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## Appeal Decision

Inquiry held on 12 - 14 May 2015 and 9 - 10 June 2015

Site visits made on 11 & 12 May 2015 and 8 June 2015

**by R Schofield BA(Hons) MA MRTPI**

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

**Decision date: 7 July 2015**

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**Appeal Ref: APP/N1730/A/14/2226609**

**Land at Owens Farm, Hop Garden Road, Hook, Hampshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Charles Church (Southern) Ltd against the decision of Hart District Council.
  - The application Ref 14/00867/MAJOR, dated 8 April 2014, was refused by notice dated 16 July 2014.
  - The development proposed is erection of 48 no. residential dwellings together with associated access and parking.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. At the Inquiry an application for costs was made by Charles Church (Southern) Ltd against Hart District Council. This application is the subject of a separate Decision.

### Preliminary Matters

3. The application was made in outline with all matters reserved other than access. I have determined the appeal on this basis.
4. An executed unilateral undertaking was submitted at the Inquiry by the appellant. Following this the Council confirmed that it would no longer be pursuing its reasons for refusal in relation to affordable housing, open space and local infrastructure and was satisfied that its reason for refusal in relation to secondary education could be addressed by condition.
5. A revised access plan was submitted by the appellant during the Inquiry. This showed minor changes from that submitted with the application, namely the position of the public right of way over which the access would pass, and an enlarged speed table at this point. The plan was consulted upon, albeit as part of a repeat application, and I am satisfied that no parties would be prejudiced by my consideration of it. I have, therefore, determined the appeal on this basis.

## **Main Issues**

6. In the light of the matters outlined above, and to aid clarity for the reader, the main issues are:
  - whether the Council is able to demonstrate a five-year supply of deliverable housing sites;
  - whether the development plan is absent, silent or out-of-date;
  - the effect of the proposed development on the Local Gap between Hook and Newnham;
  - the effect of the proposed development on protected species;
  - the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings, with regard to outlook, privacy, noise/disturbance and light; and
  - whether, having regard to the suggested benefits and disbenefits of the appeal proposal, and the Council's five-year supply of deliverable housing sites, it would represent a sustainable form of development.
7. Also for reasons of clarity, my conclusion on the final Main Issue is found in my overall conclusion to this decision.

## **Reasons**

### ***Five Year Housing Land Supply***

8. It is common ground between the parties that the Hart, Rushmoor and Surrey Heath Strategic Housing Market Assessment 2014 (SHMA) provides an appropriate basis for the establishment of the District's Objectively Assessed Housing Need (OAHN). Given that the housing targets in the development plan expired in 2006 and the South East Plan was revoked in 2013, the SHMA is in my judgment the most up-to-date analysis of housing need in the Housing Market Area (HMA) in general and Hart in particular. It is also evident that the SHMA has been produced by a respected authority on such documents, with a background in planning, economics and development. The SHMA also clearly explains its methodological approach with reference to assessment guidance set out in the Planning Practice Guidance (the Guidance). On this basis, I have no reason to disagree with the parties' views on this matter.
9. There are four substantive matters in dispute between the parties, being i) the weight to be given to the OAHN figure recommended in the SHMA ii) whether that figure should be used to provide an annual average housing target or whether precise year-by-year targets should be used iii) whether an allowance should be made for constraints upon household formation pre-2011; and iv) whether a 5% or a 20% buffer should be applied to the five year housing requirement.
  - i) *The OAHN figure*
10. With regard to the OAHN figure in the SHMA, the dispute centres on, first, whether the recommended OAHN figure, which is derived from a Mid-Point Employment Growth scenario (PROJ5), is preferable to an Experian Job-Led

scenario (PROJ3) and, second, draws upon data over an appropriate period of time.

11. The appellant suggests that the preference for PROJ5 results in a 'policy on' approach to the establishment of an OAHN, in conflict with the Guidance and case law<sup>1</sup>, largely due to PROJ5's treatment of the self-employed and conclusions in relation to growth forecasts in the M3 Local Enterprise Partnership (LEP) area. However, it cannot be considered that the application of judgement by an experienced professional, when interrogating the evidence base that he used to inform the SHMA, of which the Experian data was just one part, can be equated to the application of 'policy' constraints upon growth.
12. The SHMA explains and justifies, in some detail, the rationale behind the preference for PROJ5 over PROJ3, including the weaknesses of using the Experian forecast alone, as the basis for the establishment of an OAHN for the HMA and District. Although it is noted at paragraph 7.97 that the adopted employment scenario is 'policy on', this is in the context of it happening to accord with the LEP's Strategic Economic Plan ambitions. Indeed, it acknowledges the need for local authorities and the LEP to be proactive in fostering employment growth given the conclusions reached by the SHMA. Nowhere is 'policy', environmental, economic or otherwise, applied to constrain the scenarios.
13. This explanation and justification was further expanded upon in evidence submitted by the Council during the Inquiry, which set out the differences and inconsistencies between the various employment data sets used and the action taken to derive data from them that was as consistent as possible.
14. Turning to the matter of timescale, the data used to produce PROJ5 is derived from an assessment of the period 1998 to 2008. The appellant contends, on the basis of figures in the Enterprise M3 Housing Evidence Study<sup>2</sup>, that this period should go back to 1991 and take into account economic data from 2009 to 2013. The Guidance advises<sup>3</sup> that, wherever possible, local needs assessments should be informed by the latest available information. However, this statement is in regard to Household Projections and, even in this context, the Guidance is clear that new information does not automatically render housing assessments out-of-date. Indeed, one must draw a line somewhere, whether in the past or in relation to new information, if the production of any meaningful evidence of housing need is ever to be progressed.
15. Nor I am persuaded that taking into account data that is some 18 or more years old, and reflective of a different economic cycle and situation, is necessarily beneficial. In addition, the SHMA makes clear the widely acknowledged limitations of the 2013 ONS data and it is evident that the numbers for the period 2009-2012 continue to show a mixed picture in terms of employment growth. The SHMA makes an informed, and substantiated, judgement about an appropriate period for assessment, based upon consideration of fluctuating economic trends and the nature of the local economy and workforce. It may not go back as far in time as the appellant

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<sup>1</sup> Hunston Properties Limited v Secretary of State for Communities and Local Government and St Albans City and District Council [2013] EWHC 2678 (Admin) and Gallagher Estates Ltd v Solihull MBC [2014] EWHC 1283 (Admin)

<sup>2</sup> ID4 September 2014

<sup>3</sup> Reference ID: 2a-016-20150227

might like, but it includes periods of growth, recession and recovery and, again, this is a matter of judgement.

16. Notwithstanding this, the Council did submit further modelling during the Inquiry to take account of employment data for the period 2009-2012. On the basis of this work it was content, for the purposes of considering five year land supply in the context of this appeal, to use an updated PROJ5 figure of 382 dwellings per annum, reflective of the more recent data.
17. The assessment, comparison and interpretation of economic data necessarily requires the application of judgement or a 'sense check' in relation to forecasts, trends and the consideration of the economic make-up of a given area. This being so, as noted in the Guidance<sup>4</sup>, the establishment of housing need can never be an exact science. The appellant may have reached a different judgement with regard to which is the most appropriate of the SHMA OAHN scenarios, but there is no substantive evidence before me of fundamental failings of process or of departure from guidance in the production of the SHMA. Nor was any detailed alternative analysis comparable to that in the SHMA provided. On the basis of the evidence before me I am satisfied that the period used to inform PROJ5 is reasonable and that, overall, the SHMA's 'policy off' OAHN figure, derived from PROJ5 (as updated), is reasonable for the purposes of this appeal.

*ii) The five year target*

18. The SHMA sets out<sup>5</sup> estimated housing need in each year of projection for the HMA as a whole. This shows a higher level of annual need in the earlier part of the period, from 2011/12, which begins to decline from 2021/22. It was the appellant's view that the annual housing target should be set to reflect this estimated need, whereas the Council contends that the total housing requirement averaged equally over the putative plan period is appropriate.
19. Reference is made by the appellant in this context to the so-called 'Sedgefield' method and to wording in the Guidance<sup>6</sup>. However, these relate to an interpretation of how a local planning authority should seek to deliver any housing shortfall rather than how it should set out its annual housing targets going forward. There is nothing in the Guidance or the National Planning Policy Framework (the Framework) that states that housing delivery should be based upon such year-on-year projections and the parties agreed that an annual average approach and a specific year-on-year target approach were equally legitimate. Nor was it disputed that the Department for Communities and Local Government and the High Court<sup>7</sup> have identified that household projections, which necessarily feed into the OAHN figure, while providing useful long-term trajectories are not reliable as household growth estimates for particular years.
20. It may be that the emerging Local Plan sets out a specific housing trajectory for the plan period, which may reflect the indications set out in the SHMA. However, that will necessarily be informed by the application of other relevant planning policy and assessments of potential constraints in relation to, for example, the provision of accompanying infrastructure. Until such decisions are reached, however, the use of an annualised average figure, derived from

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<sup>4</sup> Reference ID: 2a-014-20140306

<sup>5</sup> Appx F Figure 8

<sup>6</sup> Reference ID: 3-035-20140306

<sup>7</sup> Gallagher Estates Ltd v Solihull MBC [2014] EWHC 1283 (Admin)

the total requirement for the putative plan period, is a reasonable approach when making an assessment about whether a five-year supply of deliverable housing sites is being achieved.

*iii) Pre-2011 constrained household growth*

21. It was common ground that household growth in Hart was suppressed from 2001-2011. The appellant contends that an, albeit unquantified, allowance should be made for this constraint by uplifting the annual housing supply targets in the early part of the putative plan period. This matter is, however, addressed in the SHMA by the uplift in household formation rates above those in the 2011-based household projections. I have no reason to doubt that this is reflective of what would be a gradual release of the suppressed growth over the plan period rather than a sudden burst of new households even were housing available.

*iv) The Buffer*

22. The Framework, at paragraph 47, bullet two, states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5% moved forward from later in the plan period. This buffer should be increased to 20% where there has been a record of persistent under delivery of housing.
23. The parties drew upon data in relation to housing delivery as far back as 1996/97. Looked at over this time period, years of undersupply are balanced by those of oversupply. There is also an oversupply of housing against the total delivery target for this period. Of the last six years, there has been under delivery for five of them. However, the Guidance indicates that it is best to take a longer term view, as this is likely to take account of peaks and troughs in the housing market cycle. In this context, looked at over a period of 10 years (2004/05 to 2013/14), years of over delivery again equal those of under delivery and a surplus was again achieved. Consequently, there is nothing in a longer term assessment period that would lead me to the conclusion that the Council has persistently under delivered against its housing requirements.
24. In addition, a significant mitigating consideration is the designation of the Thames Basin Heaths Special Protection Area (SPA) in 2005. This clearly preceded a significant drop in housing completions in Hart between 2008 and 2011, while a suitable mitigation strategy was developed. The appellant contends that two other authorities in the area do not appear to have suffered and that the South East Plan housing requirement figure was SPA constrained in any case. That may be so and it cannot be said definitively that the SPA designation was the only factor that led to the 2008 – 2011 drop. It is evident, however, that this was a live issue. As noted in the Assessor's Report to the Panel for the Draft South East Plan Examination in Public on the Thames Basin Heaths SPA and the Draft Delivery Plan (paragraph 3.8), it *'resulted in delays in the provision of new housing in the area or in some areas a virtual moratorium on new house building'*. In my judgement, the SPA designation clearly had some impact upon housing delivery outwith the Council's control and must be considered material to any consideration of persistent under supply, again making it reasonable to consider a record that looks beyond the past six years.

25. The appellant has sought to apply retrospectively the OAHN figure (based on PROJ3) from the 2014 SHMA to the housing requirement for 2011/12 and 2012/13 in place of the South East Plan figure, which applied until March 2013. However, there is nothing in the Framework or Guidance to suggest that it is only appropriate to assess delivery against the OAHN rather than the historic housing requirement for a given area. Indeed, case law<sup>8</sup> indicates that this is a matter of judgment for the decision maker, who may or may not take the figures in a previous plan into account as a measure of what the housing requirement was in order to assess whether there has been a persistent under delivery of housing. In my judgement, it is reasonable, in the absence of any alternative contemporary figures that may constitute a target against which a 'record' of under delivery may be considered, for the Council to assess its housing delivery during the relevant period against the South East Plan requirement that was in place at that time.
26. Policy H4 of the now superseded Hampshire Structure Plan<sup>9</sup>, set out a 'reserve housing provision' of 1500 dwellings for Hart. The policy states that the release of such land would only be supported where monitoring of the Structure Plan and Local Plans indicates there is a 'compelling justification' to do so. This policy was ultimately manifested in the First Alterations to the Hart District Local Plan (Replacement) 1996-2006 in policies ALT DEV1A and ALT DEV9, which identify the reserve sites to be released as necessary. The appellant contends that a proportion of these 1500 dwellings should be factored into the housing requirement figures from 2001/02 to 2005/06. However, it was not disputed that the reserve sites were never required and, as such, there can be no reason to add these figures to the housing requirement.
27. My attention was drawn to an appeal decision<sup>10</sup> where the issue of persistent under delivery was addressed. However, this relates to a different local planning authority and different circumstances in relation to the degree and nature of under provision of housing. The Inspector states that 'in the circumstances' he is not convinced that it would be appropriate to attach weight to the local planning authority's annual targets for the period 1999 to 2007. He also cites the advice in the Guidance<sup>11</sup> that 'the approach to identifying a record of persistent under delivery involves questions of judgment for the decision maker'. Thus, this decision is clearly circumstance specific and involved judgement based on those specific circumstances on the part of the Inspector. As such, I afford it little weight as a comparative example.
28. My attention was also drawn to a decision referenced in case law<sup>12</sup>, where an Inspector found that under-delivery in 50% or more of the years in the period considered comprised under delivery. That may be so, but this is only a finding that the Inspector's approach was reasonable. There is nothing in the judgment of the court to suggest that such a yardstick is to be applied to every case or to limit the application of judgment and consideration of other factors by other decision makers in other cases.

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<sup>8</sup> Cotswold DC v SSCLG and Fay and Son Limited [2013] EWHC 3719 (Admin)

<sup>9</sup> ID5 pp 53-54

<sup>10</sup> 2220761

<sup>11</sup> Reference 3-035-20140306

<sup>12</sup> Cotswold DC v SSCLG and Fay and Son Limited [2013] EWHC 3719 (Admin)

29. Thus, looking at the issue in the round, on the basis of the evidence before me I consider that the application of a 5% buffer to the five-year supply of deliverable housing sites is appropriate.

*vi) Conclusion on Five Year Housing Land Supply*

30. There was dispute between the parties as to whether a 10% non-implementation rate should be applied, whether the windfall allowance should be discounted by 21 dwellings and at what point the buffer should be applied to the backlog. However, it was agreed that these matters were moot, insofar as they would not affect the conclusion should it be determined that use of (updated) PROJ5, a 5% buffer, no additional allowance for the pre-2011 constrained supply and an annualised average housing target were reasonable. Given my conclusions above, I have not, therefore, addressed these matters.

31. Case law<sup>13</sup> has determined that although paragraph 47 of the Framework directly concerns plan-making, it is implicit that a local planning authority must ensure that it meets the OAHN for market and affordable housing 'in the housing market [sic]', as far as consistent with the policies set out in the Framework, even when considering development control decisions.

32. It is common ground that there is a shortfall in housing supply against the OAHN when the HMA, of which Hart is a part with Rushmoor and Surrey Heath, is considered as a whole. This is matter to be weighed in the planning balance but it does not, of itself, render relevant local plan policies for the supply of housing out-of-date. The Framework is clear at paragraph 49 that this instance only arises where a local planning authority is unable to demonstrate a five-year supply of deliverable housing sites.

33. In addition, it may be that Rushmoor and Surrey Heath ultimately adopt Local Plans that have constrained housing requirements as a result of the presence of Green Belt and the SPA, with a commensurate knock on increase in the housing requirement for Hart. Conservation Areas or AONBs may also prove to be constraints. This is not for me to determine, however, and how the OAHN for the HMA may or may not be met in future is a matter for other fora, where representatives of these authorities may be present to give evidence.

34. Taking account of my considerations on an appropriate OAHN, the five-year target, the pre-2011 constrained household formation and the buffer, I conclude that the Council is able to demonstrate in excess of a five-year supply of deliverable housing land. As such, development plan policies relevant to the supply of housing should not be considered out-of-date by reference to this matter.

***Whether the development plan is absent, silent or out-of-date***

35. The policies referred to by the Council in its decision notice were all 'saved' and, as such, cannot be considered to be absent. They continue to form part of the extant development plan, albeit that The Council has on occasion taken the view that the application of development boundary policies is not appropriate in relation to its determination of specific planning applications.

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<sup>13</sup> Gallagher Homes Ltd & Lioncourt Homes Ltd v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin)

36. Even so, the appellant advanced the argument that the development plan was out-of-date by virtue of the fact that it was originally envisaged as running to 2006. I also note that other decisions<sup>14</sup> presented to me, albeit relating to different local authorities with different sets of development plan policies, conclude that saved development boundary and gap policies are out-of-date as they were drawn up in relation to older assessments of housing need.
37. I do not know the detailed arguments that were before the Inspectors in those cases, but I do not consider that considerations in relation to different local planning authority areas and specific sets of circumstances can necessarily be regarded as establishing a generally applicable principle. Indeed, this judgment is reflected by case law<sup>15</sup>. Notwithstanding this, based on the evidence that I have heard I am not persuaded by the argument that until the extent of any necessary changes to settlement boundaries, or local gaps, has been established by the emerging Local Plan, the current settlement limits should be automatically disregarded as out-of-date. To assume such a position would effectively be to sanction residential development in the countryside without consideration of the quantified need for it or regard to the suitability of it.
38. In addition, the relevant test in the Framework in relation to saved policies<sup>16</sup>, with regard to whether a plan is out-of-date, is not one of chronology but of consistency with the Framework. In this regard, the policies reflect the Framework's aim of taking account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and the role of plan making in identifying land where development would be appropriate<sup>17</sup>.
39. The appellant further suggested that each policy referred to by the Council was out-of-date as they did not contain within them the 'cost/benefit' balancing approach of the Framework. There are previous appeal decisions<sup>18</sup> and legal judgment<sup>19</sup> in this regard. However, subsequent case law<sup>20</sup>, which does not appear to have been before the Inspector or Secretary of State in the appeal decisions referred to, indicates that this judgment is not '*authority for the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable development in the NPPF, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal*'. Consequently, I do not consider that the policies referred to by the Council can be, *de facto*, out-of-date in this regard.
40. My attention was drawn to an appeal decision<sup>21</sup> where the Inspector concluded that the policies relating to housing needs and targets within an adopted core strategy were out-of-date as they were inconsistent with the Framework's objective that local plans seek to meet an OAHN. He concluded that a recently prepared SHMA represented a more credible picture of the OAHN for that area.

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<sup>14</sup> 2199085 & 2199426 and 2209335

<sup>15</sup> Cheshire East Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 410 (Admin)

<sup>16</sup> Paragraph 215

<sup>17</sup> Paragraphs 17 and 157

<sup>18</sup> 2199085 & 2199426

<sup>19</sup> Colman v SSCLG, North Devon District Council, RWE Npower Renewables Limited [2013] EWHC 1138 (Admin)

<sup>20</sup> Bloor Homes East Midlands v SSCLG and Hinckley & Bosworth Borough Council [2014] EWHC 754 (Admin)

<sup>21</sup> 2220031



However, as noted above, the parties have agreed that the recent SHMA is an appropriate starting point for establishing an OAHN for Hart District and this is the basis against which an assessment of the District's five year supply of deliverable sites has been made, there being no saved housing needs and targets policies in the saved Local Plan.

41. The development plan contains no policy with regard to housing numbers. However, this is not the same as saying that the plan when taken as a whole is silent. The saved policies provide decision makers and applicants with a clear framework within which development proposals, such as the appeal scheme, can be assessed and a judgment made about their acceptability.
42. In conclusion, I find no reason why the development plan policies relied upon by the Council should be regarded as being absent, silent or out-of-date.

### ***The Local Gap***

43. The Local Gap (the Gap) between Hook, a very substantial settlement defined in the Officer's report as one of the District's Principal Towns, and Newnham, a very small village to the west, is secured by Hart District Local Plan (the Local Plan) policy CON21. Its extent is defined on the accompanying Proposals Map. It is one of only seven such Gaps in the District, which, even when taken together, comprise a very small proportion of land within Hart. It is reasonable to consider, therefore, that their designation was carefully considered.
44. The rationale for the Gaps, as set out in the supporting text to CON21, is to maintain the separate identities of smaller settlements, provide their setting and prevent coalescence. It also notes that PROWs within the Gaps are usually heavily used and of high value, with the reduction in size of Gaps having the potential to adversely affect the use and amenity of them.
45. Notwithstanding the wording of the decision notice, it was clear from the evidence that the Council's reason for refusal encompassed both aspects of policy CON21, namely coalescence of settlements and damage to their separate identities, as well as matters of character and appearance in relation to impact upon the Gap.
46. The land between Newnham and Hook, of which the Gap forms only that part of it in Hart District, is irregularly shaped and comprised of woodland and open fields with hedgerow boundaries. A public right of way (PROW), which is obviously well used, runs across the Gap and the wider area of land between Newnham and Hook, passing the appeal site. The two settlements are also connected by Newnham Road, which has no pavement, running along the southern edge of the Gap.
47. The buildings of Owen's Farm, High Ridge House and Fairfields are situated within the Gap but they are removed from the built form of both Hook and Newnham, appearing as discrete features in the Gap. In addition, a ribbon of development, ending with St John's Cottages, extends out from Newnham along Newnham Road on the southern side of the gap, to face Seton Drive extending out from Hook. The gap here is at its narrowest point and one is aware of the ribbon development when crossing the Gap along the PROW. Nonetheless, the main bodies of the two settlements remain separated by the open fields between them and the purpose of the Gap, and the role of the site within it, is not negated by any of this development.

48. The appeal site is a grazed field on the immediate edge of Hook, beyond its defined settlement boundary. Of the boundaries to the site that are publically visible, those to the north and west are defined by hedgerow, with mature, protected, oak trees interspersed along their lengths. The hedges are typically comprised of deciduous growth with some evergreen holly on the western side. The site is not, however, well contained. The hedges are not dense, having significant gaps in places, and the appeal site is clearly visible through and above them from the PROW and Owen's Lane on the site's western boundary. It was not disputed that proposed planting to improve the hedges would struggle to thrive under the extensive canopies of the oaks and that any works to the trees, notably crown lifting, which may be necessitated by the development, would further increase visibility of the proposed development between them.
49. There is no intervisibility between the core of Newnham and the edge of Hook, but the latter quickly comes into view from the PROW, when approach from Newnham, as one tops the rise that runs roughly north to south between St John's Cottages and Hook. At this point one can clearly see the appeal site, with some dwellings on Seton Drive and Newnham Park glimpsed across it through the trees on their immediate boundaries and those on the western boundary of the appeal site.
50. The presence of such development becomes increasingly apparent as one approaches Hook on the PROW, through the largely sparse hedgerows around the appeal site. However, the mature trees around the low density developments of Newnham Park and Seton Drive, those to the northern and western edges of the appeal site and the, albeit gappy, hedgerows and the field itself, together serve to soften the approach to Hook. Thus the appeal site acts as 'buffer' to the settlement edge, contributing to the gradual transition from the open Gap to a more suburban character of low density development, finally giving way to the higher density urban estates beyond.
51. Rather than being 'ghosted in' behind the trees around it, development upon the appeal site, which would be of considerably higher density than Seton Drive and Newnham Park on its borders, would be readily apparent between them, above and through the hedge, when approaching Hook across the Gap via the PROW. This would be even more obvious during the autumn and winter months when the trees and hedgerows are not in leaf. Its presence would be more imposing when passing the site, in very close proximity, on the PROW to the north and from the eastern boundary where the PROW doglegs around the site. The access to the proposed development would be across the PROW at this point, with clear views into the site from Hop Garden Road and the PROW.
52. In my judgment this clear visual intrusion into the Gap, when viewed from the PROW, would result in a significant diminution of the graduated sense of arrival at Hook from Newnham and foreshorten the sense of open rurality and separation experienced when moving between the two settlements. It would reduce the Gap as experienced on the PROW by around a third and advance Hook some 180 metres forward of Newnham Park. This would increase its prominence in relation to Newnham and result in a much harder and more visible edge to Hook. Seton Drive already extends out from Hook, and the appeal site would border it, but Seton Drive pre-dates the establishment of the Gap and is built on the site of a former country house. As such, development

in this location has long been a feature of the area and is not, in my judgment, a compelling reason to further exacerbate the Gap's erosion.

53. The site is, and would be, less apparent from Newnham Road when travelling between the settlements from Newnham. It is set back some distance from the road and, unless one were walking on the road, which is unlikely given the lack of pavement and the presence of the PROW, or travelling in a tall vehicle, it would be difficult to do more than glimpse the site in passing through rare gaps in the roadside hedge. When travelling from Hook, the corner of Seton Drive would remain the most prominent feature, largely obscuring the site from view from the road.
54. My attention was drawn to the report of the Inspector who considered the Hart District Local Plan at Inquiry in 1999. The Inspector's conclusion in relation to the appeal site was that its allocation for housing, notwithstanding its contribution to the screening of Hook, would not 'see the gap as greatly weakened'.<sup>22</sup> This was chiefly due to the presence of Fairfield, which has since been altered from a bungalow to a house, and development around the site, which was already clearly visible. My views on these points are set out above.
55. In addition, this report is some 15 years old and there is no detailed information before me about the evidence before that Inspector. It is also clear that the Inspector did not take issue with the need for the Gap nor wish to remove the site from the Gap unless it was allocated for housing (which it was not). The Inspector was also considering the site in a different context, namely in relation to a comparative assessment of potential housing allocations, with no specific proposals in mind, rather than a S78 planning appeal for 48 dwellings. This being so, this report carries little weight in the planning balance.
56. The Council has granted permission for residential development at High Ridge Farm, which is also within the Gap. This site is, however, markedly different to the appeal site, being defined by a much deeper and more substantial hedge and tree belt, subject to different topography and barely discernible from the PROW across the Gap. In this context, and noting also the site's provision of a very significant area of natural green space to the north, it is evident from the Officer's report that, on balance, the Council felt the scheme's benefits outweighed its harms. This is not the judgment that was reached in relation to the proposal before me. I do not consider that this grant of permission can, therefore, be regarded as setting any kind of precedent for further residential development in the Gap.
57. Clearly, development on the appeal site would not result in the physical coalescence of the two settlements. However, if that was to be regarded as the ultimate benchmark then, taken to its conclusion, the Gap could have been much more narrowly defined in the first place, with development of the two settlements being permitted to advance to within metres of each other provided a gap were maintained. It was not, however. The Gap's function, as noted above, is wider than that. Given the impacts from the PROW the proposed development would, in my judgment, undermine the function of the Gap and result in an increased perception of coalescence, with the further advance of Hook towards its smaller neighbour. This would, in turn, further erode the distinct identities of the two settlements, notably with regard to

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<sup>22</sup> DB Proof Appx 6 and PL Proof Appx 4

Newnham's sense of rural isolation and separation. I conclude, therefore, that the appeal proposal would have an adverse impact upon the Local Gap between Newnham and Hook. It would conflict with Local Plan policy CON21, the requirements of which are outlined above. It would also conflict with Local Plan policies RUR1, RUR2 and RUR3, which seek, among other things, to restrict development in the open countryside beyond settlement boundaries.

### **Protected Species**

58. The appeal proposal was accompanied by an Ecological Appraisal (November 2013), a Reptile Survey (November 2013) and a Preliminary Bat Report (November 2013). The latter indicates that there are potential locations for roosts on site and recommends that additional survey work is undertaken 'in order to demonstrate presence or to reliably infer absence of bats where features are to be subject to impacts' (paragraph 5.1). It is suggested that this work could be conditioned and wording for such a condition was provided by the parties.
59. However, Circular 06/2005<sup>23</sup>, which was drawn to the parties' attention in advance of the Inquiry, states that, 'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted' (paragraph 100). It goes on to say that the need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am also mindful of Natural England's Standing Advice in relation to Bats, also drawn to the parties' attention, which states that 'surveys need to show whether protected species are present in the area or nearby, and how they use the site'. I give these different sources of advice, coming as they do from Government and the Government's adviser on the natural environment, considerable weight.
60. The Preliminary Bat Report seeks to secure all detailed survey work and mitigation planning post-permission and I note Circular 6/2005's guidance that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by development. However, this cannot be considered an appropriate approach in this instance, given the findings of the Preliminary Bat Report and the undisputed third party evidence of the presence of bats on the site.
61. The subsequent correspondence from Keystone Ecology<sup>24</sup>, which undertook the initial surveys, does nothing to reassure me in this regard and I note that the letter of 11 May concludes, 'where retention [of trees] is not a suitable option, surveys will, however, be required to provide appropriate information with which to base a decision'. I share the view of CA Ecology<sup>25</sup> that one cannot reach a robust conclusion on whether planning permission should be granted, and whether suggested outline mitigation would be suitable, without an upfront understanding of whether bat roosts are present on the site and how bats use the site. Without knowing in advance the likely impact of a development proposal on a protected species, it is difficult to see how an appropriate scheme can be designed that would ensure populations are undisturbed or appropriate mitigation measures can be put in place.

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<sup>23</sup> Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

<sup>24</sup> ID2 11 May 2015 and ID 46 13 May 2015

<sup>25</sup> ID69 9 June 2015

62. Nor is the evidence of CA Ecology disputed, namely that the methodological guidelines followed in the Preliminary Bat Report are intended for use in assessing trees subject to arboricultural works rather than those to be affected by development proposals.
63. Taking the above matters into consideration, I conclude that development on the site may have an adverse impact upon a protected species and that a precautionary approach is appropriate. The appeal proposal would conflict, therefore, with the objectives of the Framework, which seeks, among other things, to conserve and enhance biodiversity and I am not persuaded that the proposal has demonstrated that significant harm can be avoided or adequately mitigated, in line with paragraph 118 of the Framework.

### ***Living Conditions***

64. With the possible exception of 5 Newnham Park, all of the dwellings on Seton Drive and Newnham Park have an outlook, of varying degrees of openness, over the site from the ground and/or first floor level and, in a number of instances, from the rear gardens. This, and the low density of development on these roads, with houses being situated on large plots with mature planting, contributes to a characteristic sense of spaciousness with little real awareness of surrounding development. The area is tranquil, with little background noise apparent between the well-spaced dwellings.
65. The proposal is in outline with matters other than access reserved for later determination. Nonetheless, three illustrative drawings were provided, with frequent reference made to the most recent, the subject of a more recent application refused by the Council, by both parties. All follow very much the same layout. The development on the appeal site would be constrained by the need to keep buildings away from the root protection zones and of the protected oak trees around it. There is also a policy requirement for a Local Area of Play (LAP) on the site.
66. Given the proposed density and these constraints, which limit the ways in which 48 could be laid out, it is difficult to see how the proposed level of development could be planned so as not to result in a significant adverse change in outlook from the neighbouring dwellings, from an open field and trees to a dense residential estate. Impacts upon Hartlands and 5 Seton Drive would be particularly severe, given the currently wide open outlook through the post and rail fences on their boundaries and the extremely close proximity of Hartlands in particular to the appeal site. New development would appear overbearing upon their outlook. Given its patchy boundary treatment, 4 Newnham Park would also be affected, albeit to a lesser degree, and with the drop in land levels between the appeal site and No 4's rear garden any development above a single storey would appear particularly oppressive.
67. The same is true in relation to privacy. A number of properties have close boarded fencing and/or dense planting to their boundaries with the appeal site, and would be largely unaffected with regard to overlooking. It is difficult to see, however, how the privacy of the three properties mentioned above could be secured in such a way as to not, in turn, further compound the adverse impact upon outlook.
68. Turning to noise and disturbance, the introduction of a significant residential estate, with a LAP, directly adjacent to a relatively tranquil area of low density

residential development would without doubt have an adverse impact in relation to noise and disturbance. There would be a significant increase in noise from domestic activity, notably from rear gardens backing onto the extant dwellings, as well an increase in noise from vehicles circulating where at present there are none.

69. With regard to light, due to the orientation of the site, with the sun moving around it to the south over existing development during much of the day, loss of sunlight or daylight to neighbouring properties is unlikely to be significant. The existing tree cover already filters both daylight and sunlight to some degree. This being so, unless new dwellings were in very close proximity to and spanned much of the boundaries with 3 and 4 Newnham Park, these dwellings (being west facing to the rear) would not be significantly adversely affected.
70. I conclude, therefore, that while the appeal proposal is unlikely to have an adverse impact upon the living conditions of the occupiers of neighbouring dwellings with regard to light, this would not be the case with regard to outlook, privacy and noise/disturbance. It would conflict with paragraph 17 of the Framework, which seeks, among other things, to ensure that planning always seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

### **Other Matters**

71. In addition to the High Ridge Farm decision, my attention was drawn to a number of other decisions<sup>26</sup> of the Council where planning permission has been granted for residential development beyond settlement boundaries. There appear to be different considerations by the Council of its land supply position, and the application of policy RUR2, in some of these decisions. Even so, it is evident that each case has been considered on its individual merits, weighing a range of factors in the balance and coming to a view on whether the benefits of granting permission in those instances would outweigh any disbenefits. The Council undertook the same exercise in relation to the proposal before me and reached a view on the merits of the application. In addition, the Council directed me to other recent decisions<sup>27</sup> that it has taken where it has, as here, refused planning permission for residential development beyond settlement boundaries, including in Local and Strategic Gaps, again following this process. This being so, I do not consider that any of the cases referred to by the appellant set a precedent for the appeal proposal, nor are they demonstrative of inconsistency or partiality on the part of the Council.
72. A S106 agreement has been provided that would secure obligations for the provision of affordable housing, public open space (a LAP), primary school places, improvements to local leisure facilities and local transport infrastructure improvements. The Council also suggested a condition that it felt would secure necessary improvements to Robert Mays Secondary School, to accommodate the need for additional pupil places that would arise from the proposed development. However, although acknowledging the benefit of the affordable housing, these obligations and the condition would not overcome my concerns in relation to the harm arising from the proposal and, thus, they have not had a significant bearing upon my decision.

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<sup>26</sup> ID 35 and ID45

<sup>27</sup> Mr Lee's proof paragraph 7.13

## **Conclusion**

### *Sustainable Development*

73. I have found that the proposal would cause harm to the Local Gap between Hook and Newnham; would have an adverse impact upon the living conditions of neighbouring residents; and may have an adverse impact upon a protected species such that a precautionary approach is appropriate. I have also found that the Council is able to demonstrate a five-year supply of deliverable housing land and that the development plan is not absent, silent or out-of-date.
74. The scheme would, therefore, conflict with the development plan. It would also conflict with aspects of the Framework. I give very significant weight to these conflicts and to the harms arising. Nonetheless, the appellant has stated that the appeal scheme would provide a number of benefits and I weigh these in the planning balance, taking account of the three strands of sustainable development as set out in the Framework.
75. In terms of social benefits, the scheme would deliver additional housing, both market and affordable (secured by planning obligation), in line with the Framework's<sup>28</sup> aim, and Government policy, of significantly boosting the supply of such. Having regard to the undisputed shortfall in housing supply against the OAHN cross the HMA, and the need for affordable housing in the District, I give this benefit substantial weight.
76. The development would also provide a LAP, secured by planning obligation, but this is a response to a policy requirement rather than a benefit of the scheme. It is also suggested that the scheme would provide a high quality living environment for future residents. However, this is an expectation of all new residential development. As such I afford these factors very little weight as scheme benefits.
77. It is common ground that the site is in a sustainable location, insofar as walkable access to local services and facilities is concerned, and I afford this a little weight. In this context, the appellant indicates that the Council's emerging Preferred Strategy for Housing Growth reflects the suitability of West Hook for housing development. This may be so, but the new Local Plan is at an early stage of development and, in line with paragraph 216 of the Framework, I give it little weight.
78. Turning to the economic dimension of sustainability, the Government has made clear its view that house building plays an important role in promoting economic growth. In economic terms, the appeal scheme would provide construction jobs and some local investment during its build out. Albeit that these jobs and investment would be transitory, this a matter to which I afford moderate weight.
79. It is also suggested that the scheme would help sustain existing services in Hook, including the bus and train services and the new supermarket. However, there is no evidence before me that such services are under threat and I give this matter very little weight.

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<sup>28</sup> Paragraph 47

80. The development would also generate New Homes Bonus (NHB) receipts for the Council. As this is an incentive for local planning authorities to provide housing on suitable sites, and no direct beneficial link between the spend of the NHB and Hook has been established, I do not consider that it attracts weight as a benefit in the planning balance.
81. In environmental terms, the scheme is located outside the 5km SPA mitigation zone and policy NRM6 of the South East Plan gives priority to directing development to those areas where potential adverse effects can be avoided without the need for mitigation measures. However, the wording of this policy, and the explanatory text at paragraphs 9.32 to 9.35, suggest that it is geared towards directing the allocation of new development in development plans. While this does not preclude its use for development management purposes, the policy does not prevent development in the zone of influence nor does it override other local or national policy constraints with which schemes may conflict. Thus, while the site's location can be regarded as beneficial with regard to its distance from the SPA, this factor does not of itself outweigh the adverse effects of the scheme.
82. Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would not represent a sustainable form of development. Thus, for the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

*R. Schofield*

INSPECTOR





## **DOCUMENTS SUBMITTED DURING THE INQUIRY**

1. Rebuttal Proof by Daniel Hawes
2. Keystone Ecology letter 11/05/15 regarding protected species
3. PINS letter to the Council dated 26/07/13 regarding soundness of core strategy
4. Extract from Regeneris report 'Enterprise M3 Housing Evidence Study'
5. Extract from Hampshire County Structure Plan Review and annotated table from Daniel Hawes rebuttal proof
6. Extract from Local Plan Proposals Map for Hook area
7. Chris Blandford Landscape and Visual Impact Assessment
8. Extract of selected saved policies of Hart Local Plan 1996-2006
9. Extract from Albany Park appeal final Statement of Common Ground
10. Appellant's Opening
11. LPA Opening
12. Cllr Leeson Statement
13. Mr Dellar Statement
14. Newnham Parish Council Statement
15. Mr Smith Statement
16. Mr Lawrence Statement
17. Ms Abrahams' Statement
18. Mr Taylor Statement
19. Mr Charles' Statement
20. Footpath Survey
21. Hook Parish Council Statement
22. Five Year HLS calculations, Positions 1 to 4
23. Draft S106 Agreement
24. Wessex Consulting note on Long Term Trends in Employment
25. High Court Judgement in Woodstock Holdings v SSCLG
26. Layout Plan 5946/100 Rev D
27. Watery Lane (Albany Park) Refusal Notice
28. Full copy of saved policies of Hart Local Plan 1996-2006 and saving directions
29. High Court Judgement in Crane v SSCLG
30. Committee Report on Hawley Park Farm application
31. Extract from Local Plan Proposals Map for Hawley area
32. Landscape officer consultation comments on Hawley Park Farm and site layout
33. Landscape officer comments on High Ridge Farm application
34. Highway officer comments on appeal application
35. Appellant's table of policy application to recent housing proposals
36. Extract from 1846-1901 Ordnance Survey map for appeal site
37. Statement by Mr Glen
38. Extract from Local Plan 1996-2006 non-saved policies
39. Plan showing Local Gaps in Hart District
40. Housing Land Supply Tables (Series B)
41. Colman v SSCLG, North Devon District Council, RWE Npower Renewables Limited [2013] EWHC 1138 (Admin)
42. Wychavon Secretary of State Appeal Decision - 2 July 2015
43. M3 LEP Area Map
44. Bracknell Core Strategy Policy CS15

45. Hart Committee Report Dated 27 May 2015
46. Letter from Keystone Ecology dated 13 May 2015 regarding protected species
47. Chris Cobbold Note and Additional Tables
48. Daniel Hawes Explanatory Note
49. Hart Local Plan First Alterations Inspector's Report Regarding Dilly Lane
50. Dilly Lane Appeal Inspectors Report - 23 January 2007
51. Dilly Lane Secretary of State Letter - 4 April 2007
52. Dilly Lane Secretary of State Letter - 24 July 2007
53. Hook Urban Settlement Area Appraisal
54. Newnham Conservation Area Appraisal
55. Draft List of Inquiry Documents
56. Fairfields Committee Report 5 April 2007
57. Fairfields Committee Report 25 July 2007
58. Planning Committee Report on Infrastructure - 8 April 2015
59. Tim Johnson letter regarding S106 Agreement - 27 April 2015
60. Hart Housing Land Supply - Agreed Explanatory Note
61. Hart Housing Land Supply - Agreed Set of Tables
62. Agreed Conditions
63. Signed Section 106 Unilateral Obligation
64. Email from Mr Charles regarding flooding – 1 June 2015
65. Newnham Parish Council Minutes 11 May 2015
66. Agreed Propositions of Law
67. Appellant's Costs Application
68. Final Statement from Hop Garden Action Group
69. Letter from CA Ecology regarding protected species - 9 June 2015
70. Assessor's Report to the Panel for the Draft South East Plan Examination in Public on the Thames Basin Heaths SPA and the Draft Delivery Plan
71. Statement on behalf of We Heart Hart
72. Email from Mark Saunders (Hampshire County Council) regarding secondary education contributions – 10 June 2015
73. Plan showing land ownership in the vicinity of the appeal site plus information from HM Land Registry
74. Letter and enclosures from Hook Parish Council regarding land ownership in the vicinity of the site – 10 June 2015
75. Proposed condition regarding secondary education provision
76. Closing Submissions for the Council
77. Closing Submissions for the Appellant
78. Response to Costs Application on behalf of Hart District Council