RE: LAND AT WISLEY AIRFIELD, HATCH LANE, OCKHAM GU23 6NU

APPEAL UNDER S78 TOWN AND COUNTRY PLANNING ACT 1990 BY WISLEY PROPERTY INVESTMENTS LTD

PINS REF: APP/Y3615/W/16/3159894

LPA REF: 15/P/00012

CLOSING SUBMISSIONS ON BEHALF OF WISLEY ACTION GROUP AND OCKHAM PARISH COUNCIL

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1. It is common ground between the Appellant, the local planning authority and the rule 6 parties that the only outcome of this inquiry can be a recommendation that the appeal should be dismissed.

2. The planning application should be refused for the following reasons on its merits:

   (i) The scheme is harmful development in the Green Belt which is not justified by very special circumstances;

   (ii) It is not possible to rule out the proposal having an adverse effect on the integrity of the Special Protection Area due to air pollution;

   (iii) The proposal causes less than substantial harm to six designated heritage assets and there are no public benefits which outweigh the strong presumption against the grant of planning permission;

   (iv) By reason of its poor accessibility the site is not a sustainable location for a new settlement;

   (v) The scheme has an adverse impact on the character of the area and has a harmful visual impact on views from Chatley Semaphore Tower and RHS Wisley.

Additional harm is caused by the loss of best and most versatile agricultural land;

(vi) Without adequate mitigation the scheme would cause a severe impact on the A3 in congestion and safety terms and it is agreed that there is no evidence that any proposed mitigation will be acceptable. It would also cause a severe impact on the local road network.

3. In addition there has been a failure to carry out an Environmental Impact Assessment of the project. What has been assessed is the development for which consent is applied for and previously proposed off-site highways measures. The current offsite measures at the Burnt Common slips and waste water treatment works have not been included in the EIA.

4. The extremely late change to the Appellant's scheme and its constant and even later revisions to its evidence have severely prejudiced the Wisley Action Group and Ockham Parish Council, the other rule 6 parties and the public at large. They have struggled to do more than point out the obvious errors and inconsistencies in the Appellant's technical case. The Secretary of State cannot be confident that the Appellant's evidence has been fully and properly assessed as third parties should have been able to do. However, the Minister can be confident that objectors' evidence and questions and the Inspector's questions have exposed sufficient flaws in the application that it must be refused.

The need to consider the scheme as a whole

5. The Appellant's scheme involves significant works which are outside the application site, in particular highways works and improvements to the waste water treatment works. Whilst planning permission has not been sought for them, they are necessary to enable the development to be carried out. That is why a condition or planning obligation requires the works to be carried out before the development proceeds beyond a certain stage.

6. To reach a view on the planning merits of the application it is necessary to consider:

(a) Whether those off-site works can be carried out;

(b) Whether they would sufficiently mitigate the particular impacts of the scheme which they respond to;

(c) What the impacts of those works would be.

7. If that is not done, then the scheme might not be able to proceed, or could only be partly completed. It might alternatively go forward, but with its impacts insufficiently reduced (or reduced less than expected) or with additional harm caused by the off-site mitigation measures.

The late changes

8. The Burnt Common slip roads and associated works are not mentioned in the Environmental Statement (or its Addendum) at all. The reason is that they were not part of the scheme promoted by the planning application until the publication of the Appellant's proofs of evidence. Some modelling of their effect on highways was provided in Mr Mckay's proof and on air quality in the Transport Technical Note on the eve of the inquiry. No assessment has been carried out of their other impacts, including visual, landscape, Green Belt, land take or effects on neighbours.

9. Improvement works are required to waste water treatment works. The extent of those works has not been identified by the Appellant or otherwise in this appeal. Consequently their environmental impacts are not identified. The Environmental Statement is silent on both the nature of the works and their effects. The exclusion of this matter from the ES was raised by Horsley Parish Council. Their witness on the topic was questioned on the point but it was not put to him (a) that the Environmental Statement had assessed those matters; (b) what those works would be (c) that the works would not have significant effects on the environment.

Modelling

10. Difficulties for statutory consultees, rule 6 parties and the public at large arise from the extreme lateness of the Appellant's modelling evidence; the lack of underlying data explaining it; and numerous uncorrected errors in it.

11. The traffic evidence is now based entirely on May 2017 model runs which were first provided in an inaccurate form in the proof of evidence on 8th August 2017, the Transport Technical Note 1 modelling produced the evening before the inquiry started, incorrect modelled results which were provided on 23rd September 2017 and further modelling produced in Transport Technical Note 2 on 10th October 2017. WAG pointed out in a note on day 1 of the inquiry that all of the peak period scenario C flows

in the proof were wrong and the Appellant realised WAG were right within 2-3 days.[1] However the Appellant chose not to acknowledge the error, or provide the 'correct' flows until week 4 of the inquiry, after the rule 6 parties had given evidence.

12. In TTN2 the Appellant acknowledged that Annual Average Daily Traffic flow (AADT) figures used in the ES modelling (ES Addendum CD14 ES, App 6.3) were wrong. Various figures for the A3 were seriously out. This was blamed on transcription errors, although the Appellant failed to identify which figures were incorrect or to provide the correct figures. Whilst Professor Laxen had identified inconsistencies in links 81 to 88, and TTN2 acknowledged Professor Laxen's point was right, Mr Mckay was unable to say which of those links were wrong.[2]

13. In the final week of the inquiry the Appellant attempted to provide further modelling data on a previously unassessed intermediate year using a new approach of a 'network performance summary' (ID 100).

14. For the Appellant Dr Tuckett-Jones asks the Secretary of State to consider five sets of air quality modelling.[3] One was in the ES Addendum, two were in the 3rd August 2017 letter to the Council (although the Appellant's proof did not draw attention to them), the fourth in Dr Tuckett-Jones's proof and the fifth in the eve of inquiry Transport Technical Note 1. Only the final set deals with the Appellant's transport scheme, scenario C3. Scenario C, which has less traffic on the A3 north of Ockham and so should be less harmful to the SPA, is dealt with in all those models. A reader would have to consider at least seven documents to understand the basis of Dr Tuckett-Jones's assessment.[4] There is no interim year assessment, which may well produce the worse case.

15. The first four models used inaccurate versions of the Transport Assessment Addendum traffic modelling. Those inaccuracies have not been corrected in the modelling. Even the 'correct' version of that traffic modelling has been superceded. Major issues remain over the more recent traffic modelling, as set out above, and it has not been demonstrated whether or not the inaccurate versions of the 2017 traffic modelling were used.

[1] Mr Mckay XX by RHQC.
[2] Mr Mckay XX by RHQC.
[3] Dr Tuckett-Jones XX by RHQC.
[4] Dr Tuckett-Jones XX by RHQC. The documents are the ES addendum, proof of evidence and appendix, ID4, 3rd August letter, 23rd September email, transport technical note 2 (ID72).

16. The scenario C3 air quality modelling is solely of NOx and NO2 and does not include nitrogen deposition, acid deposition or PM10s. Consequently there is no Air Quality Assessment of the Appellant's sole proposal before the inquiry, which is scenario C3.

17. No public authority has been able to assess any of the transport and air quality scenario C3 modelling and the various C models which have been produced since August 2017. Highways England have made clear their concerns. The other public authorities involved in the site have remained silent.

18. The impact of the necessary off-site works therefore remains a major omission from the information to judge the planning merits of the scheme and also the environmental information required to satisfy the EIA Regulations as explained by WAG/Ockham Parish Council in our letter before the start of the inquiry. Even identifying what is being modelled is difficult to a casual observer.

19. Expert witnesses for the various rule 6 parties have had to cope with very late technical material which has not been accompanied by sufficient background data. Errors in the Appellant's material have not been acknowledged until after those rule 6 parties have given evidence. The lowest point in the Appellant's conduct of the case was their realisation in the first week of the inquiry (because of a WAG/Ockham note) that traffic flow maps in Mr Mckay's proof were wrong and then waiting until after the Appellant's witnesses had started before admitting that and correcting the plans.

20. The proper process under the Rules and in accordance with the Inspectorate's *Procedural Guide – Planning appeals – England* is quite straightforward. An appeal is brought on the application which was before the local planning authority. If more documents are to be produced, and this includes new modelling, technical reports and drawings, these should be enclosed with the statement of case on the submission of the Appeal. The rules for appeals decided by the Secretary of State do allow a later statement of case to be provided. All parties' proofs of evidence should be able to comment on the scheme and the technical work underpinning it because that will have been available for a long time. As the Inspectorate guidance says, if an appellant wishes to change their scheme then they should normally make a fresh planning application.[5]

21. On this occasion the Appellant chose its proofs of evidence to completely change the off-site highways scheme, to provide new technical data and incomplete modelling and

[5] *Procedural Guide – Planning appeals – England* (August 2016), para M.1.1.

on the eve of the inquiry to produce a mass of new modelling. Further errors, omissions, information, corrections and changes have dribbled out late in the course of the inquiry, invariably later than they should have been. This has been an abuse of the inquiry process by the Appellant, grossly unfair to the rule 6 parties and the public and hindering the ability of the inquiry to resolve the issues.

22. It has only been the efforts of the third parties, the steadfastness of Highways England and the willingness of the Inspector to press for answers which have led to the complete collapse of the Appellant's new case.

Main Issue 1: The effect of the Proposals on the Openness of the Green Belt and on the Purposes of including land in the Green Belt

23. The development proposed, including housing, shops, employment, schools, community buildings and changes of use to playing fields constitute inappropriate development in the Green Belt. Mr Collins agreed that this involves thousands of buildings and structures.[6] The use of land for outdoor recreation is inappropriate development even though constructing buildings to provide facilities for an existing lawful use may be appropriate development. A car park serving a SANG will also be inappropriate development as parking cars harms openness.

24. Inappropriate development causes harm to the Green Belt by definition: NPPF, para 87. Since by paragraph 88 of the Framework 'substantial weight is given to any harm to the Green Belt', substantial weight must be given to this definitional harm. That is the case for a single home. The definitional harm caused by up to 2060 homes, employment, education, retail and all the other development will be even more substantial.

25. The erection of a building which is inappropriate development will cause harm to openness. The mere presence of such a new building harms openness. The extent to which the building is visible is a factor in the extent of the harm to openness. Here the new settlement will be visible from off site and from the public rights of way which run through the site. This visibility adds to the harm to the openness of the Green Belt.

[6] Mr Collins XX by RHQC.

26. Whilst the hard surfaces of the former airfield are previously developed land, that does not affect the openness impact of the proposed development. It is a clear, level, elevated site. Putting any building on the site (other than agricultural or forestry buildings which are not harmful by definition) will cause harm to the openness of the land. Several thousand buildings and other structures will cause very considerable harm to openness. Some of the buildings will be five storeys high. The scheme will dramatically change the visual appearance of the land.

27. It is common ground that the site serves the Green Belt purpose of preserving the countryside. Constructing a new settlement on it will destroy the countryside and so harm this Green Belt purpose. The number of purposes served by land is not an indicator for whether it should be released from the Green Belt. A site adjacent to an urban area is more likely to serve more Green Belt purposes (sprawl and possibly coalescence) than one which is remote. However a Sustainable Urban Extension may be a better solution in Green Belt and sustainability terms than a new settlement. This point is recognised in the Council's Local Plan sustainability appraisals which prioritise Green Belt releases adjacent to Guildford urban area ahead of remote sites such as Wisley.

Main Issue 2: Housing Land Supply Issues

28. Guildford does not have a five year housing land supply and has to work on delivering housing in the future, however:

    (a) Housing need is not sufficient in itself to amount to very special circumstances in the Green Belt;

    (b) Since the appeal scheme is undeliverable on the evidence, the Wisley proposal hinders rather than assists the supply of housing in the borough;

    (c) Even if the scheme were to proceed, its contribution to the five year supply will be limited. At the most optimistic the Appellant anticipates a contribution at the end of the period. The conditions mean that development does not have to begin until at least six years after a grant of permission: three years are provided for the first reserved matters application with development commencing within three years from the first approval of reserved matters. This is an extension on the usual section 92 requirement for reserved matters to be submitted within three years and

development to commence within two years of the final approval. This shows caution as to when development might start (let alone produce homes). There is no developer on board.[7]

29. The gypsy and travellers' site is poorly located, failing to provide an integrated community and will not be available until late in the development process.

Main Issue 3: Recreational Impact on the SPA issues

30. WAG and Ockham Parish Council raised recreational impact on the SPA in its Statement of Case (paragraphs 3.32 to 3.34). We have not called evidence on the point and leave that matter entirely to the Inspector's consideration of the written representations of the RSPB.

Main Issue 4: Effect on the safe and efficient operation of the strategic and local road networks;

31. It is agreed by all parties that without mitigation the project would have a severe impact on the highway network, including on safety and congestion on the A3. The Burnt Common slips are being required to avoid an unacceptable impact on Ripley.[8] It is also agreed that the Appellant has failed to produce the necessary assessments of its proposals for any judgment to be made on their acceptability: see the Highways England Statement of Common Ground, para 8 & 9. It is also agreed that those assessments which have been provided on the Burnt Common slip have been produced too late – the day before the inquiry opened – to be considered by Highways England or anyone else.

32. Consequently the Appellant's transport expert, Mr Mckay, agreed during cross examination[9] that the Inspector would have to recommend refusal on the evidence before the inquiry.

33. Nothing has changed in the week since that necessary concession.

34. This issue cannot be deferred by a negative condition or obligation. It is necessary to consider what the benefits and harms of the Wisley scheme will be and these will include the off-site proposals which are required by the scheme. This is both to consider

[7] Mr Mackay XX by RHQC.
[8] Mr Mckay ReX.
[9] Finally in response to the Inspector's question during RHQC's cross-examination.

the planning merits and also to meet the requirements of Environmental Impact Assessment. The Appellant has no alternative to the Burnt Common slips and its attempts to find one (by just giving money to the County Council) have been rejected by all of the public authorities and abandoned by the Appellant.

35. The planning obligation would allow the project to proceed without the slips for a period[10], leaving to a part-built out settlement. However the settlement is only said to be sustainable because of its size. Mr Collins accepted that building half of the settlement would not result in a sustainable community. Such an outcome would therefore be unacceptable.

36. The Burnt Common slips are only the final failure of the Appellant's highways proposals.

Highways England's Junction 10 scheme

37. Highways England's emerging proposals for Junction 10 (in the Road Investment Strategy "RIS") are yet to reach the preferred route announcement stage. They are not being relied upon by the Appellant as mitigation which enables the application to be approved.[11] Those changes would not in any event resolve the highways problems – the Burnt Common slips are being proposed to reduce impacts on the local highway network.[12] The Burnt Common slips of course increase impacts on the A3 by putting more traffic onto it.

Traffic modelling

38. The appellant's traffic modelling continues to be riddled with errors. The best judgment is that it underestimates development and non-development volumes on the system and on particular stages.

39. The trip generation figures omitted the primary school, nurseries, community and health centre and outdoor sports and recreation. As Mr Mckay acknowledged in XX, those uses would generate some vehicle movements, including to or from outside the new settlement. He also acknowledged that trip generation from the secondary school was not agreed with the County Council.

[10] Under the draft obligation, the trigger for approving design has been pushed back from first occupation to the 250th dwelling to occupied. Up to 999 dwellings can be occupied (along with all the other uses) before the failure to provide the slips stops further development.
[11] Mr Mckay XX by Mr Westaway.
[12] Mr Mckay ReX.

40. Other traffic has been severely underestimated. The Appellant took the emerging local plan allocations *out of* the TEMPRO growth factor. It has also omitted any schemes that have come forward for planning since 2013. We put it this way because the committed development list shows 2009-2013 schemes with planning application reference numbers but does not say (and Mr Mckay seemed unsure) whether those had been approved. Far from Surrey County Council endorsing the model, they have expressed caution about it.[13]

41. The modelling then falls apart. In Transport Technical Note 2 the Appellant admitted that considerably lower AADT figures had been used in the ES Addendum for various sections of the A3 as it passes the SPA. It was said that slip road figures had been used for the mainline. However Mr Mckay was unable to identify which sections were wrong and there has been no attempt to correct the figures. At the very least the Appellant ought to have produced corrected spreadsheets.

42. There are a large number of sections, including on the M25 by the SPA, where the Appellant's AADT figures vary wildly between the ES Addendum and May 2017 data (see the spreadsheets in Professor Laxen's Supplementary Appendices). There is no satisfactory explanation for these: some are said to be transcription errors whilst others are said to be because of different factors converting peak period flows into average daily flows. Since the peak period figures for 6 hours a day change by less than 1% between the two sets of modelling, this would mean that the levels of off-peak traffic are changing substantially. Since about half of the traffic on the strategic routes is during the peak period (and is essentially unaltered) a change of 10% to the daily flow means a 20% change to the non-peak flow. Even if the Appellant's explanation was correct it would mean that the annual average daily traffic is highly unpredictable and so the air quality modelling is subject to a high level of uncertainty for this reason. The model produces inconsistent flows – when two carriageways merge hundreds of vehicles a day appear or disappear. In the context of air quality impacts at 1% of the critical level, such inconsistencies matter. The Appellant has failed to produce any of the underlying data to assess the basis of their exceptionally late explanations.

Local highways impacts

[13] See the emails in Mr Mckay's Appendices B and W.

43. Other rule 6 parties, in particular East and West Horsley Parish Councils, and local residents have provided evidence on the effects on the local highway network. The Inspector will have had the opportunity to see the low capacity of many local lanes and the congestion on the network.

44. Whilst the Appellant has sought to deny there is a severe impact on the local highways network, this was exploded by Mr Mckay's Re-examination. He said that the Burnt Common slips – which have led to his recommendation to refuse permission – were required for the local highway network. Since there is no evidence that the slips are deliverable, the impact on the local and strategic highways network will be severe.

Main Issue 5: Transport sustainability

45. The proposal is the wrong scheme in the wrong location. Evidence on this point has been led by other rule 6 parties but we make the following comments.

46. The site is set in the least accessible part of the borough, far from train stations and with poor local roads. Bus routes will be lengthy and no one could routinely walk or cycle to any settlement beyond the site. The Local Plan policy aspires to an off-site cycle network to railway stations that would be 'attractive and safe for the average cyclist' but sensibly that has been abandoned by the Appellant. Cycling to Ripley involves crossing the Ockham interchange by four signalised crossings and cycling around the inside of the roundabout.

47. The strategic road network (the A3 and the M25) should not be used for local traffic. The scheme creates the worst of all worlds. It is too small to be self-sustaining – the great majority of residents will have to travel out for employment, shopping and most social facilities. Perversely it proposes a 600-pupil secondary school far from the rest of the population meaning that hundreds of children will have to be driven in and out each day. Since the County Council, as local education authority, do not want to commit to a 4-form entry school on site, there is no justification for shipping pupils into a remote Green Belt site.

48. The poor location has been regularly pointed out by the Appellant's witnesses, if inadvertently. Little use for travel to work is envisaged on the new cycle routes. The extent of the subsidised bus routes illustrate the need to encourage residents and workers not to use the private car. That provision has to be made to subsidise the bus

services in perpetuity shows that this third largest settlement in the borough still fails to be sustainable. Mr Mckay volunteered that the vehicle generation figures derived from the TRICS data had to be adjusted upwards 'to take account of the location'.[14] The site is so remote that the extensive TRICS database could not find a comparable site which was as poorly located.

49. The layout of the scheme is also poor. Since the design parameters for the site were to fit something on WPIL's land ownership and outside the SPA buffer, the housing will be squeezed into a long tube which as the crow flies is 1.5 miles long. This will encourage car use within the settlement itself: many residents will be between ½ a mile and a mile from the primary school. Much of neighbourhood 3 and all of neighbourhood 4 will be beyond the 800 metre direct line distance from the village centre as the 400 metre radius circles on plans show.[15]

Main Issue 6: Affordable Housing Delivery

50. There is no issue on the affordable housing delivery mechanisms. With respect to very special circumstances it is encompassed within the Secretary of State's view that housing need on its own will not amount to very special circumstances.

Main Issue 7: Loss of Safeguarded Waste Site

51. The loss of the potential waste use is a contravention of the development plan but limited weight should be attached to that. Since the IVC planning permission was on its own very special circumstances and it will not be built out, it does not advance the Appellant's case at all.

Main Issue 8: Character and Appearance

52. It is accepted by Mr Davies that the scheme has a significant visual impact on the site and in its vicinity, including from the public rights of way. He also accepted, for the first time at the inquiry that visual harm would be caused to the views from Chatley Semaphore Tower and from RHS Wisley.

[14] Mr McKay XX by Mr Paton.
[15] Mr Bradley XX by RHQC.

53. Mr Kiely identifies that the amount and height of development indicated is out of keeping with the landscape character of the area and is more akin to the main urban areas of the Borough. He considers that the development will have an unacceptable urbanising impact on the rural character of both the site and the surrounding area contrary to Policies G1 and G5 of the Guildford Borough Local Plan 2003 and the advice provided within the NPPF.[16]

Main issue 9: Heritage

54. It is accepted by the Appellant that less than substantial harm is caused by the scheme to six designated heritage assets because of impacts on their setting: [17]

(a) Chatley Semaphore Tower (Grade II* listed building);

(b) RHS Wisley (Grade II* Registered Park and Garden)

(c) Yarne (Grade II listed building) [18]

(d) Upton Farmhouse (Grade II listed building)

(e) Appstree Farmhouse (Grade II listed building)[19]

(f) Ockham Conservation Area.

55. Where the harm is to the setting of a listed building, considerable weight has to be given to that harm which gives rise to a strong presumption against the grant of planning permission: *East Northants* applying the Planning (Listed Buildings and Conservation Areas) Act 1990. That approach is reflected in the Framework's policy on designated heritage assets which includes the setting of a registered park or garden and out of area impacts on the character or appearance of a conservation area as matters to be protected. Great weight should be given to the preservation of all such designated heritage assets and a clear and convincing justification found for any loss: para 132 NPPF. The balancing exercise in paragraph 134 of the NPPF has to be undertaken with that weight

[16] Mr Kiely proof, para 6.06.
[17] Dr Massey oral evidence. Mr Collins accepted in Chief that his p.183, para 17.3, 17.6 and the Statement of Common Ground asserting that there is no harm to Yarne or any other heritage asset was no longer the Appellant's position.
[18] Dr Massey, para 7.37, 7.38, 8.7-8.9, 9.9, 9.10, 9.23, 9.26.
[19] In chief Dr Massey varied between describing the impact as less than substantial harm or negligible. In XX by RHQC he volunteered that the harm was less than substantial. In ReX the Appellant's counsel suggested the harm was negligible but Dr Massey is stuck with the evidence he gave in cross-examination.

attached to the harm. As Sullivan LJ pointed out in *East Northants*, less than substantial harm is not a less than substantial objection to the development. Any debate about where a particular impact stands within the less than substantial harm category is of significantly less importance that the fact of such harm. Categorising the level of harm as low does not avoid the presumption against the grant of permission or make the weight other than considerable.

56. The scheme must be refused unless there must be public benefits arising from that development which clearly outweigh the harm it causes. It is necessary to consider whether there is an alternative: whether the public benefits can be achieved without causing this harm.

57. The Appellant makes no effort to do so. Neither Dr Massey nor Mr Collins ask what changes to their scheme would be required to prevent the harm being caused and whether there is any justification for not making such a change. Dr Massey accepted that had not been considered.[20] The Appellant's case is that the benefits of the whole scheme justify the harm but the vast majority of the scheme does not cause harm to the historic environment. It is no part of their case that they could not have designed a scheme which did not cause that harm.

58. Mr Collins accepted that harm (and in particular, transport harm) was also relevant to whether there were public benefits for the paragraph 134 balancing exercise.[21]

59. It follows that the harm to the setting of the designated heritage assets has not been justified. Permission should be refused for this reason alone. In any event it adds to the harm which goes in the very special circumstances exercise.

Main issue 10: Air Quality

60. Nitrogen oxides emitted by traffic cause harm to the protected bird habitats in the Thames Basin Heaths by encouraging excessive plant growth. It is accepted by the Appellant that nitrogen oxide levels on the Ockham and Wisley Commons are, and will remain, above the critical level and that the contribution made by the appeal scheme is over the 1% threshold, at various parts of the SPA.

[20] Dr Massey XX by RHQC.
[21] Inspector's question during Mr Collins XX by RHQC.

61. The boundary of the SPA is that shown on the DEFRA map, produced by Mr Baker. The register of SPAs is kept by the Secretary of State, who is responsible for making any amendments to the entry: Conservation of Habitats and Species Regulations 2010, reg 13(1),(3). The register entry is decisive – it is a local land charge.[22] If the Secretary of State amends the entry then he must notify Natural England[23] who are responsible for keeping a copy of the register available for public inspection.[24]

62. However the boundary is drawn, whichever of the half a dozen modelling outputs are used and whatever assumptions are made about the errors in them, a substantial area of the SPA is affected by nitrogen oxide levels which are over the critical level and where the contribution of the appeal scheme is more than 1% of the critical level. This may explain the Appellant's casual approach to modelling. The position is so dire that any figures show that the scheme must be refused.

63. The Appellant's case is that part of the SPA is so bad that it does not matter how much they pollute it.

64. Where a project is likely to have a significant effect on a European site alone or in combination with other plans or projects then an appropriate assessment must be carried out.[25] Likely means may or potential. That is a deliberately low threshold and the exceedances of the critical level and the 1% threshold show that it is met. The Appellant then carried out a 'detailed assessment' which Dr Brookbank was not prepared to call an appropriate assessment, apparently because it did not include a full in combination assessment.

65. Judgments have to be made in view of the site's conservation objectives which require that the integrity of the site is maintained or restored by maintaining or restoring the 'extent and distribution' and 'structure and function' of the habitats of the three bird species. The supplementary advice which is to be read with the conservation objectives includes as a target the reduction of nitrogen oxide to below the critical level because of the harmful effect of promoting plant growth. Where necessary simply means where there are exceedances.

[22] Conservation of Habitats and Species Regulations 2010, reg 13(4).
[23] Conservation of Habitats and Species Regulations 2010, reg 14(1).
[24] Conservation of Habitats and Species Regulations 2010, reg 14(3).
[25] Conservation of Habitats and Species Regulations 2010, reg 61(1).

66. The appeal scheme contravenes this target by pushing NOx levels higher. On the figures in Dr Brookbank's proof the exceedances will occur on between 22 and 63 hectares of the SPA.[26] The higher figure is for the SPA within a 140 metre band. Given the various different models and the errors which remain in them, the prudent approach is to take the higher figure. She says that 4 hectares could presently be Annex 1 bird habitat. That itself dams the scheme, but the conservation objective is restoration of the habitat and the 1979 map in the SWT Management Plan[27] shows much of that land to have been heathland. SWT are continuing to clear trees and restore habitat, including within the 140 metre 'band'.

67. The land could provide a suitable habitat for the three bird species. Whilst Dr Brookbank is an expert in recreational pressure and the creation of SANGs,[28] Mr Baker is an expert in bioacoustics and birds, particularly nightjars.[29] He said that traffic noise only had an effect on birds if it drowned out their calls and it had been found that roads caused only very limited disturbance to birds. His view, based on his own expertise, is to be preferred.

68. Since the land has been designated as part of the SPA and the conservation objectives include the restoration of habitat, effects cannot be discounted because they occur on land which is presently in an unfavourable condition. A target set for that land is breached by this scheme.

69. The prudent conclusion is that the proposal does adversely affect the integrity of the SPA, and, applying the legal test, it cannot be said beyond reasonable scientific doubt that it will not cause such harm.[30]

70. Natural England's responses fail to engage with these issues.

71. Dr Brookbank suggests that 0.05% of the Thames Basin Heath SPA is suitable for the birds and within her 140 metre band at Ockham and Wisley. In addition to the issues above, that ignores the effect of disregarding other parts of the SPA which are adjacent to major roads, such as the M3. In short, the Appellant's approach involves increasing pollution in European designated sites on the justification that they are already in poor

[26] Dr Brookbank proof, p. 148, table 12.
[27] Dr Brookbank, rebuttal, appendix 2.
[28] Dr Brookbank proof para 1.6 to 1.16 and Evidence in Chief.
[29] Mr Baker, proof, para 1.8 and XX by Mr Maurici QC.
[30] Conservation of Habitats and Species Regulations 2010, reg 61(5) as applied following *Wadenzee.*

condition. Whether their condition would have been a reason for not designating the land in the first place is neither here nor there. The land is in the SPA, the conservation objectives apply and should be achieved rather than hindered.

72. Quite rightly, Dr Brookbank's proof does not rely on other measures in the SPA as mitigating the effects of increased NOx levels. Any such measures would be compensation under the Habitats regime (which could only count after the risk of adverse effect on integrity) and not mitigation which might avoid such an adverse effect.

73. In respect of the Special Protection Area, the Conservation of Habitats and Species Regulations 2010, reg 68(3) provides:

> "Where the assessment provisions[31] apply, outline planning permission must not be granted unless the competent authority are satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site … could be carried out under the permission, whether before or after obtaining approval of any reserved matters."

74. The regulation 62 exception (imperative reasons of overriding public importance) does not apply to the present scheme:

(a) Because reg 68(3) excludes its application to outline planning applications;

(b) The Appellant does not attempt to argue that IROPI applies.

75. It follows that planning permission must be refused on habitats grounds.

Main issue 11: Community and Other Facilities

76. One problem with the scheme is that the settlement is too small and too remote to sustain a full range of facilities and so excess provision has to be forced into the wrong location. This is shown by the proposal for a four form entry secondary school which the local education authority doubts is necessary at the site and which may disrupt other schools. The justification that the school is required for place making shows the indulgent self-serving nature of this scheme. 300 pupils will be expected to travel by

[31] Defined as Conservation of Habitats and Species Regulations 2010 regulations 61 and 62, see, reg 59(a).

car or bus each day to an out of the way location simply to justify the development. Of course, if secondary school provision was elsewhere then 300 pupils will have to travel from the settlement, but that merely illustrates that they will be happier living in a more sustainable location.

77. The importance of healthcare provision onsite was shown by Mr Bellchamber's demolition of the Appellant's typically late healthcare analysis. In presenting ratios of patients to GPs at local surgeries the Appellant forgot to find out whether the GPs were full time.[32] Any assessment has to be of full time equivalent positions.

78. The scheme has no redeeming qualities. Rather than a masterplanned example of a new settlement, it has been a quantum of development squeezed into what land the client had available. It is not clear who, if anyone, was the guiding mind of the scheme. Mr Bradley is a talented architect but was unable to answer on many of the matters that a masterplanner would live and breathe. He did not even know what the parameters meant.

Main Issue 12: Very Special Circumstances

79. The proposal is for inappropriate development in the Green Belt, on a site which is not identified for development (other than partially for waste) in the development plan. It is contrary to the development plan.

80. The decisive policy test is contained in the Green Belt policy at NPPF para 88, 89.

81. It is common ground that the debate over the 'tilted balance' in paragraph 14 of the NPPF is not material in the present case. Subject to the appropriate assessment test, if the very special circumstances and heritage tests are met, then the scheme is justified since it would not then fail the tilted balance and very special circumstances would be a material consideration justifying departure from the development plan.

82. Harm includes harm by reason of inappropriateness, other harm to the Green Belt and any other harm.[33] Other harm includes any harm which is material even if that harm would not be sufficient to amount to a reason for refusal in its own right.

83. The harm caused by the development falls under nine heads.

[32] Mr Collins XX by Mr Bellchamber.
[33] *Redhill Aerodrome v Secretary of State for Communities and Local Government*

(a) Harm by reason of inappropriateness;

(b) Harm to openness by building a new town on a flat, empty site;

(c) Harm to the Green Belt purpose of preserving the countryside;

(d) Harm to the strategic and local highway network

(e) Harm to the character and appearance of the area, including visual impact;

(f) The proposal of development in an unsustainable location;

(g) Loss of best and most versatile agricultural land;

(h) Harm to the setting of designated heritage assets;

(i) Harm to the SPA.

84. Most of these harms are addressed above. Mr Collins acknowledged that the admitted severe impact on highways would be part of the other harm.[34] The additional point is that there is a loss of 45 hectares of best and most versatile agricultural land. Mr Collins suggested that the 'net' loss was the 19.3 hectares which would disappear under built development.[35] He subsequently admitted that this excluded land which would be used for school sports pitches and SANGs. He finally accepted that all of the best and most versatile land on the site would be lost.

Benefits and very special circumstances

85. There are no very special circumstances which clearly (or at all) outweigh this harm.

86. As Ministers have said, unmet housing need (including for traveller sites) is unlikely to outweigh the harm to the Green Belt and other harm to constitute the "very special circumstances" justifying inappropriate development on a site within the Green Belt.[36] Almost all of the Appellant's claimed very special circumstances arise from the benefit of housing (and ancillary, but also inappropriate, development). The benefits of housing provision, including affordable housing, are insufficient.

87. The County Council are not prepared to say that a 4 form entry school should be provided on the site thinking that it may be possible to make any necessary provision elsewhere. The school therefore offers no benefit but merely a harm.

[34] Collins XX by RHQC.
[35] Mr Collins Proof, para 20.95 and Evidence in Chief citing Planning Statement Addendum, CD 3.10.
[36] Planning Practice Guidance, Reference ID: 3-034-20141006.

88. There are three remaining points taken by the Appellant: the emerging Local Plan, the previously developed land status of the hardstanding and flood alleviation.

89. The draft Local Plan does not assist the Appellant at all. It has not been submitted and is subject to a considerable number of objections, including on Wisley. The Perrybrook case illustrates the gulf between a draft plan to which considerable weight can be attached and one which adds little. The Inspector's preliminary conclusions supported the Perrybrook site and so barring a major turnaround or legal challenge, that scheme would be in the adopted plan. It happened also to be supported by its planning history and the local authorities in the area.

90. The draft Local Plan is in an even worse state at the close of this inquiry than it was. One aspect of soundness which an examination inspector must consider is deliverability: NPPF, para 182. On the evidence before this inquiry the Wisley allocation (policy A35) and the Burnt Common slips (policy A43a) are not deliverable. After years of assessment in local plan preparation and this planning application, we have an agreed position that it has not been shown that the Wisley development or those slip roads are capable of being carried out. Mr Collins agreed that no case for the Burnt Common slips could be shown now and there was no evidence of alternative highway mitigation for the Wisley allocation.[37]

91. It follows that the current draft Local Plan would be found unsound in respect of the Wisley development and Burnt Common slips. That would be a major and possibly fatal blow to the plan. Guildford Borough Council is only able to submit a local plan if it thinks that the document is sound. The Council cannot rationally, let alone sensibly, conclude that a local plan with the former Wisley Airfield or the Burnt Common slips in it is sound. Guildford needs a new local plan – and has needed one for a while – but submitting the current draft is merely prolonging the failure. The Council needs to come forward with plan which leaves the former Wisley Airfield in the Green Belt, consigns the Burnt Common slips to history and which brings forward sites which actually be developed and provide homes. The fantasy of a Wisley settlement has to be abandoned and replaced by realism and delivery for the people of this borough.

[37] Mr Collins XX by RHQC.

92. The flat runway and other hard surfaces are previously developed land, but are unobtrusive. Any building on them will cause considerable additional harm, let alone the impact of the thousands of structures proposed by the Appellant.

93. The carrying out of flood alleviation works for Ockham Lane provides no justification, singly or in combination, for the construction of a 2,000 dwelling new settlement.

Conclusion

94. Pulling the issues together, the transport, ecological and heritage impacts are each on their own sufficient to refuse the planning permission. The claimed benefits come nowhere near amounting to very special circumstances which can outweigh the harm to the Green Belt. Adding the other harm to the very special circumstances exercised merely reinforces the necessary dismissal of this appeal. Mr Collins acknowledged that his very special circumstances case was contingent upon resolving the highways issue and that had not been done.[38]

The Secretary of State

95. At one stage in his cross-examination, Mr Collins invoked a magician. The Appellant has been indulging in wishful thinking throughout this lengthy application process. Hoping that in a puff of smoke all the flaws in their scheme would disappear. The latest daydream has been that no matter how bad their evidence has been at the inquiry, something could be put before the Secretary of State to overturn these last five weeks and sweep them to victory.

96. There is no reason to think that any of that might happen and we will have much more to say if it is attempted. However some observations can be made now. The testing of evidence is for the inquiry. An attempt to go round Mr Mckay's acceptance that his client's scheme should be refused after the Inspector has reported should be dismissed. Entertaining it at all would reopen most of the evidence which we have spent five weeks dealing with, in particular highways, air quality, ecology and planning. 11 of the 14 expert witnesses before the inquiry would have to be recalled. There would need to be a new inquiry which would not be much shorter than the one which we are just finishing. It would be grossly unfair to the rule 6 parties who have stretched their

[38] Mr Collins XX by Mr Bird QC.

resources to test and contribute and debate in this inquiry. The Appellant have had their chance – a more than fair chance – over the last three years to produce a workable, acceptable, desirable scheme. They have failed. That is that.

97. The Inspector is asked to recommend that planning permission is refused and the Secretary of State is asked to refuse permission.

Richard Harwood QC
39 Essex Chambers

19th October 2017