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

APPEAL UNDER S78 TOWN AND COUNTRY PLANNING ACT 1990 BY TAYLOR WIMPEY

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

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1. Mr Collins accepted in his evidence for Taylor Wimpey that the Wisley Airfield site is not presently in a sustainable location.

2. The critical issues in this appeal are:

   (i) The failure of Taylor Wimpey to create a sustainable settlement in breach of the development plan; and

   (ii) The inability to conclude, beyond all reasonable scientific doubt that the scheme will not have adverse effects on the integrity of the Thames Basin Heath Special Protection Area.

The unsustainability of the site

3. As the previous Appeal Inspector observed 'The long, linear shape of the site does not assist in the creation of a sustainable community.'[1] The site is on a relatively remote location, with a poor rural local highway network and no railway station. A settlement would have to be made sustainable to be acceptable.

A35 and the policy solution

4. Policy A35 sets out what is required to render the new settlement sustainable. Its Transport Strategy requires the primary vehicular access to be from the Ockham interchange on the west (A35(1)). By A35(3) 'other off-site highway works to mitigate the impacts of the development'. Whilst works on Junction 10 and the Old Lane/A3

[1] IR20.78

junction are addressed by the junction 10 scheme, the policy also requires mitigation schemes to address issues:

> "(b) on B2215 Ripley High Street
>
> (c) at the junctions of Ripley High Street with Newark Lane/Rose Lane
>
> (d) on rural roads surrounding the site"

5. A35(4) says:

> "The identified mitigation to address the impacts on Ripley High Street and surrounding rural roads comprises two new slip roads at A247 Clandon Road (Burnt Common) and associated traffic management"

6. The importance of the Burnt Common slips was identified by the Local Plan Inspector[2] 'principally to deal with the potential traffic impacts of Wisley airfield (Policy A35).[3]

7. A significant bus network is required (A35(5)). In addition (A35(6)):

> "An off site cycle network to key destinations including Effingham Junction railway station, Horsley railway station/Station Parade, Ripley and Byfleet to be provided with improvements to a level that would be attractive and safe for the average cyclist"

8. Paragraph A35(7) says under the heading 'Other infrastructure'

> "When determining planning application(s), and attaching appropriate conditions and obligations to planning permission(s), regard will be had to the delivery and timing of delivery of the key infrastructure requirements on which the delivery of the plan depends, set out in the Infrastructure Schedule in the latest Infrastructure Delivery Plan, or otherwise alternative interventions which provide comparable mitigation"

9. That is not referring to the transport infrastructure identified in (1) to (6): it is distinctly 'other infrastructure'. Para (7) does not therefore excuse a failure to comply with those earlier requirements. In any event Taylor Wimpey would have to justify not providing the Burnt Common slips, the identified cycle routes or other identified infrastructure. Whether that is as a justified departure from policy or under an exception (which does

[2] CD 7.11, page 28, para 83; page 43, para 184
[3] CD7.11, page 32, para 132.

not arise) in A35(7) is of less importance than whether there is a justification for not providing the infrastructure. That turns on trip generation from the site, the modelling of junctions and the network and the non-car measures proposed.

The lack of services and employment

10. Another part of developing a sustainable settlement is the provision of jobs and facilities so that residents can work, shop, access services and recreation on site. The allocation itself is modest: for example, 600 m^2 of convenience retail is inadequate for a weekly or family shop. A secondary school was merely a possibility rather than a requirement.

11. The scheme is too small to create a settlement which is capable of sustaining itself.

12. The appellants says that the number of residents of the settlement in employment would be 2106.[4] However the number of jobs on site would be 417.[5] Of those, Taylor Wimpey say 53% would be taken by residents from outside the borough.[6] Of course, some of the Guildford borough residents working on the site would live outside the settlement. So, taking the figures as a whole, over 90% of residents who are in employment will work outside the settlement.

13. The provision of services on site has been diminishing during the course of the inquiry. It is apparent that there will be no onsite secondary school. Policy A35(9) says that a GPs surgery 'must' be provided on the site. It is apparent from the draft planning obligation and the session on it that not only is on-site healthcare not required, but there is no reason to think that it is even likely. The absence of basic services discourages residents from not owning a car and disadvantages those who can not afford one. It also encourages increased car ownership, with all adult members of a household being likely to need a car, and thereby increased usage.

14. Proposals to have an on-site library have been dropped, in favour of a financial contribution to Guildford library. That is a literary nail in the coffin of the scheme's sustainability.

15. Some of these deficiencies are inherent in the relatively small size of the settlement and policy A35. However the Local Plan Inspector anticipated an 'integrated large new

[4] CD2.49 page 18, para 3.14
[5] CD2.49 (pdf 25, table 3.4) and Collins (page 144). This is higher than the application form's 305 FTE.
[6] CD2.49, para 3.35.

village with its own employment, schools, shops and community facilities'.[7] There is now to be just one school, not much employment and few community facilities. Taylor Wimpey secure far less than the policy or the previous application sought. Residents will have to travel outside the settlement for secondary education, the weekly shop, most comparison shopping, indoor leisure and entertainment, a public house, wine bar or hot food takeaway, libraries and, most probably, healthcare. Those trips will in practice have to be by car or bus.

Modelling

16. Several issues arise on traffic modelling.

Traffic generation

17. Taylor Wimpey have failed to provide an all mode trip generation figure, so it is impossible to relate the private car usage to overall movements. The modal split was not applied to find the traffic generation figures.

18. The traffic generation relied on TRICS data (in categories summarised at Mr McKay's App 1, App B).[8] There are several serious problems with how this has been done:

(i) The 'TRICS Sites Surrey' sites were produced to WAG and the Horsleys a few days before the exchange of proofs, and only published with the proofs. The 'WSP TRICS' search sites were not disclosed. Consequently it is not known what sites were considered;

(ii) Taylor Wimpey's calculations of the average trip generations are wrong. They have taken bundles of sites and taken an average of each bundle, for example 'TRICS Sites Surrey (privately owned)' is the mean of those sites in that category. Those bundle averages are then added up, along with Dunsfold, and an average taken of all these. That is simply incorrect mathematics. A straightforward example is to calculate the mean of 1, 5 and 9:

Adding all of them together and dividing by 3, gives a mean of 5:

(1+5+9)/3= 15/3 = 5

[7] CD7.11, page 42, para 183.
[8] ID2.2, pdf 4

Adding any two numbers together, taking the mean of their total, adding this to the remaining number and taking a mean, gives figures which are different depending upon which numbers are added up first, and are wrong:

(1+5)/2 = 6/2 = 3; (3+9)/2 = 12/2 = 6

(5+9)/2 = 14/2 = 7; (7+1)/2 = 8/2 = 4

(iii) Mr McKay's assertion in cross-examination that the method used of bundling the numbers up and taking an average of averages gave the correct answer was a basic error in mathematics.

(iv) Any use of TRICS involves some assessment of the comparability of the sites. Of the eight sites identified by Taylor Wimpey, four are in urban areas and the other four are edge of town sites. None are new settlements. They all have particular, and often better, relationships with transport and services.

19. The Dunsfold figures used had been built up by the uses on that site, but whilst remote, Dunsfold has a large amount of existing employment which will be doubled with that scheme.

20. The Hallam land vehicle trip generation figures, again derived from TRICS, show much higher levels: 0.511 against 0.426 in the AM peak; 0.503 against 0.413 in the PM peak.[9]

21. There is no explanation as to where the settlement traffic is going to or coming from.

Numbers at the accesses

22. The numbers entering and exiting the site accesses were given,[10] but the totals were all added up incorrectly: the correct figures are:

Wisley Lane Diversion: AM peak 348; PM peak 442.

Old Lane: AM peak 631; PM peak 418.

23. These are the only access figures provided, and show a clear majority of movements across the peak hours to be at the Old Lane access (1049 against 790 at WLD).

Flows from the accesses

[9] Mr Russell rebuttal, page 2 and App C at page 12.
[10] CD2.22 Transport Assessment, table 6-2; Mr McKay proof, para 7.47, table 12.

24. The directions of settlement traffic at the site accesses were only extracted from Mr McKay in cross-examination.[11] This is part of a pattern of Taylor Wimpey trying to make it as difficult as possible for the public and the Inspector to understand their modelling. At the Old Lane end the settlement traffic essentially adds to the existing traffic. However at Ockham Interchange, the settlement traffic either disappears or makes an equivalent amount of existing traffic disappear. The 348 additional PCUs to or from the settlement (onto WLD) in the morning peak lead to 89 fewer PCUs on Portsmouth Road, 242 fewer on Ockham Road North, 3 fewer on A3 northbound, 53 fewer on Wisley Lane (so totalling 387) and the only increase is on the A3 southbound, many of which would be the increased numbers of vehicles exiting at Old Lane to go onto the A3. Mr McKay asserted that the missing vehicles were existing traffic but did not know where they had gone.

Modelling of the Ockham interchange

25. The mystery is deepened by Taylor Wimpey's failure to model the Ockham Interchange correctly. The LINSIG modelling in the Transport Assessment[12] and which was relied upon by Mr McKay in his proof[13] and first oral evidence, was completely wrong. It had modelled additional lanes which did not exist. The error had been spotted by National Highways and new modelling done, but Taylor Wimpey decided to withhold this from the inquiry.[14]

26. The corrected figures showed that rather than the Ockham Interchange acting well within capacity[15] it would have little AM capacity (3.2% (down from 5.3% without the settlement)) and be over capacity in the PM peak (-8.0%, against -8.8%). On Taylor Wimpey's modelling that was a little worse than the AM do-minimum and a smaller improvement on the PM do-minimum. What this exposed was a major capacity problem at the western entrance to the site, which Taylor Wimpey had not let on about and proposed to do nothing about.[16]

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[11] ID5.26.
[12] CD2.22 Part 11, pdf page 33, App M2 and Part 13, pdf page 5, App N2.
[13] Para 3.7,
[14] ID5.42, page 2: "The resubmitted LINSIGs on the Ockham Roundabout and J10 were not included within either of the TPS documents **CD 2.25 or CD 2.26**. This is because the amended LINSIGs were still being audited by JSJV in March 2023 at the time of the TPS CD 2.25 and by the time of the July Updated TPS CD 2.26, NH had confirmed that they were content and had issued its final consultation response CD 3.85."
[15] PRC 28% and 13.2% at AM and PM peaks with the scheme: CD2.22 Table 13-8.
[16] Capacity issues at the new Junction 10 had been known about but were a network rather than a scheme problem.

27. Several further problems were thrown up by the corrected LINSIG modelling:

(i) There would be risk of queues backing up to affect entrances or exits, particularly Link 18-1 at Ockham Road North.[17] The links are shown at ID5.42 page 13.

(ii) Mr McKay's attempt to explain that queue backing up would not be a problem was to say that the lights for traffic from Wisley Lane Diversion onto the roundabout would be set green for 8 seconds per 60 second cycle and allow only four vehicles onto the gyratory per cycle (on links 3-1 and 3-2). That would be 240 per hour. There would though be 406 PCUs leaving WLD per hour in the morning peak causing considerable queuing on WLD. Mr McKay then attempted to claim that 166 of those vehicles would be turning from WLD onto Ockham Road North. That makes no sense as those lights control all flows onto the roundabout including immediate left turns, so are subject to the 240 per hour limit. But even if the junction would allow immediate left turns onto Ockham Road North from WLD to be outside the 240 vehicles per hour limit, there is no plausible explanation where those 166 PCUs are from. Of the 221 PCUs said to leave the site onto WLD in the AM peak[18] 12 go down Ockham Road North and 19 up Wisley Lane.[19] The great majority of settlement vehicles go onto the gyratory. This would mean 154 PCUs from the existing Wisley Lane Diversion traffic would be going onto Ockham Road North. Since there would only be 203 existing PCUs on Wisley Lane Diversion (405 less 202 representing settlement traffic trying to enter the roundabout (221-19)) this would be an astonishing choice of manoeuvre given the options of Portsmouth Road and A3 North. The more likely explanation is that Mr McKay had not thought through the consequences of his 240 vehicle limit.

Of course, this could have been sorted out if Taylor Wimpey had disclosed the particular turning flows in the model (such as from WLD to Ockham Road North) but they did not do so;

(iii) LINSIG is a more accurate way of modelling junctions than SATURN. It also relies on being told what the vehicle flows are from SATURN or some other

[17] See ID5.43 WAG para 2.17, 2.19 and XX of Mr McKay (recalled).
[18] See the notorious table 6-2 in the TA CDS2.22 and Mr McKay proof, p 45, para 7.47.
[19] ID5.26 Access Flow Plots, p 3.

source. The SATURN and LINSIG flows modelled at a junction should be the same. However whilst some do match, others are very significantly different: comparing corrected LINSIG flows at McKay ID 5.42 page 37 and the SATURN figures in Transport Position Statement CD2.25 Part 3, pdf 93 for the AM peak:

> PCUs entering WLD from the roundabout are doubled in the LINSIG modelling (442 against 220 used in SATURN);
>
> More PCUs go past the WLD junction in SATURN (1231 against 1124 on links 7/1, 7/2);
>
> LINSIG shows more traffic on Portsmouth Road: 2028 comprising 943 entering Portsmouth Road (10/1) and 1085 leaving (12/1, 12/2); with 1990 on SATURN (870 entering Portsmouth Road and 1120 leaving it)

28. There is no explanation why the figures are different and it must be an error. But which figures if any are right is unknown.

29. The SATURN model distributes traffic depending upon capacity and delays at junctions and along links. Since the LINSIG output is a better way of judging how a junction performs, it should be used to check that the SATURN traffic distribution is accurate. That was not done since the SATURN model was not rerun after the LINSIG model was corrected. Consequently the network modelling does not reflect the performance of the key junction.

30. Taylor Wimpey's SATURN modelling shows that the majority of settlement traffic will use the Old Lane access in breach of A35(1) and go onto the surrounding rural roads network. On the western side, the scheme adds 348 PCUs to the Wisley Lane Diversion but displaces more than double that number of existing units (since the total traffic on the immediate roads is said to reduce by 387). That is a severe impact on the local highway network: a scheme which adds a significant amount of traffic but causes twice that number of vehicles to divert onto the unsuitable local road network.

31. Even with the introduction of a 30 mph speed limit on Portsmouth Road that is inherently implausible. There cannot be any confidence that the SATURN modelling (even leaving aside the Ockham Interchange LINSIG) is accurate.

32. If the SATURN modelling is accurate then none of that existing traffic is removed from the network. The consequences are that it is diverted onto other local roads. Taylor Wimpey do not know what roads they are. Given the stresses on local roads which are identified in A35 that is unacceptable under policy without any mitigation. Yet the policy's mitigation for the local roads, the Burnt Common slips, are not provided.

33. The new LINSIG modelling means that connections with the A3 to the north are poorer than anticipated. The pressure on the Ockham interchange can be relieved by the Burnt Common slips which would provide alternative routes onto the A3 northbound and coming off the A3 southbound. It will also encourage use of Ockham interchange to access the settlement from the A3 southbound rather than the Old Lane slip. That would reduce traffic through the SPA.

34. The traffic evidence therefore reinforces the policy requirement for the Burnt Common slips. It does not justify omitting those slips.

The breaches of policy

35. Policy A35(1) requires the primary access to be at the western end of the site. This matters: the reason would be to get traffic away from the inadequate local roads and Old Lane through the SPA. On Taylor Wimpey's figures considerably more traffic movements take place at Old Lane. That is the primary access in the scheme. Taylor Wimpey's attempts to claim that the primary access is not the most used were ridiculous.

36. Policy A35(3),(4) require the Burnt Common slips to be provided to relieve Ripley High Street and rural roads surrounding the site. That policy is breached and there is no justification for the breach.

37. The extent of displacement of existing traffic onto unsuitable local roads shows, even on Taylor Wimpey's modelling, that there is a severe impact on the local highway network.[20]

Cycle routes

38. The Local Plan A35(6) requires 'An off site cycle network to key destinations including Effingham Junction railway station, Horsley railway station/Station Parade, Ripley and Byfleet to be provided with improvements to a level that would be attractive and safe

[20] Including the Ockham interchange in the local network.

for the average cyclist'.[21] The required routes were endorsed by the Local Plan Inspector.[22] This requirement is reinforced by Development Management Policies ID9(2) 'Development proposals are also required to deliver the site-specific requirements for cycle infrastructure as identified in site allocation policies and also may include further requirements identified as part of the planning application process where justified.'

39. The 'average cyclist' requirement in the 2019 Local Plan is superseded by the 2023 Development Management Policies which require, in ID9(4) 'Cycle routes and infrastructure are required to be designed and adhere to the principles and quality criteria contained within the latest national guidance.' The development plan specifically requires use of LTN1/20 at para 6.77, 6.91, 6.134 and 6.135. LTN1/20[23] is 'to enable persons of all ages and abilities to cycle'.[24] LTN1/20 explains:[25]

> "The guidance should be applied to all changes associated with highway improvements, new highway construction and new or improved cycle facilities, including those on other rights of way such as bridleways and routes within public open space."

40. LTN1/20 says that routes should be 'Coherent; Direct; Safe; Comfortable and Attractive'.[26] The appeal proposals are not.

41. There has been a rather futile debate at the inquiry about whether LTN1/20 is 'mandatory'. As with all policy there is not a legal obligation to comply with it, but the development plan (subject to the statutory presumption) and national policy says it should be complied with. A failure to do so can found a reason for refusal,

42. Despite the assertion in the Design and Access Statement under the heading 'You said, We did' that 'Cycle routes will be designed to comply with LTN1/20'[27] Taylor Wimpey have failed to do so. They have crippled their design by being determined to stay within

[21] CD6.1 Strategy and Sites, p 219. This is repeated in the Strategic Development Framework SPD, CD7.1, para 8.2.2 and 8.4.9.
[22] CD7.11, page 43, para 186.
[2323] CD12.20A.
[24] Ministerial foreword.
[25] Pdf page 5, para 1.3.1.
[26] Page 6, para 1.5.2.
[27] CD2.51 Part 5, page 9.

the highway boundary. That means they have not designed routes which comply with A35, ID9 and LTN1/20.

43. There is now an acceptance that lighting will be needed for some of the works.[28] That has not been shown nor have the implications been assessed. Taylor Wimpey have also failed to carry out ecological surveys of these routes. The Environment Statement carried out a desk-based exercise but that was it.[29] It is not known what the effects on ecological interests, the rural character of the area, and dark skies will be.

Effingham Junction

44. Effingham Junction is the nearest railway station to the site. It is common ground that there is no proposed route to it which is appropriate for the average cyclist.[30]

45. That is a breach of A35(6).[31]

Horsley

46. The next nearest railway station – and the only other likely rail destination – is at Horsley. The direct (and obvious) route down Ockham Road North is not proposed to be made suitable for 'average' cyclists. The proposed route is a diversion via Long Reach, Lollesworth Lane and along the railway line. That is significantly further and so not attractive for functional journeys, such as commuting to the railway station.

47. The proposed route is also inadequate and fails to comply with LTN1/20. Long Reach is narrow and trafficked by heavy vehicles serving the businesses on it. The route by the railway line is too narrow for cycle use. A shared pedestrian/cycleway requires a minimum of 3 metre width and cyclists also require an additional 0.5 m separation from vertical features above 60 cm on either side (such as fences).[32] Taylor Wimpey have not followed the LTN, based it seems on Mr McKay's view that the average cyclist takes up 0.65m. LTN1/20 explains that a cyclist is 0.8m wide at shoulder/handlebars and will need at least 0.2 m to wobble in. Understandably the road safety audit said

[28] Mr McKay rebuttal, para 4.21.
[29] Environmental Statement, App 18A.
[30] Mr McKay, proof, para 4.17. The Appellant Statement of Case CD5.1 pdf 87 is therefore incurred in asserting that there is compliance with A35(6).
[31] The Appellant's Statement of Case CD5.1 pdf 87 is wrong to assert compliance with A35(6).
[32] LTN1/20, tables 5-3, 6-3.

that the route next to the railway line should be 3m + 0.5m to fences.[33] Taylor Wimpey have rejected that advice.

48. As numerous local residents have pointed out, the route by the railway line is unattractive and seen as unsafe. It would not be usable at night or by the majority of users.

Ripley

49. The Ripley route is also too narrow – with vegetation clearance to 2.5 metres rather than the 3 metres recommended by the auditor.[34] As the Borough Council has identified, the Ripley route has significant ecology and heritage implications which have not been assessed. It is simply not known whether a workable and effective scheme – which provides an attractive route – could be provided.

Wisley

50. RHS Wisley are dealing with questions of cycle access through their site. It is noted that the planning condition does not, on its correct reading, require the dedication of a cycleway (a route open to the public) and could not do so anyway.

Cobham, Byfleet and Stoke d'Aberon and the routes generally

51. Local residents have pointed out the difficulties with functional or casual cycling on the local roads (as well as the dangers to the more serious lycra-clad racers). All of those points should be taken into account. We point out in particular the increase in traffic on Plough Lane due to the development (more than tripling movements in peak hours)[35] and that both Plough Lane and the surrounding higher fields are frequently flooded for months on end (being on the functional floodplain of the River Mole). Whether improving highway drainage can resolve that has not been established.

Delivery of the cycle routes

52. The planning obligation does not require works to be carried out where a speed limit reduction is proposed and the execution and completion of the works require a traffic regulation order.[36] Such an order goes through its own process of statutory consultation

[33] CD2.31 Part 6 problem 1P page 32
[34] CD 2.31, Part 6, page 60, problem 3F.
[35] Transport Assessment, p 100, table 12-2.
[36] Schedule 3, part 1, para 2.3.

which cannot be pre-judged. No such consultation has taken place and there is no decision of the County Council to make the orders.

53. Similarly there has been no decision of the County Council to enter into any section 278 highways agreements, none of which have been drafted.

54. The County Council, and elected councillors, are not bound by the inquiry's consideration of the routes. There may be circumstances where is it irrational in public law terms for a highway authority to refuse to enter into a highway agreement if a planning appeal has determined that the proposed works are acceptable.[37] However that pre-supposes that the merits of the scheme have been fully assessed in the planning appeal. Since that has not been done – see the lack of detail, lighting and ecological assessment, the borough's proposed surveying condition – that is not the present case. In respect of the orders, the planning appeal cannot determine the outcome of a decision which is subject to later statutory consultation.

55. If conversely it is to be suggested that the planning appeal is in practice or law determinative of whether and how the cycle routes are provided then adequate evidence needed to be given of those routes to the inquiry. That has not been done.

56. Consequently there is no certainty that the necessary traffic regulation orders will be made. The planning obligation means that in such cases the works will not be carried out for the substantial parts of the routes which require speed limit reductions. The development would nonetheless be allowed to proceed. The result would be 1730 dwellings being constructed for a new settlement which does not have the proposed (albeit inadequate) level of off site cycle routes.

Public transport

57. Whilst bus services are promised, their effectiveness is uncertain. It is curious that the journey times remain the same as more of the settlement and stops are added.

58. The 'Access for All' contribution to improvements at Effingham Junction and Horsley railway stations is only £4 million of the £14 million cost of the schemes. An additional £400,000 is available for Horsley Station from other schemes[38] but SCC say that the remaining £9.6 million would have to come from Network Rail who have not

[37] *R v Warwickshire County Council ex p Powergen* (1998) 75 P&CR 89.
[38] SCC CIL schedule.

committed to the sum. Consequently there can be no confidence that the improvements will be made in whole or major part.

Annual Average Daily Traffic

59. The final, and discrete, modelling issue is the calculation of the Annual Average Daily Traffic flow which is used for the air quality modelling. This has been calculated by applying factors to the modelled AM and PM peak figures. If the SATURN modelling is unreliable then the AADT figures will also be unreliable.

60. Additionally, different factors are applied to different links factors[39] but no explanation has been offered as to why particular factors were chosen. The range of factors is 5.60 to 5.96, so a 6.4% variation, even if factors in that range were appropriate.

The Special Protection Area

61. It is agreed that the scheme will have likely significant effects on the Thames Basin Heaths Special Protection Area for two reasons:

(i) Nitrogen deposition from the air quality impacts of traffic;

(ii) Recreational use of the SPA by residents of and visitors to the settlement.

62. This is a fundamental change from the 2018 appeal decision where the Inspector and Secretary of State considered on the evidence at the time that appropriate assessment was not required. The Local Plan Inspector accepted that view.[40]

63. Appropriate assessment is required, in essence, when a plan or project is 'likely to have a significant effect on a European site … (either alone or in combination with other plans or projects)'.[41] When appropriate assessment is required 'the competent authority [the Inspector] may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site'.[42] The appropriate assessment should take into account any mitigation proposed.[43] As the Planning Practice Guidance advises, in accordance with European caselaw:[44]

[39] See ID3.2, Mr McKay rebuttal page 6, para 3.6.
[40] CD 7.11, p 43, para 189.
[41] Conservation of Habitats and Species Regulations 2017, reg 63(1).
[42] Conservation of Habitats and Species Regulations 2017, reg 63(5).
[43] See reg 63(6).
[44] Reference ID: 65-003-20190722.

"An appropriate assessment must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project.

The conservation objectives and supplementary advice

64. The Conservation Objectives for the SPA which have to be considered in the appropriate assessment are:[45]

"Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site."

65. The qualifying features are the European nightjar, woodlark and Dartford warbler. However three of the five conservative objectives relate to the habitats.

66. The Supplementary Advice on Conserving and Restoring Site Features[46] is the Natural England advice which should be considered with the Conservation Objectives. The 'principal habitats supporting these qualifying species are lowland heathland and rotationally managed coniferous plantation woodland'. The advice is to restore and increase the heathland. A target is:

"Restore as necessary the concentrations and deposition of air pollutants to at or below the site-relevant Critical Load or Level values given for this feature of the site on the Air Pollution Information System (www.apis.ac.uk)."

67. That target tracks any changes in critical levels or loads.

The need for appropriate assessment

[45] CD2.65, Info for HRA (August 2022), Annex 3 pdf 157.
[46] CD12.45.

68. The underlying science is well-established, see the Supplementary Advice for the SPA:

> "The structure and function of habitats which support the SPA population are sensitive to changes in air quality.
>
> Exceeding critical values for air pollutants may result in changes to the chemical status of its habitat substrate, accelerating or damaging plant growth, altering vegetation structure and composition and thereby affecting the quality and availability of nesting, feeding or roosting habitats. Some of the effects that might be attributable to aerial pollution could include accelerated and more vigorous growth of bramble, birch and coarse grasses and consequent loss of bare ground and/or heather.
>
> Critical Loads and Levels are thresholds below which such harmful effects on sensitive UK habitats will not occur to a noteworthy level, according to current levels of scientific understanding. There are critical levels for ammonia (NH3), oxides of nitrogen (NOx) and sulphur dioxide (SO2), and critical loads for nutrient nitrogen deposition and acid deposition."

Approach to the air quality issue

69. The levels of nitrogen deposition are dependent upon two sets of modelling: traffic in the vicinity of the SPA and then the air quality modelling. A material error in either set of modelling would be fatal to the appropriate assessment.

70. Errors in the highways modelling have been addressed above. For example, errors in the network modelling or the capacity problems revealed at the Ockham interchange which would encourage more vehicles to leave the A3 southbound at Old Lane.

Air Quality

71. The air quality position has changed significantly since its previous consideration in the 2018 Appeal, the Local Plan, the Local Plan High Court challenge and the DCO. Indeed, it has changed materially in the July 2023 assessment. It now requires appropriate assessment. This is a consequence of new modelling, the recent scientific recognition of the effects of anomia, and lowered critical loads. The analysis can be taken in two parts: the results of the Taylor Wimpey modelling; and the errors and deficiencies in the modelling.

The Taylor Wimpey modelling results

72. Taylor Wimpey's July 2023 Consolidated Air Quality Assessment found:[47]

(i) Baseline N deposition is above the critical load everywhere in the SPA

(ii) Baseline N deposition would be greater in 2038 than 2019 at J10, M25 and Old Lane (and A3 re SSSI) and also some SNCIs and ancient woodlands

73. In respect of the settlement scheme, the AQA found that the settlement would increase Nitrogen deposition.[48] The 2038 baseline and settlement means that the 2019 baseline would exceed up to 45 metres from the M25. Outside the areas where the baseline deposition is increased, the scheme increases deposition beyond what it would be.

74. Nitrogen deposition would exceed the critical load in all locations, often being significantly above.[49] The 1% process contribution for nitrogen deposition from the settlement alone would be 72.5m from Old Lane for heathland and over 250 m for woodland. In combination the 1% contribution over critical load over 250 m from J10, A3, M25 and Old Lane.

75. Unlike the modelling for the previous scheme, the 1% exceedances of critical load include heathland. The area within the 1% contour includes 1.94 ha of existing heathland, 7.57 ha of proposed DCO restoration heathland and 2.31 ha of proposed DCO compensation land.[50]

76. The exceedances, and the significance of Old Lane as well as the A3 in these, are shown in Map 2 at page 11 of the July 2023 IfHRA Addendum.[51]

77. This change in the July 2023 modelling. The March 2023 modelling considered that nitrogen deposition would reduce.

78. The change is due to the running of new modelling, but also to two other factors. Firstly the very recent recognition by the air quality community that ammonia emissions from vehicles are a significant source of pollution. The need to assess ammonia emissions is recognised in Guildford's Development Management Policies,[52] but not otherwise widely in policy and guidance. However there is a need to consider the best scientific

[47] CD2.70, page 37, table 4-5 baseline.
[48] CD2.70, Page 42, Table 4-6.
[49] CD2.70, page 47, Table 4-
[50] CD2.68 addendum IfHRA, pdf 9, table 2.
[51] CD2.68.
[52] CD6.2, pdf 54, para 4.109.

knowledge. Those effects have to be considered, including where the 1% exceedance is more than 200 metres from a road.

79. Secondly the revision downwards of critical loads for nitrogen deposition for these SPA species in coniferous woodland down 5-15 to 3-15 kg N/ha/yr; dwarf shrub heath down 10-20 to 5-15 kg N/ha/yr. Those loads, taken from the APIS website in accordance with the SPA Supplementary Advice are specific to the three SPA bird species in this SPA.

The changes from the previous decisions

80. The previous considerations of the Wisley settlement and the DCO were on the basis of far lower modelled nitrogen deposition. For the previous Appeal scheme the 1% exceedance of critical level was limited to strips of land on A3 and M25: 'much more limited than' 50 m.[53] That Inspector found that there were no likely significant effects from air quality on the SPA, so no need for appropriate assessment.[54]

81. The Local Plan Inspector understood 'NOx concentrations and nitrogen deposition rates within 200m of the Thames Basin Heaths SPA are expected to be better at the end of the plan period than they are at the moment'.[55] Sir Duncan Ouseley dismissed the High Court challenge, against a background of reduced exceedances of critical levels and critical load,[56] nitrogen deposition being at critical load only at the roadside[57] and that heathland would not be affected and the critical load for heathland would not be exceeded.[58]

82. None of these assessments considered ammonia.

83. Ammonia was raised by RHS in the DCO examination, but was dismissed as a 'minority view'.[59] The examination also proceeded on evidence that nitrogen deposition below the current baseline[60] and that heathland areas with all three qualifying features (birds) subject to load of less than the then lower critical load of 10 N kg/ha/yr.[61] The Secretary of State agreed that air quality would not have likely

[53] CD9.1, p117 IR 20.140.
[54] IR 20.143.
[55] CD7.11 pdf 28, para 113
[56] CD11.2, para 196, 197, 199, 200, 202, 207.
[57] Para 199.
[58] Para 202.
[59] CD13.2, pdf 184, para 6.6.20 to 6.6.26.
[60] Pdf 185 and 186, 6.6.27.
[61] Pdf 6.6.32, also para 6.6.42.

significant effects on the SPA,[62] but that the compensation measures for direct impacts on the SPA were necessary.[63]

Errors in the Air Quality modelling

84. The Air Quality modelling and it reporting has been strewn with errors. The modelling has used seven verification groups[64] – that is adjustments to the modelled figures – which appears to be unprecedented. The factors used ranged from 0.89 to 8.23 times the model output. Those factors did not encompass the full scale of the differences: in Walton 3A, the monitored NOx 44.17, yet the unverified modelled was 1.4, a ratio of 30.65 to 1. Verification factors changed wildly on opposite sides of the same road.[65] Other verification factors were well under the increases: in Ripley, RP5 the modelled NOx was one sixth of the actual level, but a verification ratio of 2.16 (L) was applied.[66]

85. The 7 different verification factors used are because the model does not reflect the measured reality. These differences are caused by errors in the model which Taylor Wimpey don't know about. They are correcting for things that they don't know what they are correcting for.

86. The verifications are applied where there are monitoring stations against which the modelled results can be checked. It is not possible to verify locations which do not have monitoring. The monitoring is of the present time without the scheme. The modelling is well into the future with the scheme. So the approach of bashing the modelled results into shape by multiple verification factors does not solve the problems in the model, but hides them. It is not possible to predict for the future when you can't understand why the model can't describe the present.

87. The groups used were completely misreported in the July 2023 AQA, leading to 1D1.19F Clarification Note 2[67] being produced in September 2023. That correction note – as it was in reality – still misreported some of the groups, a point only

[62] CD13.1, pdf 37, para 159
[63] Para 164.
[64] AQA CD2.70 Appendices page 40.
[65] For example, Compton's C10 and C4 (ID1.19F page 11.
[66] CD2.70, pdf 53
[67] ID1.19F.

acknowledged in Dr Tuckett-Jones' oral evidence in chief. The Walton 5 calculation was completely wrong, as Dr Marner identified by careful working.[68]

88. Numerous individual problems were identified in Dr Marner's evidence.[69] What sometimes tumbled out of Taylor Wimpey's evidence were explanations which contradicted the earlier description of the process undertaken. For example, monitoring in earlier rounds was adjusted to 2019 by what were said in the AQA to be constant factors.[70] Yet those adjustments changed the figures both up and down when they should have been constant in one direction. Dr Tuckett-Jones came up with a completely new explanation of the procedure in cross-examination to try to explain the figures.

89. The ability of anyone who does not have the model to identify errors is very limited. The number of errors which have been discovered by Dr Marner raises serious concerns about the number of other errors which are not identifiable by experts who do not have the model and which Taylor Wimpey have not identified and acknowledged. As Dr Marner explained:[71]

> "The number of errors which I have observed, including many which are fundamental to all aspects of the assessment, make it impossible to have any confidence in the air quality modelling which has been carried out, or any conclusions which are drawn from it."

Ecology

90. Dr Brookbank adopted an extreme and legally erroneous approach to the appropriate assessment test. In her rebuttal she adopted as correct Mr Baker's summary of her position 'we do not need to be concerned about Nitrogen Deposition at all, as long as the current population of birds is above the minimum level or is increasing'.[72]

91. That ignores the conservation objectives, three of which relate to the habitats which support the three bird species, despite the Habitats Regulations requiring the appropriate assessment decision to be taken in the light of those objectives.

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[68] ID5.6A.
[69] ID2.17, summary and conclusions, page 47, section 9.
[70] CD2.70 app table a.2 round 2 monitoring in 2016/2017 (page 5) adjusted to 2019 in table B.3 (page 41) by factors in table B1 (page 39)
[71] ID2.17, summary and conclusions, page 48, para 9.2.
[72] ID3.4, page 15, para 2.78, 2.79, 2.82.

92. The science that nitrogen deposition causes harm to the habitats which support the birds and should be reduced below critical levels and loads is well-established and, it appeared, uncontroversial. The existence of historic high levels of nitrogen deposition is not a reason not to worry about it – the Supplementary Advice is clear about that. Indeed, if Dr Brookbank was right, the air quality modelling for ecological receptors in the two appeals and the DCO was all entirely unnecessary, as would have been air quality modelling on numerous other schemes.

93. The reason for this simplistic and wrong approach is that Taylor Wimpey have failed to prepare for the higher and wider nitrogen depositions which arise with this scheme and its cumulative impact. Since the air quality impacts cannot be dismissed on the basis that the 1% contribution to the critical load is not exceeded on the principal habitat, in particular heathland, a more detailed examination is required to meet the obligations of appropriate assessment.

94. Dr Brookbank gave a list of investigations which she said that Mr Baker should have carried out for the Rule 6 Party:[73]

Nitrogen accumulation in soil

Nutrient potential in soil

The soil

The type of soil

How porous the soil is

The depth of the soil

pH of the soil

95. Those are investigations to carry out, but the duty to do so is not on the Rule 6 Party. It is on the developer who wishes to demonstrate beyond all reasonable scientific doubt that there will be no adverse effects on the integrity of the SPA. Taylor Wimpey have failed to do this and so fall far short of what they say is needed for a positive appropriate assessment. By focussing on present bird numbers they also ignore the conservation objectives and the supplementary advice.

[73] Examination in Chief.

96. The compensation land is important. It is provided to compensate for the adverse effect on integrity of the junction 10 scheme by providing invertebrates for the SPA birds.[74] The SPA birds being fussy eaters – see the Supplementary Advice[75] - so it is not possible to assume that a suitable species will replace any lost. As compensation under the Habitats Regulations the J10 scheme which could not legally proceed if that land was not provided. The 1% exceedances were properly identified in the IfHRA.[76] The effect is on invertebrates, not on the grassland as such. Mr Baker's team identified the effects of air pollution on invertebrates, an assessment which has not been challenged.[77]

97. The DCO compensation land illustrates the importance of foraging areas which are outside the principal habitats of the heathland and the managed conifers. Those parts of the SPA are more than just buffers.

98. The only available 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.[78]

Recreational pressures

99. Recreational use of the Thames Basin Heaths SPA threatens the three bird species and their habitats. That use, along with cat predation, is the reason for the 400 metre buffer zone which has significantly constrained the built up part of the settlement. It is also the reason for the SANGs.

100. It is accepted that appropriate assessment is needed of these impacts as they are a likely significant effect on the SPA. That is a change from the previous Appeal decision which concluded that there would be no likely significant effect and appropriate assessment was not required.[79] That reflects, at least in part, that mitigation measures cannot be taken into account in deciding whether there are likely significant effects. However, since appropriate assessment is being carried out, it needs to be determined that with mitigation (and taking into account other impacts on the SPA) it is beyond reasonable scientific doubt that the scheme will not have an adverse effect on integrity.

[74] CD2.69, para 2.5.
[75] CD12.45.
[76] CD2.68.
[77] ID2.18, Proof, Appendix 2, page 94.
[78] Conservation of Habitats and Species Regulations 2017, reg 63(5) as applied following *Wadenzee.*
[79] CD9.1, pdf 100, IR 20.44.

101. The Appeal Inspector had concerns about the effectiveness of the SANGs:[80]

> "To some extent I share their concerns about the desirability of using the SANG in preference to paths within the SPA for the future residents of the development. There are existing PROWs that lead from the site into the SPA and there is a realistic danger that residents, and particularly those with dogs, may prefer to use the less managed environment of the SPA over the SANGs."

102. He was though ultimately satisfied, but without having to apply the 'beyond reasonable scientific doubt' test.

103. Taylor Wimpey's evidence sought to apply a test of 'no net increase in visits to the SPA'. Not only can they not establish beyond reasonable scientific doubt that there would be no increase, the probability is that there would be an increase. The settlement would have 4800 residents and 1000 dogs.[81] Housing would be as close as 400 metres from the SPA. The northern SANG would contain four public rights of way which go into the SPA. Those routes will remain open. The SPA, including its heathland, is well within the range of a circular dog walk (described as a minimum 2.3 km). The SANG car parks will attract visitors to the area, who could then walk into the SPA via the northern SANG.

104. There are few people who live within walking distance of this part of the SPA at present. Otherwise visitors to the SPA drive there, and are likely to do so infrequently. The scheme will bring thousands of new residents within a short walk of the SPA. Hundreds of those will be walking their dogs once or twice a day. It only requires a small number of the settlement's residents to go into the SPA to completely outweigh any possible diversion of existing Surrey residents from the SPA to one of the SANGs.

105. Consequently it is not possible to conclude beyond reasonable scientific doubt that there will be no adverse effect on the integrity of the SPA from the recreational pressures caused by the scheme, let alone those pressure in conjunction with the air quality effects.

Other Air Quality and Ecological issues

Health issues and air quality

[80] IR 20.45.
[81] CD2.65, page 49.

106. Given the wide range of inaccurate modelling results it is impossible to have any confidence in the air quality modelling. That means there can be no assurance that air quality effects on human health will be acceptable.

Non-habitats ecology

107. Several issues arise.

SSSI

108. There have been late and unjustified changes to the critical level for various SSSIs and ancient woodlands. The July 2023 AQA Table 2-1 set out ammonia critical levels for Horsell Common SSSI of dry heaths and wet heaths of 1 $\mu g/m3$, with an inconsistent figure in Table 4-4. The figure was changed in ID1.19E to 3 $\mu g/m3$. The lower figure was appropriate for the SSSI and so assessment was required.

109. Woodlands also changed from 1 to 3 critical levels for ammonia.

Bats

110. The site is extensively used by bats. The surveying has been insufficient in failing to address the Old Lane access area. Taylor Wimpey' consultants have also taken the bizarre step of monitoring with their detectors set at zero crossing. That is like watching snooker with the TV screen turned down to black and white. The reason given (in oral evidence) was that it would make the results consistent with poorer quality surveying which had been carried out previously. Since the purpose of the exercise is to identify bat usage of the site, not to track changes in usage, that rationale is ridiculous and the deliberate under-surveying is unacceptable.

111. What has been revealed shows extensive use of the site by numerous bat species. These include barbastelle which are an Annex 2 species. Information on the location of the barbastelle bat sightings was withheld from the inquiry. Mr Baker was cross-examined on the basis of the only siting which he had details of, being on the southern edge of the allocation and outside the application site. It emerged, from a note which Dr Brookbank had for her oral evidence, but which was only disclosed in response to the Rule 6 party's request part way through her evidence, the seven other locations were across the whole site. The note had been disclosed because Dr Brookbank had given the timings of those records in evidence in chief, but not the locations of those sightings. The locations just happened to be on part of the note which she did not read out.

112. The introduction of a substantial built settlement on the site will interfere with bat usage. The floodlight pitches of the sports centre will also affect bats in the north west part of the site between the settlement and the site boundary. Mitigation measures and lighting control will have limited effect: indeed, it will not be practical to control lighting within residential gardens.

Badgers

113. The site has a number of badger setts and widespread badger activity. Since the whole site will either be part of urban development or SANG, to be used by the public and their dogs, the resulting disturbance means that the likelihood is that the current badger population will relocate.

Skylarks

114. There is a significant population of skylarks on the site. The mitigation measures in respect of those are inadequate. On-site mitigation in the SANGs would conflict with the public recreation purpose of the SANGs. Even fenced off against pets, the skylarks would be disturbed.

115. No off-site *scheme* has been put forward. The name of Blackmoor Farm just emerged in the draft planning obligation after the opposition witnesses had given evidence. There has been no assessment of the suitability of the site provided to the inquiry. It is simply not known whether it could accommodate a skylark population let alone mitigate for the impact on the Wisley population: would they relocate? Taylor Wimpey do not even commit to that site. Off-site mitigation may be elsewhere on unidentified land which Taylor Wimpey say they control. They have been coy about saying what land they do control. Since the land is unknown, the scope of the condition is not within section 72 of the Town and Country Planning Act 1990 allowing conditions on the applicant's land in the vicinity of the application site.

116. It is therefore impossible to know whether the skylark mitigation can be provided successfully.

Bio-diversity net gain

117. 20% bio-diversity net gain is required in the development plan policy. How that is calculated is not set out in the policy, so the sensible approach is to apply the nationally development methodology which sets out three categories to be met.

118. On that basis it is common ground that the rivers/streams gain is not achieved, being only 11.05%.[82] The habitats metric is exceeded (on any calculation (48.62% or 39.56%) and there is a dispute whether the hedgerows/lines of trees requirement is met (25.34% or 17.22%). The difference is whether the percentage increase is taken from the original baseline (TW) or the basic SANG (Mr Baker). Since the basic SANG is required for other reasons it sets the baseline for the calculation. Mr Baker's methodology accords with Natural England's guidelines such that[83] 'the baseline value of the SANG is the site with the Habitat Regulation key required habitat features incorporated'.

119. The bio-diversity net gain therefore fails two of the three of the elements required, and this counts against the scheme.

Impacts of the settlement

120. Several impacts are inherent in the development of a new settlement in this location. Consequently they can be dealt with relatively briefly.

Landscape

121. The Appeal Inspector's view was that the then scheme would be 'a very substantial change in the character of the area', 'wholly at odds with the loose, informal nature of the nearby settlement', 'imposed on the landscape' and 'wholly out of place'.[84] Those conclusions remain good however the allocation settles that issue: the consequences will flow from development in accordance with the allocation.

122. One point does arise on the landscape assessment, which is the flawed assessment methodology. Taylor Wimpey have assessed the permanent (operational) impact by a comparison with the construction impacts rather than the pre-development baseline. That gives a false conclusion: seen most clearly in the assessment of the impact on the public rights of way across the site. There is clearly a significant, albeit inevitable, impact from the new settlement.

Heritage

123. 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:

[82] See Mr Baker proof, page 36, tables 4, 5 and 6 for these figures.
[83] CD12.46, page 10.
[84] CD9.1, IR para 20.91.

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

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

(c) Yarne (Grade II listed building)

(d) Upton Farmhouse (Grade II listed building)

(e) Appstree Farmhouse (Grade II listed building)

(f) Ockham Conservation Area.

124. This harm was established in the previous appeal. The subsequent changes to the scheme make no material impact. The limited reduction in the density of the development and pulling the development further from Yarne does not change the harm.

125. Considerable weight must be attached to this harm, in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990, ss 66, 72 and the Framework. We accept the previous appeal conclusion that:

(i) Applying the heritage test in the NPPF para 202 the public benefits of the scheme outweigh the harm to designated heritage assets;

(ii) This heritage harm does though go into the overall planning balance.

Best and most versatile agricultural land

126. The scheme involves the development of 44 hectares of best and most versatile agricultural land.[85] National policy on the protection of such land has not changed since the Local Plan allocation and so that is not a reason to depart from the allocation.

The Planning Balance

The development plan

127. The scheme is contrary to important key requirements of the A35 allocation: the primary entrance, road mitigation, the Burnt Common slips, cycle routes and the provision of healthcare on site. For the transport, air quality and ecological reasons it also fails to comply with 2019 Local Plan policies ID1, ID3, ID4, P5 and Development Management Policies ID9, P6, P7 and P9 as well as the relevant Lovelace Neighbourhood Plan policies: see Mr Hall's proof.

[85] See 2018 Appeal, CD9.1, pdf 120, para 20.152.

The overall balance

128. The provision of housing, including affordable housing, is a substantial benefit. That affordable housing benefit is reduced by the refusal of Taylor Wimpey to be committed to any social rented housing: the planning obligation does not allow that to be insisted upon, notwithstanding the substantial local need.

129. Affordable housing is offered to the full 40% in policy. Whilst this application must be determined on the basis of what is offered, the viability has not been demonstrated. Any future attempt to reduce the affordable housing offer or other benefits on viability grounds must be seen as unacceptable.

130. Most of the remainder of what is proposed is an unsuccessful attempt to make the settlement sustainable. Only the sports hub may have a wider benefit, but that illustrates the problem of a settlement which is so poorly located that it will attract car users.

131. The failure to provide a sustainable settlement is fatal to the scheme. A35 is clear that this has to be a sustainable settlement or none at all. It is not sustainable judged against the key requirements of that policy.

Appropriate assessment

132. If the scheme fails the appropriate assessment, that is, it is not possible to conclude beyond reasonable scientific doubt that there will be no adverse effect on the integrity of the SPA then planning permission has to be refused. As is accepted by Taylor Wimpey he merits of the scheme are insufficient to be imperative reasons of overriding public importance (IROPI) and so planning permission cannot be granted.

133. For these reasons this second appeal for a Wisley settlement should also be dismissed.

Richard Harwood KC

39 Essex Chambers

19th December 2023