SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

BARGATE HOMES v HAVANT BOROUGH COUNCIL AND THE BEDHAMPTON HERITAGE ALLIANCE

PROPOSED DEVELOPMENT OF LAND AT LOWER ROAD, BEDHAMPTON

VIRTUAL PUBLIC INQUIRY – 2-5 FEBRUARY 2021

CLOSING SUBMISSIONS OF THE APPELLANT

THE STRUCTURE OF THESE SUBMISSIONS

SECTION 1 – INTRODUCTION.

1. This is an inquiry which has been marked by a wonderful degree of civility between the parties and on behalf of the Appellant we thank the approach of Mr Leader and Mr Tate who have presented their respective cases immaculately.

2. We also want to record our thanks to Mr Salter for his enthusiasm and competence throughout which has ensured the inquiry has run beautifully from start to finish.

3. Finally thank you Sir for running an exemplary inquiry throughout.

4. There are 6 key points to make in introduction:

   5.1. Point 1 – There is a national crisis in the provision of housing.

   5.2. Point 2 – It is worth reflecting on who will benefit from the grant of consent.

   5.3. Point 3 – It is worth reflecting on the Appellant's ownership.

   5.4. Point 4 – The historic and current judgments of the LPA in this matter.

   5.5. Point 5 – Why no costs application made.

   5.6. Point 6 – The LPA's case at this appeal.

Point 1 – There is a national crisis in the provision of housing.

5. This is an important opportunity to bring forward high quality and much needed residential development on a highly sustainable site that has been repeatedly identified as being suitable for housing development by the LPA.

6. The proposal will provide 50 new homes – 15 of which will be affordable – together with significant public open space.

7. These new homes would be provided in the context of what is agreed by both parties to be a critical need to deliver more houses **now** *"without excuses or delay"* [**LPA Opening, ID2, para 1**].

8. The Secretary of State's Written Ministerial Statement of 16 December 2020 [**Appendix 1**] re-emphasises the Government's target to *"increase housebuilding towards 300,000 new homes a year"*.

9. The Government have taken every opportunity to stress that there is a national housing crisis in this country.

10. This is further reflected in Chapter 5 of the NPPF which sets out national policies to support the objective *"of significantly boosting the supply of homes"*.

11. Mr Leader submitted in opening that this LPA takes that need for housing seriously and indeed it is clear that its officers do. This is illustrated by their commendably pro-active response to the housing land supply shortfall identified in 2016 through the publication of a Local Plan Housing Statement [**CD P10**].

12. That document represented *"the first step in addressing the rising housing need through a review of the Local Plan"* [**para 1.5**]. It did so by identifying *"a number of 'early release' sites which are considered appropriate for housing delivery in advance of the adoption of the Local Plan"* [**para 1.7**]. Our site is identified in the document as UE30 [**Table 2, p10**].

13. Notwithstanding that pro-active approach, the latest figures set out in the LPA's Housing Delivery Action Plan [**CD P20**] show that the problem of under-delivery remains far from resolved. Since its release in December 2016, only three of the ten sites identified in the Housing Statement have been granted planning permission and only 146 of the identified 1,361 potential dwellings have been built out [**CD P20, para 3.8**].

14. The completions data for the past three-years paints an even starker picture [**CD P20, Table 2**] with a total of only 913 homes delivered as against a total requirement of 1,415[1], equating to a shortfall of some 502 homes. In addition to market homes, the Council acknowledges there is also a significant unmet need

[1] Figures taken from the table at para 1.9 of the December 2020 Housing Land Supply Update [**CD P17**].

for affordable housing with approximately 2,467 households registered on Hampshire Home Choice seeking accommodation in Havant.

15. Contrary to Mr Leader's contention during the cross-examination of Mr Jobbins, this is not simply a consequence of the need to respond to the Dutch Nitrogen case by ensuring that all new development is nutrient neutral. The problem of persistent under-delivery by this LPA evidently pre-dates the European Court's judgment in November 2018 and the consequent Position Statement on Nutrient Neutral Development approved by the LPA's Cabinet on 26 June 2019.

16. The problem is not simply going to go away with time, it requires **urgent action now**.

17. Do not be seduced by the contention that this problem will be addressed in the future as sought to be done by MLF because that provides absolutely no certainty and additionally the NPPF gives no endorsement of this approach. The proper approach as articulated by Mr Jobbins is that the Government's approach **is to action now.**

18. Once again, the LPA's officers have recognised this. The Action Plan sets out the key actions and responses which the LPA will take to address this very significant historic shortfall. They include *"accepting the principle of development on proposed allocations in the emerging Local Plan where they meet the other requirements in the Plan"* [**PD20, para 4.7**]. Our site is of course one of those allocations [**Emerging Plan Policy H20**].

19. Nonetheless, despite three recommendations for approval by officers, members have now resolved to refuse permission for a housing scheme on this site twice.

20. Let it be clear that the Appellant in no way seeks to diminish the important role of democratically elected Council members in the planning system. However, the approach of these particular members to this particular scheme, strongly influenced by those local residents who now appear at the Rule 6 party, is

completely at variance with the clear injunctions of both national and local planning policy.

21. To uphold the refusal of planning permission for this scheme would be to fail to recognise the urgency of the situation in which this LPA finds itself and to further undermine the eminently sensible steps taken by its officers to seek to remedy that situation.

Point 2 – It is worth reflecting on who will benefit from the grant of consent.

22. Additionally it is worth reflecting on who will benefit if planning permission is granted? This is not some academic proposal but it will provide actual homes for 50 people, couples and families who currently are living in properties that are not large enough, or rented or sharing or even some will be homeless.

23. This proposal has the potential to change many lives. One only has to remember the excitement of getting one's own home for the first time to remember how incredible that moment is. I do – 7 July 1997 was the first time I had my own home and I am sure you will remember your first home as well sir.

24. Therefore think throughout your determination that by providing homes you give people security and comfort which are the two most fundamental desires of the human race.

25. In contrast the objectors all have their homes. They are defined by seeking to protect what they have at the expense of others. It is one of the saddest ironies of modern life that those with homes repeatedly try and stop others enjoying the benefits which they are fighting so hard to protect.

26. The truth is that housing developments are benign once built and those that occupy them seek to contribute and assist the community of which they become part of.

Point 3 – It is worth reflecting on the Appellant's ownership.

27. The profit from this development will ensure additional affordable housing units because of the ownership of Bargate by Vivid who are one of the biggest providers of affordable housing in the South of England.

Point 4 – The historic and current judgments of the LPA in this matter.

28. The planning history of this site provides immense corroboration of the judgment that this site should come forward for housing.

29. It is noteworthy that this is completely ignored by MLF in closing.

30. The site has now been assessed by expert planning officers as suitable for housing development on the scale currently proposed some eight times:

30.1. The LPA's 2016 Housing Statement [CD P10];

30.2. Policy H20 of the Pre-Submission Havant Borough Local Plan 2036 [CD P11];

30.3. The Planning Officer's Report to Committee on this application in January 2020 [CD P4];

30.4. The Planning Officer's Report to Committee on this application in March 2020 [CB p5];

30.5. The LPA's Strategic Housing Land Availability Assessment (SHLAA) August 2020;

30.6. The LPA's Housing Land Supply Update December 2020 [CD P17]; and

30.7. The Planning Officer's Report to Committee on the revised application (APP/20/01031) in January 2021 [CD P16].

30.8. Mr Wood's XX when he accepted the principle of development on this site and confirmed his concern related to the quantum of development.

31. Therefore from December 2016 to February 2021 those representing the LPA and qualified to make planning judgments have agreed that this is a suitable site for housing and perfectly acceptable in principle to be developed for housing.

Point 5 – Why no costs application made.

32. The Appellant is of the view that the LPA has acted unreasonably however it has numerous interests in the LPA area and wants to ensure its good and productive relationship with officers in particular is retained and enhanced into the future.

33. Patently an award of costs is not the most productive contexts for a future relationship!

Point 6 – The LPA's case at this appeal.

34. Mr Leader's closing shows the paucity of the LPA's case by relying on arguments that simply do not reflect the reasons of refusal by developing two themes – the DAS was deficient in considering the significance of the Old Manor Farm and the design of the proposal is harmful.

35. The criticisms of the DAS simply do not reflect the evidence of the LPA or the reasons of refusal. Where in Mr Wood and Mr Hanson's evidence are these points made? These are purely Mr Leader's points. Additionally nowhere did the planning officer or the CO criticise the methodology of the DAS although they had many months to consider it.

36. Secondly a design harm criticism has emerged. That should be given no weight because:

36.1. There is no such point in the January 2020 report

36.2. There is no such point in the March 2020 report.

36.3. There is no such point in the January 2021 report relating to a slightly different design.

36.4. There is no reasons of refusal relating to design as accepted by Mr Wood.

36.5. There is no criticism of the design in the Statement of case.

36.6. There is no criticism of the design as an area of disagreement in the Statement of Common Ground.

37. Taking those 6 points together it is therefore submitted that the consequences of granting permission are overwhelmingly positive.

SECTION 2 - MAIN ISSUE 1 – EFFECT ON HERITAGE ASSETS

38. There is absolutely no embargo of any kind in any national guidance on development which affects heritage assets whether it be within CA or within the setting of CA.

39. The key test is the effect of the proposal on the significance of that HA. Will the development materially harm the significance that makes the HA worthy of conservation, preservation and enhancement.

40. Additionally it is of note that this part of the CA [No 5.] was never viewed by officers to merit inclusion in the CA as a matter of professional judgment. OMF was included by members. That is really important in reaching a judgment on its significance and value when officers resolutely resisted this amendment which was imposed on them by members.

41. Both heritage witnesses adopted the steps endorsed by Historic England in its Good Practice Advice Note 3 [**CD H6**] in assessing the effect of the proposal on heritage assets.

42. There was also agreement as to the result of Step 1 – Identify which heritage assets and their settings are affected – in this case, the Old Bedhampton Conservation Area ("OBCA"). It is of note that not one listed building is alleged to be harmed by this proposal so the focus is exclusively on the OBCA.

43. The divergence began when it came to Step 2, namely, assessing the degree to which the setting, and specifically that part of it that would be affected by the development, contributes to the significance of the OBCA.

44. You heard from Mr Trehy that, while there is no dispute that the site forms part of the immediate setting of the revised OBCA, his judgment is that this particular part of that setting does not contribute in a material way to the significance to the OBCA.

45. This view is utterly endorsed and supported by the Conservation Area Appraisal ("CAA") [**CD H3**] which does not draw out the appeal site land as contributing to the significance of the OBCA. In particular:

    45.1. Page 30 of the CAA which lists the "features that contribute to special interest" does not mention the fields south of Lower Road in which the appeal site is situated. This is critical because this is the part of the CAA dealing with significance in terms.

    45.2. Paragraph 7.6 which considers the historic interest of the Old Manor Farm buildings does not identify the surrounding fields as contributing to their significance.

    45.3. Paragraphs 7.7 and 7.8 expressly address the heritage value of the fields in which the site is situated and rule them out of inclusion in the revised conservation area boundary because they *"do not have the special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance"*. Mr Hanson accepted the correctness of this conclusion in cross-examination.

46. Mr Trehy's evidence on the setting of the OBCA's contribution to its significance was therefore clearly grounded in and supported by the CAA which must, on any sensible view, be the primary source of information on the CA's significance and provides utter corroboration of Mr Trehy's evidence.

47. Indeed, Mr Hanson agreed in cross-examination that the very objective of a CAA is to clearly identify what the significance of an asset is.

48. Nonetheless, he chose to base his assessment of significance on his own six elements of the immediate setting which contribute to the significance of the

OBCA. The strength of each of these elements was reduced somewhat in the course of his evidence to this inquiry:

48.1. Element A – historic function and character of open agricultural land – Mr Hanson accepted in examination-in-chief that the proposal would not result in the loss of all the fields to the south of Lower Road.

48.2. Element B – views of local importance – he accepted in cross-examination that his viewpoints 1 and 2 were not publicly accessible and that the proposal would in fact represent an improvement to viewpoint 3.

48.3. Element C – physical separation of Old Manor Farm and associated buildings to the village core. Mr Hanson accepted in cross-examination that there was in fact no physical separation between Old Manor Farm and the village core as a result of the development to the north of Lower Road.

48.4. Element D – he accepted that there would be no change to the function of the east-to-west aligned routes leading into, through and beyond the settlement.

48.5. Element E – again, he accepted that there would be no change to the historic function of Narrow Marsh Lane and that this was not identified as a public right of way in any event.

48.6. The scheme is accepted as representing a benefit in respect of Element F – the coniferous tree belt.

49. Ultimately, the contribution which the appeal site makes to the significance of the OBCA will be a matter of judgment for you Sir in light of the expert evidence that you have heard and the significant body of documentary evidence before the inquiry.

50. For ease of reference those documents consist of: Mr Hanson and Mr Trehy's Proofs and Appendices; the Conservation Area Appraisal [**CD H3**]; the Heritage Statement and Addendum [**CD H1 and H2**]; the LPA's Conservation Officer's three

responses [**Appendix 3 to Mr Trehy's Proof**]; and the relevant sections of the three Officer Reports [**CD P4, P5 and P16**].

51. There is no dispute that this constitutes sufficient information for you to reach a properly informed view.

52. The two expert's divergent views on the appeal site's contribution to significance result in similarly divergent views with regard to Step 3 – assessing the effects of the proposed development, whether beneficial or harmful, on the significance of the heritage asset or on the ability to appreciate it.

53. Mr Trehy, having reached the judgment that the appeal site does not contribute in a material way to the significance of the OBCA, reasonably concluded that the proposal's effects on the significance would be neutral.

54. Mr Hanson, by contrast, was adamant that the effect of the proposal on each of his identified six elements was such as to justify a conclusion of "moderate" less than substantial harm ("LTSH").

55. It is the Appellant's submission that this conclusion is simply not credible for the following reasons:

    55.1. It involved attributing a rating of "high" harm (which he stated was highest rating on the "Hanson" scale) to his elements A and C as a result of the proposal. This in spite of the fact that he accepts that all of the open agricultural land will not be lost and that Old Manor Farm is not in fact physically separated from the village core currently.

    55.2. By contrast he gives only a "moderate" rating to the enhancement as a result of the total removal and replacement of the coniferous shelter belt (his Element F).

    55.3. He acknowledges the high degree of mitigation which the scheme's design and layout provides in respect of preserving the historic function and character of Narrow Marsh Lane – one of his two "moderate" harm ratings.

55.4. He acknowledges that the OBCA has previously shown a resilience to, and retained its historic interest in spite of, the significant expansion of the urban development to the north. Indeed he referred to the area as "a model example of that dynamic" between historic conservation area and modern housing development.

55.5. It is exceptionally rare to get above LTSH to a conservation area as a result of a scheme which affects only its setting. Therefore, to say that this scheme which impacts only on a very limited part of the setting of a conservation area (the satellite CA5 Old Manor Farm), reaches towards the midway point of the LTSH range, is to suggest that it represents some of the worst harm that can be inflicted on the setting of a conservation area. This simply cannot be correct and is not borne out by the recent review of what features or areas of the OBCA define its special interest.

56. As to Step 4 – assessment of how the proposed development has sought to maximise enhancement and avoid or minimise harm – there was also a difference in view between the two experts.

57. Mr Trehy summarised during examination-in-chief the steps taken in the design process to avoid causing harm to the OBCA and, in particular, the Old Manor Farm buildings. This included:

57.1. Setting the built form back from the redline boundary with Old Manor Farm and reinforcing the substantial existing hedge boundary.

57.2. Setting back the closest house to Character Area 1 with a substantial green boundary between it and the existing hedgerow and trees.

57.3. Protecting the alignment of Narrow Marsh Lane with no built form on or directly abutting it.

57.4. Designing the scale of the development to respond to the local context including, for example, the bungalows to the north of the site which relate

to the bungalows on the north side of Lower Road and the **very low density** of the scheme at 22dph.

58. Mr Hanson, on the other hand, while initially claiming that it was the **nature** of the proposed development and not the principle which is harmful, was unable to suggest an alternative design that would avoid or mitigate his alleged harms. Ultimately, he accepted that – on his analysis of significance – it would be very difficult not to create a degree of harm through the construction of housing on the site.

59. Therefore, given Mr Wood's acceptance that this site is suitable for housing in principle, and that therefore these open fields will eventually be lost, the only debate can be as to the quantum of development.

60. It is worth noting that the LPA's conservation officer's responses refer to parts of the design which she deemed mitigate the harm that she identified thus bringing that harm down to the lower end of the LTSH scale.

61. In sum, therefore, you have before you three views on the effect of the scheme on the setting of the OBCA: (1) Mr Trehy's assessment that it will have a neutral effect; (2) the CO's judgment that it will have a harmful effect but at the low end of the LTSH scale; and (3) Mr Hanson's assessment that the scheme will have a harmful effect that is moderate on the LTSH scale.

62. The Appellant submits that Mr Trehy's assessment is to be preferred for all the reasons given above.

63. This is corroborated on the ground. Bedhampton has experienced very significant residential expansion around it throughout the past 150 years and yet this is a CA which is resilient and its special interest and significance has remained intact.

64. It is even a CA that the LPA are expanding as was done in 2019 and, mindful of the parallel progression of the draft Local Plan, did not deem it necessary or appropriate to include the Appeal Site within the revised CA.

65. Therefore, you can see on the ground that the past has shown that residential development is completely compatible with the OBCA and will continue to be so into the future if planning permission is given.

66. If, however, you were to disagree with that assessment, the Appellant would urge you to adopt the view of the CO, who properly accounted for the mitigating features in the proposal's design.

SECTION 3 - MAIN ISSUE 2 – EFFECT ON HIGHWAY NETWORK

67. While this has been identified as a main issue for the inquiry, the starting point is of course that there is no RfR on highways grounds. The Appellant, the LPA and the Highway Authority are all agreed that the scheme will have no material highways impacts.

68. Nonetheless, in response to points raised by Mr Tate on behalf of the Rule 6 Party in his evidence, Mr Jenkins provided a proof of evidence which specifically addressed the expressed concerns. He also gave live expert evidence to this inquiry and answered detailed questions put by Mr Tate in cross-examination.

69. Mr Jenkins' evidence-in-chief described the thorough approach to highway matters adopted in the evolution of the scheme. This involved the preparation of a transport statement, carrying out extensive surveys and producing a technical note in response to the Highway Authority's comments. Only as a result of this work was the Highway Authority satisfied that the scheme would not have negative transport effects.

70. Mr Jenkins was very robust in his view that there is no existing safety issue on Lower Road there having been no accidents for as long as formal records are available. He also drew attention to Figure CA-009 in the appendices to his proof [**page 35**] which illustrates why, in his view, there would be no safety issues even if two cars were to pass or meet a pedestrian at one of the blind bends.

71. Far from having negative highway impacts the scheme, as illustrated in Mr Jenkins' figure GA-007 [**SJ Proof, page 34**], would provide highway improvements.

72. Ultimately, having considered the points raised by the Rule 6 Party in great detail, Mr Jenkins' view remains, as agreed with the Highway Authority, that there would be no material highway impacts arising as a result of the scheme. Given that he is the only expert transport witness to have given evidence to the inquiry and that no contrary expert view has been presented, it is submitted that his evidence should be given great weight.

SECTION 4 - MAIN ISSUE 3 – THE APPLICATION OF SECTION 38(6)

73. There was a discussion at the outset of the inquiry as to how best to address the two separate but clearly interrelated questions of the application of the tilted balance and the application of section 38(6) of the Planning and Compulsory Purchase Act 2004. Thankfully, some assistance in that regard is provided by the Court of Appeal's decision in Gladman [**ID5**]. In light of that judgment, the Appellant suggests the following approach to section 38(6) in this case:

    73.1. Assess the extent to which the proposal complies with the development plan;

    73.2. Determine whether or not the "tilted balance" is engaged; and

    73.3. Carry out an overall planning balance that is informed by paragraph 11 and that takes into account both compliance with the development plan and all other material considerations.

STEP 1 – COMPLIANCE WITH THE DEVELOPMENT PLAN

74. The starting point here is the agreement between the two planning witnesses as to the relevant development plan policies. They are: CS11, CS16 and CS17 of the Core Strategy 2011 [**CD P8**], and AL1, AL2 and DM20 of the Allocations Plan 2014 [**CD P9**]. The areas of dispute lie in whether or not the development would breach these policies and the weight attributable to any such breach.

Heritage policies – CS11, CS16 and DM20

75. As to CS11, CS16 and DM20, each of the planning witnesses defers to the view of their respective heritage expert as to whether or not there is harm to heritage

assets as a result of the proposal and therefore a breach of these policies. Your judgment on compliance or breach will therefore broadly depend upon your determination of Main Issue 1 above.

76. However, in respect of CS16 and CS17 in particular, it is relevant to note that the only potential for conflict which arises does so only with respect to one limb in what are both very detailed and comprehensive policies (bullet point 4 of CS11 and sub-paragraph 1(a) of CS16). This should be borne in mind when you are reaching a judgment on the weight to be attributed to any breach of these particular policies.

77. As regards the weight to be attributed to each of these policies more generally, this is to be assessed in accordance with their degree of consistency with the current NPPF [**para 213 NPPF**].

78. There was a degree of agreement reached with regards to these policies. First, it is agreed that neither CS11 nor CS16 provide for a balancing of public benefits against any LTSH to heritage assets as required under para 196 NPPF. However, Mr Jobbins accepted that, on a fair reading of DM20 together with its supporting text, the relevant paragraphs in the NPPF (including what is now para 196) are incorporated by reference and the policy is therefore up to date and can be given full weight.

79. However, this means that only if you find that there is some material harm to the OBCA as a result of the proposal **and** that that harm is not outweighed by the public benefits of the proposal, will there be a breach of Policy DM20 which can be given weight in the overall planning balance. For the reasons already given, the Appellant submits that no harm to the OBCA will result from the scheme and, in any event, any harm is outweighed by the public benefits and consequently those policies are complied with by this proposal.

The "spatial strategy" policies – CS17 and AL2

80. These two policies can be addressed rather more briefly.

81. First, the Appellant strongly denies any breach of either policy because, while the site may be outside the settlement boundary it does not lie within any of the "undeveloped gaps" identified by the policies themselves. The LPA, by its own admission through Mr Leader and Mr Wood, is not running a "gap" case.

82. Second, even if the proposal were found to breach one of these policies, they were very plainly – and this is not in dispute – predicated on a certain level of housing need which has since been superseded by a significantly higher figure. That higher figure clearly cannot be met while maintaining the existing boundaries. Mr Wood's assertion that the policies should nonetheless be given "full weight" is simply not credible.

83. No weight should therefore be given to either of these policies in the overall planning balance.

Policy AL1

84. This is a very clear example of a policy that is fully consistent with the NPPF. Consequently, the development's compliance with that policy should be given full weight in the overall planning balance and that is reinforced by the absence of any allegation of its breach in the reasons for refusal.

85. Consequently taking the heritage policies, the sustainability policy and the housing delivery policy, although the weight is reduced on many of them, it is the Appellant's position that the proposal complies with the development plan and the Section 38(6) presumption applies.

86. Consequently are there any material considerations that indicate otherwise.

The emerging plan

87. There are two material considerations that are relevant.

88. The first is the emerging plan which unquestionably supports the grant of permission.

89. The site is allocated.

90. Additionally as has been shown by the LPA Action Plan the LPA seeks now to grant such allocations subject to their compliance with the other policies in the emerging plan which this site does.

91. The only issue is to weight.

92. Mr Wood accepted in cross-examination that he was content to give limited weight to the emerging plan in line with the view taken by officers. The battle ground therefore is between this and Mr Jobbins' judgment that substantial weight can be given to the emerging plan and, in particular, the allocation of the site.

93. The Appellant's submission is that in view of the significant evidence base that has fed into the draft Local Plan, and the fact that at every stage the inclusion of this site as an allocation has been endorsed by members notwithstanding very substantial efforts by BHA to get it taken out, Mr Jobbins' judgment is clearly the correct one. This is further endorsed by the January 2021 Action Plan [**CD P20**].

STEP 2 – ENGAGEMENT OF THE TILTED BALANCE

94. This is another area where there is much agreement between the parties at least insofar as to the approach to be taken.

95. First, the parties agree that para 11(d) is prima facie engaged as a result of the agreed 5YHLS shortfall.

96. Second, the parties agree that the next step is to consider whether para 196 provides a clear reason for refusing permission to the scheme. The disagreement begins with the answer to that question.

97. However, there is agreement that if para 196 does <u>not</u> provide a clear reason for refusing permission then para 11(d)(ii) is engaged and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The converse is also agreed (i.e. if para 196

does provide a clear reason for refusing permission then para 11(d)(ii) is not engaged).

Does para 196 provide a clear reason for refusing permission?

98. Paragraph 196 provides that:

> "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."

99. There is now agreement between the planning witnesses as to what the public benefits of the proposal are with the battle ground once again being in relation to the weight to be attributed to them.

100. For ease of reference, we have added Mr Wood's weightings to the summary table in Mr Jobbins' Proof [**DJ Proof, page 25**].

101. In light of Mr Wood's answer in cross-examination we have treated "significant" and "substantial" weight as being interchangeable.

SUMMARY OF THE BENEFITS AND THEIR WEIGHT IN THE RESPECTIVE PLANNING BALANCES.

Public benefit	DJ weight	SW weight
Provision of market housing	Significant	Significant
Provision of affordable housing	Very significant	Significant
Provision of Public Open Space	Moderate	Limited
Sustainable location and improved accessibility through site	Significant	Significant
Well-designed development	Moderate	Limited
Energy efficiency	Moderate	Limited
Biodiversity enhancements	Moderate	Limited
Removal of coniferous tree line	Moderate	Limited
Economic benefits	Limited	Limited
CUMULATIVE WEIGHTS TO BENEFITS	SIGNIFICANT	MODERATE

102. What became clear from Mr Wood's cross-examination was his unique approach to the weighting of benefits (apparently endorsed by Mr Leader). This "Wood" balance requires a benefit that is "out of the ordinary" or "over and above" policy requirements in order for it to attract more than limited weight. The exception to this rule appears to be in relation to affordable housing, which can be afforded significant weight even if required by policy.

103. However, Mr Wood's test for the weighting of benefits asks the wrong question. Whether or not a proposal coming forward would provide a public benefit needs

to be assessed as against that proposal not coming forward not as against some other hypothetical policy compliant scheme.

104. Mr Wood acknowledged that this approach to benefits accounted for the difference between his weightings and those of Mr Jobbins. It is therefore a question for you, Sir, as to whether or not Mr Wood's approach to discounting weight is appropriate.

105. It is our fundamental submission that Mr Woods is simply wrong. The approach he seeks approval of simply has no precedent or endorsement. He did not present one decision notice or Secretary of State decision where the weight to be given to benefits has been reduced in this way.

106. It would also be an approach which is fundamentally flawed because only benefits not required by policy would be included which would be bizarre and always lead to refusal frankly which would make the desire of government to significantly boost the supply of housing redundant.

107. Nonetheless, even on Mr Woods' flawed weightings, it would not, in the Appellant's submission be unreasonable to conclude that the benefits of this scheme outweigh the LTSH to the OBCA. Therefore, even taking the LPA's case at its highest, paragraph 196 NPPF does not provide a clear reason for refusing permission.

108. Paragraph 11(d)(ii) must therefore be applied.

OVERALL PLANNING BALANCE

109. The Gladman decision confirms that paragraph 11(c) and (d) simply *"set out a policy to guide decision-makers on the performance of their statutory responsibilities under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, in the specific circumstances to which they relate"*: [49]. The court concluded that it was perfectly proper for a decision-maker to apply the statutory presumption in favour of the development plan and the national policy presumption in favour of sustainable development together: [67].

110. In other words, in making an assessment as to whether any adverse effects of the proposal significantly and demonstrably outweigh the benefits, you can properly take into account any relevant policies of the development plan: [61]. This in no way changes the very high hurdle set by paragraph 11(d)(ii) for a refusal of planning permission.

111. The decision also confirmed that the test in para 213 NPPF may properly be taken into account in the balancing exercise under para 11(d)(ii): [68]. Thus, any development plan policies that are being weighed in the overall balance, must be weighted in accordance with their consistency with current NPPF policies.

112. The weight to be attributed to the relevant development plan policies has already been discussed. The Appellant's view, for the reasons given, is that none of the applicable development plan policies are breached and that therefore the question of compliance with the development plan is a further benefit of the scheme. Thus, even on a flat balance the cumulative benefits would very plainly outweigh any harms attributable to the scheme and permission ought to be granted.

113. If, however, you were to find that some LTSH to heritage assets will result from the scheme (but that this is outweighed by the public benefits so that the para 196 test is passed), then this harm – with due weight given to it in accordance with NPPF and s.70 of the Listed Buildings Act 1990 – will of course need to be weighed in the balance. Nonetheless, it cannot be the case that this harm significantly and demonstrably outweigh all the benefits of this scheme that have been identified and agreed by both parties.

SUMMARY AND CONCLUSIONS

114. In conclusion:

114.1. There is a national housing crisis which demands action and the only real action that can solve the crisis is building more homes.

114.2. There is a local housing crisis in which this LPA cannot show a 5 year HLS.

114.3. They have just needed to publish an Action Plan to address this material failing.

114.4. The only way to solve this crisis locally is by granting consents.

114.5. The only way consents can be granted is on greenfield sites.

114.6. No one at this inquiry has contended that the LPA could only use brownfield sites. Indeed the HLS sites provide a majority of units on greenfield sites. The emerging plan provides a majority of units on greenfield sites.

114.7. There is simply no other way of getting the numbers required.

114.8. This is a proposal to build 50 new homes against the background of a critical and urgent need for housing at national, regional and local level.

114.9. The site is eminently suited to meeting some of that critical need as recognised by the LPA's own officers on numerous occasions.

114.10. The response of national planning policy to a 5YHLS shortfall such as that which exists here is to apply a "tilted balance" in favour of the grant of planning permission. That "tilted balance" is engaged in this case.

114.11. The only reason for refusal which remained live before this inquiry was alleged heritage harm as a result of the impact of the proposal on the setting of the OBCA. The Appellant has demonstrated through the evidence of Mr Trehy why such harm will not arise. It has further demonstrated, through the evidence of Mr Jobbins, why any such harm that does arise is clearly outweighed by the many benefits of the scheme.

114.12. The test in paragraph 196 of the NPPF does <u>not</u> therefore provide a clear reason for refusing this application and the "tilted balance" remains engaged.

114.13. The highways concerns raised by the Rule 6 party have been addressed by Mr Jenkins through his proof and live evidence to this inquiry. The Appellant's view remains that they do not give rise to any material consideration weighing against the proposal.

114.14. The overall planning balance very clearly weighs in favour of the grant of permission.

115. For all the reasons set out in these closing submissions, the Appellant urges you to allow the appeal and to enable this much needed and highly sustainable development to come forward without further delay.

5 February 2021

SASHA WHITE Q.C. AND KIMBERLEY ZIYA

LANDMARK CHAMBERS
