to explain the enforcement investigations undertaken in relation to the development at the abovementioned site and is presented at the discretion of the Executive Director of Place.

Members have received extensive copies of communications in relation to the ongoing development at this site from concerned local residents and this report will consolidate and update members on the investigations which have been undertaken and the findings of those investigations.

RECOMMENDATION

The contents of the report are endorsed and noted by the Sub-Committee.

Date of Despatch: Friday, 7 October 2022

PLANNING (ENFORCEMENT) SUB-COMMITTEE

Date and Time: 1 July 2019 at 10 am

Place: Council Chamber, Civic Offices, Fleet

Present:

COUNCILLORS

Blewett, Delaney, Southern, Worlock

Officers:

Emma Whittaker	Planning Manager
Maxine Lewis	Enforcement Team Leader
Sharon Whittaker	Enforcement Officer
Sylvia O'Connor	Enforcement Officer
Tola Otudeko	Shared Legal Services

1 ELECTION OF CHAIRMAN

Councillor Southern was elected as Chairman of the Planning (Enforcement) Sub Committee.

2 ELECTION OF VICE CHAIRMAN

Councillor Blewett was elected as Vice Chairman of the Planning (Enforcement) Sub Committee.

3 MINUTES OF PREVIOUS MEETING

The Minutes of the meeting held on 3 December 2018 were confirmed and signed as a correct record.

4 APOLOGIES FOR ABSENCE

None.

5 CHAIRMAN'S ANNOUNCEMENTS

None.

6 DECLARATIONS OF INTEREST

None declared.

7 UPDATE ON PRIOR APPROVALS INVESTIGATIONS

Members were updated on the ongoing review of prior approval applications in respect of office to residential conversions. Officers verbally corrected an error in the report (“Background” section); the date should be “6th May 2019” rather than “4th July 2019”.

Members discussed:

- That the Article 4 Direction took effect on the 6th May 2019.
- The effect of the Article 4 Direction for future applications for prior approval/permitted development for office to residential conversions.
- That any update will take place once the entire investigation had concluded however if Members would like an update on specific sites they should contact Officers in the meantime.

DECISION

The Planning (Enforcement) Sub-Committee noted the information.

8 LAND AT FORMER CHAPEL BUNGALOW, POTBRIDGE

Members were updated on the current condition of the former Chapel Bungalow site. A short presentation was given where before and after photos were shown of the site.

Members discussed:

- That Natural England were still looking at the “Donkey Paddock” in relation to the complete restoration of the site.
- Members were advised that the clearing of the site had been achieved as a result of cross-departmental and cross-organisation working.
- Members queried whether any trees had been removed on the site and were advised that none of the trees were protected.
- Members were delighted at the outcome but were frustrated that it took so long to get a result.

DECISION

The Planning (Enforcement) Sub-Committee noted the information.

9 APPLICATIONS FOR ENFORCEMENT

The addendum was circulated and the updated information accepted.

The Applications for Enforcement were considered and the decisions made as shown.

ITEM 101 – 19/00076/COU3 – PAYNES COTTAGE, POTBRIDGE, ODIHAM, HOOK, HAMPSHIRE RG291JW

Members received a presentation setting out the alleged breach. The Chair allowed comments submitted by the Agent for the appellant to be read out. Members discussed the following:

- The property was in a countryside location and that the site comprised, amongst other things, of a domestic dwelling, garden, a paddock and stables.
- The proximity of the site to the adjacent Public Right of Way (PROW) was discussed.
- Totters Lane was a narrow, country lane in a rural location.
- The time periods for immunity from enforcement action.
- The suggested timescale for the enforcement notice taking effect were appropriate.
- No application had yet been received for the change of use of the site.

Mr McLean (Chairman of the Potbridge Residents Association) addressed the Committee.

DECISION

That the Planning Manager, following consultation with Shared Legal Services, be authorised to take enforcement action to secure the cessation of the unauthorised use of the site for commercial storage, including parking of commercial vehicles to cease and related paraphernalia to be removed from the site.

ITEM 102 – 17/00256/XPLAN2 – 127 Albert Street, Fleet, Hampshire GU51 3SN

Members received a presentation setting out the background to the site and advising that planning permission had been granted (and implemented) in relation to the layout of the car parking area to the front of the building.

- Members discussed whether there should be a disabled parking bay.

DECISION

That no further action on the case be taken.

The meeting closed at 10:43 am.

PLANNING ENFORCEMENT SUB COMMITTEE

DATE OF MEETING: 17TH OCTOBER 2022

TITLE OF REPORT: REVIEW OF PLANNING ENFORCEMENT INVESTIGATIONS IN RELATION TO DEVELOPMENT AT HAWLEY PARK FARM, HAWLEY ROAD, BLACKWATER, CAMBERLEY

Report of: Executive Director of Place

Cabinet Portfolio: Place

Key Decision No. The recommendations in this report do not relate to a key decision and therefore prior notification on the Forward Plan is not necessary.

Confidentiality Non Exempt

1 PURPOSE OF REPORT

- 1.1 This report is made to explain the enforcement investigations undertaken in relation to the development at the abovementioned site and is presented at the discretion of the Executive Director of Place Services. Members have received extensive copies of communications in relation to the ongoing development at this site from concerned local residents and this report will consolidate and update members on the investigations which have been undertaken and the findings of those investigations.

2 OFFICER RECOMMENDATION

The contents of the report are endorsed and noted by the Sub-Committee.

3 BACKGROUND

- 3.1 Planning permission for development of this land was originally approved in 2014 via application 14/01817/MAJOR (The 2014 major permission). This application was a hybrid planning application consisting of outline application for the development of 126 no dwellings, vehicular access from Hawley Road, secondary access from Fernhill Lane, public open space, landscaping and associated works; change of use of land to a Suitable Accessible Natural Greenspace (SANG). Full details of access, layout and landscaping associated with the residential development to be determined at outline stage. All other matters reserved for later approval.

- 3.2 Alongside this, application 14/02112/MAJOR was approved for Change of existing agricultural grazing land to publicly accessible informal open space,

new vehicle access, car parking, new footpaths, landscaping and associated works (The 2014 SANG permission).

3.3 These applications were subject to a joint legal agreement under S106 of the Planning Act (The 2014 Legal Agreement).

3.4 Reserved Matters in respect of the application were subsequently agreed via 16/01552/REM on 11th November 2016.

3.5 Various applications were then submitted to discharge conditions of the 2014 major permission.

3.6 In 2018 an alternative full planning application was submitted for the erection of 158 dwellings, vehicular access from Hawley Road and the provision of SANG, public open space, landscaping, and associated works under application reference 18/00334/FUL (the 2020 permission).

3.7 This planning permission was refused by planning committee on 4th April 2019. An appeal against this refusal of planning permission was lodged and the appeal was allowed on 2nd March 2020. (The appeal decision). The appeal decision was subject to an alternative Legal Agreement under S106 of the Planning Act. (The 2018 Legal Agreement).

3.8 In his decision, the Planning Inspector imposed 20 separate conditions on the 2020 permission. A copy of the appeal decision is attached at Appendix 1 to this report. The conditions differ from those originally imposed on the 2014 permission.

3.9 Various applications to satisfy the conditions imposed by the Planning Inspector have been submitted and details have been agreed – these details are referenced in more detail below. Along with this a number of Non-Material Minor Amendments to vary or change the detail of some approved plans have also been agreed and in one case refused.

3.10 There is currently one undetermined application in relation to the site of note to the enforcement investigations which is application 22/01475/AMCON (target decision date of 13th December 2022). This application is an application made under Section 73 seeking to amend house types and layout to plots 105 – 127 with consequent amendments to Conditions of the permission.

3.11 Local residents have expressed numerous concerns with the conduct of the developers and have raised a variety of issues which they consider constitute a breach of planning control. Officers have investigated but have found either no breach of planning control has currently occurred, or, considered the matters raised do not warrant further action under the planning acts at this time.

3.12 Although customers have been advised that Enforcement Action is discretionary, the same issues are being repeatedly raised notwithstanding that matters have been reviewed and explanations have been provided to the customers concerned.

- 3.13 The main issues are therefore clarified further for Members' information and avoidance of doubt in the main body of this report.

4 MAIN ISSUES

- 4.1 The Council's Planning Local Enforcement Plan dated January 2016 sets out the Council's approach to planning enforcement. A copy is attached at Appendix 2.

- 4.2 Clearly, there is no duty under the Town and Country Planning Acts to take planning enforcement action as the powers given to local authorities are discretionary. In deciding whether to take enforcement action, the Council must decide whether a breach of planning control has occurred and whether unauthorised development unacceptably affects public amenity, this is reflected in Policy PE1 (d) which states;

"In considering whether it is expedient to start enforcement action, the Council will take account of the policies in the current local plan and all other material considerations including the emerging Local Plan and will assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings which ought to be protected in the public interest.

- 4.3 In this case, customers raised numerous issues associated with the development which can be summarised as the following issues, in order of chronology with which the issues were raised with the Planning Enforcement team:

1. Commencement of work on site without discharge of all conditions and dissatisfaction with details agreed via condition.
2. Failure to provide a Construction Management Plan or sign up to the Considerate Contractors Scheme.
3. Failure to implement appropriate tree protection fencing.
4. Surface water flooding from the site.
5. Undertaking work to highways outside permitted construction hours.
6. Operatives working outside permitted hours.
7. Work in relation to Fernhill Lane sewage connection and conflict with protected trees.
8. Occupation of dwellings before connection to off-site sewage network implemented and consequent other breaches of conditions and failure to provide SANGs.
9. Failure to implement the surface water drainage scheme.
10. Failure to implement scheme for boundary treatment along Fernhill Lane.
11. Failure to implement reinforced landscaping/hedging along Fernhill Lane.
12. Failure to implement all roads/footways/streetlights and surface water disposal across the site prior to occupation of any building.
13. Failure to adopt off site sewage connection.
14. Working out of hours.
15. Lack of Maintenance of SANGs (bins overflowing).

4.4 For clarity and precision in relation to each point the enforcement team has investigated and advised:

1. Commencement of work on site without discharge of all conditions and dissatisfaction with details agreed via conditions imposed by the Planning Inspector.

Details in relation to the requirements of conditions were submitted through the following applications:

18/02462/CON – (written scheme of investigation)

18/00334/CON – Condition 3, 4, 5, 6, 8, 9, 12, 17, 18 – Conditions 3, 4, 8 and 9 agreed. Condition 12 partially satisfied. Conditions 5, 6, 17 and 18 not satisfied.

20/02409/CON – Condition 10 – satisfied.

20/02488/CON – Condition 7 – satisfied.

20/02490/CON – Conditions 5 and 6 – satisfied.

20/02489/CON – Conditions 17 and 18 – satisfied.

20/02492/CON – Condition 12 – satisfied.

21/00049/CON – Condition 18 – satisfied.

21/02533/CON – Condition 15 – satisfied.

It is clear therefore that details to discharge the conditions were submitted and considered satisfactory.

In particular, customer concerns were expressed regarding the impact of the proposed foul sewage connection in Fernhill Lane on existing protected trees and the agreement of details pursuant to tree protection and the boundary treatment to the boundary of the site with Fernhill Lane.

The customer was advised that the sewage connection, highways permitted works and any connection would be outside of the red line boundary of the application site and therefore beyond the control of any planning permission enforceable by this Council. Despite this information being provided, a complaint about these matters along with the approved boundary treatment to Fernhill Lane was raised by the customer with the Local Government Ombudsman. The Ombudsman found no fault by the Council in respect of the matters. A copy of the Ombudsman's decision is attached at Appendix 3.

2. Failure to provide a Construction Environmental Management Plan or sign up to the Considerate Contractors Scheme.

The Inspector imposed condition 4 on his 2020 appeal decision requiring the submission and approval of a Construction Traffic Management Plan.

The details were submitted via application 18/00334/CON, however, only those details required via the condition can be enforced.

Whilst the customer was advised additional information to that required by the condition had been submitted, only the details required by the condition could be enforced. As such, no breach of planning control had occurred in this respect.

3. Failure to implement appropriate tree protection fencing.

Officers visited the site and walked the perimeter of the site to check the provision of the agreed tree protection fencing.

The fencing was found to be complete, stabilised and in the correct location indicated in the agreed details.

The customer was particularly concerned that the fencing was not stabilised and that warning notices had not been affixed to the fencing.

Officers were satisfied the fencing was stabilised in accordance with the approved detail and noted it was clearly installed in accordance with the approved details.

As such, no breach of planning control had occurred in this respect.

Whilst the matter at that time had been resolved, recent events have impacted upon the Tree Protection Fencing – this is referenced later in this report.

4. Surface water Flooding on Fernhill Lane and environs.

Customers contacted the enforcement team following surface water flooding which occurred in Fernhill Lane and the surrounding area.

Officers visited the site and noted that the drains in the area appeared to be blocked by silt and thus the water on the highways was not being disposed into the highway drains.

As the highway drainage system is a matter for Hampshire County Council in its role as Local Highway Authority, the issue did not constitute a breach of planning control nor was it an issue within the gift of the District Council and customers were advised to contact Hampshire County Council (HCC). Hart District Council Officers also

referred the matter to HCC directly and alerted the Environment Agency.

5. Undertaking work to highways outside permitted construction hours.

Customers expressed concerns with noise and disturbance arising from work undertaken to Fernhill Lane and to Hawley Road in relation to the development.

These works were undertaken in relation to the Highway Act and were subject to regulation and permitting by HCC.

Officers confirmed that HCC were the permitting authority for these works to the public highway as Local Highway Authority and that these matters were not within the control of HDC and did not constitute a breach of planning control.

6. Operatives working outside permitted hours.

Reports were received that site operatives were working on site outside the permitted hours. Hart District Council Officers made a number of out of hours visits to the site to establish whether a breach of condition was taking place. Initially, it was established that the operatives on site were painting the interior of the show homes and undertaking some landscaping in the vicinity of the show homes.

This was not considered to be a breach of the condition as no 'development' as defined within Section 55 of The Town and Country Planning Act 1990 (as amended) was involved in either activity.

HDC Officers continued to monitor activity and further work in breach of the condition took place at the site on Bank Holiday Monday 30th August 2021, 26th September 2021, 3rd October 2021, 10th October 2021 (all being Sundays) and on 9th October 2021 after 1pm on a Sunday.

A Temporary Stop Notice and a Breach of Condition Notice were issued on 14th October 2021. The notices came into effect immediately and required the developer to comply with Condition 13 of the planning permission by ceasing any development or deliveries on the land outside the permitted hours for construction.

The Breach of Condition Notice remains in force and is further referenced later in this report.

7. Work in relation to Fernhill Lane sewage connection and conflict with protected trees.

Concerns were expressed by customers that notwithstanding the submitted details relating to the sewage connection in Fernhill Lane which had been considered satisfactory, customers considered this

would impact on protected trees and were subject to permit issued by Hampshire County Council in relation to works to the road.

Whilst these concerns were noted, approval for the roadworks in Fernhill Lane is a matter for the HCC as the Local Highway Authority rather than a planning matter and HDC Officers have no regulatory powers afforded to them in this respect.

8. Occupation of dwellings before connection to off-site sewage network implemented and consequent other breaches of conditions and failure to provide SANGs.

Officers visited the site and confirmed that eleven dwellings had been occupied at the site. This accordingly was a breach of conditions 5, 6, 7, 8 and 9.

The developer confirmed that the eleven dwellings had been occupied since 29th October 2021 but this was unknown to the Council until the developer distributed a leaflet in early December 2021 to nearby occupiers advising that the first occupations on the site had taken place and customers raised this with HDC.

In relation to foul sewage arrangements, the connection was planned to have been implemented however trial holes uncovered a gas pipe and a high-voltage cable. This resulted in the work extending beyond the HCC permit, accordingly a revised permit had been submitted.

During this period, Tardis, a specialist waste contractor was engaged to collect waste from the site. They visited and cleared the foul network to ensure full capacity and attended once a week to empty the system. The developer provided the waste transfer notes to clarify matters. The internal waste system had capacity for 9,000 litres of waste and during this period the extraction range was between 1,364 litres and 6,819 litres.

This temporary drainage strategy was maintained until the permanent foul drainage connection was subsequently implemented in Fernhill Lane to the public sewage system.

The developer advised that the surface water drainage works had been implemented in accordance with the approved details and were operating. HCC as the Local Lead Flood Authority (LLFA) confirmed there were no outstanding issues being addressed by them.

The developer confirmed that street works including levels, lighting and footways were complete for the main access and occupied areas and indicated they intended to submit an application to vary conditions (including 8 and 20) to seek a phased discharge of the condition relating to roadways and footways.

The Heras fencing (tree protection fencing) was in situ at this time, however, the approved boundary treatment was not implemented. The

developer therefore engaged a sub-contractor to install the fencing in accordance with the details approved under condition 7.

The SANG had been inspected by the Council and confirmed to be implemented and functioning as a SANG in December 2021.

The developers undertook to agree that no further occupations of any dwellings would take place until the matters referenced had been resolved.

Whilst it is therefore acknowledged that a technical breach of planning control had occurred, it appeared to the Council that due to the limited number of occupations and the measures implemented, the breach had caused no unacceptable impact on public amenities, accordingly it was resolved no further action was taken subject to a review of circumstances in early 2022.

The foul sewage connection and fencing were subsequently implemented accordingly no further action became necessary as the breaches of planning condition were rectified.

9. Failure to implement the surface water drainage scheme.

Customers maintain that the surface water drainage scheme has not been implemented.

This relates specifically to the imposed Condition 6 of the 2020 Appeal Decision.

Condition 6 states:

“No development excepting formation of the approved access shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied on the site until the approved details have been implemented.”

The details relating to the surface water drainage scheme were submitted and approved in writing and as mentioned the LLFA have confirmed there are no outstanding issues being addressed by them.

In this regard, no breach of planning control appears to have taken place at the present time. The customer has however been asked to clarify matters further and if further clarity is provided, this matter will be reviewed collaboratively with colleagues from the LLFA and the Council's internal drainage expert.

10. Failure to implement boundary treatment along Fernhill Lane.

Customers maintain that the boundary treatment along Fernhill Lane is neither complete nor in accordance with the approved details.

This relates to Condition 7 of the 2020 appeal decision which states:

“Notwithstanding the approved details in condition 2, no development above slab level of any dwelling hereby approved shall take place until a scheme for the boundary treatment along the Fernhill Lane boundary to the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall provide for fencing and for the existing landscaping/hedging to be reinforced and shall be designed so as to prevent pedestrian access to Fernhill Lane. The approved boundary treatment shall be implemented prior to the first occupation of any dwelling and shall be thereafter retained and maintained in accordance with the approved details.”

Officers have made numerous visits to the site and have recorded that the approved post and rail fencing along the boundary of the site has been installed. Additional post and rail fencing has been installed beyond that agreed via the abovementioned condition. However, due to its position and height, the additional post and rail fencing is permitted development and as such is not a breach of planning control.

Condition 7 also requires that additional planting is undertaken to replace any failed planting, it is therefore reasonable in light of the other conditions imposed to expect the planting to take place in the next planting season following occupation of the properties. The next planting season is the current planting season i.e. between October 2022 and March 2023.

In this respect, should the developer fail to undertake the planting during the current planting season, the matter can be reviewed in due course in line with other priorities, but no earlier than April 2023.

At present, Officers are satisfied there is no current breach of planning control and have advised customers that no further action will be taken at this time.

11. Failure to implement all roads, footways, streetlights and surface water disposal from roads across the site prior to occupation of any building.

Condition 9 of the 2020 appeal decision states:

“No development excepting formation of the approved access shall take place until details of the width, alignment, gradient and type of construction proposed for the roads, footways and accesses, including all relevant horizontal cross sections and longitudinal sections showing the existing and proposed levels, together with details of street lighting and the method of disposing of surface water, and details of a programme for making up of the roads and footways has been submitted to and approved in writing by the Local Planning Authority.

The agreed details shall be fully implemented before any building or use hereby approved is occupied.”

Details were submitted and approved in writing, however, whilst the details have been implemented in relation to the area adjacent to the occupied properties, the work across the entirety of the site has not been implemented. A technical breach of the condition therefore occurred.

An application for a non-material amendment to the wording of this condition was submitted via application 21/03237/NMMA to enable the phased completion of the works on the development site. This permission was granted on 3rd October 2022.

Officers advised the customers that no action would be taken in relation to this matter until a decision was reached on the non-material amendment application as no harm to public amenity had resulted from this breach of condition.

Customers were further advised that if the application were approved, any formal enforcement action would be moot, however, if the application were refused, the Council would consider the matter further.

In these circumstances, given that the application has been approved to enable phased provision of the works/details across the development, no further action is required.

12. Failure to adopt off-site sewage connection.

Condition 5 of the 2020 appeal decision states:

“No development excepting formation of the approved access shall take place until a drainage strategy including details of connection to the off-site foul sewers and increase in capacity where necessary have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied on the site until the drainage works have been completed.”

The details of the drainage strategy including the connection to the off-site foul sewers were submitted and approved in writing. The connection works have subsequently been completed although it is acknowledged that the position of the off-site connection changed.

Officers acknowledged that the connection was made on the week commencing 14th February 2022, as a result a technical breach of planning condition had taken place up until that time.

The customer is particularly concerned that the connection to the public foul sewage system has not been adopted. This is not a matter controlled by the condition. The customer has been advised to raise his concerns with the sewage undertaker (Thames Water) or with the developer directly as the Council has no control over the ownership,

maintenance or connections to the public sewage system. Ownership matters fall outside of the remit of the planning system and outside of the powers afforded to any Local Planning Authority.

Whilst a technical breach of the condition took place as the connection differed from the approved details, the matter caused no harm to public amenity due to the interim waste arrangements made by the developer during the period between occupation of the properties in November 2021 and the permanent connection being made in February of 2022. Accordingly it would not be expedient to take formal enforcement action in these circumstances.

13. Working out of hours

Customers contacted the enforcement team to highlight further out of hours working at the site in breach of the extant Breach of Condition Notice on Bank Holidays and weekends.

As the planning enforcement service does not operate an out of hours service, permission was sought from the Development Management & Building Control Manager to enable officers to make unannounced monitoring visits during evenings and weekends, which was approved at their discretion.

Officers have been monitoring the situation and further information has been obtained. At the time of preparation of this report, Officers are considering this matter further and a verbal update is likely to be provided to Members during the meeting.

14. Lack of Maintenance of SANGs (bins overflowing).

Officers have received reports of customer concern that the SANG is not being adequately maintained. The specific issues raised relate to failure by the developer's sub-contractor to empty bins and that planting and seeding in the SANG has already failed.

Planning Enforcement Officers have liaised with Countryside colleagues as the SANG is currently within a one year maintenance snagging period which commenced in December 2021/ January 2022. The SANG land has not yet been transferred to the Council.

Although no Council decision has been made in relation to the transfer of the SANG, it is regularly being inspected and its condition is being monitored by the Countryside Operations Manager.

Within the last two weeks (at the time of writing this report) the developer has confirmed to Countryside that a failure to empty the bins occurred and that they are liaising with their sub-contractor to ensure the matter does not recur in future.

In terms of the wider condition of the SANG, it is noted that planting across the site has failed, in part due to weather conditions and in part

due to failure of maintenance. Officers will therefore continue to liaise with Countryside colleagues to seek an improvement in the situation, this may include a requirement for replanting of any dead trees across the site, or for example reseeding of any areas of failed landscaping.

As this matter has been recently raised, no formal enforcement action is considered necessary at this time as liaison between Countryside colleagues and the developers is still taking place and an informal approach to remedying the issue is appropriate at this time.

5 OTHER CONSIDERATIONS

- 5.1 Planning legislation and powers afforded to Local Planning Authorities is designed to control the development and use of land in the public interest. The credibility of the planning system relies on the Council's readiness to take effective enforcement action when needed and the Council is committed to providing a speedy and efficient planning enforcement service to respond proportionately to breaches of planning control.
- 5.2 It is important to remember that under The Town and Country Planning Act 1990, or other legislation or statutory instrument, there is no duty for Local Planning Authorities to take planning enforcement action. The powers given within the relevant legislation is discretionary powers. Also, in deciding whether to take enforcement action, the Council must decide whether unauthorised works, use or development would unacceptably affect public amenity.
- 5.3 When matters have been investigated, a matter must be a breach of planning control for further action to be contemplated. The adopted Local Enforcement Policy sets out our approach to enforcement investigations and particularly makes it clear that where a breach is minor or technical and causes no harm to the environment or nearby neighbours, we will take no further action. Similarly, we will try to negotiate a solution wherever possible to achieve a suitable outcome and avoid unnecessary wasted time and costs associated with formal action.
- 5.4 The Council will make strong use of available enforcement powers to remedy any harmful breach where this is expedient in the public interest and follows the law, guidance and relevant evidence for that case. Before formal action can be taken Local Planning Authorities must first have sufficient evidence of a breach of planning control. Any such evidence must show real substance including documenting and detailing the effect of that breach on the land in question, surrounding area and where relevant the amenity of nearby occupiers.
- 5.5 In relation to the matters raised, formal action has been taken where it has been necessary and action has been justified. A significant number of other issues raised by customers are not planning matters or relate to a technical or trivial breach of planning control which has subsequently been resolved.
- 5.6

All matters raised have been investigated and no alternative approaches would be appropriate.

6 EQUALITIES

- 6.1 Under equality legislation, the Council has a legal duty to pay “due regard” to the need to eliminate discrimination and promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not. The recommendation will have no direct impact on equalities issues.

7 CLIMATE CHANGE IMPLICATIONS

- 7.1 There will be no direct carbon/environmental impacts arising from the recommendation.

8 ACTION

- 8.1 That the contents of this report are endorsed and noted.

Contact Details: Maxine.Lewis@hart.gov.uk

Appendices

**Add rows as required to box below*

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule of the Local Government Act 1972 by ticking the relevant</i>						
		1	2	3	4	5	6	7
1	2020 Appeal Decision							
2	Adopted Local Enforcement Policy							
3	Ombudsman Decision							

Appeal Decision

Hearing Held on 4-5 February 2020

Accompanied site visit made on 5 February 2020

by David Spencer BA(Hons) DipTP MRTPI

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

Decision date: 2 March 2020

AppealRef:APP/N1730/W/19/3232716

Hawley Park Farm, Hawley Road, Blackwater, Camberley GU17 9EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Crest Nicholson Operations Ltd against the decision of Hart District Council.
- The application Ref 18/00334/FUL, dated 9 February 2018, was refused by notice dated 23 April 2019.
- The development proposed is full permission for the erection of 158 dwellings, vehicular access road from Hawley Road and the provision of SANG, public open space, landscaping and associated works - site layout alterations to re-site the blocks of flats from adjacent to Fernhill Lane to elsewhere in the site.

Decision

1. The appeal is allowed and planning permission is granted for full permission for the erection of 158 dwellings, vehicular access from Hawley Road and the provision of SANG, public open space, landscaping and associated works - site layout alterations to re-site the blocks of flats from adjacent to Fernhill Lane to elsewhere in the site at Hawley Park Farm, Hawley Road, Blackwater, Camberley GU17 9EF in accordance with the terms of the application, Ref 18/00334/FUL, dated 9 February 2018, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Crest Nicholson Operations Ltd against Hart District Council in respect of the appeal. This application is the subject of a separate Decision.

Procedural Matters

3. I have taken the description of the development from the Local Planning Authority's (LPA) decision notice on the basis that it accurately reflects that the appeal proposal no longer includes a pedestrian connection to Fernhill Lane. It also reflects that the scheme was amended after the planning application was submitted and that the LPA made its decision on these amended plans. I too have based my decision on these same amended plans.
4. There is an intricate planning history to the appeal site and adjoining land in the appellant's control, which is set out in Section 3 of the signed Statement of Common Ground between the two main parties. The appeal site is split into two distinct areas and proposed land uses, with the proposed residential element being on the 'western parcel' and the proposed Suitable Alternative Natural

Greenspace (SANG) being on the 'eastern parcel' of the appeal site. The appellant also benefits from controlling land with a separate planning consent for an additional phase of SANG immediately to the north of the appeal site (the Shelley Spears site). Notwithstanding the discussion at the hearing, the long and short of it is that despite ongoing queries about the access road constructed to date, it is agreed that the appellant retains an implementable reserved matters consent for a detailed scheme for 126 homes and SANG provision at the appeal site. The appellant's initial works at the site provide a clear indication of intent to deliver housing at the site. I consider this fall-back position to be an important material consideration.

5. Reasons 2-5 of the LPAs decision stem from the absence of a mechanism to secure sought after planning obligations at the time of determination. The statement of common ground agrees that these reasons for refusal could be overcome through the submission of such a mechanism. At the hearing the appellant submitted various advanced iterations of a Section 106 (S106) Agreement entering into obligations with both Hart District Council (HDC) and Hampshire County Council (HCC). This contained obligations in relation to affordable housing, transport and travel planning, formal on-site play space, the provision and management of the SANG and contributions to monitoring and management of protected habitats. A final signed S106 Agreement was received shortly after the hearing. I return to the planning obligations later in this decision.

Main Issues

6. The main issues in this appeal are as follows:
 - (i) Whether the proposed development would preserve or enhance the character or appearance of the Hawley Park and Green Conservation Area; and
 - (ii) Whether the proposal makes adequate provision for any additional need for infrastructure, services and facilities arising from the development.

Reasons

Development Plan

7. The extant development plan comprises of those saved policies of the Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006 (the HDLP) and saved policy NRM6 of the partially revoked South East Plan. In relation to the LPAs reasons for refusal, on the main issue of heritage, the principal HDLP policies are GEN! (development management principles) and CON13 (Conservation Areas). Regarding the second main issue, on the various policy requirements, the HDLP policies that apply are CON! and CON2 on biodiversity (together with saved South East Plan Policy NRM6), GEN! on infrastructure generally, T14 on transport and ALT GEN 13 regarding 40% affordable housing.
8. In the context of the HDLP the appeal site is also outside of an adopted settlement boundary and therefore in open countryside and as such HDLP Policies RUR1 and RUR2 are of relevance in terms of development in the countryside. Policy RUR1 defines the extent of rural settlements and countryside. Policy RUR2 addresses development in the countryside and only

permits proposals that are specifically provided for by other policies of the HDLP.

9. The HDLP was adopted in 2002 (with altered policies adopted in 2006) and significantly pre-dates the National Planning Policy Framework (NPPF). Accordingly, the weight to these policies is to be determined having regard to paragraph 213 of the NPPF. Subject to consideration of the S106, it is clear from the statement of common ground that the HDLP policies where there remains disagreement between the two main parties on matters of policy compliance, datedness and weight are Policies GEN1, CON13, RUR1 and RUR2.
10. The Council is making good progress on putting into place a new Local Plan. The Inspector's report on the emerging Hart Local Plan (eHLP) has been received and the Council is looking to adopt its new plan towards end of March 2020. The eHLP proposed policies of particular relevance are Policy H2 seeking 40% affordable housing, Policy NBE4 on Thames Basin Heaths Special Protection Area (SPA) and Policy NBE9 on Historic Environment. Given the very advanced position of the eHLP, the weight to these policies is to be determined by reference to paragraph 48 of the NPPF.
11. Furthermore, the eHLP has provided an opportunity to review settlement boundaries in light of recent evidence including the latest development needs. The western parcel of the appeal site is included within a 'New Settlement Policy Boundary adjoining Farnborough' which reflects the extant permission for 126 dwellings. This also fed into the analysis of whether on adoption of the eHLP there would be a deliverable five-year supply of housing land. I consider it significant to this appeal that the western parcel of the appeal site has been purposefully included within the revised settlement boundary, accepting in-principle that the area can accommodate development. This significantly distinguishes the appeal proposal from the various other recent appeal decisions in Hart which have been put before me by both main parties.

Heritage

12. The appeal site is entirely within the Hawley Park and Green Conservation Area (HPGCA). It is located in the south-east quadrant of the HPGCA where Fernhill Lane forms the southern boundary of the conservation area beyond which is the urban edge of Farnborough. The site occupies an undulating topography such that the SANG would occupy the more exposed landform of the eastern parcel and the proposed residential would be largely nestled within the generally enclosed bowl landform of the western parcel. To the west of the appeal site, the landform rises again with dense woodland and shrub.
13. At the core of the conservation area is the Grade II listed Hawley Park House and separately listed Grade II former stables block to the house, both of generally late Eighteenth Century origin, with the house altered further in the Nineteenth Century. Hawley Park is also identified on HDC's Local List of Historic Parks and Gardens. Whilst there is an overall rural and verdant character to the wider HPGCA, the heritage significance of the conservation area is the small country estate character of Hawley Park House together with a cluster of Nineteenth Century development to the north of the Park including the Holy Trinity Church and almshouses at Hawley Green.
14. In terms of the layout and function of the estate, and notwithstanding the position of peripheral lodges, including the Southern Lodge on Fernhill Lane

adjacent to the appeal site, from the balance of evidence, including historic mapping, the parkland character focuses on those fields immediately surrounding the house rather than the peripheral fields, including the appeal site. There is little in the evidence before me, including the Council's 2012 Character Appraisal and Management Proposals (CAMP) document for the HPGCA, to indicate that the appeal site formed an integral part of any core parkland to the House.

15. As agreed by the parties and as I observed on site, there is no inter-visibility between the western parcel of the appeal site and the listed buildings. From the documentary evidence the appellant surmises that appeal site may have formed part of a principally agricultural (pastoral) function in the wider estate. Certainly, the physical evidence on the ground reveals an evident difference between the character and appearance of core estate parkland around the house with its distinctive mature tree specimens and filtered views of the house compared to the more generic countryside character at the peripheral appeal site.
16. The appeal site can be appreciated from the adjacent Fernhill Lane to the south, from Footpath 21 which cuts across the eastern parcel and from Hawley Road. It is notable, however, that the CAMP does not identify any "important views" across the appeal site save for two on Hawley Road which are principally orientated to afford views towards the core parkland setting of the house. These views would remain unaffected by the open character of the proposed SANG on this part of the appeal site. The description of the appeal site in the CAMP is limited with little accentuation of the appeal site's contribution to the significance of the HPGCA other than its rural character.
17. The rural and estate character of the HPGCA remains prominent notwithstanding the recent housing development within it at Hawley Grove. The proposed SANG element of the appeal proposal would retain the verdant openness and would not harm the character or appearance of the HPGCA. In contrast the proposed residential development on the western parcel would result in the direct loss of undulating pastoral land. Whilst the loss of the openness and rural character at the edge of the HPGCA would be contained by the topography and surrounding vegetation it would nonetheless represent a significant built form at the edge of the former estate parkland. As set out above, these peripheral fields make only a limited contribution to the heritage significance of the HPGCA as a whole.
18. In assessing other attributes and qualities of the former estate to be found at or adjacent to the appeal site, I observed that the southern lodge to Hawley Park has been much altered. This is reflected in the CAMP (page 16) which does not identify it as a 'positive building'. Consequently, together with the overgrown nature of the carriage drive at this point, its former status as the entrance to the estate from Fernhill Lane has significantly diminished. The proposed layout gives space to the setting of this building such that it would not be subsumed and would remain to be read as a lodge dwelling in Fernhill Lane.
19. Remnants of the southern carriage drive separate the eastern and western parcels of the site. It is largely overgrown such that only a narrow path remains in places. It is currently experienced in the wider landscape as an indistinct belt of mature trees and holly understorey. The drive would be

largely retained and reinforced as a feature in the landscape and would only be crossed once by the access road (as already consented). The drive is no longer intact being already severed closer to the House thus reducing its heritage value. Overall, having regard to paragraphs 17-19 above, I find the arcadian qualities of the appeal site make only a limited contribution to the heritage significance of the HPGCA.

20. In assessing impact and any harm that would arise, it is relevant to have in mind what should constitute the baseline for assessment. As such there are two material factors which must be considered that are not within the 2012 CAMP document's assessment of the HPGCA. Firstly, the site has an extant planning permission for 126 dwellings which is capable of implementation. As such the assessment of harm should focus on the difference between the consented 126 dwelling scheme and the appeal proposal's 158 dwellings. Secondly, the very advanced eHLP includes the appeal site within a revised settlement boundary as an extension to Farnborough signalling an in-principle acceptance that there will be change from the countryside character of the HPGCA to some form of development at this location. Consequently, I turn to consider the heritage impact arising from the differences between the consented 126 dwellings and the proposed 158 dwellings.
21. The net developable area, the developed area and maximum height of buildings would be broadly comparable between the consented and proposed schemes, albeit the proportion of undeveloped land would reduce marginally. The appeal proposal would be a moderately denser and of a more urban form of development compared to what is already consented.
22. Whilst there is dispute over the description of some buildings as being 3 storey or 2½ storey, the upshot of the appeal proposal is that the tallest buildings proposed would be approximately 1 metre higher than those already consented. Whilst the overall massing of the scheme would increase through a greater number of taller buildings, and to varying degrees taller buildings arranged more closely, the overall visual impact of the scheme would remain similar to that consented. Due to the topography of the site, the proposed height and massing of the proposed buildings would remain contained in the wider landscape, including from other parts of the HPGCA. There would be no interruption of important views identified in the CAMP. Again, due to the topography, the woodland to the west would remain prominent above proposed the development despite the proposed relocation of the play area and the revised design of dwellings along the western boundary of the site.
23. The proposed increase in footprint and volume of development on a broadly similar net developable area, would result in some perceptible differences to the density and grain of development compared to the consented scheme. By any measure it would be a moderately higher density scheme albeit not an uncharacteristic modern density for an edge of settlement location. However, through a markedly revised layout the increases in density would be appropriately absorbed making a more effective and efficient use of the profiles of the site whilst retaining an appropriate set-back from Fernhill Lane. Overall, I do not consider the appeal proposal would manifest itself as "highly urbanised form" of residential development.
24. The appeal proposal would contain a variety of dwelling types and styles including a mix of materials across the scheme on the elevations and roofs.

Accordingly, it would not be a bland, homogenous development and the detail of the materials can be separately secured by condition for assurance. Furthermore, across the HPGCA I observed a wide palette of building materials including a widespread use of brick and render such that I do not consider the design or appearance of the proposal to be incongruous within the HPGCA as a whole.

25. Consequently, any heritage harm arising from the proposed residential element of the appeal scheme would be comparable to the consented scheme in terms of the impacts arising from the loss of the pastoral, rural qualities at the periphery of the Hawley Park estate. In considering the 'net' harm, I have also had regard to paragraph 200 of the NPPF in terms of treating favourably those proposals that make a positive contribution to the asset (or which better reveal its significance).
26. The CAMP identifies that public access and appreciation of the HPGCA is limited to the short section of Footpath 21. The proposed 5.6ha of SANG on the eastern parcel of the appeal site offers a notable opportunity to retain the openness and provide for public access to this part of HPGCA. Additionally, through a legal agreement, the appeal proposal would bring forward an additional 11ha of SANG on the adjoining Shelley Spears site that would enable public access into the "inner" estate area enabling a better appreciation of the setting of the House including remnant parkland features. The proposed SANG would enable a large area of the HPGCA to be managed for a land use which would be sympathetic to the character and appearance of the asset. I consider that these aspects of the appeal proposal would deliver an appreciable heritage benefit.
27. Overall, and notwithstanding the heritage benefits identified in paragraph 26, I nonetheless find the 'net' position to be one of harm to the heritage significance of the HPGCA due to scale of development and the resultant loss of characteristic rural, openness that defines the peripheral character of the historic Hawley Park Estate. By the appellant's own figures¹ the extent of undeveloped land would reduce further, albeit marginally, compared to the consented scheme. The harm would be less than substantial and when looking at heritage impacts in the round across the whole appeal site, I find that the harm would be at the lower end of any spectrum of less than substantial.
28. I therefore find that the appeal proposal would harm the character and appearance of the HPGCA. On this basis it would be contrary to Policies GEN1(criteria (i) and (v)) and CON13 of the HDLP and proposed Policy NBE9 of the eHLP. Accordingly, it would also conflict with the objective of the NPPF to conserve heritage assets in a manner appropriate to their significance.
29. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. As such it is incumbent that I attach considerable importance and weight to the harm that has been identified. The harm to the setting of the listed buildings and the appearance of the HPGCA would be less substantial and therefore paragraph 196 of the NPPF requires such harm to be balanced against the public benefits. I deal with this in a final balancing and conclusion section.

¹ Document H1 - Quantification Table

Planning Obligations - affordable housing and infrastructure

30. The signed and executed S106 agreement seeks to address the LPAs reasons for refusal Nos. 2 to 5. These relate to policy requirements that the proposal makes adequate provision for affordable housing and any additional need for infrastructure and facilities arising from the development. I deal with those specific elements of S106 relating to the SANG and Strategic Access Management and Monitoring (SAMM) separately under the consideration of the Thames Basin Heaths Special Protection Area (SPA) below.
31. The S106 is expressed as a deed and clearly identifies the land to which the obligations would be charged. The agreement is constructed in such a way that should I find the obligations not to meet the 3 lawful tests at Regulation 122 of the CIL Regulations 2010 (as amended) then they would not be enforceable (a "blue pencil" clause). The fact that similar obligations were secured on recent planning consents at the appeal site does not discharge my responsibility to separately scrutinise the lawfulness of those obligations that are before me.
32. The completed and executed S106 agreement at Clauses 20, 21 and 22 would secure the provision of 40% affordable housing as required by HDLP Policy ALT.GEN13. The 40% requirement on 158 dwellings would translate as 63.2 dwellings. The S106 makes appropriate on-site provision for 63 dwellings as either rented affordable units or intermediate housing units, applying reasonable trigger points for delivery and a recognisable cascade approach to providing the units, including by reference to the Council's approved registered provider list. The balance of the 0.2 unit would be secured by way of a financial contribution (£14,002.52) for off-site delivery. Overall, I find the provisions to secure affordable housing to be demonstrably necessary, directly related and fairly and reasonably related in scale and kind to the development and so I have taken them into account.
33. The S106 in Clause 12 would require a financial contribution towards off-site transport improvements. The transport contribution is £502,000 and seeks to fund the following: (1) A30 Corridor improvements between A327 and A331; (2) Hawley to Farnborough pedestrian and cycle route; and (3) a pedestrian and cycle scheme for Fernhill Road to Hawley Green. I note the same transport contributions were secured in the S106 accompanying the extant permission for 126 dwellings to the value of £400,000 such that the £502,000 has been described to me as a proportional increase reflecting the proposed additional 32 dwellings.
34. There is very little before me which explains why this contribution would be necessary to make the development acceptable in planning terms or why it would be directly related to the appeal proposal. Whilst the appellant's transport assessment (TA) sets out adjusted mode splits to improve the proportion of journeys by foot and cycle there is negligible evidence that the pedestrian and cycle projects listed above are necessary to achieve this. There are no details of these schemes, the extent to which they are already funded and that they are deliverable. Nor are there any details of the A30 corridor project in terms of what it is, where the planned improvements are in relation to the appeal site and again the extent to which they are already funded. There is little evidence of the harm that would arise were the transport contribution not secured.

35. I was directed to the HCC representations on the application dated 11 April 2018 and 22 June 2018. These advise that mitigation would be necessary and refers back to the existing S106 (£400,000). It identifies the 3 schemes listed above are from the 'District Statement' and assures that this would be CIL Regulation compliant. As the principal evidence before me (repeated in the Council's statement of case), the representations do not provide the required assurance that the transport contribution would be lawful in light of the necessary tests. Consequently, I have not taken the obligation into account.
36. Clauses 12 and 19 would require a school travel plan and a wider travel plan for site respectively. The School Travel Plan involves a contribution of £42,000 and relates to producing and monitoring travel plans for nearby Hawley Primary School and Fernhill Secondary School. HCC has submitted an explanatory statement² to the hearing which sets out the basis for the contribution. Given the two schools are a moderate distance from the appeal site but within the bounds of reasonable walking and cycling distances I find the obligation to be consistent with the need to improve mode splits in line with the appellant's TA. It would broadly align with the objectives sought in HDLP Policy T14 and therefore I have taken the School Travel Plan contribution into account.
37. Turning to the wider travel plan, this would comprise the production of a travel plan, a £1,500 fee for HCC to approve the travel plan, a £15,000 monitoring fee for HCC to monitor the effectiveness of the travel plan over a five year period and a sum (as yet unspecified) to serve as a bond to facilitate the implementation and compliance with the travel plan. Whilst the site is sustainably located on the edge of Farnborough the appellant's TA outlines at Section 7 the need for travel planning to manage trip generation and promote sustainable modes of transport. I am satisfied that the obligation and the sums involved meet the lawful tests. This would accord with HDLP Policies GEN1 and T14 and in particular with NPPF paragraphs 108 and 111.
38. Clause 17 would secure on-site formal open space, its maintenance for a reasonable period until a point of transfer and then a recognisable cascade mechanism for its ongoing responsibility together with a maintenance contribution. I find this aspect of the obligation would accord with HDLP Policy GEN.1 on securing necessary infrastructure and have taken it into account.
39. Clauses 13 and 14 would provide financial contributions for district and parish leisure provision respectively. The LPA cites paragraph 4.6.1 of the HDLP which refers in general terms to off-site infrastructure where it is necessary to support sustainable growth. Additionally, the LPA has provided a copy of the August 2014 Cabinet report (Paper F) in support of its approach to S106 agreements and district-wide leisure projects. The district provision sought would be for Frogmore Leisure Centre in nearby Yateley. A number of improvements are identified at Appendix 1 of Paper F due to of capacity issues at Frogmore Leisure Centre and are costed at £420,000 (as at 2014).
40. There is no evidence as to whether these capacity issues have subsequently been addressed or to what extent they are being (or have been) remedied by the Council's capital programme and any other S106 monies accumulated since 2014. The per property contribution formula in Appendix 2 of Paper F is a simple division of total district-wide capital costs as of 2014 divided by remaining pipeline of planned dwellings. On this basis I cannot conclude that

² Document H6

the contribution as sought for the appeal proposal would be necessary, directly related or fairly and reasonably related and so I have not taken it into account.

41. Similar applies in connection to the parish leisure contribution sought in connection with the Hawley Memorial Hall and Hawley Leisure Centre. Whilst the LPAs statement of case refers to potential projects (sports field drainage and a youth shelter) there are no details and no evidence as to whether these projects are existing deficiencies or additional demands arising due to the appeal proposal. Again, Appendix 2 of Paper F in the August 2014 Cabinet Report takes an aggregate district-wide capital figure for local leisure and divides by the remaining pipeline of housing supply at that time. For the same opaqueness I cannot find that the obligation would be lawful and so I have not taken it into account.

Conclusions on the planning obligation on affordable housing and infrastructure

42. Overall, by taking into account those obligations which accord with Regulation 122 of the CIL Regulations 2010 (as amended), I have arrived at the following conclusions in relation to the LPAs reasons for refusal nos. 3, 4 and 5 (essentially the second main issue for this appeal identified above).
43. The proposed affordable housing contributions would ensure the scheme accords with HDLP Policy ALT.GEN13 and eHLP Policy H2. It would also mean the scheme would accord with the NPPF at paragraphs 59 and 62 to deliver a sufficient amount and variety of homes to meet specific housing requirements including those who require affordable housing.
44. Those obligations necessary to maintain a safe access onto Hawley Road and secure a school travel plan and wider site travel plan would ensure that the appeal proposal would provide appropriate opportunities to promote sustainable transport modes and that there would be safe and suitable access for all users. Accordingly, I conclude, with the obligations in Clauses 12, 16 and 19, there would be no conflict with HDLP policies GEN1 and T14 insofar as they relate to highways safety or more widely with the objectives of the NPPF on promoting sustainable transport at paragraphs 102, 103 and 108-111. Nor would there be a conflict with eHLP Policies I1 and 13.
45. More generally in relation to social infrastructure (such as open space), again I am satisfied that the S106 agreement makes adequate provision for any additional need arising from the development. Consequently, the proposal would not conflict with paragraph 4.6.1 of the HDLP and would accord with the provisions of HDLP Policy GEN1 and URB23 on infrastructure and eHLP Policy 14.

Thames Basin Heaths SPA

46. The appeal site is within the 5 kilometre (km) zone of influence for the Thames Basin Heaths Special Protection Area (SPA). The SPA supports important breeding populations of a number of bird species including the Nightjar (*Caprimulgus europaeus*), the Woodlark (*Lullula arborea*) and the Dartford Warbler (*Sylvia undata*). Potential adverse effects on the SPA include urbanisation, atmospheric pollution, water abstraction and recreational pressure and disturbance. From everything that is before me, including the Interim Avoidance Strategy for the Thames Basin Heaths SPA (2010) and Natural England (NE) correspondence on the application, the likely significant

effect of the appeal proposal, in combination with other plans and projects, would be recreational pressure and disturbance. Having regard to recent applicable case law³, having screened-in that there would be a likely significant effect, it is necessary for me to carry out an appropriate assessment (AA) as part of this decision.

47. As part of the AA, it is necessary to consider whether any proposed mitigation measures would provide necessary certainty in ensuring no likely significant effect arising from recreational impacts. The two principal mitigation measures identified are the provision of Suitable Alternative Natural Greenspace (SANG) and the provision of Strategic Access Management and Monitoring (SAMM) as per the Interim Avoidance Strategy. NE have been engaged during the application process and have reaffirmed as part of this appeal⁴ that they have no objection provided mitigation being secured.
48. The appeal proposal would directly provide 5.6 hectares of SANG on the eastern parcel. The submitted S106 agreement would link this area of SANG with the delivery and implementation of the approved SANG on the Shelley Spears site to the north thus providing an overall SANG area of some 16.4 hectares. This wider area would provide for a circular walk in excess of 2.3km which would meet NEs guidelines on SANG. There is agreement⁵ that the overall quantum of SANG being provided would be sufficient to meet some 855 homes overall, leaving a balance of c.700 once the appeal proposal is taken into account. Importantly, Clause 15 of the S106 requires the SANG to be in place prior to the occupation of any housing.
49. There is some local concern that the inclusion of a children's play area and the access road within the SANG are incompatible with its function, but these are peripherally located and would not diminish the overall scale and quality of the SANG proposed. The proposed scale and layout of the SANG would be an attractive area for dog-walking, informal recreation and general biodiversity enhancement. There is no substantive evidence that the proposed SANG would be ineffectual. In terms of securing the SANG in perpetuity, the S106 agreement provides for the transfer of the wider SANG to HDC. The Council confirmed at the hearing that it would take on the responsibility for this SANG given its strategic scale. The S106 also provides for a management and maintenance payment of £1,116,991 and a separate SANG monitoring fee of £44,215.16. Having regard to the Interim Avoidance Strategy I find these contributions would meet the tests of CIL Regulation 122.
50. My attention was brought to the proximity of the Hawley Meadows and River Blackwater SANG a short distance to the east of the appeal site, partly as an indication that the proposed additional SANG at the appeal was not justified. I am mindful that the Interim Avoidance Strategy is a starting point, developed some 10 years ago. There is no evidence that there is capacity in this nearby SANG to accommodate the appeal proposal. Overall, the ability to secure another meaningful area of SANG within Hart, proximate to both Rushmoor and Surrey Heath, should be regarded positively in terms of supporting growth and reducing pressure on sensitive, protected habitats.

³ People over Wind, Peter Sweetman v Coillte Teoranta

⁴ Letter dated 5 June, Appellant Statement of Case, Appendix 36

⁵ Statement of Common Ground paragraph 3.10

51. Clause 28 of the S106 agreement would also secure a SAMM, contribution prior to the occupation of any housing, to assist with measures to better manage and monitor visitors to the SPA. Again, the Interim Avoidance Strategy provides the justification for the SAMM contribution. Additionally, to ensure the SANG is properly operational at an early stage, the timely implementation of signage and interpretation boards can be secured separately by condition. This would further assist in terms of mitigation. Again, having regard to the Interim Avoidance Strategy I find the SAMM contribution proposed would be lawful.
52. Overall, I am satisfied that based on the above mitigation measures, the appeal proposal would not result in a significant effect on the SPA. Therefore, it would accord with Policy NRM6 of the South East Plan which requires that adequate measures are put in place to avoid or mitigate any potential adverse effects on the SPA. There would also be no conflict with HDLP Policies CON1 and CON2 and eHLP Policy NBE9 which seek to safeguard European and national nature conservation designations.

Other matters

53. The site is adjacent to the urban edge of Farnborough and is within reasonable walking and cycling distance of a range of facilities including shops and schools. Whilst Blackwater train station is some distance to the north (c.1500 metres), it is not so distant that some future occupiers of the appeal scheme would reasonably walk or cycle to it. There is a good standard of footway with lighting along the B3272 Hawley Road for pedestrians. Whilst I observed appreciable volumes of traffic at peak periods it is nonetheless a suitable road of reasonable alignment and visibility within a 40mph speed limit for people to conveniently cycle along.
54. Whilst local bus services may have altered, including a reduction to those using Hawley Road closest to the appeal site, I observed that there are frequent bus services plying Chapel Lane a short distance to the south. Overall, the appeal proposal would be sustainably located, reflecting its inclusion with the revised settlement boundary in the eHLP. There is no substantive evidence before me that local schools and health services would not be able to accommodate any net additional demand generated by the appeal proposal. Nor is there any evidence that site drainage (foul or surface) cannot be appropriately managed, having regard to the appellant's detailed Flood Risk Assessment, and that any necessary detailed measures could be secured by condition.
55. The appeal proposal would provide 381 parking spaces⁶ comprising of 342 allocated spaces (253 parking spaces and 89 garage spaces) and 39 visitor spaces. Given the site is adjacent to Farnborough it is appropriate to consider parking in the context of Rushmoor's latest parking standards rather than Hart's older 2008 standards which place the appeal site in Zone 3 (the least accessible from a Hart perspective). In quantitative terms Rushmoor's standards would require 320 residents' parking spaces and 35 visitor spaces. The Rushmoor standards count garage spaces such that the appeal proposal would result in a small surplus of parking spaces on this basis.
56. It is recognised that there can be a tendency for garages to be converted for additional residential accommodation. To countenance this a condition is proposed to restrict the conversion of garages. I note the local concerns that

⁶ Agreed Statement of Common Ground, paragraph 8.27

on-street parking could be displaced along the access road and into the surrounding road network. The appeal proposal would provide on average 2 parking spaces per property at a sustainable location and no longer includes a pedestrian link to Fernhill Lane. Together, with the general predilection for people wanting to park as close as possible to where they live, I am satisfied there would not be any harm to the safety or capacity of local road network arising from the level of parking proposed. Consequently, the appeal proposal would accord with HDLP Policies GEN1 and T14 in this regard.

Balances and Conclusion

57. There is no dispute that HDC can demonstrate a deliverable supply of housing land considerably in excess of a 5-year requirement and is also performing very positively against the Housing Delivery Test. There is also agreement that the most important policies against which to determine the development include HDLP Policies GEN1 and CON13. There would be conflict with the policies because of the less than substantial harm to the character and appearance of the HPGCA. The datedness and weight of these policies is disputed. There is also disagreement as to whether NPPF paragraph 11(d) would be engaged because the degree of heritage harm could be outweighed by public benefits.
58. Matters are more balanced in respect of whether Policies RUR1, RUR2 and RUR3 (the policy framework for development in the countryside) are also most important for this appeal proposal. The statement of common ground accepts the policies are relevant (paragraph 8.4) but the statement also confirms that the principle of residential development at the appeal site is established, and the site is sustainably located (paragraphs 8.2 and 8.3 respectively).
59. The appeal site is outside of a settlement boundary in the extant development plan but as set out elsewhere in this decision it is important to note that the site is proposed within a revised settlement boundary. The eHLP is very advanced emerging Local Plan and the Council determined in April 2019 that it would give great weight to it. Furthermore, the Council has already accepted the principle of residential development at the appeal site in approving both the outline and reserved matters proposals for 126 dwellings. Whilst policies RUR1, RUR2 and RUR3 are relevant they did not underpin a reason for refusal. The appeal proposal principally hinges on specific impacts arising from the proposed development rather than its spatial location. Consequently, the Council's contention that an additional 32 dwellings at the appeal location would result in an unbalancing of the emerging spatial strategy, as referred to the eHLP Inspector's 2019 interim findings, is misplaced.
60. Consequently, there are material differences here to the recent Netherhouse Copse and Crandall appeals where the planning context is less blurred than that at the appeal site. Whilst the appeal proposal would be contrary to Policies RUR1, RUR2, RUR3 I do not consider them to be amongst the most important policies for determining the appeal. That said, recent approvals since 2015 for major residential development on the appeal site (and elsewhere in Hart) illustrate that the extant settlement boundaries do not reflect the more up-to-date housing requirements. It is notable, that whilst the Council can demonstrate a five-year supply, that is in part because of provision such as the appeal site. Whilst Policy RUR2 offers some partial consistency with the NPPF on protecting the character and setting of the countryside, I nonetheless find Policies RUR1 and RUR2 to be out of date for the reasons

given. That does not mean they have no weight in the decision-making process but given matters have moved on significantly since they were adopted in 2002 I only give them only modest weight in any final planning balance.

61. I therefore turn to consider whether policies GEN! and CON13, as the most important policies, are out of date. Matters therefore focus on paragraph 213 of the NPPF which states that policies are not to be considered out of date simply due to their age, but due weight should be given to them based on their consistency with the NPPF. As set out above, these policies of the HDLP were adopted in 2002 and so significantly pre-date a number of principles to decision-making embedded in the original 2012 NPPF and now reinforced in the revised 2019 NPPF.
62. The LPA submit that the thrust of Policies GEN! (criteria (i) & (v)) and CON13 remain consistent with the NPPFs objective of conserving and enhancing the historic environment. Policy GEN! requires more generally at criterion (i) that proposals are keeping with the local character and at criterion (v) permits development that conserves or enhances, amongst other things the District's historic heritage. Policy CON13 applies to conservation areas and states that proposals for development which fail to meet the objectives of conserving or enhancing the character or appearance of a designated conservation area will not be permitted.
63. Whilst Policy GEN! provides some partial consistency with the NPPF on general matters of character and appearance neither policy fully reflects the wording or tests now set out in national policy at paragraphs 192-202 of the NPPF. Importantly, this includes the more nuanced approach allowing for a weighing of less than substantial harm to the significance of a designated heritage asset against public benefits. When taken together, as the most important policies, HDLP Policies GEN! and CON13 are out of date. The tilted balance at NPPF paragraph 11(d) would be engaged on this basis.
64. In undertaking an appropriate assessment, I have concluded that the proposal would not adversely affect the integrity of protected sites and so, in accordance with paragraph 177 of the NPPF, the presumption in favour of sustainable development would still apply. This is materially different to the Warbrook Lane, Eversley appeal decision cited by the LPA (Appendix 6 to Statement of Case). Matters therefore turn to footnote 6 to paragraph 11 of the NPPF as to whether the identified heritage harm in this case disengages the application of the tilted balance.

The Heritage Balance

65. As identified under the first main issue considered above, the appeal proposal would result in less than substantial harm to the character and appearance of the HPGCA. I have considered carefully the benefits arising the extensive proposed SANG (both phases being secured by the S106) and the ability of the SANG to preserve the openness of the HPGCA and to enable public access to better appreciate the heritage asset. However, because the appeal proposal would moderately intensify and reduce the area of undeveloped land that was once part of the wider rural Hawley Park Estate I find the net position remains one of less than substantial harm albeit at the lower end of any spectrum of such harm.

66. In arriving at this view, I give significant weight to the established fall-back position of an implementable scheme for 126 dwellings, meaning that the character of this part of the HGPCA has a strong likelihood of changing irreversibly in the near future. Nevertheless, even the small degree of heritage harm identified from the appeal proposal requires clear and convincing justification bearing in mind that great weight should be given to conserving heritage assets (NPPF paragraph 193).
67. There is dispute about the public benefits of the appeal scheme and the weight to be given to them, principally because of the housing land supply position in Hart. It was confirmed to me that the housing requirement should be regarded as a minimum. This accords with the tenet of the NPPF to significantly boost the supply of homes so as to ensure that the housing needs of various groups are met. Given the District has a deliverable housing land supply and is very positively performing against the HDT I give the social benefit from the 19 net additional market homes (out of the net additional 32 homes) arising from the appeal proposal on this site moderate weight. This is consistent with my colleague in the very recent Crandall appeal (paragraph 69).
68. In terms of the proposed affordable housing, the scheme would yield a net additional 13 affordable units. The LPA intimated at the hearing that the need for affordable housing was so significant in the District that the 13 units would have a negligible impact. The LPA invited only moderate weight be given in part because of the eHLP Inspector's interim findings that seeking to deliver more affordable need through a proportion of market housing would result in an imbalanced strategy and unsustainable commuting patterns. That would not arise here given the appeal site is accepted as a sustainable location. I therefore find to the contrary in that the 13 additional affordable units and commuted sum would make a moderate but nonetheless valuable contribution to those in important housing need. As such I attach substantial weight to the social benefit that would arise.
69. In respect of other associated social benefits arising from the appeal proposal the proposed scale of the SANG would enable an additional 697 homes to come forward with suitable habitats mitigation. The net additional 32 dwellings would not appreciably dent the surplus SANG capacity. Given the sensitive environmental context of the wider housing market area I ascribe significant weight to this benefit.
70. The proposed SANG, whilst necessary to enable the likely significant effects of the appeal proposal to be satisfactorily mitigated nonetheless presents appreciable wider public benefits in terms of heritage and the environment. This includes enabling public access to a significant part of the HPGCA whilst preserving and enhancing the parkland setting. It would provide for net benefits in terms of biodiversity arising from the landscape management proposals of the SANG. The increased scale of development on the net developable area of the western parcel would also make for more efficient and effective use of land as a finite resource in accordance with NPPF paragraph 122. I give appreciable weight to these environmental benefits.
71. Economically, the appeal proposal would generate appreciable employment during the construction phase, new homes bonus, additional council tax and additional expenditure into the local economy. I give moderate weight to these benefits.

72. Cumulatively, the various public benefits arising from the appeal proposal would be significant. Therefore, in respect of the heritage balance I find that the less than substantial harm identified to the significance of the heritage asset would be demonstrably outweighed by the public benefits so as to amount to clear and convincing justification. Consequently, footnote 6 to paragraph 11(d) of the NPPF is not engaged and the tilted balance applies.

The Tilted Balance

73. As set out above, there are a number of social, environmental, economic benefits which range from moderate to substantial. The appeal proposal also benefits from being sustainably located as reflected by its incorporation within the very advanced emerging revised settlement boundary. The proposed housing would be proximate to the services and facilities in both Farnborough and Hawley/Blackwater and would make a positive contribution to the deliverable supply of housing in the District, especially affordable housing. The proposed extent of the SANG would provide benefits to the HGPCA as well as preserving openness between Farnborough and Hawley/Blackwater.
74. Through the S106 agreement a number of obligations meet the relevant tests and whilst these are necessary to mitigate the impacts of the scheme and so are neutral in the balance, they nonetheless mean that there would be no conflict with HDLP Policies GEN1, T14 and ALTGEN13 and paragraph 4.6.1. The effect on the SPA can be mitigated such that there would be no conflict with Policy NRM6 of the South East Plan, Policies CON1 and CON2 of the HDLP and draft Policy NBE2 of the eHLP.
75. With regard to the adverse impacts, the development would result in less than substantial harm to the heritage significance of the HPGCA in conflict with HDLP Policies GEN1 (criteria (i) and (v)) and CON13 as well as eHLP Policy NBE9. However, the harm would be outweighed by the public benefits arising from the proposed development. Due to the outdatedness of the HDLP policies I only give moderate weight to this conflict. I give similar moderate weight to the conflict with eHLP NBE9 recognising the principle of the proposed development is already established (reflected in amended proposed settlement boundary) and the fact the appellant's robust fall-back position which would generate a comparable degree of harm and has every prospect of being implemented.
76. As the site is outside of an adopted settlement boundary it would conflict with HDLP Policies RUR1 and RUR2 but given the outdatedness of these policies, the only partial conformity of RUR2 with the NPPF, the extant permission and the imminent proposed settlement boundary amendment I give this conflict only limited weight.
77. In conclusion, and taking it account all other material considerations, the adverse impacts of the appeal proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. Therefore, the presumption in favour of sustainable development would apply. On this basis a decision, other than in accordance with the development plan is justified and consequently the appeal should be allowed.

Conditions

78. The statement of common ground has a number of proposed conditions which were considered necessary in the event the appeal was allowed. I have considered these in light of the content of the PPG on the use of conditions and the guidance at paragraph 55 of the NPPF and where necessary amended the wording slightly for comprehension.
79. In addition to the standard time limit condition (1), a condition (2) requiring the development is carried out in accordance with the approved plans and a separate condition (8) requiring cross-sections showing finished floor and ridge heights of buildings relative to ground level are both needed in the interests of proper planning and for avoidance of doubt. The approved plans are taken from the revised list provided by the appellant on 30 January 2020 and agreed by both main parties at the hearing. Notwithstanding the approved plans and details a further condition (10) requiring details of external finished surfaces would be necessary in terms of securing good design.
80. A condition (3) requiring that any contamination on the site would be adequately dealt with is necessary in the interests of public safety and environmental protection. Given the history and character of the site the risk is likely to be low and so I have imposed a proportionate standard condition which ultimately achieves a similar outcome to the lengthy condition suggested. For similar safety and environmental reasons conditions (5) and (6) requiring details of foul and surface water drainage schemes are both necessary. I am mindful that the appellant has provided a very detailed flood risk assessment (466 pages) which deals with infiltration, flood event modelling and sustainable drainage solutions. I have therefore amended condition 6 to remove the detail and to leave it between the parties to determine what additional information is needed in respect of surface water.
81. A condition (4) requiring a construction traffic management plan (CTMP) would be necessary to ensure highway safety and to protect the amenities of adjacent residents. A separate condition (11) specifying construction access is to be taken from Hawley Road and not Fernhill Lane is also necessary given Fernhill Lane is narrow, of poor alignment and visibility and unsuitable for heavy goods vehicles. In the interests of good design and accessibility of all users a condition (9) requiring details of internal road and footway network is also necessary as is a condition (14) requiring parking and bin storage facilities to be maintained for that purpose. In terms of the wider amenity of adjacent residents, it would be justified to impose a condition (13) limiting the times for construction and deliveries.
82. Notwithstanding the details approved in the plans in condition 2, a further condition (7) on securing appropriate boundary treatment to Fernhill Lane is necessary in terms of protecting the local character in accordance with HDLP Policy GEN!. For similar reasons of local character and good design a set of conditions (16), (17), (18) and (19) are necessary to ensure the scheme is landscaped in accordance with the approved details, that tree pits within the highway are implemented to an acceptable standard and that retained trees, hedges and shrubs are appropriately protected (and if necessary replaced) during construction.

83. Given the representations from Hampshire County Council archaeology it would be justified to impose a condition (12) requiring an agreed programme of archaeological work.
84. A condition requiring a separate ecological management plan would not be necessary given the evidence in the appellant's ecological assessment (February 2018) and the various management plans for the proposed SANG in condition 2 and further measures for the management of the SANG in the S106 agreement. A further condition (15) requiring the early implementation of signage is necessary to ensure the effectiveness of the SANG and I impose it accordingly.

<David Spencer

Inspector.

APPEARANCES

FOR THE APPELLANT:

Christopher Boyle QC - Landmark Chambers
Michelle Quan - Boyer Planning
Dr Timur Tatiloglu - Montagu Evans (for heritage matters)
Radek Chanas - Pegasus Group (for landscape matters)
Andrew Morgan - DAC Beechcroft LLP (for S106 matters)
Alastair Pott MRTPI - Crest Nicholson (discussion on conditions)

FOR THE LOCAL PLANNING AUTHORITY:

Peter Lee BA(Hons) DipGeog MRTPI - Planning Team Leader
Cllr Graham Cockarill
Maxine Lewis - Enforcement Team Leader

INTERESTED PERSONS:

Paul Brett - Local Resident/ HALT (Hawley Area Land Threat)
Steve Carpenter - Local Resident/ HALT
John Pattison - Local Resident
Cllr Adrian Collett - Blackwater & Hawley Town Councillor
Cllr Brian Blewett - District and Town Councillor

DOCUMENTS ACCEPTED AT THE HEARING

- H1 Appellant's 'Quantification Table' - comparing the previously permitted 126 dwelling scheme with the appeal scheme
H2 Bloor Homes v SSCLG & Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin)
H3 Eastleigh Borough Council v. SSHCLG et al. [2019] EWHC 1862 (Admin)
H4 Revised Draft S106 Agreement with SAMM optional amendments as of 5 February 2020

DOCUMENTS ACCEPTED POST HEARING

- PH1 Signed and dated S106 Agreement - received 13 February 2020
- PH2 Crandall Appeal decision (3185513) - issued 14 February 2020
- PH3 LPA submissions on the Crandall Appeal Decision - 25 February 2020

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) Unless otherwise agreed in writing by the local planning authority, the development shall be carried out, retained and completed in accordance with the following approved drawings and documents:

FD17-1483-50 Rev A Site Location Plan; FD17-1483-51 Existing Site Layout; FD! 7-1483-52 Existing Site Sections; FD! 7-1483-60 Rev G Proposed Layout; FD! 7-1483-65 Rev C Proposed Layout - Affordable Housing Mix; FD17-1483-68 Proposed Layout- Refuse Strategy; FD17-1483-70 Rev D Proposed Material Plan; FD17-1483-71 Rev D Proposed Material Schedule; FD17-1483 Sheet 6b Issue Sheet; FD17-1483-200 Rev A Plots 01-03 & 33-35 Plans & Elevations; FD17-1483-205 Rev B Plots 04-05, 132-133, 134-135 & 136-137 Plans & Elevations; FD17-1483-210 Rev B Plots 06-07 Plans & Elevations; FD17-1483-215 Rev A Plots 08-13,14-19 & 71-76 Plans & Elevations; FD17-1483-220 Rev A Plots 20-25 Plans & Elevations; FD17-1483-225 Rev A Plots 26-29 Plans & Elevations; FD! 7-1483-230 Rev A Plots 30-32 Plans & Elevations; FD17-1483-235 Rev A Plots 36 & 57 Plans & Elevations; FD17-1483-240 Rev A Plots 37-38 Plans & Elevations; FD17-1483-245 Rev B Plots 39-40 Plans & Elevations; FD! 7-1483-250 Rev A Plots 41-42 Plans & Elevations; FD! 7-1483-255 Rev A Plots 43-44 Plans & Elevations; FD! 7-1483-260 Rev A Plot 45 Plans & Elevations; FD! 7-1483-265 Rev A Plot 46 Plans & Elevations; FD! 7-1483-270 Rev C Plots 47-48 Plans & Elevations; FD17-1483-275 Rev B Plots 49-56 & 113-116 Plans & Elevations; FD! 7-1483-280 Rev A Plots 58 & 164 Plans & Elevations; FD! 7-1483-285 Rev A Plots 59 & 60 Plans & Elevations; FD17-1483-290 Rev A Plot 61 Plans & Elevations; FD17-1483-295 Rev A Plot 62 Plans & Elevations; FD17-1483-300 Rev A Plots 63-64 Plans & Elevations; FD17-1483-305 Rev A Plots 65-70 Plans & Elevations; FD17-1483-310 Rev B Plot 77 Plans & Elevations; FD! 7-1483-315 Rev A Plots 78-79 & 80-81 Plans & Elevations; FD! 7-1483-320 Rev A Plot 82 Plans & Elevations; FD! 7-1483-325 Rev B Plots 101-104 & 109-112 Plans & Elevations; FD17-1483-330 Rev A Plots 105-108 Plans & Elevations; FD17-1483-335 Rev B Plot 117 Plans & Elevations; FD! 7-1483-340 Rev B Plots 118-119 Plans & Elevations; FD! 7-1483-345 Rev B Plots 120-122, 148-150 & 151-153 Plans & Elevations; FD17-1483-350 Rev A Plots 123-124 Plans & Elevations; FD17-1483-355 Rev A Plot 125 Plans & Elevations; FD17-1483-360 Rev A Plots 126 & 127 Plans & Elevations; FD! 7-1483-365 Rev A Plots 128-129 & 130-131 Plans &

Elevations; FD17-1483-370 Rev A Plots 138-139, 140-141 & 144-145 Plans & Elevations; FD17-1483-375 Rev A Plots 142-143, 146-147 & 167-168 Plans & Elevations; FD17-1483-380 Rev A Plots 154-156 Plans & Elevations; FD17-1483-385 Rev B Plots 157-161 Plans & Elevations; FD17-1483-390 Rev A Plots 162 & 163 Plans & Elevations; FD17-1483-395 Plots 165 & 166 Plans & Elevations; FD17-1483-400 Plots 169-172 Plans & Elevations; FD17-1483-405 Plots 173, 174, 175 & 176 Plans & Elevations; FD17-1483-600 Single Garage Plans & Elevations; FD17-1483-605 Double Garage Plans & Elevations; FD17-1483-610 Triple Garage Plans & Elevations; FD17-1483-615 Rev B Plots 08-19 Bin Store; FD17-1483-620 Rev A Plots 08-19 Cycle Store; FD17-1483-625 Rev B Plots 20-25, 65-70 & 157-161 Bin & Cycle Store; FD17-1483-630 Rev B Plots 71-76 Bin & Cycle Store; FD17-1483-750 Rev A Proposed Street Scenes - Sheet 1; FD17-1483-751 Rev B Proposed Street Scenes - Sheet 2; FD17-1483-752 Rev A Proposed Street Scenes - Sheet 3; FD17-1483-753 Rev A Proposed Street Scenes - Sheet 4; FD17-1483-754 Rev C Proposed Street Scenes - Sheet 5; FD17-1483-755 Rev A Proposed Street Scenes - Sheet 6; FD17-1483-756 Proposed Street Scenes - Sheet 7; FD17-1483-760 Rev A Proposed Sections - Sheet 1; FD17-1483-761 Rev A Proposed Sections - Sheet 2; FD17-1483-762 Rev C Proposed Sections - Sheet 3; FD17-1483-800 Indicative 30 Views; 06326.001 Rev 02 Illustrative Masterplan; 06326.002 Rev 02 Landscape GA Plan; 06326.101 - 06326.107 Rev 03 Hardworks Plan Sheets 1 - 7; 06326.201 - 06326.207 Rev 03 Planting Plans Sheets 1 - 7; 06326.400 Rev 01 Landscape Details; 06326.410 Rev 00 Play Equipment; 06326.430 Rev 00 Play Equipment w/in Residential Area; 06326.500 SANGS Phase 1 - Illustrative Masterplan; 06326.501 SANGS Phase 1 - Key Plan; 06326.511/ 06326.512 / 06326.513 SANGS Phase 1 - Landscape Plans Sheets 1 - 3; 06326.700 Landscape Details - SANGS Phase 1; 06326.710 Play Equipment - SANGS Phase 1; Planning Statement; 17-1483-10 Rev D Parts 1-3 Design and Access Statement; DFA18012V3 Ecological Assessment; 30969/001 Transport Statement; TN02 Transport Statement Addendum; 170271-03 Noise Impact Assessment; 170271-005-P6 Drainage Strategy; Slh21985(170271-01) Rev A Flood Risk Assessment; 9558 Heritage Impact Assessment; MMA 14427 Outdoor Lighting Report; MMA14427/001 Street Lighting Design; C.2111 Arboricultural Impact Assessment and Tree Protection Plan; and BHA_C.2111_AIA Addendum to Arboricultural Impact Assessment.

- 3) No development excepting formation of the approved access shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures

for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the local planning authority.

- 4) No development excepting formation of the approved access shall take place until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i. the parking and turning arrangements of vehicles of site operatives and visitors;
 - ii. construction traffic routes;
 - iii. the loading and unloading arrangements of plant and materials; and
 - iv. measures to prevent mud being deposited on the highway

The approved Construction Traffic Management Plan shall be adhered to throughout the construction period for the development.

- 5) No development excepting formation of the approved access shall take place until a drainage strategy including details of connection to the off-site foul sewers and increase in capacity where necessary have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied on the site until the drainage works have been completed.
- 6) No development excepting formation of the approved access shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied on the site until the approved details have been implemented.
- 7) Notwithstanding the approved details in condition 2, no development above slab level of any dwelling hereby approved shall take place until a scheme for the boundary treatment along the Fernhill Lane boundary to the site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall provide for fencing and for the existing landscaping / hedging to be reinforced and shall be designed so as to prevent pedestrian access to Fernhill Lane. The approved boundary treatment shall be implemented prior to the first occupation of any dwelling and shall be thereafter retained and maintained in accordance with the approved details.
- 8) No development excepting formation of the approved access shall take place until drawings including cross-sections through the site showing the finished floor level and finished ridge heights of buildings in relation to the existing ground level of the site have been submitted to and approved in writing by the Local Planning Authority. The submitted plans shall also show the Ordnance datum levels of the site as existing and as proposed. The dwellings shall not be constructed other than in accordance with the approved levels details.
- 9) No development excepting formation of the approved access shall take place until details of the width, alignment, gradient and type of construction proposed for the roads, footways and accesses, including all relevant horizontal cross sections and longitudinal sections showing the existing and

proposed levels, together with details of street lighting and the method of disposing of surface water, and details of a programme for making up of the roads and footways has been submitted to and approved in writing by the Local Planning Authority. The agreed details shall be fully implemented before any building or use hereby approved is occupied.

- 10) Details and samples of all external finished surfaces shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. The development shall only be carried out in accordance with the approved details.
- 11) The access road from Hawley Road shall be of a formation and capable of beneficial use prior to the commencement of construction of any dwellings at the site. No construction traffic and vehicles of site operatives or visitors shall enter the site from Fernhill Lane.
- 12) No development excepting formation of the approved access shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation as submitted to and approved in writing by the Local Planning Authority.
- 13) No development or delivery of materials shall take place at the site except between 07:30 hours to 18:00 hours on Mondays to Fridays or 08:00 hours to 13:00 hours on Saturdays. No development or deliveries of materials shall take place on Sundays or Bank Holidays.
- 14) The approved parking and bin storage facilities shall not be used for any other purpose other than for what they have been designed for and access shall be maintained at all times to allow them to be used as such.
- 15) Details of the required signage and interpretation boards for the SANG shall be submitted to and approved in writing by the Local Planning Authority. The approved signage and interpretation boards shall be installed prior to the SANG site first being made available to be used by the public including the completed circular paths.
- 16) Hard and soft landscaping works shall be carried out in accordance with the approved details. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 17) Notwithstanding the submitted landscape details (D6326.400 Rev 01), no development excepting the formation of the approved access shall take place until and unless full details of proposed tree pits are submitted and approved in writing by the Local Planning Authority. The details shall include cross-section drawings, the use of guards or other protective and irrigation

measures. The details shall be provided in accordance with BS8545: 2014 (with reference to Figures F.1 and F.2 on Tree Pit Design). The tree pits shall be implemented in accordance with the approved details.

- 18) No development excepting the formation of the approved access shall take place until a scheme for the protection of the retained trees, hedges, hedgerows and shrubs (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 19) If during construction any retained tree, hedge, hedgerow or shrub is cut down, uprooted or destroyed or dies another specimen(s) shall be planted at the same place and that specimen(s) shall be of such size and species and shall be planted, in accordance with condition 18, at such time as may be specified in writing by the local planning authority.
- 20) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Schedule ends.



Hart District Council

Planning Local Enforcement Plan

January 2016

HART PLANNING ENFORCEMENT PLAN 2015

1. Introduction

1.1 Planning legislation is designed to control the development and use of land in the public interest. The credibility of the planning system relies on the Council's readiness to take effective enforcement action when needed. The Council is committed to providing a speedy and efficient planning enforcement service to respond to alleged breaches of planning control.

1.2 Hart District Council follows the principles of the Regulators Code and has signed up to the Government's Enforcement Concordat that sets out the principles of good enforcement practice. These are:

Standards: to publish clear standards of service and performance.

Openness: to provide information and advice in plain language, to discuss problems with anyone experiencing difficulties and to be transparent in decision making processes.

Helpfulness: to work with all parties to advise on and assist with compliance. To provide contact details for further information.

Consistency: to carry out duties in a fair, equitable and consistent manner.

Proportionality: to take action in proportion to the risks posed and how serious the breach is.

Complaints about the Service: to provide well publicised, effective and timely complaints procedures.

1.3 In Hart Planning Enforcement is carried out under the Scheme of Delegation to Officers. The Head of Regulatory Services has delegated authority to investigate and to take enforcement proceedings. However, this is under the overview of Members who sit on the Planning (Enforcement) Sub-Committee. This Sub-Committee normally meets quarterly to consider certain cases where there are particular issues, such as the need to take direct action.

2. Purpose of Document

2.1 This policy is intended to provide guidance to officers, businesses and members of the public, setting out the principles and the standards the service will work to in enforcing breaches of planning control. It sets out what we can and can't do in terms of planning enforcement. It also explains how complaints are investigated, how we prioritise and what tools we have available where enforcement action is considered necessary.

2.2 Hart District Council Regulatory Services has an adopted enforcement policy and has a published guidance document entitled "What you can expect from Regulatory Services in Hart District". This policy document fits within that overall framework alongside other regulatory service policies

3. About Planning Enforcement

- 3.1 Government guidance to local planning authorities on enforcement is set out the [National Planning Policy Framework](#) at paragraph 207 and identifies effective enforcement as an important means of maintaining public confidence in the planning system. The National Planning Policy Framework is supported by [Planning Practice Guidance \(Ensuring Effective Enforcement\)](#).
- 3.2 There is no duty under the Town and Country Planning Acts to take planning enforcement action - powers given to local authorities are discretionary. In deciding whether to take enforcement action, the Council must decide whether the unauthorised works would unacceptably affect public amenity. For example, it would not be appropriate to take action in the case of a small extension to a dwelling, which although technically needing an application planning permission, does not cause any harm to the amenity of the area or nearby residents.
- 3.3 It is important to remember that, in general, it is not a criminal offence to carry out development before first obtaining planning permission and it only becomes an offence when there is failure to comply with a formal enforcement notice. However, there are exceptions to this in that unauthorised works to listed buildings, carrying out works to protected trees and the display of advertisements without the necessary consent all do constitute offences which are liable to prosecution. (See further information at below).
- 3.4 Planning enforcement can be a lengthy process, particularly where evidence needs to be collected or where formal notices are served and the right to appeal is exercised. A satisfactory outcome can take many months to achieve. There are also time limits after which enforcement action cannot be taken. Generally speaking, if a building has been completed for more than 4 years, or a use has been carried on, or a planning condition breached, for more than 10 years, the Council will not be able to take any enforcement action. (This does not apply in the case of listed buildings).

4. What we can deal with

- 4.1 Hart Planning Enforcement deals with the following matters:
- Unauthorised building works
 - Unauthorised change of use
 - Unauthorised works to listed buildings
 - Unauthorised demolition in Conservation Areas
 - Unauthorised works to trees covered by a Tree Preservation Order or within a Conservation Area
 - Works not being carried out in accordance with the approved plans
 - Breaches of planning conditions
 - Unauthorised advertisements
 - Untidy sites (beyond what you would expect for an activity of that type)

5. What we can't deal with

- 5.1 Hart Planning Enforcement is unable to deal with the following matters:

- Works that do not require planning permission
- Minerals and waste planning enforcement matters (these are dealt with by Hampshire County Council)
- Works that have not yet started (except in exceptional circumstances where a serious breach can be prevented)
- Boundary disputes
- Obstruction of a highway or public footpath (this is dealt with by Hampshire County Council)
- Advertisements on the highway or on street furniture (these are dealt with by Hampshire County Council)
- Enforcement of deeds or covenants (these are enforced by the landowner or other person benefiting from the covenant)
- Fly-tipping (this is dealt with by the Council's Streetscene service)
- Noise issues (this is dealt with by the Council's Environmental Heath Team, unless there is a condition attached to a planning permission restricting noise levels that is being breached)
- Anonymous complaints unless they are of a very serious nature and it is in the public interest to do so

6. How to make contact with us

- 6.1 If you are concerned that a matter may be a breach of planning control you can raise this on the Council's [planning enforcement form](#) or by making contact in one of the following ways.

Telephone: 01252 774419

Email: planningadmin@hart.gov.uk

Web: www.hart.gov.uk

By post: Hart District Council
Civic Offices
Harlington Way
Fleet
Hampshire
GU51 4AH

Or in person at the above address between 9am and 5pm (Monday-Thursday) 9am and 4:30pm (Fridays) excluding national holidays.

- 6.2 You will need to provide:

- The address of the site
- Your own contact details, including your name and address
- Details of the alleged breach, including the start date, if known
- An indication of what harm is being caused, and to whom
- Any details you have about the persons responsible

- 6.3 Complaints can be made by telephone, but will not be dealt with unless sufficient information is provided to allow the officer to undertake an initial investigation. If the information given is found to be false, the enquiry will not be continued unless the breach is seriously harmful to the area. Similarly, anonymous complaints will not be investigated unless they are of a very serious nature, it is in the public interest to do so and the investigation is not reliant on the evidence of the complainant.
- 6.4 The identity of a complainant will be treated as confidential. However, if the complaint results in a court case, the success of that case may rely on evidence being given by the complainant. In such a case, the Council will discuss this with any potential witnesses before taking a decision about whether to prosecute an offender.

7. How we prioritise complaints

- 7.1 Although we appreciate that all allegations of breaches of planning control are important to those they affect, to make the most effective use of the resources available, cases will be prioritised, taking into account the significance of the breach and the level of harm caused. The priority categories for unauthorised works are listed below. These timescales are the longest period in which we intend to respond to a complaint I and in all instances the service will seek to visit as soon as possible.

Priority 1 – High priority (Site visit up to 2 working days):

- Demolition or alteration of a Listed Building
- Demolition of a building within a Conservation Area.
- Works to trees protected by a Tree Preservation Order or within a Conservation Area.
- Any unauthorised development/activity/operation, falling within planning control that presents an immediate and serious danger to the public

Priority 2 – Medium priority (Site visit up to 5 working days):

- Development not in accordance with the approved plans during the construction process
- Development causing serious harm to the amenity of nearby residents, e.g. through impact on privacy or outlook
- Advertisements causing serious harm to amenity or highway safety
- Commencement of works without clearing conditions precedent

Priority 3 – Low priority (Site visit up to 10 working days):

- Advertisements
- Minor works including fences, walls, small extensions
- Condition monitoring
- Untidy sites
- Other breaches of planning control

- 7.2 These categories will be used not only to determine how quickly a site visit will be carried out, but also to decide what priority is given to each case when officers are managing their workload.

7.3 Individual cases may be re-prioritised as the investigation progresses and as new evidence comes to light.

8. How we investigate an allegation

8.1 We aim to acknowledge all complaints within 3 working days and to visit the site in the timescales set out above.

8.2 In most cases it will be quite clear from a site visit and the planning history whether a breach has taken place. However, there are some cases, particularly involving changes of use, where a number of site visits will be needed or more information will be required.

8.3 Authorised officers have statutory powers to enter land and buildings to investigate breaches of planning control. Officers will produce evidence of their authority, identity and the purpose of their visit when requested. It is an offence to obstruct an authorised person exercising their right of entry.

8.4 In some cases we might need to ask complainants to help by keeping a log of activities to help provide evidence of a breach. If the complainants are unwilling to do this, the Council may not be able to pursue the case due to insufficient evidence being available as a successful prosecution may rely on those collecting such details being prepared to give evidence in court.

8.5 The Council will not normally undertake covert surveillance for planning enforcement purposes. Should it be considered necessary to do so, surveillance will only be undertaken with prior authorisation and in accordance with the provisions of The Regulation of Investigatory Powers Act 2000 or any subsequent legislation.

8.6 To obtain further information the Council will, where necessary, serve the following notices:

8.6.1 A *Planning Contravention Notice* (PCN) is used where further information is required about ownership of land or the activities being carried out there. It can be served on the owner or occupier of land, or a person who is carrying out operations on the land or is using it for any purpose. A PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine being £1,000. To knowingly or recklessly provide false or misleading information on a PCN can result in a fine of up to £5,000.

8.6.2 A *Requisition Notice*, under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 can be used to establish information about the ownership of land. It is an offence to fail to respond to the notice or to knowingly or recklessly provide false or misleading information. The maximum fine on conviction is £5,000.

8.7 The Council will also use other publically available sources of information such as Land Registry records or information which is published on the internet.

9. Proactive Investigations

- 9.1 As well as responding to complaints about alleged unauthorised developments or breaches of planning conditions, the council provides a proactive approach to ensure compliance with planning permissions and other consents. It is the responsibility of developers to comply with the conditions imposed on any planning permission or consent or with any terms identified in legal agreements. However, failure to comply can affect not only the quality of the local environment or the amenity of neighbouring properties, but also undermine the reasons and justification for granting planning permission or other consents in the first instance. Failure to comply with planning conditions also exposes an applicant or developer to the potential for enforcement action.
- 9.2 Proactive action will encourage and enable compliance with conditions to safeguard that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment.
- 9.3 We will work closely with other services within the Council such as Building Control, Environmental Health and Revenues & Benefits to help in identifying potential breaches.
- 9.4 The Council will operate a risk based approach in deciding which cases are to be investigated or monitored to ensure our available resources are used in a targeted and focused way. Priority will be given to:
- larger developments such as those over 10 dwellings or development greater than 1 hectare in area;
 - Commercial developments over 1000sq metres floor area or 0.5 hectares in area;
 - Decisions subject to a planning agreement (Section 106, CIL or any subsequent method);
 - Proposals which have trees which are protected by Tree Preservation Orders;
 - Where there has been a history of non-compliance at a particular site;
 - Significant works to Listed Buildings.
- 9.5 This is not an exhaustive list and our officers will use their discretion if there are other applications which do not fall into the scope above but there is a justifiable need to carry out proactive monitoring.

10. The Council's Approach to Planning Enforcement

- 10.1 The integrity of the development management process depends on our readiness to take enforcement action when it is considered expedient to do so. The quick initiation of enforcement action is vital to prevent a breach of planning control from becoming well established and more difficult to stop.
- 10.2 The Council will not condone willful breaches of planning law but it will exercise

discretion about taking enforcement action if it is considered expedient to do so.

- 10.3 The Council will take into account its Policies on Enforcing Planning Control (Appendix A) when considering whether to take enforcement action.

11. What action might we take?

- 11.1 The options available to the Council will depend on the results of its investigation. These include:
- 11.2 **No action** – if it is found that an application for planning permission is not required, or the breach is very minor and causes no harm to the environment or nearby residents, then no further action will be taken.
- 11.3 **Negotiate solution** – we will try to negotiate a satisfactory solution within 12 weeks of the start of an enforcement investigation wherever possible. This approach achieves a suitable outcome and avoids the time and cost of serving notices, fighting appeals and possibly taking the offenders to court. If building works or an unauthorised use is considered to be unacceptable, the developer will be given a realistic deadline by which to remove the building/cease the use. If this deadline is not met, then formal enforcement action will be taken. Clear timescales for compliance will be given to the landowner and other interested parties at all stages.
- 11.4 **Retrospective application** – where a development is in line with policies in the Hart Local Plan and the development is causing no harm, or where planning conditions can be used to make a development acceptable, the Council may invite the developer to submit a retrospective planning application depending on the nature of the breach of planning control and the expediency to do so. This would only be appropriate in cases where formal enforcement action has not been taken.
- 11.5 **Invite an application for Lawful Development Certificate** – if it appears to the Council that a use or development might have become lawful by passage of time, the developer will be invited to submit an application for a Lawful Development Certificate. If the application is approved, no further action will be taken. If it is refused, and no appeal is lodged, then the Council will decide whether formal enforcement action is necessary.
- 11.6 **Breach of Condition Notice** – where a planning condition has not been complied with, a Breach of Condition Notice can be served. The notice sets out what steps are needed to comply with the condition and by what date this action must be taken. There is no right of appeal against a Breach of Condition Notice and failure to comply can result in a prosecution in court.
- 11.7 **Enforcement Notice** – if a development is causing harm to the surrounding area, or is contrary to local plan policies, and attempts to negotiate a solution have failed, then a formal Enforcement Notice will be served. An Enforcement Notice will set out what harm is being caused by the development, what steps are needed to remedy the harm and the timescale in which these steps must be taken.

- 11.8 **Stop Notice** – in cases where urgent action is needed to remedy harm being caused, a Stop Notice can be served in addition to the Enforcement Notice. The purpose of a Stop Notice is to require activities to cease before the date for compliance set out in the Enforcement Notice. These are only used in exceptional circumstances where serious harm is being caused to public amenity.
- 11.9 **Temporary Stop Notice** - These take effect immediately and do not have to be accompanied by an Enforcement Notice. They last for a period of 28 days during which the local authority must decide whether any further action is needed. They cannot be used in certain situations, e.g. the use of a building as a dwelling, or in some cases involving use of a caravan where it is the occupant’s main residence (although there are exceptions to this).
- 11.10 **Injunction** - in very serious cases, where irreparable harm and serious danger is being caused, or where all other methods of enforcement have failed, the Council can seek an injunction in the County Court or High Court to restrain or prevent a breach of planning control. Failure to comply with an injunction is a contempt of court and can lead to a fine, imprisonment or assets being seized. This is only used in exceptional circumstances.
- 11.11 **Prosecutions** - although normally a last resort, are an important part of the enforcement function. In deciding whether to prosecute, the Council will take into account whether it is in the public interest and whether there is sufficient evidence to prove the case beyond reasonable doubt. As referred to above, this may be dependent upon complainants being willing to assist with the provision of evidence and by appearing in court.
- 11.12 **Direct action** - Where any steps required by an Enforcement Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether to exercise its power to enter the land and take the steps to remedy the harm; and to recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. If the costs cannot be recovered, a charge will be registered on the property with the Land Registry.
- 11.13 **Planning Enforcement Order** - A local planning authority can seek a Planning Enforcement Order through the Magistrate’s Courts where a breach of planning control has been deliberately concealed in an attempt to circumvent the “4 year rule” or the “10 year rule” which normally provide immunity from enforcement action. Its use will depend on whether or not there are other remedies available but also on whether or not any “concealment” was deliberate.
- 11.14 **The Proceeds of Crime Act 2002** provides for the confiscation or civil recovery of the proceeds from crime in the UK. The Council may be able to seek an award under the Act if relevant criteria are satisfied and the breach of planning has resulted in monetary or other gains being made by the individual concerned.

12. Trees

- 12.1 Trees are protected when they are covered by a Tree Preservation Order or if they are within a Conservation Area. Anyone who contravenes an Order by damaging or carrying out work on a tree protected by an Order without getting permission from

the Council is guilty of an offence.

- 12.2 In a Conservation Area, a person wishing to cut down or carry out works to trees is required to give 6 weeks notice to the local planning authority. This is to give the LPA the opportunity to make a Tree Preservation Order if they consider the tree contributes to the amenity of the area. Anyone who carries out such work without serving a notice on the LPA is guilty of an offence.
- 12.3 If we receive information to suggest that a protected tree is being felled, we will treat this as a high priority and visit the site as soon as possible. When questioning the owner of the land, or the person carrying out the work, The Council will then consider whether it is in the public interest to prosecute those concerned. The planting of replacement trees will normally be required irrespective of whether or not any further action is taken. If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice within a period of four years to ensure compliance.

13. Advertisements

- 13.1 It is an offence under the Town and Country Planning Act to display an advertisement without express consent. If officers consider that an application for the advertisement would probably be granted, then a retrospective application will be requested. Where the advertisement causes serious harm to amenity or public safety, a request will be made for its removal within a specific period. The Act also gives the Local Planning Authority the power to remove and dispose of structures (such as hoardings) which are being used for unauthorised advertisement displays, but not on buildings to which there is no public right of access. In these instances the Council can serve a 'removal notice and then be able to recover the cost of removal.

14. Listed Buildings

- 14.1 Listed Building Consent is required for the demolition of a listed building or for alteration or extension to the building in a manner which would affect its character as a building of special architectural or historic interest. It is an offence to carry out such works without the necessary authorization.
- 14.2 The Council can either prosecute an offender or serve a Listed Building Enforcement Notice requiring the unauthorised work to be remedied. There are no time limits for taking enforcement action in respect of listed buildings. In deciding whether to serve a Listed Building Enforcement Notice, or to prosecute an owner, the Council will take into consideration the length of time that has passed since the work took place and who was responsible for carrying out the unauthorised work.
- 14.3 It is not possible to make a retrospective application for Listed Building Consent however an application may be necessary to resolve matters. If negotiations fail, then the Council may serve a Listed Building Enforcement Notice. As with a general Enforcement Notice, this identifies the works required and the timescales.

15. Demolition in Conservation Areas

- 15.1 The demolition of an unlisted building in a conservation area requires planning

permission. This can either be applied for in conjunction with a planning application for redevelopment of a site, or a separate application for 'relevant demolition' can be made. It is an 'offence for a person to carry out or cause or permit to be carried out the demolition of an unlisted building within a conservation area without the required planning permission. Similarly it is also an offence for a person to fail to comply with any condition or limitation subject to which planning permission for relevant demolition is granted.

16. What to do if you are not satisfied with our service

- 16.1 We make every effort to provide good customer service and to follow correct procedures at all times. However, we are only human and make mistakes. If you have a complaint about the service then the Council has a [Complaints Procedure](#). However, in the first instance please direct your complaint to the case officer dealing with your case.
- 16.2 Please note that the Complaints Procedure only deals with processes and procedures in making a decision, it does not deal with matters where we had followed the proper procedures (including considering objections for matters relating to planning), relevant legislation and guidance but came to a decision that you disagree with, i.e. that it was not expedient to take enforcement action or to serve an enforcement notice.
- 16.3 If, having gone through the formal complaints procedure, you remain dissatisfied, you may refer your complaint to the Local Government Ombudsman. Details of how to do this are on the Council's website at the link above, or on the Ombudsman's website www.lgo.org.uk.



**Hart District Council
General Policy on Enforcing Planning Control
January 2016**

POLICY PE1

- a) **Formal enforcement action will not normally be taken where a trivial or technical breach of planning control has occurred that causes no material harm, or it is considered that planning permission is likely to be granted unconditionally;**
- b) **Hart District Council recognises the importance of establishing effective controls over unauthorised development, to assist in the preservation and enhancement of the qualities of both the built and natural environment, and to protect public amenities;**
- c) **As local planning authority, the Council will exercise all reasonable powers granted under the provisions of the Planning Acts, including all other subordinate legislation, and other relevant legislation to control unauthorised development effectively;**
- d) **In considering whether it is expedient to start enforcement action, the Council will take account of the policies in the current local plan and all other material considerations including the emerging Local Plan and will assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings which ought to be protected in the public interest;**
- e) **In considering whether something is trivial the Council will pay particular regard to whether the site lies within a conservation area where there is a statutory duty to ensure that new development preserves or enhances the character and appearance of the area. Where unauthorised works are carried out to a listed building the Council will also have regard to whether those works adversely affect its character and appearance.**

POLICY PE2

Immediate planning enforcement action will be taken against any unauthorised development which unacceptably affects public amenity, causes harm to land or buildings or creates an immediate danger. Where this is not the case the Council will seek to negotiate a resolution of the breach of planning, either by the submission of a planning application or the cessation/variation of the activity.

The Council will try to persuade an owner or occupier of land to remedy voluntarily any harmful effects of unauthorised development. The Council will not however, allow discussions to hamper or delay any necessary formal enforcement action to make the development more acceptable on planning grounds, or to make it stop.

POLICY PE3

Where works without consent have been carried out to a listed building and the works are considered to adversely affect its character, appearance and setting, the Council will issue a Listed Building Enforcement Notice and/or start criminal proceedings where it is in the public interest to do so.

Where action is taken it may be in the form of stop notices, temporary or conventional, seeking injunctions from the Courts, prosecutions or direct action. The choice of action will be taken on the basis of what is considered to be likely to be most effective in securing compliance with planning control in the particular circumstances.

Cases involving listed buildings

Works which affect the reasons why a listed building is listed require Listed Building Consent. Where works have been carried out without consent an offence may have been committed. Subject to the extent and nature of the works, consideration will be given to whether to start criminal proceedings and/or serve a Listed Building Enforcement Notice to make sure that appropriate remedial works are undertaken.

POLICY PE4

Where unauthorised development has been carried out in a conservation area and the development does not preserve or enhance the character and appearance of the area, enforcement action will be taken in accordance with the general enforcement policies PE1.

In considering what action to take if works are carried out to a listed building without consent, the Council will have regard to the advice contained in the National Planning Policy Framework and the Planning Practice Guidance.

The choice of action will be taken on the basis of what is considered to be likely to be most effective in securing compliance with planning control in the particular circumstances. Where the breach is irrevocable then it is likely that prosecutions will be taken both as a punishment and deterrent to others.

Cases in or which affect the setting of a Conservation Area

The Council has a statutory duty to make sure that any development that takes place within a conservation area either preserves or enhances the character and appearance of the area. Where unauthorised development takes place without the relevant consents and where the Council considers that it adversely affects the character and appearance of a conservation area, action will be taken within the overall framework of Policies PE1 and PE2.

POLICY PE5

Where an advertisement has been displayed without express consent and it causes serious harm to amenity or public safety the Council will seek its removal. Where an unauthorised advertisement continues to be displayed prosecution proceedings will commence when it is in the public interest to do so.

Posters and placards may be removed by direct action.

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows the display of some classes of advertisements and signs without the need to get consent from the Council.

Where an advertisement is being displayed without the appropriate consents it constitutes a criminal offence. Where the advertisement causes serious harm to amenity or public safety the Council will ask for it to be removed within a specified period. If the advertisement continues to be displayed after this time, formal prosecution proceedings will be considered. Equally, if an advertiser continually displays advertisements, either by replacing those previously removed or a large number of advertisements are displayed as in a commercial “campaign”, formal

prosecution proceedings will be considered.

POLICY PE6

Where a building or land is in a condition which seriously detracts from, or affects the visual character of an area, the Council will ask for measures to be taken to improve the appearance of the land. Where no improvement works are carried out within a reasonable time, the Council will serve a Notice under S215 of the Town and Country Planning Act 1990. Where the Notice has not been complied with prosecution proceedings will commence where it is in the public interest to do so and consideration will also be given to entering the land, carrying out the works in default and recovering costs.

The condition of certain buildings or land can cause harm to the visual amenity of an area. Where the condition of land or buildings is causing significant harm to public amenity, consideration will be given to serving a notice under the S215 of the Town and Country Planning 1990. The Notice will specify measures to improve the appearance of the land or buildings. If those measures are not taken within a specified time an offence has been committed. The Council can start prosecution proceedings and/or enter the land and carry out the works and then reclaim the costs from the landowner.

POLICY PE7

Where works are carried out to protected trees without consent and the works are not necessary to overcome a serious safety hazard,, or detrimental to local character, or not in the interests of the health of the tree, and is not reasonable in arboricultural terms with regard to good tree management or practice, the Council will instigate prosecution proceedings where it is in the public interest to do so and may also serve a Tree Replacement Notice under s207 of the Town and Country Planning Act 1990 as amended to secure the replacement of any trees that are felled where the land owner fails in their duty under s206 of the 1990 Act as amended

The Council makes Tree Preservation Orders (TPO) to keep visually important trees, particularly where they are threatened by development. Similar protection applies to trees within Conservation Area (s211 of the Town and Country Planning Act 1990 as amended). Consent to prune or remove trees protected by a TPO will not be given unless the Council is satisfied that it would be necessary to overcome a serious safety hazard, nuisance or detriment to local character, is in the interests of the health of the tree, or is reasonable in arboricultural terms with regard to good tree management or practice . It is a criminal offence to cut down, top, lop, uproot, willfully destroy or damage a tree in a Conservation Area in a manner likely to destroy it, without the Council's consent. In determining any fine, the Court may

take into account any financial benefit that appears likely to have accrued as a result of the offence. It will also be the duty of the landowner to plant replacement trees of appropriate size and species in the same location as soon as reasonably possible. Should the landowner fail to do so within a specified timescale the Council has the ability to act in default to carry out such works and recover the full cost of the default action.

The Ombudsman's final decision

Summary: Mr C complained the Council failed to follow planning guidance and procedures before it discharged the planning conditions for a large development of homes in his local area. As a result, he said there was a risk of damage to protected trees and injury to pedestrians. We found the Council and its Tree Officer properly considered the Developer's plans before discharging the planning conditions. It made decisions it was entitled to make, and we cannot therefore criticise the merits of its decisions.

The complaint

1. The complainant, whom I shall refer to as Mr C, complained about the Council's handling of a planning application for a development of homes in a conservation area. He said it wrongly discharged planning conditions for the site's drainage, fencing, and planting of vegetation.
2. As a result, Mr C said existing protected trees are at risk of damage. He also said pedestrians may be at risk as the highway can be easily accessed and the rural aspect of the area was impacted.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

6. As part of my investigation, I have:
 - considered Mr C's complaint and the Council's responses;

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- discussed the complaint with Mr C;
 - considered the information provided by Mr C and the planning documents available on the Council's website;
 - considered relevant law, guidance, and policy; and
 - given Mr C and the Council the opportunity to comment on a draft version of this decision and considered the comment I received.

What I found

Relevant Law, Guidance, and Policy

7. The Town and Country Planning Act 1990 (the Act) says protected trees cannot be cut down, uprooted, wilfully damaged or destroyed without the local planning authority's consent.
8. The Town and Country Planning (General Permitted Development (England) Order 2015 sets out circumstances where planning permission is not required before a development or works takes place. This includes sewage works by statutory undertakers.
9. The National Joint Utilities Group (Volume 4) sets out utility industry guidelines for the planning, installation and maintenance of utility apparatus in proximity to trees. This includes sewage works and drains. It refers to the need to consider British Standard recommendations and to consult with a local authority's Tree Officer for further guidance.
10. The British Standard, BS 5837 – Trees in Relation to Design, Demolition and Construction – Recommendations' (the Standard) details the steps that should be taken to ensure trees are appropriately and successfully retained when a development takes place. A local planning authority should consider the Standard when making decisions on proposed developments, which may impact trees.
11. The Standard also says, in circumstances where development is likely to detrimentally affect any retained trees, an Arboricultural Method Statement is normally required. This should set out the methodology for the implementation of any aspect of the development.

What happened

12. Mr C lives in a rural conservation area.
13. In 2018 the Council considered a planning application for a large development of homes within its conservation area. The Council decided to refuse the planning application and the Developer appealed the Council's decision to the Planning Inspector.
14. In 2020 the Planning Inspector granted the Developer planning permission for the development. This was subject to several conditions, including:
 - (Drainage) a strategy for surface water and foul drainage had to be submitted to the Planning Authority for its approval, including details for the connection to the off-site foul sewers;
 - (Boundary treatment) an appropriate boundary treatment had to be submitted to and agreed by the Local Planning Authority. The Scheme should provide for fencing and for the existing landscaping to be reinforced to prevent pedestrian access to the highway;

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- (Tree and plant replacement) for up to five years after the development was completed, any trees or plants which die as a result of the development should be replaced with similar size and species;
 - (Tree pits) full details of the proposed tree pits should be submitted and approved by the Local Planning Authority. The details should include drawings, use of guards and other protective and irrigation measures; and
 - (Tree protection) A tree protection plan and the appropriate working method should be submitted to and approved by the Local Planning Authority.
15. The Developer provided the plans and drawings as set out in the conditions to the Council. This included its Arboricultural Method Statement (Method Statement).
 16. The Council discharged some conditions, but its Tree Officer was not satisfied with the Developer's drainage, tree pit, and tree protection plans. It asked the Developer to update its plans to address its Tree Officer's concerns.
 17. In late 2020 the Developer provided amended plans for the tree pits, the tree protection, and the drainage. It asked the Council to discharge the conditions.
 18. Mr C made objections on the Developer's applications to discharge the conditions.
 19. The Council consulted with the relevant statutory consultees, who had no objections to the discharge. It also consulted with its Tree Officer, who said he had met with the Developer and changes had been made to its Method Statement. He was therefore satisfied this would minimise harm to trees. And so, the Council discharged the conditions.
 20. In early 2021 the Developer provided an updated Method Statement which included its plans for offsite foul drainage, which would be connected to sewers under the highway.
 21. The Council's Tree Officer was satisfied with the Developers off-site drainage plans and Method Statement, but he said the tree protection condition could not be fully discharged until the development was completed. This was because it would then be possible to confirm the trees had been protected and appropriate working methods had been used.
 22. The Council also discharged the boundary treatment condition, as its Tree Officer was satisfied with the Developer's plans. This was after the Developer had provided the Officer with further details on its plans and how it would minimise any damage to trees and vegetation.

Mr C's complaints

23. Mr C made several complaints to the Council about its handling of the planning application and its decisions to discharge the planning conditions. He said:
 - it failed to add a condition about road closures;
 - it delayed uploading plans and document about the development to its website and said some plans were no longer available;
 - it had approved the Method Statement when there was no reference to the foul drainage works and its impact on trees. And later versions of the Statement failed to refer to the relevant National Joint Utilities Group guidance for the drainage works near to trees;
 - it wrongly discharged the drainage condition as the Method Statement did not provide enough information, including details its Tree Officer had asked for;

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- it wrongly discharged the boundary treatment condition because pedestrians could easily climb the timber post fence. He said the Developer should install the weldmesh fence as originally planned;
 - the boundary treatment condition should also not have been discharged because the planting was less than the original plans and over a shorter length;
 - it wrongly said it could not comment on the foul drainage connection under the highway as this is off-site and not under its control. Mr C said it failed to consult with the County Council. He also said the Council has taken different approaches on other planning applications where it had made comments; and
 - he questioned why the Council had not considered an alternative route for the drainage from the development to the Highway to prevent damage to the trees.
24. The Council responded to Mr C's complaints and apologised if it had failed to respond to some of his emails. It did not uphold his complaints and said its complaints procedure should not be used to raise concerns about planning matters or breaches of planning control. However, it decided to provide a response to his concerns, it said:
- it had followed proper procedure and consulted statutory and non-statutory consultees, including its Tree Officer;
 - the developer had submitted details for a Construction Traffic Management Plan. This was as set out in the planning condition imposed by the Planning Inspector. It could not impose additional conditions to an approved planning application;
 - Mr C's concerns about the drainage strategy for the proposed connection to the Highway (off-site drainage) was not under the Council's control. It said he should direct his concerns to the statutory undertaker, Thames Water, and the Highway Authority. However, it said its Tree Officer raised issues with the Developer's first plans for the off-site drainage, but had no objections to the approved plans; and
 - it had made wrongly delayed publicising the amended details for the Developer's boundary treatment plans (fencing). However, it will consider Mr C's comments before it makes its decision.
25. Mr C was not satisfied with the Council's response and asked the Ombudsman to consider his complaint.

Analysis

26. The Ombudsman is not a planning appeal body and so he cannot substitute his judgement for that of the Council in the absence of fault in the process leading to the decision. Whether the Council's judgement was right or wrong is not for the Ombudsman to adjudicate on. The Ombudsman examines the process leading up to the decision.

Drainage

27. Mr C complained about the Developer's plans for drainage under the Highway (off-site drainage) and drainage from the development to the boundary of the application site (on-site drainage)
28. The off-site drainage under the Highway was not under the Council's control and was approved by the Highway's Authority. The Council's Tree Officer made comments on the Developer's original off-site plans but had no objections to the

approved plans. I have therefore found no fault by the Council on this matter. I acknowledge Mr C feels the Council should have worked closer with the Highway Authority and said it had done so for other developments. However, the Council was entitled to consider each development on its own merits and decide when to make any comments to the Highways Authority. Any concern Mr C may have about the off-site drainage should be brought to the attention of the Highways Authority.

29. The on-site drainage was subject to a planning condition imposed by the Planning Inspector, which said the Developer should submit its drainage plans for the Council's approval.
30. Mr C said the Council wrongly discharged the condition. This was because the Developer's Method Statement did not reference the National Joint Utilities Group guidance and set out how the works met the British Standard guidance. He also disagreed with the approved drainage location set out in the plans and raised concerns about the impact on the nearby protected trees.
31. I have not found fault in the process the Council followed to discharge the on-site drainage condition. In reaching my view I am conscious that:
 - Mr C made comments on the Developer's application to have the drainage condition discharged, which the Council considered;
 - the Council considered the Developer's application and its plans. Its Tree Officer was not satisfied with the plans and asked for more detail. He also met with the Developer and its arboriculturist.
 - the Council and its Tree Officer were satisfied with the Developer's amended plans and discharged the condition;
 - while the approved plans may not have included reference to the National Joint Utilities Group Guidance, it was agreed that works near protected trees would be supervised by the Developer's Arboriculturist and the Council's Tree Officer. Any concerns about excavations near tree roots would then be decided; and
 - when the Developer completes the works, the Council will do an inspection to assess the works and any damage caused.
32. I understand Mr C believes the drainage works near the protected trees must meet the Guidance and the Standard. However, while the Council should consider these, it is entitled to reach its view on how these should be applied to the development. This may mean the guidance is only partly adhered to.
33. In addition, the Planning Inspector included a condition for the replacement of damaged trees during the development and up to five years after. This shows he accepted the development may cause damage to some trees. The purpose of the Method Statement was therefore not to remove this risk of damage, but to limit it to a level the Council was satisfied with. As the Council properly considered the Developer's plans and Mr C's concerns, I cannot therefore criticise the merits of its decision.

Boundary treatment

34. Mr C said the Council was wrong to approve the Developer's plans for a timber post fence, as the original plans approved a weldmesh fence. He also said the vegetation to reinforce the fence and landscape was less than originally agreed.
35. The original proposal for a weldmesh fence and vegetation was partly to prevent pedestrian access to the Highway. The Council found a timber post fence was

enough to prevent this and the Developer provided new plans. Mr C disagreed with the Council's view and objected to the Developer's plans and application to discharge of the condition.

36. I recognise Mr C's view a timber post fence may be more scalable and there was therefore a greater risk of pedestrian access to the Highway. However, I have not found fault by the Council. This is because the Condition does not require the fence to be climb proof. Also, it is not fault for a Council to propose or agree to changes in the approved plans after a planning decision has been made. It considered Mr C's objections and the plans it had received for the fence and vegetation. It was therefore entitled to reach its view, and I cannot therefore criticise its decision.

Other concerns

37. Mr C said some planning documents were no longer available on the Council's website. While I understand this may have caused him some concern, it may be previous versions of documents were removed to avoid uncertainty. In any event, if Mr C would like access to such document, he can ask the Council to provide these.
38. Mr C said the Council wrongly discharged planning conditions before the Developer provided the full plans and information. I have not found fault by the Council on this matter. However, the planning process can become complex when planning conditions are discharged. This is because some conditions may be discharged, but further works or information may be required before it is fully discharged. This may not be until several months later. Based on the information available, I cannot say if the Council may have discharged a condition before it should have. However, even if it did, I am not satisfied this caused Mr C a personal injustice, nor there is a significant public interest concern to be considered. This is because the Developer has since provided more details and relevant plans for the conditions.

Final decision

39. I have completed my investigation with a finding of no fault by the Council.

Investigator's decision on behalf of the Ombudsman