

EPSOM AND EWELL BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL

Appeal by Fairfax Aspire Ltd against the refusal of planning permission by
Epsom and Ewell Borough Council of

“Outline application for up to 110 dwellings including affordable homes (all matters reserved except access from Langley Vale Road).”

at Farm View, Langley Vale Road, Epsom, Surrey, KT18 6AP

Planning Inspectorate Reference: 6006971

Council Reference: 25/00846/OUT

**Proof of Evidence of Christopher Whitehouse BSc (Hons) MRICS,
RICS Accredited Expert Witness**

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1.0 Introduction

1.1 I am Christopher Whitehouse, a Member of the Royal Institution of Chartered Surveyors (MRICS) since 2010. I hold a Bachelor of Science degree in Planning and Development Surveying from Northumbria University (2009) and I am an RICS Accredited Expert Witness in Planning (2014). I am also a member of the National Expert Witness Agency (NEWA).

1.2 I am the Managing Director of the planning consultancy NextPhase, an RICS Regulated Practice that I have owned and managed since its formation in 2011; having beforehand worked as a planning consultant in a planning consultancy.

1.3 I have over 17 years' experience in a broad range of planning matters, and across that time have worked extensively on planning issues associated with major residential, environmental, commercial and minerals developments.

1.4 I have acted as planning consultant for a variety of housing and commercial developers, investment funds and minerals and waste operators. I have also worked extensively across a broad range of planning appeals, including many Public Inquiries and Hearings, acting as an expert witness for Local Planning Authorities, Minerals and Waste Planning Authorities and appellants.

1.5 I am familiar with the appeal site, the wider area and the relevant national and local planning policy. I undertook my most recent site visit on 11 August 2026.

1.6 Declaration

Adopting the declaration of the RICS, I confirm that my proof has drawn attention to all material facts which are relevant and have affected my professional opinion. I confirm that I understand and have complied with my duty to the Secretary of State as an expert witness which overrides any duty to those instructing or paying me, that I have given my evidence impartially and objectively, and that I will continue to comply with that duty as required. I confirm that I am not instructed under any conditional or other success-based fee arrangement. I confirm that I have no conflicts of interest. I

confirm that I am aware of and have complied with the requirements of the rules, protocols and directions of the Public Inquiry Procedure. I confirm that my report complies with the requirements of RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement “Surveyors Acting as Expert Witnesses, 5th Edition” (RICS, July 2026). The opinions expressed are my true and professional opinions.

2.0 Background and Scope of Evidence

2.1 I have been instructed to appear as a witness at this Inquiry on behalf of Epsom and Ewell Borough Council (“EEBC” or “The Council”) in relation to the decision to refuse planning permission for application 25/00846/OUT on 2nd March 2026. I was formally instructed by the Council on 13th May 2026 having satisfied myself professionally that I could support the Council’s case.

2.2 The application was refused for the following reasons:

“1. Unsustainable Development

The proposal is sited in an unsustainable location with a lack of access to public transport and walking and cycling options, resulting in excessive reliance upon private car usage and a lack of alternative travel options, contrary to Sections 9 and 13 of the National Planning Policy Framework 2024, Policy CS16 of the Core Strategy 2007 and Policy DM10 of the Development Management Policies Document 2015.

2. Inappropriate Development in the Green Belt

The proposal is inappropriate development in the Green Belt by definition and will result in unacceptable harm to the openness and setting of the Green Belt without very special circumstances, contrary to Section 13 of the National Planning Policy Framework 2024, Policies CS1 and CS2 of the Core Strategy 2007 and Policy DM3 of the Development Management Policies Document 2015.

3. Harm to the Landscape Character of the Area

The proposal will have an unacceptable visual impact on the landscape setting of the Area of Landscape Value and of the wider landscape character of the countryside and Green Belt, contrary to Sections 13 and 15 of the National Planning Policy Framework 2024, Policy CS5 of the Core Strategy 2007 and Policy DM9, DM10 of the Development Management Policies Document 2015.

4. Impact on Horse Racing Industry

The proposal will lead to an increased conflict with existing movements of horses on Langley Vale Road, posing unacceptable conflict and impediment to vehicular traffic and risks to horses, trainers and riders, contrary to Section 9 of the National Planning Policy Framework 2024, Policy CS16 of the Core Strategy 2007 and Policy DM10 of the Development Management Policies Document 2015.”

- 2.3 On 4 August 2026, the Council confirmed to both the Planning Inspectorate (“PINS”) and the Appellant that, having reviewed its position, the Council would not defend RfR4 (impact on horse racing industry), subject to agreeing suitable conditions. The Council confirmed it would continue to defend RfR1, RfR2 and RfR3 as set out in their Statement of Case (“SoC”). This proof of evidence is written on that basis.
- 2.4 The Council screened and scoped the application in compliance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“EIA”), reference 25/00733/SCR. It confirmed the application was not EIA development.
- 2.5 A s106 agreement is being progressed with the intention of it being produced in advance of the appeal decision in order to secure appropriate planning obligations, as set out within the overarching Statement of Common Ground (“SoCG”) (CD9.1)¹. This proof of evidence is written on that basis.
- 2.6 This proof of evidence will consider the main issues in this appeal, as referred to within the Inspector’s Post-Conference Note from the Case Management Conference (CMC)², which are as follows:
1. Whether or not the proposal would be in a suitable location having particular regard to future occupiers’ access to services, facilities and employment using sustainable transport modes.
 2. The effect of the proposal on the landscape character and appearance of the area.
 3. The effect of the proposal on the horse racing and training industry.
 4. The effect of the proposal on ecology and biodiversity.
 5. Whether or not the proposal would comprise inappropriate development in the Green Belt;
 6. The effect of the proposal on the openness and purposes of the Green Belt; and
 7. If the development would be inappropriate, whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

¹ Overarching SoCG Chapter 7

² Post-CMC Note dated 22nd June 2026, paragraph 7

- 2.7 The Council do not continue to raise an objection in relation to effects on the horse racing and training industry and have not raised an ecological objection, recognising that the delivery of biodiversity net gain is an identified benefit of the proposal³.
- 2.8 My evidence is therefore presented under the following sections:
- Section 3 – Planning Policy Context
 - Section 4 – Analysis of Main Issues
 - Whether the proposed development is considered to constitute inappropriate development.
 - The effects of the proposed development on the openness and purposes of the Green Belt.
 - In addition to the potential harm to the Green Belt, what, if any, other harm is there?
 - Section 5 – Whether Very Special Circumstances Exist
 - Section 6 – Planning Balance and Conclusions
- 2.9 Additional Proofs of Evidence are being provided on behalf of the Council by two further witnesses addressing sustainability and landscape matters, respectively. The Proofs are submitted under separate cover, but I rely upon their evidence in my assessment of planning balance to be applied to the appeal.
- 2.10 A signed overarching Statement of Common Ground (“SoCG”) (CD9.1) has been prepared between EEBC and the Appellant, which states matters of agreement and disagreement, and provides factual descriptions of both the site location and of the proposed development. I therefore do not rehearse those descriptions here.
- 2.11 Additional, topic-specific Statements of Common Ground have been agreed between EEBC and the Appellant in relation to landscape (CD9.2), highways and transport (CD9.6), heritage (CD9.4), affordable housing (CD9.5) and ecology (CD9.3).

³ EEBC SoC paragraph 6.25

- 2.12 The Council reserves the right to consider and respond to issues raised by the Appellant in the submission of their evidence, through rebuttal proofs if necessary, in accordance with the Inspector's comments raised within the CMC.
- 2.13 On 17th August 2026, a new National Planning Policy Framework ("NPPF") came into force, which has left a limited amount of time to consider it within this proof of evidence. Whilst it has been considered, I reserve my right to provide additional comments solely in relation to the NPPF within the extended additional timeframe proposed by the Inspector⁴, should they be needed as a result of further consideration. Any response required to be raised to NPPF-specific matters presented by the Appellant in evidence, will be addressed in a rebuttal proof.

⁴ Inspector's instructions dated 17th August 2026.

3.0 Planning Policy Context

3.1 The Development Plan

Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 together require that planning applications must be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise. The National Planning Policy Framework ("NPPF") or ("the Framework") (2026) and Planning Practice Guidance ("PPG") are material considerations.

3.2 The requirements in determining applications "in accordance with" the plan does not mean that an application must comply with each and every policy, but it is approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the courts⁵, that Development Plans are a broad statement of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. The statutory adopted Development Plan of relevance to this appeal comprises of the following:

- Epsom and Ewell Core Strategy (2007) ("CS")
- Epsom and Ewell Development Management Policies Document (2015) ("DMPD")

3.3 Emerging Policy

The Council submitted its Regulation 19 Local Plan 2022-2040 to the Secretary of State for independent examination in public by a Planning Inspector on 10 March 2025. A Stage 1 Examination Hearing was held on 28 August 2025, and Stage 2 Hearings were held between 30 September 2025 and 9 October 2025. Following the Stage 2 hearings, additional work was undertaken by the Council and was subject to public consultation which ran until 15 June 2026. A further examination hearing was held on 2 July 2026. There are unresolved objections to some submission Local Plan policies, including the spatial strategy, and as such the policies with unresolved objections are to be afforded limited weight within the appeal at present, in accordance with paragraph 49 of the Framework.

⁵ Regina v Rochdale MBC, Ex Parte Milne [2000] and R(Corbett) v Cornwall Council [2020]

3.4 Constraints

The appeal site (“the Site”) is located within the Green Belt and is within the Surrey Hills Area of Great Landscape Value (AGLV). The Site forms part of the Langley Bottom Farm Site of Nature Conservation Importance (SNCI). The Site is adjacent to an Ancient Woodland (The Warren), falls within the Site of Special Scientific Interest Risk Area and is located within Flood Zone 1.

3.5 The nearest heritage assets to the Site are:

- The Grade II listed *Wall Bordering North West and South Sides of The Warren* (entry number 1213778) which is located to the immediate south east of the Site.
- The Grade II listed *Boundary Wall to Woodcote Park Extending from Opposite Pumping Station to Corner with Chalk Pit Road* (entry number 1232240) which is located on the north side of Langley Vale Road to the immediate north west of the Site.
- The Grade II listed *Coal Tax Post to South East of Langley Bottom Farm* (entry number 1277034) which is located approximately 250m to the south of the Site.

3.6 Policies

The development plan policies that are relevant in the determination of this appeal are set out in the SoCG⁶. I do not propose to address all of these policies exhaustively here but address some of them below.

3.7 CS

Policy CS 1 provides an overarching policy that applies to all new development. It identifies an expectation for development to, inter alia, achieve sustainable development and to protect the natural and built environments of the Borough.

3.8 The Site is identified on the CS “Key Diagram” as being within the Green Belt⁷ and as such Policy CS 2 is applicable. The policy seeks to “*ensure the Green Belt continues to serve its key functions... strict control will continue to be exercised over inappropriate development as defined by Government*

⁶ Overarching SoCG, paragraphs 4.8 and 4.9

⁷ CS Key Diagram, page 53

policy". The policy defers to the Framework with regard to the Green Belt and therefore is clearly consistent with it.

3.9 Policy CS 5 addresses the built environment. The policy requires all development to be of *"high quality and inclusive design"* and should:

- *"create attractive, functional and safe public and private environments;*
- *reinforce local distinctiveness and complement the attractive characteristics of the Borough;*
- *make efficient use of land and have regard to the need to develop land in a comprehensive way."*

3.10 Policy CS 16 addresses transport and travel. The policy encourages *"development proposals and management policies which foster an improved and integrated transport network and facilitate a shift of emphasis to non-car modes as a means of access to services and facilities."* In reference to *"new places"*, the policy states that highway design *"should ensure that the needs of vehicular traffic do not predominate to the detriment of other modes of travel or to the quality of the environment created."* Development proposals are required to be both consistent with, and contribute to, the Surrey Local Transport Plan and should, inter alia:

- *"minimise the need for travel, through measures such as travel plans or the provision or enhancement of local services and facilities [bullet 1];*
- *provide safe, convenient and attractive accesses for all, including the elderly and disabled, and others with restricted mobility, and provide links to the existing network of footways, bridleways and cycleways, so as to maximise opportunities for their use [bullet 2]".*

3.11 Furthermore, the policy states that *"all major developments should be well located for convenient access by non-car modes, including walking, cycling and high quality public transport."*

3.12 DMPD

Policy DM1 is relevant as it further addresses the extent of the Green Belt within the Borough and identifies the Site as being within it⁸. The Site is not located within one of the major developed sites in the Green Belt referred to in Policy DM2, and as such Policy DM2 is not relevant. The appeal proposal

⁸ Policy DM1 figure, DMPD page 6

would include the demolition of the existing dwelling located within the red line boundary, known as Farm View House, which is recognised as a dwelling located within the Green Belt. Policy DM3 addresses replacement buildings within the Green Belt, and as such is relevant. The policy states that replacement of buildings in the Green Belt will be supported where:

*“(i) The replacement building is not materially larger than the existing building (excluding temporary buildings) it replaces, taking into account floorspace, bulk and height; and
(ii) The replacement building remains in the same use.”*

3.13 Policy DM9 states that *“planning permission will be granted for proposals which make a positive contribution to the Borough’s visual character and appearance”* and that the following will be assessed:

- *“compatibility with local character and the relationship to the existing townscape and wider landscape;*
- *the surrounding historic and natural environment;*
- *the setting of the proposal site and its connection to its surroundings; and*
- *the inclusion of locally distinctive features and use of appropriate materials.”*

3.14 Policy DM10 addresses design requirements for new development. The policy sets out principles of good design, at parts (i) to (vi) and states that development proposals should:

- *“ensure that the development incorporates an appropriate layout and access arrangements for servicing the completed development from adjoining highway and pedestrian networks” (part (x));*
and
- *“have regard to the public realm and to ways in which it can be enhanced as an integral part of the design of the development” (part (xii)).*

3.15 Policy DM36 addresses sustainable transport for new development. The policy requires, at part a., *“all major new development, including new homes, commercial and community uses to develop and implement a proportionate, robust and effective Travel Plan in accordance with Surrey County Council’s adopted Travel Plan Good Practice Guide”*. At part b., the policy states that the Council will *“prioritise the access needs of pedestrians and cyclists in the design of new developments, protect and enhance*

pedestrian and cycle access routes to, and where possible, through development sites, including the protection or enhancement of the strategic cycling and walking networks”.

3.16 National Planning Policy Framework

The NPPF does not change the fundamental premise of Section 38(6) of The Planning and Compulsory Purchase Act 2004. The NPPF must be taken into account when preparing the Development Plan and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements.

3.17 At the heart of the NPPF is a presumption in favour of sustainable development, for which three overarching objectives are identified, namely an economic role, a social role and an environmental role. The implication is that to achieve sustainable development, the economic, social and environmental gain should be sought jointly and simultaneously through the planning system.

3.18 The Chapters of the Framework relevant to the determination of this appeal include:

- Chapter 3. Decision-making policies
- Chapter 4. Achieving sustainable development
- Chapter 5. Meeting the challenge of climate change
- Chapter 6. Delivering a sufficient supply of homes
- Chapter 7. Building a strong, effective economy
- Chapter 12. Making effective use of land
- Chapter 13. Protecting Green Belt land
- Chapter 14. Achieving well-designed places
- Chapter 15. Promoting sustainable transport
- Chapter 16. Promoting healthy communities
- Chapter 18. Managing flood risk and coastal change.
- Chapter 19. Conserving and enhancing the natural environment
- Chapter 20. Conserving and enhancing the historic environment

3.19 National decision-making policy (“National Policy”) S3 states, at part 1, that:

“Decisions on development proposals should apply a presumption in favour of sustainable development. This means:

- a. Policy S4 in this Framework should be applied when considering development proposals within settlements;*
- b. Outside settlements, policy S5 should be applied; and*
- c. In all locations, development proposals that accord with both an up-to-date development plan and the decision-making policies in this Framework should be approved without delay.”*

- 3.20 The Site is located outside of the settlement boundary associated with Langley Vale, however the Site is also within the Green Belt and as such National Policy S5, Part 5, is to be applied states:

“This policy does not apply to development proposals in the Green Belt or on land designated as Local Green Space, which should instead be determined in accordance with policies HC8, GB6, GB7 and/or GB8 (as appropriate). However, where development would not be inappropriate in these locations (through the application of policies HC8 and GB7), proposals 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, and applying paragraph 2 of this policy”.

- 3.21 As the Site is in the Green Belt, it is National Policies GB6, GB7 and GB8 that are relevant. National Policy GB6 addresses control of development in the Green Belt and states, at part 1, that *“Development in the Green Belt is inappropriate unless it falls within one of the categories in policy GB7.”*

- 3.22 At part 2, the Policy states that *“inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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. In making this assessment, substantial weight should be given to the harm to the Green Belt which would be caused, including harm to its openness.”*

- 3.23 Policy GB7 sets out the exceptions where development is not inappropriate in the Green Belt. I do not conclude that the appeal proposal is addressed in the list of exceptions at 1a) to 1f), and insofar as

they are similar to the criteria set out at paragraph 154 in the previous NPPF and as such have been addressed by the Appellant, they do not make that assertion.

- 3.24 This leaves exceptions at 1g) and 1h) to be addressed. 1g) provides an exception for *“development where all of the following apply:*
- i. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;*
 - ii. There is an evidenced unmet need for the type of development proposed;*
 - iii. The development would be in a sustainable location, with particular reference to policy TR3 of this Framework; and*
 - iv. In the case of major development involving the provision of housing, the development proposed complies with policy GB8.”*
- 3.25 The policy is broadly similar to paragraph 155 of the previous NPPF, however whilst there are some specific differences, those differences do not significantly alter the Council’s case as set out within their Statement of Case⁹; insofar as the Council accepted in it that the proposal would utilise grey belt land because, in having regard to the updated definition of grey belt, it does not strongly contribute to purposes a), b) or d) set out at (what is now) National Policy GB2, part 1. The Council concluded that the proposal would not fundamentally undermine the purposes of the remaining Green Belt¹⁰. I agree with these conclusions and as such the proposal would therefore accord with part i) of GB7 1g).
- 3.26 The parties agree the Council does not currently have a five-year supply of deliverable housing sites¹¹ and as such there is a demonstrable unmet need for the type of development proposed. The proposal would therefore accord with part ii) of GB7 1g). Whilst the Council set out in their SoC that the proposal fails to satisfy the ‘Golden Rules’ set out in (what was) paragraph 156 of the Framework¹² and now addressed at part iv) of GB7 1g); in a circumstance where the appeal succeeds, it is likely that the Inspector will have concluded that the proposed planning obligations, particularly that proposed for an enhanced bus service, will have proportionately addressed necessary improvements to local

⁹ EEBC SoC paragraph 6.12i

¹⁰ EEBC SoC paragraph 6.12ii

¹¹ Main SoCG paragraph 4.14

¹² EEBC SoC paragraph 6.12v – a failure to satisfy paragraph 156, part b.

infrastructure, notwithstanding the Council's objections as to their effectiveness¹³. In my judgment, the proposal otherwise satisfies the 'Golden Rules' affordable housing requirements that apply as set out in National Policy GB8 part 1. In my judgment, the proposal would as such accord with part iv) of paragraph GB7 1g).

3.27 However, the parties disagree on the proposals accordance with what is now part iii) of GB7 1g)¹⁴, and this will be considered in my analysis of the main issues, having regard to the evidence of Mr Dukes who addresses sustainability matters in relation to RfR1.

3.28 GB7 part 1h) provides a further Green Belt exception for residential development, subject to accordance with all parts i) to v), which state:

"i. Be within reasonable walking distance of a well-connected station (applying the definitions in the glossary at Annex B);

ii. Be physically well-related to the station or the settlement within which the station is located;

iii. Be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure;

iv. Not prejudice any proposals for long-term comprehensive development in the same location; and

v. In the case of proposals for major development, comply with policy GB8."

3.29 In addressing matters of sustainability in relation to RfR1, Mr Dukes confirms that the nearest railway station is located at Tattenham Corner, which is east of the site and approximately 2.9 kilometres away¹⁵. This is agreed between the parties within the Transport SoCG¹⁶. Annex B of the NPPF defines "reasonable walking distance"¹⁷ for the purposes of GB7 to be *"considered to be around 800 metres, or around 10 minutes' walk time if topography, route availability and quality or physical barriers would prevent or discourage walking from up to 800 metres away"*. In my judgment, the Site is not within reasonable walking distance of the nearest well-connected station so as to accord with part i) and as such the proposal does not benefit from the exception provided at GB7 part 1h).

¹³ Having regard to RfR1

¹⁴ Overarching SoCG paragraph 6.1a

¹⁵ TD PofE paragraph 4.2

¹⁶ Transport SoCG Table 2.2, paragraph 2.3.10

¹⁷ NPPF page 111

- 3.30 National Policy HO7 states that *“in applying the policies in this Framework, substantial weight should be given to the benefits of providing homes which will contribute towards meeting the evidenced accommodation needs of the community, as identified through needs assessments prepared for the area of the local planning authority and other relevant evidence. This includes, but is not limited to, homes needed for different groups assessed under policy HO1.”*
- 3.31 National Policy DP3 provides key principles for well designed places, setting out criterion a) to g) at part 2, which include for, at d) *“provide transport infrastructure and choices which support the design vision for the site, provide good connections to the wider settlement (or those nearby), and prioritise walking, wheeling, cycling and public transport”*, whilst at g), creating *“visually attractive, distinctive and characterful development to establish or maintain a strong sense of place and pride, including through the use of a coherent palette of materials, design features and planting.”* Part 4 states that *“the principles set out in the Design and Placemaking planning practice guidance should be used to inform how this policy is applied in the absence of locally-produced design policies, guides, codes or masterplans.”*
- 3.32 National Policy TR3 addresses sustainable locations and states, at part 1 and as relevant to the main issues, the following:
- “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, development proposals should reflect the following principles, taking into account the vision for the site, the type of development and its location:*
- a. 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;*
 - b. Opportunities should be taken to utilise existing or proposed transport infrastructure in optimising the amount or density of development which can be accommodated in different locations, especially where this can support more walking, wheeling, cycling and public transport use;*

- e. *In rural areas, opportunities to improve walking, wheeling, cycling and public transport and enhance the connectivity of an area should be taken where they exist and can be supported by the development proposed.”*

3.33 National Policy N2 addresses the natural environment, and at part 1 and as relevant to the main issues, states the following:

“To contribute positively to the natural environment, and support nature’s recovery, development proposals should:

- a. *Consider the environmental qualities of land proposed for development, including habitats, landscape character and the natural beauty of the countryside, and identify opportunities for those qualities to be conserved or enhanced (including through requirements for biodiversity net gain where these apply);*
- b. *Take into account the quality of agricultural land (including that classified as best and most versatile agricultural land, and its grade), and if significant development of agricultural land is necessary, use areas of poorer quality land where possible;*
- c. *Take suitable opportunities to connect to and strengthen ecological networks that extend beyond the site, drawing on the measures proposed by Local Nature Recovery Strategies, National Forest Strategies and Community Forest Plans, where present, and other relevant assessments.”*

3.34 Chapter of the Framework relates to the conservation and enhancement of the historic environment within the planning regime. This is informed by the statutory duties as established in Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”), which places a duty on the decision maker when determining applications for development which affects a listed building or its setting, to have special regard for the desirability and preserving the listed building or its setting, or any of the features of special architectural interest it possesses. Having regard to *Mordue*¹⁸ if a decision-maker applies the relevant paragraphs from the Framework regarding heritage, they are likely to have properly performed their statutory duty under section 66.

3.35 National Policy HE5, part 1 establishes that the starting point for assessing harm to heritage assets is to identify and assess the significance of the assets in question.

¹⁸ Jones v Mordue & Ors [2015] EWCA Civ 1243

3.36 National Policy HE6 states at part 1, that *“when considering the potential effect of a development proposal on the significance of a designated heritage asset, substantial weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential effect amounts to a positive effect, harm, substantial harm, or total loss of its significance.”* Part 3 states that *“any harm to a designated heritage asset will be a matter of considerable importance and weight, which should be dealt with in accordance with paragraphs 4 to 6 of this policy.”*

3.37 Part 4 replaces the former “paragraph 215 test” and states that *“where a development proposal would harm the significance of a designated heritage asset the effect on the asset and its significance should be weighed against any public benefits resulting from the proposal. Important public benefits can include securing the long-term reuse of a vacant or underused listed building, and enabling energy efficiency and low carbon heating measures to be employed.”*

3.38 Planning Practice Guidance (PPG)

The PPG is a material consideration. The most relevant of the considerations for this appeal are sections on Biodiversity Net Gain, Green Belt, Historic Environment, Natural environment, Planning obligations, Travel Plans, Transport Assessments and Statements and Use of planning conditions. I refer to these in the paragraphs below.

3.39 Historic Environment

Section 66(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) imposes a duty on local planning authorities to have special regard to the desirability of preserving a listed building or its setting, or any features of special architectural or historic interest which it possesses. The Site is not located within a conservation area and as such Section 72 does not arise.

3.40 Other material considerations

It is agreed¹⁹ that the following national policy and guidance documents are material considerations relevant for the determination of this appeal:

- Parking Standards for Residential Development Supplementary Planning Document 2015
- Sustainable Design Supplementary Planning Document 2016
- Surrey Transport Plan 2022–2032
- Surrey County Council Vehicular, Electric Vehicle and Cycle Parking Guidance for New Developments 2023
- Surrey County Council's Local Transport Plan 4 (LTP4)
- Natural England Guide to Assessing Development Proposals on Agricultural Land 2021
- Green Belt Study Update, November 2024
- Emerging Local Plan Site Assessment Methodology September 2024
- Emerging Local Plan Land Availability Assessment September 2024

3.41 Other national policy and guidance documents that are concluded to be material considerations in the determination of the appeal are the following documents:

- Conservation of Habitats and Species Regulations 2017, as amended.
- Waste (England and Wales) Regulations 2011
- Environment Act 2021

3.42 With regard to matters associated with the Council's sustainability and landscape evidence, material documents to be referred to are set out in the respective witnesses' proofs of evidence and set out in the Council's Statement of Case²⁰.

3.43 Where specific reference is made to paragraphs within the policy and guidance documents within this proof it is noted, otherwise I confirm that the policy and guidance has been considered in full.

¹⁹ Overarching SoCG paragraph 4.10

²⁰ EEBC SoC, Chapter 5

4.0 Analysis of Main Issues

4.1 **Whether the proposed development is considered to constitute inappropriate development.**

As set out in Chapter 3, the Site is identified on the CS “Key Diagram” and in the DMPD as being within the Green Belt and as such CS Policy CS 2 and DMPD Policies DM1 and DM3 are applicable.

4.2 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence²¹. The purposes of the Green Belt²² are:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.3 Substantial weight should be given to any harm to the Green Belt, including harm to its openness, and inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances²³.

4.4 In my judgment and as set out below, the appeal proposal is not addressed within the list of exceptions provided at GB7 part 1 a) to f) of the Framework. The Appellant and the Council agree²⁴. I have also concluded that the proposal does not benefit from the exception at part h). With regard to part g) and as I have set out within Chapter 3, the parties disagree on the proposals accordance with part iii), and this will be considered in my analysis of the main issues.

²¹ NPPF Chapter 13 introductory paragraph

²² NPPF Policy GB2 part 1

²³ NPPF Policy GB6 part 2

²⁴ Overarching SoCG para 4.31

4.5 *Whether the development would be in a sustainable location*

In order to be subject to the exception provided within GB7 Part 1g) of the Framework, a development must accord with parts i) to iv). Part iii) requires development to demonstrate that it would be in a sustainable location, with particular reference to policy TR3.

4.6 A Proof of Evidence has been prepared by Tim Dukes of Surrey County Council, on behalf of the Council, to consider whether the development would be in a sustainable location. Mr Dukes evidence is presented under separate cover; it is referred to as the basis of evidence relied upon in my assessment of the proposal's accordance with part iii). He raises a series of conclusions and these are summarised below.

4.7 Mr Dukes concludes that the Site is not located within a reasonable walking distance of Epsom where most facilities are located²⁵ and that Langley Vale offers only three destinations within a reasonable distance of the site; The Vale Primary School (1.3km distance), a small shop attached to the fuelling station (0.5km), and a bus stop (0.5 km)²⁶. Whilst the proposal would include improvements for pedestrian access to these facilities, Mr Dukes concludes that access would still be limited by fundamental issues, such as gradients²⁷.

4.8 He concludes that routes from the Site to Epsom for pedestrians are constrained by inadequate footway provision and for cyclists, the routes are busy and require mixing with high volumes of vehicular traffic on unlit roads with significant gradient changes²⁸. Routes to Tattenham Corner, which provides a railway station (2.9km) would require pedestrians to travel over significant gradients, along narrow footpaths, unbound surfaces and unlit routes²⁹. As such, education, retail, employment, health, leisure and other key destinations would require significant walking or cycling over poor-quality routes to access³⁰. Mr Dukes does not consider that this would be a genuine choice for all future occupiers of the site.

²⁵ TD PofE paragraphs 4.1

²⁶ TD PofE paragraph 5.3

²⁷ TD PofE paragraphs 4.4 to 4.7

²⁸ TD PofE paragraph 5.9

²⁹ TD PofE paragraphs 5.15 to 5.17

³⁰ TD PofE paragraph 5.24

- 4.9 Mr Dukes concludes that proposals to improve bus services by way of an obligation has not demonstrated that it would create a commercially viable, and hence sustainable, bus service for this location³¹.
- 4.10 Mr Dukes concludes that it is not considered feasible for the proposed development to provide suitable public transport, pedestrian or cycle connectivity improvements that could mitigate for the lack of services and facilities within reasonable walking distance of the Site³². He concludes that the proposal would represent a car-dependent development without offering genuine choice to future occupiers³³.
- 4.11 I agree with Mr Dukes' conclusions and in doing so, conclude that the proposal is in an unsustainable location and does not accord with Policy GB7 part 1g)iii) of the Framework. Furthermore, there are resulting conflicts with policies. I will ascribe weight to those conflicts in my consideration of "other harms".
- 4.12 The Appellant has placed reliance on two appeal decisions³⁴ as a predominant basis of their case to determine that the Site is located within a sustainable location³⁵. The parties agree that the decisions are material considerations for the appeal³⁶.
- 4.13 Allowed appeal decision 3280881 refers to the demolition of existing commercial and agricultural buildings and erection of 20 dwellings on land to the immediate south west of the Site. I consider this decision first because, in my judgment, it provides the basis for the consideration of the sustainability of the location that is simply adopted in decision 3359376.

³¹ TD PofE paragraph 5.25

³² TD PofE paragraphs 6.4

³³ TD PofE paragraph 6.5

³⁴ Appeal decisions 3280881, dated July 2022 (CD15.1) and 3359376, dated July 2025 (CD15.2)

³⁵ See Appellant SoC paragraphs 1.19v. and 2.11

³⁶ Overarching SoCG paragraph 2.12

- 4.14 The appeal decision was subject to the same Development Plan policies as this appeal, but an earlier iteration of the Framework³⁷. The consideration of “significant development” in sustainability terms is now addressed by TR3 part 1a) which addresses proposals *“which could generate a significant amount of movement”*. The four-part development considerations of what was paragraph 110 at the time is now addressed by part 1a) which states that development 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”*. The 2022 appeal decision was also not subject to National Policy GB7 part 1g) of the current Framework.
- 4.15 In my judgment, both the Framework the Inspector had before them and the context informing their decision were materially different to that before this appeal. In determining the sustainability of the location, the Inspector concluded that the proposal did *“not quite meet the threshold for being ‘significant’ development in the context of paragraph 105 of the Framework”*³⁸. There is a significant difference in terms of the size of that appeal scheme in comparison to this appeal. In my judgment it is clear that this appeal scheme could generate a significant amount of movement, having regard to policy TR3 of the Framework.
- 4.16 The Inspector recognises that bus services were *“not very frequent”* but that some *“proposed residents would use them on occasion”*³⁹ and that *“it could not be reasonably said that the appeal site is in an exceptionally accessible location”*. However, notwithstanding that the Inspector recognised that it was *“very likely that there would be reliance placed on the use of the private motor vehicles for a high proportion of trips to and from the site”*, they had regard to the baseline informing the appeal; the vehicle movements associated with the existing agricultural and commercial uses of that site⁴⁰. Both the determination that the appeal proposal was not significant, and the extant uses associated with a previously developed site were material to the Inspector’s decision on the weight to be ascribed to the accepted reliance on the motor vehicle the scheme would provide in the absence of frequent sustainable transport options. In my judgment, the Inspector concluded that the proposal was *sufficiently* sustainable having regard to this context.

³⁷ NPPF July 2021

³⁸ 3280881 paragraph 31

³⁹ 3280881 paragraph 21

⁴⁰ 3280881 paragraph 23

- 4.17 The Inspector's position on sustainability was also influenced by the Council's housing supply position⁴¹. In the context of the current Framework, the Council's housing land supply position should not in my judgment be a factor in determining if the Site is in a sustainable location. It is not an identified consideration in policy TR3, and in having regard to Policy GB7 Part 1g), the sustainability of the location is a distinctly separate requirement to need in determining whether a proposal meets the exception the paragraph provides.
- 4.18 This appeal proposal is for a significant development. The outcome of determining its sustainability against the factors that informed the 2022 appeal proposal, and in having regard to Mr Dukes' evidence, would be a scheme of a significant size that places significant reliance on the private motor vehicle, due to the lack of services and facilities available within Langley Vale and insufficient public transport provision to provide vehicle users with choice. The Site is not an insignificant parcel of previously developed land with an extant baseline of vehicle movements associated with it. There is an insufficient provision of services and facilities available in Langley Vale to address the requirements of a significant development and the impacts of reliance on the motor vehicle would be measurably different to the size and context of the 2022 appeal proposal. If the Inspector's approach in 2022 were applied to this proposal, it would not prioritise sustainable transport modes sufficiently so as to accord with policy TR3.
- 4.19 Having regard to Mr Dukes evidence, and taking into account the vision for the site, the type of development proposed and its location, I do not conclude that the 2022 appeal decision is a material consideration of significance in determining whether this appeal scheme is in a sustainable location. For the reasons outline above, I ascribe very limited weight to it.
- 4.20 Dismissed appeal decision 3359376 was a proposal for the erection of a dwelling in replacement of ruins of a former farmhouse. The extent of its consideration of the sustainability of the location is limited to a single sentence, wherein the Inspector confirms that on the basis of the evidence before them, including the 2022 appeal decision, the site would be in a sustainable location⁴². The proposal was for a single dwelling, not a significant development. The 2022 appeal decision was clearly an important material consideration, and for the reasons I have set out, this appeal scheme provides for a

⁴¹ 3280881 paragraph 29, *"In assessing this main issue, it has to be considered in the context..."* and paragraph 33

⁴² Appeal decision 3359376, paragraph 5

materially different context with significantly greater impacts in a circumstance where sustainable transport modes are not prioritised.

4.21 Both the Officer's Report ("OR")⁴³ and the Appellant⁴⁴ make reference to the *North Wiltshire* judgment⁴⁵. I understand this judgment and recognise that these appeal decisions are material considerations to this appeal. However, for the reasons I have set out above, I do not conclude that the context that informed the decisions apply to this appeal proposal. In my judgment, the Inspector would not be disagreeing with those decisions in a circumstance where they agreed with me, because the proposal is a significant development and subject to both different context and a different Framework.

4.22 The OR concluded that the size of the Site does not directly impact on the underlying sustainability of the location⁴⁶. I do not agree with this. National Policy TR3 specifically addresses proposals that would generate of a significant amount of movement. The policy recognises that determining sustainability is a planning judgment that must have regard to the factors of the proposal. It is reasonable to conclude that location, size and significance of the Site are all factors informing a judgment.

4.23 For the reasons set out above, I conclude that the appeal does not comply with National Policy GB7 part 1g)iii) of the Framework, and as such does not benefit from the exception part g) provides. In having regard to the relevant policies of the Development Plan, the proposal is therefore considered to be inappropriate development in the Green Belt. By virtue of Policy GB6 part 2 of the Framework, the proposed development is therefore harmful to the Green Belt and this carries substantial weight.

4.24 **The effects of the proposed development on the openness and purposes of the Green Belt.**

As previously noted, Chapter 13 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt being described as their openness and their permanence.

⁴³ OR Paragraph 9.55

⁴⁴ Appellant SoC paragraph 2.12

⁴⁵ *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P. & C.R. 137

⁴⁶ OR paragraph 9.56

- 4.25 The requirement to preserve openness means that proposals must not reduce openness or cause harm to the Green Belt and if they do, they must demonstrate very special circumstances (“VSCs”) as set out in the Framework. A part of these VSCs will be a need to demonstrate why any chosen method or approach is not able to avoid or minimise a reduction of openness.
- 4.26 It is important to define what openness is. The objective of Green Belt policy is the prevention of urban sprawl, which means that openness is defined for its intrinsic quality and the avoidance of increased sprawl and not necessarily about sensitive receptors to such sprawl or potential landscape and visual impacts. *Turner*⁴⁷ (CD17.2) determined that the concept of openness of the Green Belt “*is not narrowly limited to the volumetric approach suggested by [counsel] the word ‘openness’ is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent amongst these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents*”.
- 4.27 *Samuel Smith*⁴⁸ (CD17.13) provided further analysis of openness beyond a broad support for *Turner*, stating that “*The concept of “openness” in para 90 of the NPPF [2012 version] seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 [Planning Practice Guidance 2] made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development*”. Further it is stated “*[Openness] is a matter not of legal principle, but of planning judgement for the planning authority or the inspector*”.
- 4.28 It is a reasonable expectation that in assessing openness, decision makers should take into account the likely visual impacts of development on the openness of the Green Belt. It is reasonable to assume that in assessing openness, the decision maker should determine whether the proposal offers any

⁴⁷ *Turner v. SSCLG* [2016] EWCA (CIV 466)

⁴⁸ *Samuel Smith R (on the application of Samuel Smith Old Brewery [Tadcaster] and others (Respondents) V North Yorkshire County Council (Appellant)* [2020] UKSC3)

visual or spatial effects on the openness of the Green Belt, and whether such effects are likely to be harmful or benign. It is then, that any visual harm caused to the landscape would also be caused to the Green Belt.

4.29 Relevant considerations of the impact of openness could include the siting, nature and scale of development within the local context, including its cumulative context, along with its visual effects, the impacts of its duration and its reversibility of any impact on the openness and purposes of the Green Belt.

4.30 This position is further underpinned by advice in the PPG⁴⁹ which states that when *"assessing the impact of a proposal on the openness of the Green Belt, where it is relevant to do so, requires a judgment based on the circumstances of the case. By way of example, the courts have identified a number of matters which may need to be taken into account in making this assessment. These include, but are not limited to:*

- *openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;*
- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation."*

4.31 Sprawl is a multi-faceted concept and thus has a variety of different definitions which may apply according to context. Sprawl is the converse of open and undeveloped land and may include an uncontrolled or cluttered urban fringe or development which adds to a loss of attractiveness or sense of untidiness. A relevant term used in the NPPF at Policy GB2 part 1 is *"encroachment"* which is generally defined as a gradual advancement of urbanising influences through physical development or land use change.

⁴⁹ Paragraph: 013 Reference ID: 64-013-20250225

4.32 The Appellant addresses the impact of the development on the openness of the Green Belt, to account for a circumstance where the Inspector does not agree that the Site is subject to the benefit of exception now provided by Policy GB7 part 1g) of the Framework, within their Statement of Case (CD6.1). This is limited however to a single sentence, wherein it is stated that *“any harm to the openness of the Green Belt would be limited given the site’s context including enclosure by existing development”*⁵⁰. The Appellant’s submission includes a Green Belt Statement (CD1.9) dated July 2025. This refers to spatial openness and visual openness at various points⁵¹ but does not ascribe weight to the harm that would be caused to the openness of the Green Belt, the extent to which that harm arises from its spatial or visual impact, nor any reasons for that assessment; stating that the proposal would cause *“some harm to the Green Belt by reducing both physical and visual openness in a localised area”* and concluding that *“this harm is constrained by the Site’s discrete and enclosed nature and its proximity to existing development”*⁵².

4.33 For the benefit of assessing the impact of the development upon the openness of the Green Belt, I consider the components of openness, those being spatial; visual; duration and remediability; and degree of activity, separately below.

4.34 *Spatial Aspect of Openness*

A description of the existing character of the appeal site is provided within Chapter 2 of the overarching SoCG. The Site consists of a 5.2ha area of two fields that rise from west to east up towards the settlement boundary of Langley Vale. Chapter 3 of the SoCG provides a description of development; the Parameters Plan (CD1.23) identifies areas of proposed built development, existing and proposed tree planting. The Design and Access Statement (CD1.6) provides an illustrative masterplan and details with regards the expectations of form, appearance and scale⁵³. I recognise that the plan and the details in the Statement are indicative, nonetheless they provide an understanding of the proposed extent of the development within the appeal site and within the context of the Green Belt.

⁵⁰ Appellant Statement of Case, paragraph 1.25

⁵¹ Green Belt Statement, Fabrik July 2025 paragraphs 3.2.2, 5.1, 5.2., 6.3, 6.4

⁵² Green Belt Statement, Fabrik July 2025 paragraph 7.0

⁵³ Design and Access Statement, Figure 15 (page 30), paragraph 3.05 pages 28-33

- 4.35 When determining the impact of a proposed development on the openness of the Green Belt, relevant factors may include the size of the proposed development (generally beginning with footprint but also taking into account the height, width and built volume), how built up the relevant part of the Green Belt is at that time, whether the site is previously developed land and (where relevant) the visual impact, albeit I will be assessing this separately.
- 4.36 From a spatial perspective, the proposal introduces a substantial amount of development into an open area, and the impact on spatial openness would not be reduced to any measurable degree by the proposed landscape framework due to its scale, the sloping topography of the land and due to the open nature of the existing appeal site, particularly when stepping away from its eastern boundary. I conclude that neither the extents of the proposed provision of open space nor proposed landscaping reduces the spatial effects on the openness of the Green Belt. Having regard to the Parameters Plan alone, the proposed density of development will provide for an appearance of large areas of a single mass, from a number of viewpoints and likely not limited to closer interaction.
- 4.37 In otherwise concluding that the size, scale and spread of built development across 5.2 hectares of land offers harm to the spatial component of openness of the Green Belt, I conclude that this harm is significant.
- 4.38 Visual Aspect of Openness
Having regard to the consideration of openness in both *Turner* and *Samuel Smith*, any harm to the visual experience of openness to the landscape would also be caused to the Green Belt.
- 4.39 From my own site visit, I have concluded that the proposal will provide significant visual effects on receptors. This includes effects as experienced by residents whose houses back on to the eastern boundary of the Site, located on Millers Copse, Langley Close, Beaconsfield Road and The Hayes, and who at present have a visual experience of long reaching views westwards over open countryside. Users of Bridleways 146, 33, and 127 would all experience the introduction of built form within views. Pedestrians and drivers on Langley Vale Road to the north currently experience visually open views to the south across the Site and would instead see the development, albeit the views occurring on transient routes will be short lived. The range of impacted receptors I identify is consistent with those

raised in the Appellant's LVIA (CD1.7)⁵⁴. The Council's landscape witness, Mr Drummond, has concluded that the proposal would cause significant harm to a number of visual receptors that is not able to be overcome by mitigation⁵⁵.

4.40 In my judgment, whilst the visual aspects associated with openness are relatively localised to viewpoints adjacent to or within close proximity to the Site, they are not limited to a small number of receptors from a small number of viewpoints. I conclude that the proposal would cause significant harm to the openness of the Green Belt in visual terms.

4.41 Duration and Remediability

I note that it is the fundamental aim of the Green Belt to prevent urban sprawl by keeping the land permanently open. The proposal would be permanent and, in having regard to the evidence of Mr Drummond, the proposals impact on the openness of the Green Belt would not be able to be remediated by way of mitigation to any significant degree.

4.42 Degree of activity

In relation to the degree of activity likely to be generated, I refer to the Appellant's Transport Assessment (CD1.10) as, in having regard to the PPG, traffic generation would be an important component of activity. The assessment expects 53 vehicular trips to be generated in the AM peak hour and 50 trips in the PM peak hour⁵⁶. The site currently provides no such activity. In my judgment, the increase in associated activity that would be generated by the Site is of significance.

4.43 Consequently, I conclude that overall, the proposed development would result in substantial harm to the openness of the Green Belt. This adds to the harm caused to the Green Belt by reason of inappropriateness.

⁵⁴ LVIA July 2025, page 43, paragraph 7.2

⁵⁵ GD PoE paragraphs 6.13 and 6.15

⁵⁶ TA table 8.3 page 42

4.44 Whether the proposed development would be contrary to the purposes of the Green Belt.

The Council published a Green Belt Study Update in November 2024 (CD4.9), where the Site is referred to as making a moderate contribution to purpose a), a limited contribution to purpose b) and a moderate contribution to purpose c)⁵⁷. I do not seek to take an alternative position in relation to purposes a) and b) as I agree with the judgments, having regard to the PPG Guidance⁵⁸. However, I disagree with the position taken on purpose c) and in my opinion the commentary raised in the assessment is more akin to a strong contribution. It states that the land use is “*agricultural, transitioning to the wider open countryside*” with “*views of the valley side and bottom from bridleways and footpaths that form the edge to this parcel, some of these are elevated viewpoints across the Langley Bottom Farm stead towards the countryside beyond*”. In terms of visual sensitivity, the Site is considered to be “*highly sensitive... rare and quite tranquil*” and is a transitional landscape with medium to longer distance views across the landscape and is “*clearly delineated*” from the adjacent urban area⁵⁹.

4.45 I have concluded that purpose d) is not relevant to the proposal. With regard to purpose e) (“*to assist in urban regeneration, by encouraging the recycling of derelict and other urban land*”) whilst I conclude that the proposed development would in principle conflict with the purpose, the significance of the conflict is reduced having regard to the lack of likelihood of a site of a similar size being found within an urban area. I conclude that the proposal is therefore in conflict with this Green Belt purpose, however to a lesser degree than would be applied to identified conflict with other purposes.

4.46 Having already concluded that the proposal is inappropriate development in the Green Belt and is by definition harmful to the Green Belt, additionally I conclude that the proposal would result in substantial harm to Green Belt openness and would conflict with four purposes of the Green Belt, one of them to a significant level. I conclude that the harm to the Green Belt arising from these matters attract substantial weight against the proposal and that the proposal would be in conflict with the Framework, Policies CS 2 of the CS and Policies DM1 and DM3 of the DMPD.

⁵⁷ Green Belt Study Update, page 71

⁵⁸ Paragraph 005 Reference ID: 64-005-20250225

⁵⁹ Green Belt Study Update, page 73

4.47 **In addition to the potential harm to the Green Belt, what, if any, other harm is there?**

The Court of Appeal in *Redhill Aerodrome* (CD17.14)⁶⁰ held that the words “*any other harm*” in the Framework test did not only mean harm to the Green Belt; it means any other harm that is relevant for planning purposes. Any other harm should be weighed in the balance when considering whether or not there are very special circumstances to justify the development. In understanding that the balancing exercise needs to consider these harms, consideration has to be given to the other planning harm concluded to be provided by the development.

4.48 As set out in relation to my first main issue, I have relied on the evidence of Mr Dukes and concluded that the proposal would be in an unsustainable location with a lack of access to public transport and walking and cycling options. The impacts would be an excessive reliance on private car usage and a failure in both limiting the need to travel and in offering a genuine choice of transport modes. The failure to prioritise sustainable transport modes conflicts with Chapter 15 of the Framework, Policy CS16 of the CS and Policy DM10 of the DMPD. In my judgment the harm should be ascribed very significant weight in the consideration of planning balance.

4.49 **The effects of the development on landscape character and visual impacts on the landscape setting**

A Proof of Evidence has been prepared by Graeme Drummond of Open Spaces, on behalf of the Council, to consider the visual impact of the appeal scheme on the landscape setting and landscape character of the countryside.

4.50 Mr Drummond’s evidence is presented under separate cover, it is referred to as the basis of evidence relied upon in my assessment of the harm on the landscape to be considered in planning balance.

4.51 The reason for refusal raised within the Decision Notice concluded that the proposed development, would have an unacceptable visual impact on the landscape setting of the Area of Landscape Value and of the wider landscape character of the countryside and Green Belt, and as such conflict with CS Policy CS5, DMPD Policies DM9 and DM10 and the Framework.

⁶⁰ *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386

- 4.52 Mr Drummond's Proof of Evidence has provided a series of conclusions with regard to the impact of the proposed development on the landscape and these are summarised below.
- 4.53 Mr Drummond concludes that the Site is open, with clear views from Langley Vale Road, adjacent PRow's and from viewpoints 1, 3, 4, 5, 6, 9, 12,13, 15 and 16 as identified within the Appellant's LVIA⁶¹. He considers that there are no visible detractors within the Site⁶².
- 4.54 He identifies that the Site is contained within the AGLV, which is not a single area of land but a number of areas all linked to the Surrey Hills National Landscape⁶³. In his judgment, the Site and the surrounding land is consistent with the identifiable character of the AGLV and is supportive of the nearby Surrey Hills National Landscape⁶⁴.
- 4.55 Mr Drummond disagrees with the Appellant's view that the Site relates well to the existing built form of Langley Vale. He concludes that the Site identifies well with the wider landscape and adjacent Landscape Character Areas and does not relate well to the existing built form of Langley Vale⁶⁵. With regard to landscape character, he concludes that the Magnitude Judgement, Significance of Effect and Nature of Effect of the Appellant's LVIA have been under assessed⁶⁶, and as set out in his Appendix A he has *"assessed the proposed development at year 1 as causing significant harm requiring suitable mitigation measures to: UE3 Epsom Downs LCA, Langley Vale Centenary Woodland and its setting and CF3 Leatherhead to Epsom Downs Open Chalk Farmland LCA."*⁶⁷
- 4.56 Having regard to visual effects, Mr Drummond raises concerns with the extent of detail provided with the viewpoints raised within the LVIA and as such has carried out his own assessment of the Visual

⁶¹ GD Proof of Evidence paragraph 4.1

⁶² GD Proof of Evidence paragraph 4.2

⁶³ GD Proof of Evidence paragraph 4.4

⁶⁴ GD Proof of Evidence paragraph 4.6

⁶⁵ GD Proof of Evidence paragraph 4.9

⁶⁶ GD Proof of Evidence paragraph 4.10

⁶⁷ GD Proof of Evidence paragraph 6.6

Receptors⁶⁸. He concludes that the proposal will cause significant harm to a number of visual receptors⁶⁹.

4.57 With regard to proposed mitigation, Mr Drummond concludes that the proposal provides insufficient room to be able to mitigate for the harm provided by the proposal, with areas proposed for planting consisting of landscape enhancement, but not landscape mitigation⁷⁰.

4.58 Mr Drummond concludes that the proposal *“will cause significant harm to the landscape character of the surrounding ‘UE3 Epsom Downs’ LCA, ‘Langley Vale Centenary Wood and its setting’ and ‘Site Setting and Overall Character’ the proposed development will also cause significant harm to the surrounding Area of Great Landscape Value.”*⁷¹

4.59 I agree with Mr Drummond’s conclusions. He has otherwise concluded that the proposed development will not be able to limit some of those adverse impacts through mitigation, providing significant adverse effects that fail to accord with the Development Plan. I agree with his conclusion and in my judgment the harm should be ascribed significant weight in the consideration of planning balance.

4.60 I conclude that significant harm should be attributed to the proposal’s failure to accord with CS Policy CS5, DMPD Policies DM9 and DM10, together with the failure to accord with Policy N2 Part 1a) of the Framework.

4.61 *The effects of the development on the significance of designated heritage assets*

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”) places a duty on the decision maker when determining applications for development which affects a listed building or its setting, to have special regard for the desirability and preserving the listed building or its setting, or any of the features of special architectural interest it possesses.

⁶⁸ GD Proof of Evidence paragraphs 6.8 and 6.9

⁶⁹ GD Proof of Evidence paragraphs 6.12 and 6.13

⁷⁰ GD Proof of Evidence paragraphs 6.14 and 6.15

⁷¹ GD Proof of Evidence paragraphs 6.14 and 6.17

- 4.62 Chapter 20 of the Framework relates to the conservation and enhancement of the historic environment within the planning regime. This is informed by the statutory duties as established in the Act.
- 4.63 National Policy HE5 part 1 of the Framework establishes that the starting point for assessing harm to heritage assets is to identify and assess the significance of the assets in question. Heritage significance is defined as *“the value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting”*⁷².
- 4.64 National Policy HE6 part 1 of the Framework states that *“When considering the potential effect of a development proposal on the significance of a designated heritage asset, substantial weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential effect amounts to a positive effect, harm, substantial harm, or total loss of its significance.”*
- 4.65 The policy echoes the *Palmer*⁷³(CD17.15) case in which the judge endorsed the following approach:
“34...It is also clear as a matter both of law and planning policy that harm (if it exists) is to be measured against both the scale of the harm and the significance of the heritage asset. Although the statutory duty requires special regard to be paid to the desirability of not harming the setting of a listed building, that cannot mean that any harm, however minor, would necessarily require planning permission to be refused. I agree, therefore, with what the judge said at [61]:
“It is still plainly the case that it is for the decision taker to assess the nature and degree of harm caused, and in the case of harm to setting rather than directly to a listed building itself, the degree to which the impact on the setting affects the reasons why it is listed. Further, it is for the decision taker then to balance that against the benefits of the development. The duty to accord “considerable weight” to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight. The desirability of avoiding a great harm must be greater than that of avoiding a small one. The desirability of avoiding

⁷² NPPF Annex B, Glossary

⁷³ *Palmer v Herefordshire Council & Another* [2016] EWCA Civ 1061

harm to a high category heritage asset must be greater than that of avoiding a similar harm to a less important asset.””

- 4.66 The Court of Appeal decision in the case of *Barnwell*⁷⁴ (CD17.16) provides that in enacting Section 66(1) of the Act, Parliament’s intention was that decision makers should give *“‘considerable importance and weight’ when the decision-maker carries out the balancing exercise”*. This gives rise to a strong statutory presumption against granting planning permission for development which would cause harm to the settings of listed buildings.
- 4.67 Furthermore, the *Bramshill*⁷⁵(CD17.17) judgment has provided clarity on the meaning of *‘great weight’* within what was paragraph 212 of the Framework. I conclude that those provisions are to be applied to Policy HE6 part 1 and that notwithstanding the use of the word “substantial” this does not predetermine the amount of weight to be given to the conservation of a heritage asset in a particular case; the imperative of giving *‘considerable weight’* to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it, or its setting, is a uniform one. It will depend on the extent of the assessed harm and the heritage value of the asset in question.
- 4.68 Policy HE6 part 4 of the Framework states that *“Where a development proposal would harm the significance of a designated heritage asset the effect on the asset and its significance should be weighed against any public benefits resulting from the proposal.”*. The Bramshill judgement has confirmed that there is no prescribed or correct approach in the balancing of such harm against any likely benefits, and in terms of public benefits, these do not need to be heritage benefits, and all types of public benefits can be taken together and weighed against the harm.
- 4.69 The PPG states that public benefits are those that *“could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework. Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or*

⁷⁴ *Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137

⁷⁵ *Bramshill Vs SSHCLG* [2021] EWCA Civ 320

*accessible to the public in order to be genuine public benefits...*⁷⁶ I consider the benefits of the appeal scheme within Chapter 5 of this proof, and I consider those to which I have ascribed beneficial weight to be public benefits.

- 4.70 Within their Statement of Case, the Council sets out that the proposed Development would result in less than substantial harm to the Grade II listed *Wall Bordering North West and South Sides of The Warren* (entry number 1213778), which is located to the immediate south east of the Site⁷⁷.
- 4.71 The OR states that *“the significance of this heritage asset lies in its historical interest as the Warren Wood is the site of a hare warren thought to have been set up by Lord Baltimore of Woodcote Park”*⁷⁸. It is recognised in both the OR and the Appellant’s Heritage Statement (CD1.14) that the setting of the asset is created by the woodland of The Warren and the open countryside⁷⁹. The OR states that there would be a change to the setting as a result of development of an open field⁸⁰, but that this setting is already altered due to built development in Langley Vale and a proposed planting buffer along the south east edge of the Site would provide mitigation⁸¹.
- 4.72 The OR concludes that the proposal *“would affect a meaningful change to the setting of this listed asset, which would harm its significance”*⁸². The Appellant concludes that *“there would be a very low impact on the setting of the wall, equating to a neutral impact on its overall heritage significance”*⁸³.
- 4.73 In my judgment, having reviewed the context of the relationship, and therefore the setting, of the Site with the heritage asset; having reviewed the Parameters Plan for the Site, including the outlined landscape mitigation strategy; and having undertaken a site visit, I agree broadly with both parties. The proposal would provide a change to the setting of the asset, but there is the opportunity to mitigate the extent of impact with buffer planting. I conclude that the proposal would provide harm,

⁷⁶ PPG Paragraph: 020 Reference ID: 18a-020-20190723

⁷⁷ Council SoC, paragraph 6.16

⁷⁸ OR paragraph 12.7

⁷⁹ OR paragraph 12.8 and Heritage Statement paragraph 7.23

⁸⁰ OR paragraph 12.10

⁸¹ OR paragraph 12.11

⁸² OR paragraph 12.13

⁸³ Heritage Statement paragraph 7.25

that in having regard to the wording in Policy HE6 Part 1 of the NPPF, it is not substantial harm and is at the lower end of the spectrum.

4.74 Substantial weight should be given to an asset's conservation and the more important the asset the greater the weight should be. The harm is required to be weighed against the public benefits of the proposal having regard to HE6 part 4 of the Framework. I give consideration to the weight I have ascribed to the public benefits set out within Chapter 5 of this proof. I ascribe very significant (substantial) weight to the combined supply of housing and affordable housing supply, significant weight to BNG and moderate weight to economic benefits, the proposed delivery of public open space and children's play area and the enhancement of Langley Bottom Farm SNCI. I find that the weight afforded to these benefits is sufficient to outweigh the weight that must be afforded to the harm to the designated heritage asset.

4.75 I conclude that against the tests provided in Policy HE6 part 4 of the Framework, the proposal provides sufficient public benefits to outweigh the harm identified to the significance of the affected heritage asset. Notwithstanding this conclusion, the heritage harm must be weighed in the overall planning balance, as "other harm", having concluded that the development is inappropriate development in the Green Belt. I ascribe moderate weight to the harm, to the lower end of the spectrum, the proposal provides to the heritage asset.

4.76 *Best and Most Versatile Agricultural Land*

National Policy N2 part 1b) of the Framework sets out that development proposals should "*take into account the quality of agricultural land (including that classified as best and most versatile agricultural land, and its grade), and if significant development of agricultural land is necessary, use areas of poorer quality land where possible*".

4.77 There is no definition within the Framework that defines "*significant development of agricultural land*", however Natural England's Guide to Assessing Development Proposals on Agricultural Land 2021 advises that Natural England must be consulted on developments that are likely to cause the loss of 20ha or more of BMVAL. In my judgment, it is reasonable to consider that a loss closer to that extent would be a significant loss of BMVAL, depending on its grade. The proposed development

would result in the loss of around 2.6ha BMV subgrade 3a agricultural land⁸⁴. Subgrade 3a is the lowest grade BMVAL; it is land capable of consistently producing moderate to high yields of a narrow range of arable crops.

- 4.78 Taking the appeal site, including 2.6ha of BMVAL, permanently out of potential arable production would have some effect on potential agricultural productivity in the locality, albeit with a negligible impact on food security, nationally. Overall, in having regard to National Policy N2 part 1b) and in otherwise finding no policy conflict, I nonetheless consider that the appeal scheme would result in an adverse effect of limited significance insofar as it would impact on agriculture, and that this limited harm needs to be considered within the planning balance.

⁸⁴ Agricultural Land Classification and Considerations Report (CD2.13) paragraph 3.6, Table 1

5.0 Whether Very Special Circumstances Exist

5.1 For the purposes of this section, and with regard to the consideration of planning balance in chapter 6, I adopt a scale of relevant harm/benefit referred to in the previous chapters, namely: very significant (or substantial), significant, moderate, limited, or no weight.

5.2 I have concluded that the appeal proposal is inappropriate development in the Green Belt. In accordance with the Framework, VSCs need to be shown to exist if inappropriate development is to be approved. National Policy GB6 part 2 of the Framework states that *“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.”*

5.3 Benefits

The Council has considered the benefits advanced by the Appellant and agreed the following are benefits of the scheme in planning terms⁸⁵:

- Provision of up to 110 new homes including 50% affordable housing.
- Economic benefits including job creation during construction and economic spend of residents into the local economy.
- Proposed delivery of public open space, children’s play area and landscaping.
- Enhancement of Langley Bottom Farm Site of Nature Conservation Importance.
- Biodiversity Net Gain (“BNG”).

5.4 Delivery of market and affordable housing

The parties agree that the Council cannot demonstrate a 5-year housing land supply and it is agreed that the supply is 1.6 years⁸⁶. National Policy HO7 states that *“substantial weight should be given to the benefits of providing homes which will contribute towards meeting the evidenced accommodation needs of the community, as identified through needs assessments prepared for the area of the local planning authority and other relevant evidence. This includes, but is not limited to, homes needed for different groups assessed under policy HO1”*. The Framework seeks to significantly increase the supply of housing, and the appeal proposal would contribute to meeting the requirement to increase the

⁸⁵ Council Statement of Case paragraph 6.25

⁸⁶ Overarching SoCG paragraph 4.14

supply of housing in a circumstance where the Council's Development Plan policies have failed to sufficiently meet that requirement. In doing so, the proposal commits to a provision of 50% affordable housing, which is above both the 40% requirement of CS Policy CS9 and in accordance with National Policy GB8.

5.5 The proposal makes a significant contribution towards market and affordable housing supply. Affordable Housing is included in the homes "*for different groups*" schedule at National Policy HO1 part 2a) and the substantial beneficial weight to be ascribed to providing homes as a result of Policy HO7 must therefore include affordable housing. As such, I ascribe substantial weight to the contribution towards market and affordable housing supply as a singular benefit.

5.6 Direct and secondary economic effects

I conclude the appeal proposal would result in economic benefits by virtue of the jobs created through the construction of the proposed dwellings, albeit that these would last only for the duration of the construction period, and through an increase in direct and indirect spending in services as a result of the increased population the scheme would deliver. Those benefits are required to take into consideration the fact that the proposal is contrary to local and national policies and would not bring about the concomitant economic benefits that would otherwise be planned for. I conclude therefore that the economic benefits for the proposal should be ascribed moderate weight, having regard to the nature and scale of the economic benefit, its effect on the economy and to the High Court's judgment in *Bewley Homes*⁸⁷.

5.7 Public open space and children's play area.

The Council's Open Space Audit 2024 sets out the open space provision for new development. The proposed development would provide 1.6ha of publicly accessible open space. Of this provision, 0.25ha would be parks and gardens; 0.30ha would be amenity green space and 1.0ha would be natural and semi natural open space. This would provide an additional 0.744ha above the Council's audit requirements and would as a result accord with CS Policy CS4. The proposal would provide a Local Equipped Area of Play ("LEAP") in the southern part of the site, within the area of open space and which meets The Fields in Trust Standards.

⁸⁷ *Bewley Homes PLC v Secretary of State for Levelling Up, Housing and Communities & Anor* [2024] EWHC 1166 (Admin)

5.8 The open space provision is clearly beneficial but, in having regard to the Parameters Plan, the proposed layout of the provision is also a necessity to mitigate for environmental factors associated with the development; including proposed attenuation, separation between residential dwellings and buffer spaces providing mitigation for its impacts to the edges of the Site. Furthermore, the provision of a LEAP playing area, whilst beneficial, is a reasonable expectation of development that seeks to establish community use benefits. Having regard to these factors, I ascribe moderate weight to the benefit.

5.9 Enhancement of Langley Bottom Farm Site of Nature Conservation Importance.

The site forms part of the Langley Bottom Farm Site of Nature Conservation Importance (SNCI) which was selected for designation in 2014 for being a valuable arable complex that supports considerable arable plant interests, including at least 10 nationally rare plant species and 7 species rare or scarce within Surrey. The EclA (CD1.12) concluded that the proposal would have a negative effect on arable margins of field gromwell and narrow-fruited cornsalad through their loss to development, including the provision of the SuDS⁸⁸. Through the provision of a Habitat Creation and Management Plan to be secured as an obligation within the S106 Agreement, the remaining arable field margins associated with the wider landholding would provide a mini arable plant reserve. This would provide adequate compensation for the loss as a result of the proposal and would enhance the nature conservation potential of the wider landholding, in accordance with Policy DM4 of the DMPD. Given the extent of the arable plant reserve, I ascribe moderate weight to the benefit.

5.10 Delivery of biodiversity net gain.

The Appellant has demonstrated an intention to deliver an onsite BNG increase of 3.93 habitat units (33%) and 4.06 hedgerow units (2745%), which exceed national requirements. Delivery of the BNG and monitoring provisions would form part of a Habitat Management and Monitoring Plan, which would be secured by a condition. I ascribe significant weight to the BNG that would be secured.

⁸⁸ EclA paragraph 4.2.2, page 30

5.11 Summary and Conclusions on Very Special Circumstances

I ascribe substantial (or, very significant) weight to the provision of housing supply including affordable housing, significant weight to the delivery of BNG, and moderate weight to the economic benefits, provision of open space and a LEAP area, and enhancement of Langley Bottom Farm SNCI, respectively.

6.0 Planning balance and conclusions

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that *“where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise”*.
- 6.2 I have concluded that the proposal is inappropriate development in the Green Belt, and this by definition will be harmful to the Green Belt. I have concluded that the proposal would result in substantial harm to openness and would conflict with four purposes of the Green Belt, one of them to a significant level. The harm to the Green Belt arising from these matters attracts substantial weight against the proposal.
- 6.3 With regard to “other harms” I have concluded that the proposal is in an unsustainable location and fails to prioritise sustainable transport modes. In my judgment this harm should be ascribed very significant (or, substantial) weight. I have concluded that the proposal would have an unacceptable visual impact on the landscape setting and on the wider landscape character of the countryside. In my judgment this harm should be ascribed significant weight. I have ascribed moderate weight to the harm the proposal would provide to a Grade II listed heritage asset and limited weight to the loss of BMVAL. I conclude that the proposal provides conflict with CS Policies CS2, CS5 and CS16 and DMPD Policies DM1, DM3, DM9 and DM10, together with the Framework, which itself amounts to harm to be included within the balance.
- 6.4 Set against this harm, I have ascribed substantial (or, very significant) weight to the provision of housing supply including affordable housing, significant weight to the delivery of BNG, and moderate weight to the economic benefits, provision of open space and a LEAP area, and enhancement of Langley Bottom Farm SNCI, respectively.
- 6.5 Whilst I acknowledge the benefits of the proposal, I do not consider that these clearly outweigh the substantial harm that would be caused to the Green Belt, including to its openness and its purposes, to the very significant harm the proposal would offer as a result of being in an unsustainable location, to the significant harm to landscape character and visual impacts; to the harm to a heritage asset and to

the limited harm as a result of loss of BMVAL. I therefore conclude that the proposal is contrary to the aforementioned policies of the Development Plan, together with the Framework. Therefore, the proposed development is contrary to the development plan overall, and this conflict is not outweighed by other material considerations.

6.6 Conclusion

Accordingly, I invite the Inspector to dismiss the appeal.

Appendix A – Case Law Reference

Each judgment referred to in this proof has been prefaced with a note explaining the relevance of the Decision to the issues arising in the current Inquiry case, together with the propositions relied on.

1. Jones v Mordue & Ors [2015] EWCA Civ 1243

The Court of Appeal established that if a decision-maker correctly applies the heritage policies within the National Planning Policy Framework (NPPF)—specifically paragraphs relating to the balance of harm and public benefit—they will generally have satisfied the statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to give "*considerable importance and weight*" to the desirability of preserving a listed building or its setting.

2. North Wiltshire District Council v Secretary of State for the Environment and Clover (1993) 65 P. & C.R. 137

Page 15 is referred to. The Court established that a previous planning appeal decision is a material consideration, and whilst an Inspector must always exercise his own judgment, like cases should be decided in a like manner so that there is consistency in the appellate process.

3. Turner v SoSCLG and East Dorset Council [2016] EWCA Civ 466)

Paragraphs 14, 15 and 16 of Turner are referred to in considering the concept of openness. Turner determined that the concept of openness of the Green Belt "is not narrowly limited to the volumetric approach suggested by [counsel]. The word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt present.

4. Samuel Smith R (on the application of Samuel Smith Old Brewery [Tadcaster] and others (Respondents) V North Yorkshire County Council (Appellant) [2020] UKSC3)

Paragraphs 22-26 are referred to. Samuel Smith concludes that there is not a clear distinction between openness and visual impact; in assessing openness decision makers may take into account the likely visual impacts of development on the openness of the Green Belt as a matter of planning judgment.

5. Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government and others [2014] EWCA Civ 1386

The judgment held that the words “any other harm” in the Framework test did not only mean harm to the Green Belt. It means any other harm that is relevant for planning purposes. Any other harm should be weighed in the balance when considering whether or not there are very special circumstances to justify the development. In understanding that the balancing exercise needs to consider these other harms, consideration has to be given to the other planning harm concluded to be provided by the development.

6. Palmer v Herefordshire Council & Another [2016] EWCA Civ 1061

The Court stated [34] that it is clear as a matter both of law and planning policy that harm (if it exists) is to be measured against both the scale of the harm and the significance of the heritage asset. Although the statutory duty requires special regard to be paid to the desirability of not harming the setting of a listed building, that cannot mean that any harm, however minor, would necessarily require planning permission to be refused.

7. Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Ors [2014] EWCA Civ 137

The Court held that in enacting section 66(1) of the Listed Buildings Act 1990 Parliament intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.

8. City & Country Bramshill Ltd v Secretary of State for Housing, Communities And Local Government & Ors [2021] EWCA Civ 320

The Court gave clear and detailed guidance on how to approach the assessment of harms and benefits to heritage assets. In particular:

- a. There is no prescribed single, correct approach to the balancing of such harm against any likely benefits – or other material considerations weighing in favour of a proposal. [72]
- b. If the approach in what was paragraphs 193 to 196 of the NPPF is followed, the section 66(1) duty is likely to be properly performed. [72]
- c. The weight to be given to the conservation of heritage assets in a particular case is a matter of planning judgment
- d. The imperative of giving “considerable weight” to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is “uniform”. That will depend on the “extent of the assessed harm and the heritage value of the asset in question”. These are questions for the decision-maker, heeding the basic principles in the case law. [75]

e. What amounts to “substantial harm” or “less than substantial harm” in a particular case will always depend on the circumstances. Whether there will be such “harm”, and, if so, whether it will be “substantial”, are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific approach to identifying “harm”. [74]

f. Identifying and assessing any “benefits” to weigh against harm to a heritage asset are also matters for the decision-maker. What amounts to a relevant “public benefit” in a particular case is, again, a matter for the decision-maker. So is the weight to be given to such benefits as material considerations. A potentially relevant “public benefit” can include a heritage-related benefit as well as one that has nothing to do with heritage. These can all be taken together and weighed against the harm. [76]

9. Bewley Homes PLC v Secretary of State for Levelling Up, Housing and Communities & Anor [2024] EWHC 1166 (Admin)

The High Court rejected the argument that Paragraph 81 of the NPPF mandates a "blanket assignment" of significant weight to economic benefits in residential developments. Mr Justice Holgate ruled that whilst economic growth is a significant objective, the specific weight assigned to economic benefits remains a matter of professional judgment based on evidence, not a mandatory top-tier weighting.