FARM VIEW, LANGLEY VALE

APPELLANT'S CLOSING SUBMISSIONS

Introduction

1. As Mr Brown described in his evidence in chief, there is a "decision tree" in this case which divides on a single point of policy application. All the parties agree[1] that if the proposal falls within Policy GB7(1)(g) of the NPPF, then permission should be granted. As to whether GB7(1)(g) applies, the only point of dispute between the parties is whether the *"development would be in a sustainable location, with particular reference to policy TR3 of this Framework"*. If GB7(1)(g) does not apply, then a different exercise must be undertaken.

2. These closing submissions will therefore address the principal question under GB7(1)(g) first. It is important to have in mind, however, that whichever route is taken through policy the substantial benefits of delivering market and affordable homes is kept in mind. That is particularly so in this Borough, where woeful housing delivery over many years and a desperate shortage of affordable housing has had substantial real-world costs. It is the 13th worst performing local authority area in terms of housing delivery.[2] It is only able to demonstrate a 1.6 year supply of deliverable housing land (a shortfall of 3,402 homes over the next five years). There has been a persistent failure to remedy the housing supply position. In relation to affordable housing, this has resulted in a spiralling waiting list: there are 1,541 households on the Housing Register.[3] 55 of those households could have a home at the Site. The fact that the Council, and Mr Whitehouse, accept all of this without argument does not make the point any less significant in this

[1] Mr Whitehouse for the LPA in his proof; Mr Mumford for the R6 in cross examination
[2] CD 5.5
[3] Annie Gingell, Affordable Housing POE, para. 4.12 (CD6.3)

appeal. The Inspector is invited to have these points firmly in mind in addressing each of the principal issues.

The development would be in a sustainable location

Policy

3. Policy GB7(1)(g) requires a judgment to be by the Inspector about whether the Site is in a sustainable location. In doing so, "particular reference" is to be made to Policy TR3 of the NPPF. TR3 is not itself framed as a binary test; it directs the decision-maker to certain relevant considerations. It is not framed as a "should be refused" policy; it therefore invites a balanced judgment in all the circumstances of the case.

4. The objective of TR3, along with the other policies in Chapter 15 of the NPPF, is to "ensure that transport considerations are taken fully into account in… the evolution and assessment of development proposals; using a vision-led approach to embed the role that transport infrastructure and choices can play in creating well-designed, sustainable, inclusive and popular places." Policy TR3 then states that certain principles should be applied so that development is located "where it can support sustainable patterns of movement, enable good accessibility for different users and make the most of existing and proposed transport infrastructure". TR3(1)(a) then provides that:

> "Development proposals which could generate a significant amount of movement, in the context of the area within which they would be situated, should be in locations that are sustainable (or which can be made so, taking into account planned improvements, including any provided for as part of the development itself). This means the location should limit the need to travel, particularly by private car, and offer a genuine choice of transport modes for residents and users, unless the nature of the development would make this impractical".

5. Despite the time spent on it at the Inquiry and in the LPA's closings, there is no real issue about the point at the heart of TR3(1)(a). The test is whether the location limits the need to travel and offers a genuine choice of transport modes for residents. That is the point which has been extensively considered in the TA and in

Mr Hamshaw's evidence. That is the same test that was applied under the NPPF prior to August 2026[4]. It is the same test that was applied by the Inspector in the 2022 appeal decision[5]. It is the same test that was applied by Council officers in recommending the grant of planning permission.[6]

6. The only new issue which arises from the revised NPPF is whether that question needs to be posed at all in the present case. That is because the threshold for requiring consideration of the "genuine choice" test has changed. We are no longer asked to consider whether the proposal is for "significant development" but instead whether it "could generate a significant amount of movement, in the context of the area". This is clearly a change in policy. Policy TR1(2) anticipates that thresholds for the application of the test may be set in development plans. There is, however, no guidance on how the test is to be applied in the absence of a locally set threshold. As Mr Hamshaw explained in his evidence, it is not clear whether any such threshold has met in this case. The development traffic will increase flows on the nearest road, Langley Vale Road, by c. 5%.[7] There is therefore some doubt as to whether the NPPF in fact requires the application of the TR3(1)(a) test to these appeal proposals.

7. Nonetheless, the application was prepared under of the earlier version of the NPPF, and the development was regarded as "significant" under the terms of the policy as it then stood. Accordingly, the proposal was assessed through a Transport Assessment, and indeed by officers, on the assumption that policy formerly in paragraph 110, and now in TR3(1)(a), needed to be applied.

Context

8. What, then, is meant by a "genuine choice"? It obviously does not mean that all journeys are carried out by sustainable modes. Nor can it mean that a sustainable mode has to be available to every user or occupier: some people simply cannot

[4] See e.g. Hamshaw Proof 2.2.4
[5] CD15.1, para 31
[6] CD3.1, para 9.48
[7] Philip Hamshaw, Traffic and Transport POE, para. 5.4.2 (CD6.6).

take advantage of sustainable modes in any location. The question of which choices can be taken up must also necessarily depend on context. It is therefore unhelpful, for instance, to assess bus service frequencies by reference to the standards applicable in central London,[8] or to consider the sustainability of the location by reference to appeal findings in Eastleigh.[9] Each relevant witness agreed that the sustainability credentials of the Site fall to be assessed *in context*.

9. An understanding of context also requires the decision-maker to consider what the existing patterns of movement are in the area concerned. However, the data which is available (and relied on by Mr Ward in particular) relates to journeys to work only. This necessarily provides a limited impression of movement, particularly here in a rural, and predominantly residential, village. The journey to work data also not distinguish between trips that are made through several different modes and those which are made through only one. It is reported as data relating to only the mode used for the longest part of journey. It is important to bear this in mind when considering e.g. the use of a bus to get to a station. A person taking a bus to Epsom and then boarding a train to Central London would be recorded as a train journey in the data, despite using a bus for the start of the journey. The same is true of those who cycle to a station.

10. The data also necessarily excludes trips to school. We know that Langley Vale is a place where primary school age children can walk to a primary school. We know that that primary school provides not just schooling from reception to Year 6, but also nursery places, and wraparound care. We also know that Langley Vale is served by school bus routes including buses to Epsom and a dedicated school bus service towards Leatherhead. Therefore, secondary school trips are also trips which, although not featuring in the travel to work data, will at present be carried out by bus for some pupils.

[8] Mr Ward's Appendix AW4
[9] ID.11

11. Other trip purposes are not the subject of existing data. It will necessarily exclude walking trips the village hall or Texaco shop within Langley Vale. Many trips are made simply for recreational purposes without particular destination in mind. Langley Vale is, and will continue to be, a paradigm of a place where active travel for recreational purposes is promoted. There are abundant routes to walk and cycle, onto the Downs, towards the Centenary Wood, or further afield. This is not a location where residents have to get in their car to have access to the countryside.

12. There is also the simple fact that Langley Vale is a popular place to live. There are 540 households, and about 1500 people, who call it home. Others travel there for the school. There is no sense that existing travel patterns compromise the environmental, social or economic life of the village. That overall impression of the location is sufficient to resolve this issue in the apparent favour. The Inspector has seen the Site's surroundings, and formed an impression of how people live in Langley Vale now, and how they would live in the new development.

Detail

13. The section will consider each of the sustainable modes and will do so by reference to the position after the development and its sustainable travel proposals are implemented. In cross examination, Mr Hamshaw and Mr Brown were pushed on the extent to which they *relied* on the "package" of sustainable transport measures to support their conclusion. Contrary to paragraph 18 of the LPA's Closings, both explained that Langley Vale was a sustainable location without it, but that their assessment was undertaken with those commitments in mind. This is consistent with the approach of Council officers:[10]

> "18.73. Paragraph 110 of the NPPF seeks new development to take opportunities to maximise sustainable transport solutions and therefore sustainability opportunities have been set out in the TA and the ESTS to promote sustainable travel modes. It is important to recognise that these improvements are proposed

[10] CD3.1. See also 9.56 and 9.59 of the same report.

to enhance the sustainability, rather than make the location sustainable, as the Site is already to be considered in a sustainable location…"

14. The reason for taking that approach is because policy TR3 expressly requires consideration of "proposed improvements", whether they are of the application or otherwise. Here there are a number of proposed improvements which will support sustainable transport choices. That is not to say that each or any of those choices needs to be improved to reach the conclusion that this is a sustainably located proposal. It is to demonstrate that scheme will encourage the uptake of those genuine choices as well as improving the likely uptake of sustainable modes by existing residents.

15. Walking. The basic premise of walkable destinations appears to have been somewhat forgotten in the assessment carried out by Mr Dukes and Mr Ward, and in the cross-examination of Mr Hamshaw. As Mr Hamshaw sets out in his proof, 800m is under a 10-minute walk, and on SCC's analysis means the facility is "accessible by foot". A distance of 1,600m is under a 20-minute and the distance where more than three-quarters of trips are made by foot[11]. SCC's guidance also indicates that most needs should be met within a 20 minute walk or cycle.[12] Longer distances of up to 3,200m remain walkable for some: the National Travel Survey shows 19% trips of between 1,600m and 3,200m are made on foot.[13]

16. It follows that for walking to be the likely mode of choice for many people, the destination would have to be within 1,600m, or c. 20mins. This means that the Texaco shop (4 mins), Grosvenor Road bus stop (5 mins), Village Hall (10 mins), Vale Primary (14 mins), and Centenary Wood (14 mins) are all within the range where many people will comfortably walk.

17. It is confusing that the Council and R6 Party continued to assess routes to Epsom Town Centre/Train Station and Tattenham Corner by reference to their walkability.

[11] See Image 4.7 in Mr Hamshaw's proof, derived from the National Travel Survey.
[12] Hamshaw Proof, 4.4.11
[13] Hamshaw Proof, 4.4.4

Mr Hamshaw recognises that only some trips would be made on foot to these destinations[14], based on distance alone. He did not put forward walking to these destinations as a predominant or particularly material part of the sustainable transport opportunities. Mr Duke's analysis of these walking routes is therefore of no real relevance.

18. The routes within this "20-minute neighbourhood" pose no impediments. Walking routes within Langley Vale will be improved. This will improve access from the appeal Site to the school and village hall and make the walking environment in Langley Vale better for existing residents, promoting active travel, a point accepted by Mr Dukes in cross examination. There are also proposed improvements to the Texaco shop, increasing the trading space to the size of a small Tesco store.[15] Whilst the permission has not yet been implemented, Mr Brown's enquiries suggest it will be implemented next year. This will improve the retail provision within walking distance of the Site.

19. As well as looking at the wrong mode for the wrong destination (i.e., walking to Epsom) bizarrely Mr Dukes also assessed the wrong routes to the walkable destinations. The Appellant's assessment of walking to the primary school is based on the route through the village – hence funding improvements along that route. However, Mr Dukes' assessment focused on the off road route. This is a shorter route via the recreation ground which no doubt will be attractive to some parents and children, encouraging active travel. However, the existence of a more challenging alternative route can only boost the uptake of walking, not dissuade someone from walking along an acceptable route.

20. For cycling, Mr Hamshaw's undisputed evidence is an "accessible" cycle distance is up to 5,000m, or a 20-minute ride.[16] This means that in terms of distance by bike, Epsom town centre and four different train stations can be reached. The position

[14] Not, as suggested by in the LPA closings at para 28, that no-one would walk.
[15] Mr Brown EiC
[16] Hamshaw proof, 4.4.21

of the Council (and SCC through Mr Dukes) on cycle access is very surprising indeed. The Council publishes a map of cycle routes in the Borough, with descriptions of the nature of the routes[17]. This shows that there are cycle routes from the Site to (i) Tattenham Corner via the Downs and (ii) via Headley Road to Epsom. The former is a National Cycle Route, the latter part of the Surrey Cycleway known as the "Epsom Link". There is also a route via Langley Vale Road and Chalk Lane, itself a signed cycle route on a road with restricted access for cars. In the Transport SoCG, Mr Dukes agreed the routes and their designations.[18]

21. Yet extraordinarily, Mr Dukes (and Mr Ward) sought to persuade the Inquiry that the cycling routes relied upon by the Appellant are problematic and/or unattractive despite their designation for cycling. Their objections are not supported by any adequate evidence. In fact, Mr Dukes failed to assess certain relevant cycle routes, including from the Site to Epsom through Chalk Lane. He accepted in cross examination that he had not looked at Chalk Lane, considering instead Ashley Road, rather than the designated cycle route identified in the Transport SoCG. As noted above, the fact that there is an alternative, less attractive, sustainable transport mode does not assist in understanding the suitable route which is available.

22. Mr Duke's analysis of the route to Tattenham Corner is perhaps even more surprising, yet the LPA persist with that analysis in their closing.[19] It is predominantly part of the National Cycle Network, and all follows bridleways. It is identified by the Council as being a route which is "reasonably comfortable to cycle any time of the year without need for a mountain bike". However, when he purported to assess the route, Mr Dukes took a materially different route to the station, left the National Cycle Network and the bridleway, and went through an open gate. The photos presented in his proof[20] do not depict the relevant bridleways or the cycle route to Tattenham Corner relied upon by the Appellant,

[17] Highways SoCG, Appendix B (CD9.6)
[18] Highways SoCG, para. 2.2.18 and Image 2.2 (CD9.6)
[19] Paragraph 29
[20] Tim Dukes, Highways POE, appendix C (CD7.4)

set out in the Transport SoCG, and marked on the cycle maps, but an alternative route which Mr Dukes found online.[21] This was poor.

23. Similarly, Mr Ward provided no detailed analysis of the relevant cycle routes and only cited anecdotal evidence of the gradients on Chalk Lane despite objecting to its viability on this basis. He did not carry out any assessment of these gradients, nor explain why they would present an impediment to users. He also took issue with the Council's own description of the routes in question.

24. By contrast, the official Council designations of these cycle routes, along with Mr Hamshaw's evidence (including having actually cycled the routes), support the conclusion that these routes will provide a safe and convenient choice for many cyclists to undertake everyday journeys. Some will choose not to cycle over the Downs at night, but they may cycle to Epsom by road instead. In this regard, it is important to emphasise Mr Hamshaw's evidence that the assessment under Policy TR3 must consider choices for all people, but with an essential recognition that "*not all people will be able to take all journeys by all modes*" – this is true in any location.

25. Public transport. Bus routes (E5, 408, and 618) provide access to Epsom, Leatherhead, local secondary schools, train stations, and other key facilities.[22] Improvements to bus stops[23] secured via condition will enhance the attractiveness of using these services by providing shelters and live travel information. The bus stop is within an easy, safe and accessible walk of the Site. The current bus service gets to Epsom with its higher order facilities and train station in 15 minutes. The issue is service frequency. The Appeal Scheme will also deliver either a higher frequency bus service or enhanced DDRT service in the area, as secured by the Section 106 agreement. By different means, either of these would ensure that there is an enhanced service to a town centre or train station[24].

[21] Tim Dukes, Highways POE, photos 5-8, pgs. 19-22 (CD7.4)
[22] Philip Hamshaw, Traffic and Transport POE, table 4.1 (CD6.6).
[23] Highways SoCG, para 7.2.1 (CD9.6)
[24] If the DDRT is extended to Langley Vale but *not* to Epsom train station, it would still serve Ashtead: Hamshaw re-examination.

Mr Dukes accepted in XX that these public transport improvements would be of "*significant benefit*" to current residents of Langley Vale: he was right to do so. The bus connection does not just open up town centre facilities but also the excellent rail connections, with up to nine services per hour to London from Epsom.[25] It is notable that this concession does not feature in the LPA's closing submissions.

26. The Council's case on public transport seeks to cast down on its ongoing viability. However, as Mr Dukes accepted, the five-year funding period was requested by Surrey County Council Passenger Transport Services. After five years, Mr Hamshaw underlined in his evidence that the resulting additional buses or DDRT services will be financially supported by patronage from all users throughout the bus corridors or in the demand-responsive coverage not merely by the residents of the Appeal Scheme. SCC has not sought any modelling of patronage in respect of the services, and thus can be assumed to be content that the improved service is both deliverable and sustainable. It follows that the crude attempt to characterise the bus service as being dependent on a small number of trips from the new development is manifestly wrong as a matter of logic as well as maths.

27. Ultimately, between walking, cycling, and public transport routes, the residents of the Appeal Scheme would have a genuine choice of sustainable transport modes in the context of the Site's location in Epsom & Ewell Borough. Indeed, Mr Dukes acknowledged in XX that the mode shift identified in the Travel Plan[26] would be "*acceptable*" for sustainability purposes if achieved and that a corrective mechanism exists to secure the necessary mode shift through remedial measures if required.

28. When all the planned transport improvements are implemented, residents may still have and use private cars. However, it is manifestly clear that they will also have realistic and frequent opportunities to undertake everyday journeys by other means, opportunities which will limit their need to travel by car. This is a

[25] Highways SoCG, Table 2.2 (CD9.6).
[26] Framework Travel Plan, para. 6.2 (CD1.11).

sustainable outcome in a Surrey village location. The common misunderstanding underpinning Mr Dukes' and Mr Ward's conclusions lies in their conflation of rural and urban locations and the differing levels of transport choice reasonably required in each. This approach fails to recognise the inherently contextual nature of the sustainability requirement under Policy TR3.

The Connectivity Tool/comparative data

29. Policy TR3(2) invites consideration of the connectivity tool as part of the assessment of the sustainability of the location. Mr Dukes accepted in XX that his use of the Connectivity Tool[27] was defective, comparing Sites of different rural-urban classifications when government guidance explicitly advises against this.[28] He also selectively quoted results for certain destination types, without giving a full picture of all the available data.

30. Meanwhile, Mr Hamshaw underlined that correct and contextual application of the Connectivity Tool demonstrates that the Appeal Site actually has a comparable score to Sites identified as Local Plan locations[29] - Sites *being actively promoted* by Epsom & Ewell Borough Council as sustainable locations for housing in Epsom. This is notwithstanding the fact that the Appeal Site's score will be improved by the additional bus services proposed. This exercise gives more meaning to the connectivity score results than anything else: Sites with a similar score are considered to represent sustainable locations for development within this Borough.

31. Mr Ward's analysis of the Regulation 18 plan is, like Mr Dukes' reading of the Connectivity Tool outputs, highly selective. He accepted in XX that his Appendix AW8 presented scores for just 3 of the 7 categories against which accessibility had been assessed. He also accepted that on the "access to stations" score, the West

[27] Tim Dukes, Highways POE, para. 4.14 (CD7.4)
[28] Government guidance note, Interpreting Connectivity Scores and the Connectivity Matrix, pg. 1 (CD12.1).
[29] Philip Hamshaw, Traffic and Transport POE, para. 4.6.8 (CD6.6).

Park Hospital (North) Site is proposed for allocation in emerging plan and thus considered by the Borough Council to be a sustainable location for development. The selective reading of data by Mr Ward and Mr Dukes stands in contrast to the frank and well reasoned evidence of Mr Hamshaw.

Other appeal decisions

32. As set out in opening submissions, two appeals (in 2022 and 2025) have found adjacent locations in Langley Bottom Farm to be sustainable locations for housing development.[30] These decisions were cited in the Officer's Report which concluded that the Appeal Site was in a sustainable location, a position confirmed by counsel at the time.[31] The Officer's Report rightly set out the principle explained by the Court of Appeal in *North Wiltshire*[32]:

> "One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that: there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision."

33. The Court of Appeal on to emphasise the importance of considering whether a particular decision was "distinguishable in some relevant respect". The 2022 decision is crucial. The Council has fallen into a trap of misreading it to try to serve the case they now make; rejecting the advice of their officers and indeed their appointed counsel[33]. The relevant findings from the Inspector are these:

[30] Steven Brown, Planning POE, para. 6.8 (CD6.2); PINS refs: APP/P3610/W/25/3359376 and APP/P3610/W/21/3280881.
[31] Officer Report, para. 9.31 (CD3.1).
[32] CD 3.1, 9.55
[33] The refusal to disclose this advice, despite it being available to members, indicates that it cannot be anything other than adverse to the Council's case.

"24. … I find that the residential use of the Site would not mean that all journeys would be made using private motor vehicles. Some occupiers would be likely, albeit occasionally, to use public transport to travel further afield, and while I recognise the incline from the Site to Langley Vale some would nonetheless undertake trips to these local facilities and amenities by either bicycle or on foot. Such trips would be made safer as a result of the widening of the footway on Langley Vale Road and the upgrading of Bridleway 33.

25. Furthermore, some may use public footpaths and routes to visit facilities in other nearby villages, although I acknowledge that this would likely relate to trips during leisure time rather than on a day to day basis. I acknowledge that given that off-road cycle routes and footpaths are unlit, coupled with their surfaces, the use of bicycles would not be a very frequent occurrence. Nevertheless, a limited number of more experienced cyclists would likely travel to some amenities and facilities within 8km of the Site albeit in the context of the Epsom Downs Regulation Act 1984.

…

28. Overall, I do not find that the existence of bridleways and gallops would deter all residents from walking or cycling to Tattenham Corner Railway Station or that the route to it would lead to unacceptable safety impacts. I acknowledge that off road routes to Tattenham Corner Railways Station would be unlikely during inclement weather, or in winter months when it is dark. However, that does not mean that no journeys at all would be made by proposed residents using this route. Furthermore, and, in any event, I would add that there is an acceptable alternative walking and cycling route from the Site to such a railway station using Langley Vale Road and Tattenham Corner Road which is predominantly lit and where surfaces are better.

29. In assessing this main issue, it has to be considered in the context that there is no dispute between the parties that the local planning authority (LPA) cannot demonstrate a deliverable five year supply of housing Sites in the Borough. The housing undersupply position is very poor at a currently undisputed very low level of 0.68 years. Furthermore, at the hearing the Council confirmed that housing delivery was also poor with the 2022 Housing Delivery Test result showing that only 35% of required housing delivery had been achieved. The Council also commented at the hearing that it was possible that Sites outside existing villages and settlements would be needed to address the shortfall in the supply of housing Sites in the Borough. In other words, and going forward, it is quite possible that some Sites will need to be released for housing that are not as sustainably located as main settlements.

…

31. In my judgement, the proposal does not quite meet the threshold for being 'significant' development in the context of paragraph 105 of the Framework.

Furthermore, and, in any event, in respect of paragraph 110 of the Framework I am satisfied that given the type of development and its location, the proposal would appropriately provide opportunities for residents to take up sustainable transport modes. The proposal includes opportunities to improve walking links to Langley Vale where there are some local facilities and amenities and bus stops. There is no reasonable evidence before me that the proposal would lead to any unacceptable highway safety impacts or that the residual cumulative impacts on the road network would be severe.

32. I acknowledge that the appeal Site is in a rural area, but it is nonetheless within convenient walking and cycling distance of Langley Vale. Pedestrian connectivity to this village and the nearby bus stops would be improved through the widening of the footway along Langley Vale Road and the upgrade of Bridleway 33. This would also deliver some benefits to the existing community and could be controlled by means of a planning condition/section 106 agreement. I note comments made by some interested parties about the incline from the appeal Site to facilities and bus stops at Langley Vale, but for most this would not represent a significant impediment to walking or cycling.

33. For the above reasons, and also in the context of the LPAs housing land supply and delivery position, I do not find that the Site would be unsustainably located. There would be some opportunities to promote walking, cycling and the use of public transport, and not all trips would need to be undertaken using the private motor vehicle.

34. … In this case, I am satisfied that appropriate opportunities to promote sustainable transport modes have been considered given the location of this development.

35. For the above reasons, and overall, I do not find material conflict with the sustainability, accessibility and safety requirements of policies CS8 and CS16 of the CS 2007 and paragraphs 104, 105, 110 and 111 of the Framework…."

34. It is then necessary to consider the distinguishing features of this case.

35. First, it is correct to note that the 2022 appeal was for 20 houses, not 110. However, the question was whether the proposal for residential development was in a sustainable location. Mr Whitehouse was unable to explain why a location may be sustainable for 20 houses, but not for 110, and where the cut off would lie between the two. No part of the Inspector's reasoning above depended on the number of units proposed. Further, whilst the Inspector doubted whether the

development was “significant”, he found the test in NPPF paragraph 110 was met in any event. Scale of development is not a basis upon which to distinguish the 2022 decision.

36. Second, it is also correct to note that the existing use of Langley Bottom Farm generated vehicle movements. However, that point was noted by the Inspector at paragraph 23 but not relied on in his subsequent findings, summarised above. These were factual findings about the transport modes available.

37. Third, national policy *has* changed, but the basic test remains the same (limited the need to travel/genuine choice). Again, this is not a reason a distinguish that decision.

38. Fourth, Mr Whitehouse sought to suggest that the housing land supply position was not a matter which was relevant to locational sustainability – i.e., that the Inspector was wrong to rely on this as he did at paragraph 33. He was right to rely on this for precisely the reasons he gave, which continue to apply now. The Council has a woeful housing land supply position. It accepts that it needs to look beyond the main urban area of Epsom to meet its housing needs. It is necessary to develop Sites which are less well connected than the main urban area: a point made good in Mr Hamshaw’s analysis of the local plan allocations[34]. This was, and remains, an important part of the context.

39. There are, of course, further distinguishing factors on the other side of the coin. Most notably, the appeal scheme would deliver public transport improvements which were no part of the Langley Bottom Farm proposals. Further, the Inspector did not consider the availability of identified cycle routes to Epsom – Headley Road and Chalk Lane – in his analysis. The footpath improvements into Langley Vale were not part of those proposals either.

[34] Hamshaw Proof, Table 4.6

40. Consequently, the high bar in departing from the findings of these previous inspectors is simply not met. The Site next door has been found to be a sustainable location for new housing, twice. This is unsurprising for all the reasons already canvassed, but it underscores that there is only one rational outcome on this issue in this appeal.

41. A further appeal decision in which an entirely unrelated Site was found to be unsustainable has been brought to the attention of the Inquiry[35]. However, as Mr Hamshaw pointed out in his evidence, the sustainability credentials of the Eastleigh Site are far worse than those of the Appeal Site; it features greater walking distances to local facilities, no identified cycle routes, and less frequent bus services than the Appeal Site. The Inspector is therefore invited to find that this decision is of limited relevance.

Other matters

42. No other matter raised in the appeal is said to constitute a reason why planning permission "should be refused" under the terms of the NPPF. Outside of the green belt constraint and locational sustainabiity, no other matter raised in the appeal is said to be capable of "substantially outweighing" the benefits of the proposal.

Landscape & visual impacts

43. The Council's reason for refusal on these grounds is puzzling. It alleges harm to the setting of the Area of Landscape Value. This is assumed to be a reference to the Area of Great Landscape Value. However, for the reasons explained in the evidence, this is not a designation which carries any weight. It is not supported by any development plan policy. The AGLV was a designation in the Surrey Structure Plan. In 2007 it was reviewed and recommended for retention pending a review of the Surrey Hills AONB (National Landscape), and thereafter remaining extents to be considered for local designation. The National Landscape boundary view has since been completed, and the Site does not lie within its setting. The emerging local plan wrongly describes AGLV as a statutory designation, but contains no

[35] Ref: 6005642, Land at Denham's Corner, Snakemoor Lane, Horton Heath, Eastleigh SO32 2BW.

policy support for the continued designation. Mr Whitehouse was right to accept the designation has no weight.

44. Consequently, the Council has accepted that the Site does not comprise a valued landscape[36]. There is no impact on any protected landscape. The Site's characteristics are that of an urban edge farmed field. With the development of Langley Bottom Farm, and the planting of Langley Vale Wood, the field becomes viewed in isolation, not as part of some wider arable landholding.

45. Mr Drummond's analysis vastly overstates the effects. He dismisses the urban influences on the Site. He overstates the impact on the receiving landscape by failing to consider its scale properly – a point he accepted in respect of LCA CF3, but should have accepted in relation to UE3 as well. It is in relation to the appeal Site itself that his conclusion is most surprising. Unlike the approach in the LVIA, he does not articulate what landscape elements of the Site are changed or retained. He regards the loss of the agricultural field to be, in itself, a significant adverse effect. Mr Smith's more considered analysis should be preferred here. Much of the character is retained. The considered arrangement of development parcels, the proposed mitigation planting, and natural topography allow the development to settle into the landscape as houses amongst trees on the valley side. That, albeit in a more "stark"[37] form, is how this part of the urban edge landscape is appreciated today.

46. In relation to visual impacts, the same fundamental problem of analysis in Mr Drummond's evidence arises. In the assessed viewpoints he only looks at the Site itself, and only considers what changes, not what is retained. In the principal views from the west – such as VP12 and 15 – the Site is seen as a field sitting beneath a ridge of build form amongst trees, with the Epsom Grandstand appearing in the background. The presence of the development brings forward the built form, but does not otherwise change the composition. The same point arises

[36] CD9, para 5,7 and CD9.2, para 2.5
[37] Mr Whitehouse XX

from the southerly views (e.g. VP9), where the houses of Langley Vale are already seen. From Langley Vale Road, views to the south will be preserved, with the transient viewer seeing the development alongside the existing form of Langley Vale. Wider views are not curtailed.

47. In relation to mitigation, the eastern boundary has substantial space available for planting – in excess of the 7-10m said to be necessary by Mr Drummond. This was explained in detail in Mr Smith's evidence in chief and not substantially challenged. Notwithstanding this, the LPA's closings[38] pursue the point that there is insufficient space for mitigation, in the face of clear evidence to the contrary. It is not open to the LPA to push that point when the evidence is against them. It does not appear that Mr Drummond undertook the exercise of measuring off the drawings before he formulated his position on this issue. In any event, his view of mitigation planting discloses the same error as his analysis of effects. The change caused by the development is not to landscape or visual receptors which need to be protected from the presence of built form. To the contrary, the existing condition is of an urban edge. The treatment of that edge does not need to result in the houses being "hidden", as Mr Drummond said in evidence in chief. Planting will soften the presence of built form and, once secured through reserved matters, provides an opportunity to provide a more appropriate edge to the village than is seen at present.

Ecology

48. In relation to ecology, the proper assessment is that the proposals will deliver substantial net benefits. There is some ecological interest in the Site, but it is derived from arable plants which are vulnerable to modern farming practices, and the proposals will lead to enhancement of this ecological feature. Very substantial BNG weighs positively in the planning balance.

[38] E.g. paragraph 76 and 81

49. Badgers are not protected against disturbance, and the presence of setts would not impede the development of the Site. As Mr Whitby explained, up to date expert surveys have established the presence of an outlier sett close to the proposed access. It may be possible to design the road around this. If not, there is no impediment to obtaining a Natural England licence to close the sett. Even if a replacement sett was required, there is space within the Site to provide it. A condition has been put forward to secure further surveys and mitigation proposals, as necessary.

50. In respect of ancient woodland, a dense wooded boundary to the Site will ensure that the buffer is effective, and in accordance with Natural England guidance. The area within The Warren which includes ancient woodland is not on the route from the Site to the school and therefore the development will not lead to increased footfall through the ancient woodland. As Mr Whitby explained, walking on paths through the ancient woodland would not in any event be of concern.

Heritage

51. Although not in any way determinative, it is important to focus on the best evidence in respect of the impact on the listed wall of The Warren. Since the Council alleged heritage harm (albeit not substantial, and outweighed by the benefits), the Appellant commissioned an expert assessment through Mr Copp.[39] His careful analysis following the process in GPA3: The Setting of Heritage Assets[40] concluded that there would be no harm to the significance of the heritage asset by virtue of development within its setting. That was because, in summary[41]:

> "5.5 The section of the Wall closest to the Site has been almost entirely lost and it is not possible to understand the historic function of this part of the Wall. In addition, the Site has historically served as enclosed, arable land rather than as part of the wider Downs and does not share a historic functional relationship with the Wall. The Site makes no contribution to the significance of the Wall as a result. 5.6. The proposed development will alter one element of the Wall's setting, but will not affect land that was functionally related to it and will not diminish the

[39] Mr Brown's Proof, CD6.2, Appendix SB1.
[40] CD11.6
[41] CD6.2, p 99

> ability to appreciate and understand its historic function. In addition, the proposed development includes an area of open space within the eastern part of the Site which will retain the immediate, undeveloped setting to this part of the Wall with the proposed dwellings located approximately 40m to the west.
> 5.7. The special architectural and historic interest of the Wall will be preserved (i.e. kept from harm)."

52. Mr Whitehouse was taken to these conclusions in cross examination. He did not seem familiar with them, nor was he able to articulate any clear basis for disagreement, including in response to the Inspector's questions. He accepted he had no heritage qualifications. His allegation of heritage harm was not substantiated in his written or oral evidence. There was no attempt to respond to Mr Copp's expert written analysis, which should obviously be preferred. Accordingly, there is no heritage harm to weigh in the balance.

Horse racing industry

53. There is no doubt as to the importance of the horse racing industry, including racehorse training, to Epsom. The world class facilities centred around Epsom Racecourse are unaffected by these proposals. First, it is common ground with the highway authority, and not seriously disputed by the Rule 6 Party, that there is no highway safety issue. The increase in traffic on Langley Vale Road is c. 5%. It is a well trafficked road which is occasionally chosen by trainers for walking horses already. The CTMP can have specific regard to the interactions between construction deliveries and racehorses. Second, the impacts of construction on the gallops which adjoin the Site can be managed through the CEMP. Mr Phelan was concerned about dust, but there is no reason why this cannot be managed as it must be for many construction Sites in more sensitive locations. Again, this is a matter appropriately dealt with by conditions. Third, the presence of the completed development cannot realistically be said to be harmful to training or the wider industry. Langley Vale sits between some of the training yards and the Downs at present. It has not impeded the continued success of the industry. For those reasons, there is nothing in this to weigh against the development.

Green Belt harm

54. If the development is not inappropriate, then questions of Green Belt harm simply do not arise. If GB7(1)(g) is found not to be engaged then Green Belt harm would occur. There is definitional harm. Such harm must be given substantial weight. However, Green Belt effects would be limited. In spatial terms, the Site lies adjacent to Langley Vale, but away from urban areas. The extent of Green Belt around the Borough would not be materially reduced. In visual terms the Site is visually contained, and already influenced materially by built form and residential activity, which will increase as Langley Bottom Farm is developed. The contribution of the Site to Green Belt purposes is assessed by the Council to be limited, and thus the harm to those purposes from its development must correspond to that.

Benefits

55. Mr Brown's analysis of the benefits of the proposal weighs them as follows:[42]

Benefits	Weight
Provision of up to 55 Market Homes	Substantial
Provision of up to 55 Affordable Homes	Substantial
Economic Benefits (job creation & local expenditure)	Moderate
Biodiversity Net Gain	Moderate
On-Site POS	Moderate
Enhanced connectivity, footpaths, cycle links and bus service enhancements	Moderate
Satisfying the 'Golden Rules' at paragraph 158 of the NPPF	Substantial

56. There is an important point of principle in relation to the weight to be given to the benefits of market and affordable housing. The delivery of housing, generally, contributes to meeting the vast unmet need for housing in Epsom and addressing the longstanding failure to deliver what is required. This should be given substantial weight pursuant to policy HO7 of the NPPF.

[42] Mr Brown Proof, CD 6.2, Table 6 (extract)

57. However, meeting the distinct need for affordable housing should be given separate positive weight in the balance. The need for affordable housing is itself quantified and is not merely an adjunct to general housing needs in the area. It represents a need for those for whom the market in housing provides no solution. Mr Whitehouse's approach, saying that affordable housing need should be merged with general housing need, fails to recognise this significant point. It also would lead to the illogical conclusion that no greater weight would be attributed to a proposal for 100% affordable housing than one for 100% market housing. This is not rational.

Planning balance

Development plan

58. The development plan is out of date. The Core Strategy is time expired and does not come close to meeting current needs. There is agreed to be conflict with the spatial strategy and the restraint on development beyond settlement boundaries (CS8), and that this leads to conflict with the development plan as a whole. However, the development management policies of the plan are met. It follows, therefore, that very limited weight should be given to the conflict with the development plan and other material considerations should outweigh that conflict.

Planning permission should be granted under GB7(1)(g) and S5(5)

59. For the reasons set out above, the Inspector should conclude that the appeal Site is in a sustainable location, and will be made more sustainable by the delivery of the package of measures to be secured by the s 106 agreement. Given the context, the need to travel, particularly by private car, will be limited. There will be a genuine choice of transport modes for residents with many trips capable of being completed by walking, cycling, and public transport.

60. It follows that Policy GB7(1)(g) is met. Applying Policy S5(5), the proposal should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in this Framework. In those circumstances, there is no suggestion that any adverse effects are capable of substantially outweighing the benefits, however they are formulated. The appeal should therefore succeed.

Very Special Circumstances

61. If GB7(1)(g) is *not* met, then it is necessary to consider Policy GB6, namely whether there are very special circumstances for granting permission. Such circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposed development, is clearly outweighed by other considerations.

62. The harm to the Green Belt would be given substantial weight, but that harm would be limited in extent. As Mr Brown explained, very limited weight should be given to development plan conflict, moderate weight to landscape and visual harm, and limited weight to the loss of agricultural land.

63. Mr Whitehouse contended that, additionally, in these circumstances substantial weight should be given to the locational sustainability of the proposal. This is illogical. Sustainability credentials necessarily lie on a continuum. If the Site is found not to meet the GB7(1)(g) test, it is not rendered any more or less accessible than if it passes. The package of improvements would remain the same – and as Mr Dukes said, would deliver significant benefits. Policy TR3 is not a "should be refused" policy; it requires consideration to be given to locational sustainability in the manner described. All of the matters set out above would continue to be relevant. It follows that this point cannot be given more thafn moderate weight.

64. In the very special circumstances analysis, it is necessary to have regard to all of the benefits described above. The acute housing land supply shortfall, and the acute affordable housing need, continue to weigh substantially in favour of the

appeal. The fact that the Borough needs to release Green Belt land to meet its housing needs is not in dispute. The proposal would still make use of grey belt land, and still comply with the Golden Rules. Further, in terms of the locational policies of the Framework, the Site would remain physically well-related to Langley Vale, and thus a place that (but for the Green Belt designation) would benefit from the presumption in Policy S5. These points were accepted by Mr Whitehouse, and had not been weighed into the balance by him.

65. These benefits, taken together, are sufficient to clearly outweigh the Green Belt harm and the further harm identified above. Substantial weight should be given to the delivery of market housing, the deliver of affordable housing, and compliance with the Golden Rules. Together with the fact that the Borough needs to develop on Green Belt land, and should prioritise grey belt Sites such as this, lends further support to the premise. It follows that very special circumstances exist. Permission should therefore be granted in any event. This conclusion accords with that of the Council's officers in recommending approval.

Conclusion

66. As the Council's officers recognised, there is no good reason to withhold consent in the present case. Accordingly, the Appellant will submit that the appeal should be allowed.

Richard Turney KC

Landmark Chambers

18 November 2026