

Ms Jo Male
Planning Case Officer
Bracknell Forest Council,
Time Square,
Market Street,
Bracknell RG12 1JD

By email only

15 June 2020

Dear Ms Male

**Land North of Herschel Grange, Warfield Street
Planning Application Reference 19/00497/FUL (the Application)**

1. I am writing on behalf of the Warfield Village Action Group to object to the above Application, which I understand will be taken back to the Bracknell Forest Council (the Council)'s planning committee for redetermination.
2. As I will explain, the Application proposes a 'common or garden' urban housing estate, unsupported by any particular positive material considerations, within an area which the Council itself characterizes as rural, and where the Council's own policies for the area as a whole (and in particular guidance for development of the land between Bracknell and Warfield Street contained in the Council's Warfield Supplementary Planning Document (2012)) either prohibit development, or require it to adopt no more than a semi-rural character.
3. The Application is clearly contrary to national and local development plan policy:
 - It proposes development outside the settlement boundary and in the countryside, contrary to Policy CS9.
 - The scale and layout of the development (which the Council itself recognises in its most recent committee report as 'sub-urban') conflicts with the Council's character policies CS1, CS2, CS9, EN8, EN20, H5 and the character requirements of the Bracknell Forest Design SPD.
 - There are fundamental flaws in the design of the scheme, including a failure to provide adequate and safe public open space, inappropriately located parking spaces, an arbitrary use of materials and inadequate edge of development landscaping which fails to effectively soften the impact of the development on the countryside. All of the above are contrary to policies CS7, CS8, and EN20 and the Council's Design SPD.

4. Although the prohibition on countryside development in Policy CS9 may not be wholly consistent with the Government's National Planning Policy Framework, the Council's policies on character and design are certainly consistent with Paragraphs 124, 127 and 170 of the NPPF and therefore attract full weight.
5. Particularly with respect to the assessment of character, it is no response to argue that this development takes its cue from Toogood Place. The Council's own various character assessments recognise that such cul-de-sac developments are currently sufficiently 'de-minimis' so as not to materially influence the rural village character of Warfield Street. The same cannot even remotely be said about an Application, which proposes a 30% increase in the existing size of Warfield Street.
6. Moreover, the Application falls to be determined at a time when the Council has a 6.9-year housing land supply and a delivery record of 99% of its target. That is a weighty material consideration in favour of upholding adopted policies.
7. In these circumstances and for these reasons which I will explain below in greater detail, this Application has no merit and should be refused.

Erroneous Approach to Appeal Decisions at Committee Meeting on 16 December 2019

8. As a final introductory point, I understand that when the Application was last considered at committee on 16 December 2019, some members repeatedly expressed and gave weight to the view that planning inspectors give determining weight at appeals to the provision of housing. Notably, no details of any of the appeals where this is allegedly the case were provided or discussed.
9. Officers will appreciate that the alleged approach of the planning inspectorate to appeals is not a material consideration. What members here were referring to (but evidently, without understanding the legal principle) is the public law principle confirmed in the case of *North Wiltshire District Council (1993)*¹ that there should be consistency between decisions on similar planning applications. In order for that consistency to be a material consideration, there must be sufficient information in front of the decision maker to understand the main similarities and differences between the present application and any application regarded as having a 'precedent effect', i.e. to be able to decide whether the facts of the previous decision really are 'on all fours' with the present case.
10. Equally, if there are contrary appeal decisions that suggest that inspectors do not give determining weight to the provision of housing above policy breaches, those also need to be explained to members. In that respect, I hope that officers will draw members' attention to the 6 November 2019 refusal on appeal of a proposal for 12 dwellings on land at Scotlands House, Forest Road, Newell Green, Warfield, Bracknell (Appeal Reference APP/R0335/W/18/3217574). This was a case where the inspector refused a similar, albeit, smaller application to the present, against the same policy background, and where the inspector agreed with the Council's assessment that it could demonstrate a 6.08 year housing land supply².

¹ The case of *North Wiltshire* and other relevant cases is briefly summarized in the annex to this letter.

² The Council is also referred to the list of refusals set out in my clients' objection letter to the present Application of 13 December 2019.

11. I have not addressed this point further in this letter. However, please note that if at the next committee meeting, the same unevidenced assumptions as to how planning inspectors are likely to address the present Application are given weight, I have advised my clients that it is likely to give rise to a successful judicial review. I would be grateful if this could be explained to members at the next committee meeting.

Background

12. As this matter has a complex history and raises complex issues as to policy compliance, I have taken the liberty of setting out the factual background in detail before analyzing the Application against the relevant policies. A detailed discussion of the relevant policy and legal context is contained in the annex to this letter.

The Application Site

13. As the Council will be aware, the Application Site (the Site) comprises a paddock, a small stables area and the land currently occupied by number 6 Herschel Grange (to be demolished), which together extend to 1.3ha.

14. The gardens to houses in Toogood Place and Herschel Lane comprise the southern boundary of the site. Toogood Place is a recent, cul-de-sac development of a sub-urban character which was promoted and developed by the present Applicant (Applicant's Planning Statement, para 2.1).

15. The land to the east of the Site benefits from Outline Planning permission reference 16/01004/OUT for a 50-unit, low density and substantially landscaped development (Newhurst Gardens). This is discussed further below. The two sites are divided by a substantial buffer of trees and a hedge.

16. The western boundary of the Site is made up of small single-storey mobile homes in the Hermitage Caravan Park and a property on Gibbins Lane. The caravans themselves are located close to the boundary of the Site and have only small gardens. Public Footpath 12 runs along Gibbins Lane and provides views into the Site.

17. To the north of the Site is a further field boundary which is much more sparsely planted, and beyond that, further fields and two isolated dwellings accessed from Gibbins Lane. Again, there are views into the Site from the North and west, in particular, from the public footpath in Gibbins Lane (as is implicit in the Appeal Inspector's comments in his report on application reference 16/01004/OUT) and as illustrated by the following recent photo of the site from Gibbins Lane.



View of Application Site from Gibbins Lane (the Site lies between the second line of fencing and the planting on the horizon).

18. The Council has proposed allocating the Site for 33 residential units (of which 12 should be affordable) under draft Policy LP3 of the emerging Bracknell Forest Local Plan. That draft policy has attracted substantial objection, and the emerging Local Plan has yet to be submitted for examination. The draft allocation therefore is only capable of carrying minimal weight.

Warfield Street

19. The Site is in the countryside, abutting the northern development boundary of the Warfield Street settlement that currently comprises approximately 100 dwellings. Warfield Street is an essentially linear village. That linear character “has been broken up by a small number of limited cul-de-sac infill developments. However, these do not impact on the overall character” (Bracknell Forest Character Area Assessments Supplementary Planning Document (adopted 2010), page 46).
20. Warfield Street and the Site fall within landscape character area C1 (Binfield and Warfield Clay Farmland) as identified in the Bracknell Forest Borough Landscape Character Assessment prepared by LUC and dated September 2015 (the LCA). The LCA identifies the key characteristics of this area as including its “[q]uiet and rural character with limited scattered settlements well integrated into the landscape” (LCA para 7.3). The overview section describes a “predominantly quiet rural area, characterised by [amongst others] scattered small villages and hamlets. The landscape and built features “together create an open feel. Its proximity to the northern edge of Bracknell town means that the landscape in the south of the area [which notably includes the Site] provides an important green space function which provides a strong transition between the urban edge and the rural area to the north” (LCA, at para 7.4).
21. The town of Bracknell lies to the south of Warfield. The land between Warfield Street and Bracknell (currently countryside) has been allocated for mixed-use development including 2,200 residential units under Policy SA9 of the Bracknell Forest Site Allocations Local Plan (2013).

22. The Warfield Supplementary Planning Document (2012) sets out design ambitions for the part of the urban extension known as Warfield Street South (which is directly south of Warfield Street). At paragraph 4.46 it states:

“This character area should reflect development in the existing Warfield Street community, in so far as it should have a village feel, with substantial green elements and a variety of dwelling types” (emphasis added).

23. The document goes on to require development in the Warfield Street South to demonstrate character principles including:

“The area should be informal and semi-rural and mainly consist of detached and semi-detached houses with long gardens and generous setbacks.”

24. An example of what the SPD intends is shown at Picture 28 of the SPD:



Picture 28 Illustrative bird's eye view of Hedge Lane and existing pond, with development set back

25. Warfield Street is located within Area B of the Bracknell Forest Character Area Assessments Supplementary Planning Document (adopted 2010). The townscape of the villages within Area B is described as “one of ribbon development with houses on both sides of the road, small to medium scale plots, becoming larger in modern developments, with generally consistent building lines”, and the recommendations include a requirement that future backland development must be designed to minimise any impact on the street scene.

26. The area as a whole falls within landscape character area C1 as identified in the *Bracknell Forest Borough Landscape Character Assessment 2015* which forms part of the evidence base to the emerging local plan. This document describes this area as a “predominantly quiet rural area, characterized by [amongst others] scattered small

villages and hamlets". The landscape and built features "together create an open feel. Its proximity to the northern edge of Bracknell town means that the landscape in the south of the area [which notably includes the Site] provides an important green space function which provides a strong transition between the urban edge and the rural area to the north".

27. The 'Forces for Change' section notes that the landscape is vulnerable to "[c]ontinued pressure of urban expansion to the north of Bracknell, while the 'Protect' section emphasises the need to "[c]onserve the natural and rural qualities of the landscape to the east of Binfield [including] the Cut river corridor [and to] [p]rotect the rural character of villages through appropriate planning and design of new development ... Avoid urbanizing features that will erode the rural character".

28. The Site is directly addressed in the *The Landscape Sensitivity Appraisal of Potential Housing and Employment Sites in Bracknell Forest 2018* which also forms part of the evidence base to the emerging Local Plan (under Reference WAR9). This document notes at Page 144 that:

- "The urban extension at Warfield (Policy SA9 SC4) will extend the settlement edge of the town of Bracknell north towards Warfield Street (B3034) blurring the demarcation between Bracknell and the village of Warfield Street.
- Development on this site will extend the built form further north into the countryside than the current settlement's edge;
- The valued open rural character would be put at risk if the site were to be developed."

Newhurst Gardens

29. The 4.4a site of the Newhurst Gardens proposal (Outline Permission reference 16/01004/OUT) (the Newhurst Permission) lies to the immediate east of the Site and was granted on appeal in 2018 at a time when the Council could only demonstrate a 4.1 year housing land supply.

30. The Newhurst Permission authorises a development of up to 50 units at a density of 11.3 units / hectare on a site which the appeal inspector described as "unusually well contained" by virtue of a continuous boundary of dense, mature trees. In addition, the proposal included a substantial collar of public open space between the proposed units and the boundary, which the inspector found would "act as a buffer between the housing and the countryside and enable further planting to strengthen the peripheral tree belt" (Inspector's report, para 12). The inspector also found that that landscaping would be "attractive in itself and form a defensible boundary for the built-up area in the long term" (Inspector's Report at para 37)".

31. Consequently, the inspector found that the appeal site was "unusually well contained and its development would have minimal visual impact on the surrounding open countryside, albeit, there would be glimpsed views of the tops of the houses from Gibbins Lane" (emphasis added) (para 13).

32. The extent of the peripheral planting and the landscaping collar of the Newhurst Gardens scheme is evident in the image below, which is taken from the present Applicant's Planning Statement. The Newhurst Gardens scheme is the eastern scheme, and the present Application is the denser scheme, which lies to its west.



The Proposed Development

33. The present Application seeks full planning permission to develop the Site with 33 dwellings (of which 10 will be affordable) and related infrastructure, representing a development density of 25.4 units / hectare.
34. The development will be laid out along both sides of the internal estate road, which describes three sides of a square (see attached drawing reference 17- J2176 – 02, revision K (the Site layout)). This arrangement results in four west-east aligned rows of development to the rear of Toogood Place, and a further two south-north aligned rows along the western and eastern boundaries. This is a typical layout for a modern urban estate.
35. The proposed buildings are 2-3 storeys high (the third storey being within the sloping roof). Scaling off the street scene images, the peak height of the tallest buildings including the apartment building appears to rise to 9.5 metres above current ground levels. The largest building is a block of flats, located in the south-eastern corner of the Site, presenting a largely blank and tall flank wall to No. 3 Toogood Place.
36. As the Applicant's Site Plan makes clear, the individual plots are relatively small, and the units front the estate road. Plots 1 – 8, & 22-19 have a minimal set back from the road. Car parking is for the most part to the side of the units (in the case of the apartment

building, the 7 related parking spaces are to the immediate rear of number 2 Toogood Place, and adjacent to the garden to Plot 33). The Site Plan shows a balancing pond and foul water pumping station in the north west corner of the Site, with a very small 'amenity' area (no larger than one of the gardens to one of the smaller units) to their immediate south, tucked behind four parking spaces. Neither the amenity space, nor the balancing pond are overlooked by any of the units.

37. The proposed material pallet is a mixture of two types of brick and horizontal wooden cladding (Applicant's Character Study document (the ACS), and Design and Access Statement, page 6). The ACS makes no bones about the intentionally 'modern' design, citing schemes by Crest Nicholson in Reading and elsewhere, and by SCD Architects in Guildford as exemplars. Notably, there is no information in the materials as to how the boundaries between the plots will be treated. It is assumed that some form of close-boarded fencing will be used to ensure privacy for the future residents.
38. Proposed landscaping is briefly described in the Applicant's 'Landscaping Proposals and Green Mitigation Plan' (August 2019) (the Landscaping Plan). Unfortunately, the plan attached to the Landscaping Plan, which can be accessed on the Council's planning portal, has been scanned at a low resolution, meaning that the notes on the plan are illegible. However, it is nonetheless clear that:
- That plan is the same as the plan for the refused application reference 18/00650/FUL and therefore does not reflect the revised site layout of the present Application.
 - Landscaping areas are limited to the verges of the estate roads, and some additional hedge planting to the boundaries of the site. In particular, no additional planting (other than a hedge) is proposed to strengthen the northern boundary of the Site, so it will not screen the proposed development as effectively as the existing and proposed planting praised by the Inspector at Newhurst Gardens.
39. Notably, in its committee report of 5 December 2019 for the planning committee meeting held on 16 December 2019 at which the Application was considered, officers considered the Application scheme to be 'sub-urban' in character (see para 9.25).

Planning History

40. The present Application is the second application for essentially the same form and scale of development of this Site.
41. The first (application reference 18/00650/FUL) (the Original Application) was refused by notice dated 1 May 2019, for a number of reasons. For ease of reference and comparison, I have attached to this letter a copy of the proposed Site Plan (drawing reference 17-J2176-02, Rev C) for the Original Application.
42. The delegated report to that refusal made the following findings:
- The proposal formed a "substantial backland development" which failed to minimise impacts on the existing street scene and retain a close relationship with the settlement edge.

- The urban character of the development failed to complement the semi-rural character of Warfield Street, and of the Site “due to the formal layout, and the relative lack of variety in building form and layout”.
- The design did not feature sufficient variety to create a semi-rural character.
- The proposed development would be “notably bulkier and visually urbanizing than the existing form present in the caravan park, would be distinctly visible from the west and north, and from Gibbins Lane”.
- The proposal would appear as a “clear enlargement of the settlement and a significant increase in built form”.
- The apartment building (which in that proposal was in the north west corner of the Site), would be “prominent in the landscape”, particularly visible from Gibbins Lane, and the visual impact would be exacerbated by the flank elevation with the protruding lift shaft, which created a “very bulky and awkward appearance in relationship (sic) to the main building”.
- The development was excessively inwards-looking, and there was not enough attempt to allow for views along the site to the countryside beyond.
- The built form in this location would require additional planting across the development, and particularly along the northern boundary so as to improve the containment of the development.
- The absence of dedicated open space beyond the play area in the south [of the Site] and the formal layout of planting especially on building frontages within the site does not fully allow for a genuine semi-rural character”.

43. As the Council will be aware, the present Application adopts essentially the same layout and form as the Original Application. The main differences between the two are:

(1) the play area originally proposed at the immediate entrance to the Site (at its south western corner) is replaced in the current Application with Plot 33 and car parking; and

(2) the Apartment Building, formerly in the north west corner of the Site has been moved to the south east corner of the Site. In its place, the present Application proposes a balancing pond, foul water pumping station, and a much reduced amenity area, beneath which is a below-ground attenuation tank.

44. As I will explain, it follows that the vast majority of the above reasons for refusing the Original Application apply with equal force to the present Application.

Planning Policy and Legal Background

45. The policies that are relevant to determining the Application are contained in the Government’s National Planning Policy Framework (2019) (the NPPF), the Council’s Core Strategy DPD (2008), the saved policies of the Bracknell Forest Borough Local Plan (2002), and the Bracknell Forest Design SPD (2017).

46. The Council has finished its non-statutory consultation on the draft Bracknell Forest Local Plan but has yet to submit the plan for examination. The policies in the emerging Local Plan should therefore not carry material weight in any decision on the Application.

47. For the sake of brevity, I have merely listed the relevant policies below. The Council is referred to the fuller description of both the relevant policies and of the Council's own guidance on those policies, in the Annex to this letter.

- NPPF Policies contained at paragraphs 124 and 127 (Design), 170 (Countryside), 11 (Presumption in Favour of Sustainable Development) and 130 (requirement to refuse development of poor design).
- Development Plan Countryside Policies: CS9, EN8 and H5, draft Policy LP11.
- Development Plan Character Policies: CS1, CS2, CS9, EN8, EN20, H5 and Section 2.1 of the Bracknell Forest Design SPD (2017).
- Design Policies: CS7, CS8, EN20, R4, Bracknell Forest Design SPD (2017).

48. As I will explain, in the present case, while Core Strategy CS9 appears to take an absolute position, saved Policies EN8 and H5 take a more nuanced approach, which is consistent with the approach advocated in the NPPF to balance development needs against the need to protect the countryside. Moreover, the approach advocated in Policies EN8 and H5 is largely mirrored in draft Policy LP11 of the emerging Local Plan, which the Council clearly considers is consistent with the NPPF (or else it would not be promoting the policy). These policies are therefore not out-of-date and should be given full weight.

49. The Council will be well aware of its legal duty to determine planning applications in accordance with the Development Plan unless material considerations indicate otherwise. I have set out in the Annex to this letter a very brief summary of relevant legal principles.

50. The Council's attention is drawn in particular to its legal duty to have regard as material considerations to the reasons for refusal of the Original Application which in form and layout is materially the same as the present Application (*North Wiltshire DC (1993)*). The Council is also reminded that should it decide to depart from its own assessment of the Original Application, it must give reasons for doing so (*Dover DC (2017)*).

Discussion

51. As a preliminary point, the emerging Local Plan has yet to be submitted to examination. Its policies, and in particular, the draft allocation of the Site in Policy LP3 (which has attracted significant and as yet unresolved objections) can carry only negligible weight. The following analysis is therefore based on adopted policies only, and their consistency with the NPPF.

52. It hardly needs saying that the Application is contrary to the requirement in Policy CS9 to protect the countryside for its own sake. In its determination of the Original Application, and in its committee report of 5 December 2019 for the committee meeting held on 16 December 2019, the Council considered that aspects of Policy CS9 were not consistent with the NPPF, and that the policy therefore attracted only moderate weight. My clients do not disagree with this assessment.

53. The more important question is whether the Application meets the requirements both in the NPPF and in development plan policy, that development should be sympathetic to the local character including the surrounding built environment and landscape, whether it

adds to the overall quality of the area, and whether it is visually attractive as a result of good architecture, layout and appropriate and effective landscaping as required by paragraphs 124 and 127 of the NPPF and by the character and design policies which form part of the Local Development Plan. For the reasons I will explain, the Application fails to meet these requirements.

54. Indeed, given the minimal changes to the Application from the refused Original Application, the majority of the reasons for refusal of the Original Application apply with equal force to the present Application. If the Council disagrees with this assessment, as a matter of law, it must explain why.

Character

55. The character of the wider area as identified in the Bracknell Forest Borough Landscape Character Assessment 2015 is one of a “predominantly quiet rural area, characterized by [amongst others] scattered small villages and hamlets”. The same assessment highlights the role of the area in providing “an important green space function which provides a strong transition between the urban edge and the rural area to the north” and goes on to identify the risk posed to that character by further development.
56. The character of Warfield Street as identified in the Bracknell Forest Character Area Assessments Supplementary Planning Document (adopted 2010) is one of “ribbon development with houses on both sides of the road, small to medium scale plots, becoming larger in modern developments”. There are a small number of cul-de-sacs that may depart from this character, but the same document notes that “*these do not impact on the overall character*”. That conclusion is reasonable given the limited scale of those cul-de-sacs.
57. In contrast to the open, loose-grained character of the predominantly linear Warfield Street, the Application proposes a dense, inward focused development, which turns its back both on the rest of Warfield Street and the surrounding countryside (see illustration of layout above). This ‘inward focus’ is not characteristic of Warfield Street as a whole and was a reason that the Original Application was refused. That reason applies equally to the present Application.
58. In terms of scale, the Application, comprising a 30% increase in the existing number of dwellings (laid out in a block of four rows north of Toogood Place) in Warfield Street, represents a significant development in the local context. That development takes the form of a substantial, sub-urban cul-de-sac development. The Bracknell Forest Character Area Assessments Supplementary Planning Document evidently considers that the present cul-de-sac developments are not consistent with the semi-rural / rural character of Warfield Street. However, it concludes that their small extent means that they do not impact the overall character of Warfield Street. That conclusion cannot be sustained if Warfield Street grows by 30% through a modern housing estate which is not linear in form.
59. In addition, the cumulative impact of the scheme and the existing cul-de-sac developments need to be understood. The scale and layout of the Application is such that taken together with existing modern cul-de-sacs, a significant proportion of development within Warfield will in future be cul-de-sac development. That in turn will fundamentally change the character of Warfield Street. It will no longer be a primarily linear, loose-grained village, but instead an indistinguishable piece of suburbia.

60. Moreover, the Application is situated outside the settlement on the edge of Warfield, in the countryside (and with countryside immediately abutting the Site boundary to the north). The character of that countryside (i.e. the setting of the development) as recorded in the Bracknell Forest Borough Landscape Character Assessment (2015) is “quiet and rural ... with limited scattered settlements well integrated into the landscape” (emphasis added). Into this setting, the Application introduces a modern, sub-urban housing estate, with bulky buildings up to 9.5 meters high positioned in the north east corner of the Site overlooking countryside. In stark contrast to the neighbouring Newhurst Gardens Scheme, there are only short gardens between the backs of these large buildings and the northern boundary of the Site (and the countryside beyond). Again, unlike the Newhurst Gardens Scheme, that boundary is only intermittently enclosed by mature trees, and the only attempt to screen or soften the impact of the development by the applicant is additional hedge planting, leaving these bulky buildings visible from the north and from Gibbins Lane. By no measure can this arrangement be described as “well integrated into the landscape”.
61. It is no excuse to argue (as officers attempt to do in the Report of 5 December 2019 to the Council’s planning committee held on 16 December 2019), that the development takes its cue from Toogood Place and Herschel Grange (notably also developed by the Applicant). Firstly, Toogood Place and Herschel Grange together provide less than half the amount of development proposed in the Application. Secondly, to the extent that Toogood Place and Herschel Grange are sub-urban in character, that character remains inconsistent with the semi-rural village character of Warfield Street, and adding a further 33 units in the same character, merely compounds that flaw and further dilutes the village character of Warfield Street. It is astonishing that the committee report in effect argues that “two wrongs make a right”.
62. Equally concerning is that the present scheme stands in such stark contrast to the Newhurst Gardens Scheme, from which it will be visible. Not only is it twice as dense as the Newhurst Gardens Scheme, but as the appeal inspector commented, the Newhurst Gardens site was “unusually well contained”, and in that case, the applicant also proposed a substantial landscape buffer to the boundary of the site which the inspector concluded “would form a defensible boundary for the built-up area in the long term” (see above). The same cannot be said of the Application scheme, as is self-evident from the side by side image of the two schemes above. In particular, the rear boundary of the Application scheme does not present a defensible settlement boundary, as the rear boundary of the Newhurst Gardens scheme did.
63. NB: If, as the Appeal Inspector found, the Newhurst Gardens scheme will be visible from Gibbins Lane, the present scheme, located so much closer to Gibbins Lane and without the benefit of similarly substantial peripheral landscaping as on the Newhurst Gardens site, will be all the more visible from Gibbins Lane (see photo above).
64. Adopting a yet wider perspective, Warfield Street will at some point in the future form the northern edge of the Policy SA9 urban extension to Bracknell. The Warfield Supplementary Planning Document (2012) sets out very clear ambitions for that development:
- “This character area should reflect development in the existing Warfield Street community, in so far as it should have a village feel, with substantial green elements and a variety of dwelling types” (emphasis added).

65. The SPD also recommends that development takes an “informal and semi-rural” character, “with long gardens and generous set backs”. An example of what the Council aims to achieve through these policies is given in the image taken from the SPD and provided above.
66. Instead of a development which preserves the “village feel”, with substantial green elements, which is informal and has generous setbacks, the Application scheme is an unashamedly dense and regimented piece of sub-urban development (the Council itself acknowledges this in its 5 December Committee Report), with all units being a variation on a modern standard (apparently inspired by a Crest Nicholson Scheme in Reading), with no substantial green elements and only limited setbacks.
67. Such a development is not only out of character with its immediate rural setting, with the neighbouring Newhurst Gardens Scheme, and with Warfield Street village (as explained above), it will also be out of character with the Council’s own ambitions for the Warfield Street South urban extension as an important transitional area. Particularly given that the Application will be on the edge of the urban expanse immediately abutting countryside, it should at least adopt the semi-rural character that the Council recommends for the Warfield Street South development. It does not do so and is therefore out of character with the Council’s own proposals for the Warfield Street South urban extension. Put simply, it “will stick out like a sore thumb”.
68. Furthermore, the fact that the Applicant appears to have been ‘inspired’ in its design choices by ‘run of the mill’ Crest Nicholson schemes in Reading and similar schemes in Guildford (see Applicant’s Character Study Document at page 6) underlines how the Applicant has failed to take its cue from the local character, and instead is imposing a standard urban approach that is more suited to the suburbs of a large city.
69. In the light of the above observations, the Application scheme cannot be described as “sympathetic to local character ... including surrounding built environment and landscape setting” as required by Paragraph 127 of the NPPF. Nor does it meet the character requirements of policies CS1, CS2, CS7, CS9, EN8, EN20 (NB. EN20 expressly requires each of its sub-criteria to be met in order for the policy to be satisfied), H5, or the expectations of Section 3.5 (Addressing Edges) of the Council’s Design SPD.
70. Nor is this a mere ‘technical’ or minor breach. The Council has set out very clear expectations as to the character both of the northern villages and the Warfield Street South development. Particularly given the likely changes which will result from the Warfield Street South expansion to Bracknell, it is all the more important that the Council’s ambitions for this area are followed through. This proposal flies in the face of those expectations and, if approved, will justify further departures from those policies in other developments in the area. For this reason alone, the Application should be refused.
71. Finally, on the question of character, the failure of this proposal to meet the Council’s policy requirements was a significant reason for the refusal of the Original Application. As a matter of law, those reasons for refusal are a material consideration in the Council’s determination of the present Application, and for the reasons I have explained, apply with equal force. Should the Council decide to depart from the reasoning set out in its report on the Original Application when it determines the present Application, it must (as a matter of law) provide clear reasons for doing so.

Design

72. There are several glaring conflicts between the proposed layout and the Council's design requirements.
73. Policy CS8 requires development to provide recreational facilities, comprising open space of public value and include active space for children's play. Policy R4 requires that space to amount to 4.3ha/1000 residents (i.e. circa 1ha for every 200 residents).
74. The Application scheme comprises 33 units, of which 28 units will be 2-5 beds and 5 1-2 bed units; the number of residents (assuming an average occupation of 3 people / unit will be around 100 people. Therefore, the development should provide in the region of half a hectare of on-site public open space (excluding balancing ponds, highway verges, residual and unusable landscape strips, and screening planting areas as per para 7.23 to Policy R4) of which 50% should be active open space. Moreover, the Council's Design SPD requires that open space to be overlooked by the development (Design SPD, para 3.5.4).
75. Instead, an obviously much smaller, but unspecified amount of land (no larger than one medium sized garden) is proposed as an amenity area in the north western corner of the site. That area is not overlooked by any windows of the development. Indeed, it is hidden behind car parking and boundary treatments. Moreover, it opens directly onto land that is used for a balancing pond, thereby presenting a potential safety risk to unsupervised children. This arrangement is clearly contrary to policy (including the requirement in Policy CS7 to provide safe and useable open space), and frankly, placing an area, which is very likely to be used by unsupervised children, right next to a balancing pond is contrary to common sense.
76. Contrary to the guidance at paragraph 3.7.2 of the Design SPD, the height of the buildings fails to respond to the height of the buildings in the Hermitage caravan site and fails to respond to the open countryside to the north of the Site. A well-designed scheme (as suggested by the Warfield SPD) would be expected to step down, not only in density as it reaches the edge of the settlement, but also in height. Instead, two of the tallest buildings are located in the north eastern corner of the Site, which will be visible from the north and east, including Grade II Listed Buildings St Michael's Church, Warfield, to the north and Warfield House to the east. Indeed, the whole bulky development will be visible from Gibbins Lane (see photo above). Again, this conflicts with the requirements of Policy CS7 and the requirements of the Council's Design SPD for developments on the edge of settlements.
77. The Applicant's Design and Access statement boasts of using a mixture of materials, including vertical timber cladding. Contrary to the SPD guidance set out at Paragraph 3.8.15, that use does not bear any relationship to the form of the buildings. See for example the illustration of poor material use from the Council's Design SPD below:

Materials



In these two examples the change in material appears random and adds unnecessary complications.

78. Moreover, in the British climate, wood cladding is notorious for discolouring and eventually rotting, thereby increasing maintenance costs to future residents and harming the visual amenity of the development should maintenance be neglected. Once more, this conflicts with Policy CS7 and the Design SPD.
79. The location of car parking at the rear of the garden to 2 Toogood Place and next to the rear garden to Plot 33 is also contrary to the guidance in supporting paragraph 2.124 to Policy EN20.
80. Moreover, the existing boundary planting is not sufficient to screen the Site and the proposed additional landscaping (a hedge) will not prevent any part of the development that rises above from being visible. This is contrary to the principles at section 3.5 of the Design SPD and, in particular, the guidance in paragraph 3.5.4 which requires development on the edge of settlements to incorporate sufficient landscaping to soften the impact and “to help integrate new housing into its rural setting”. This is a further conflict with Policy CS7 and the Design SPD.
81. Officers will appreciate that the hard edge of this development, is particularly obvious in comparison to the effective screening in the Newhurst Gardens Scheme which is a result not just of the existing planting and its proposed augmentation, but also of the generous areas of public open space that act as a buffer between the much less dense development and the surrounding countryside.
82. The design of the proposal is therefore significantly flawed. The proposed public open space is inappropriate and, in any event, inadequate. The designs of the buildings are generic modern designs, which the Applicant acknowledges are inspired by the major urban developers such as Crest Nicholson. The use of materials is arbitrary and not related to the form of the buildings, and the large concentration of such buildings with only very small gardens is not a positive characteristic for Warfield Street. The landscaping is equally totally inadequate. All of this conflicts with the Council’s design policies and its Design SPD (as set out in the attached Annex).

Conclusions

83. In summary, the Application proposes a 'common or garden' 33 unit housing estate, inspired by the likes of Crest Nicholson, outside of Warfield Street village, in the countryside. As such, the proposal conflicts with Policy CS9.
84. The sub-urban scale (a 30% increase in the existing number of homes in Warfield Street village) and layout of the development is wholly inconsistent with the rural/semi-rural character of the area. This represents a conflict with Council's character policies (Policies CS1, CS2, CS9, EN8, EN20, H5 and the character requirements of the Bracknell Forest Design SPD). Those policies are wholly consistent with Paragraphs 124, 127 and 170 of the NPPF and therefore attract full weight.
85. These same character flaws rightly justified the refusal of the Original Scheme and that in itself is a significant material consideration in determining the present Application and must be brought to the attention of the Planning Committee. There is no reason why these same flaws do not support a refusal of the present Application. If officers have changed their mind on this point since the Council refused the Original Application, as matter of law, they must explain that change of mind and the reasons for that change of mind to the planning committee.
86. In addition, the inadequate, un-overlooked and dangerously located public open space (squeezed between a balancing pond and car parking), the cramped layout, overly high and bulky buildings, the inappropriately located car parking, the arbitrary use of materials and the inadequate landscaping and screening also conflict with the Council's design policies (CS7, CS8, and EN20 and the Council's Design SPD).
87. It will be common ground that the Council's Character and Design policies are also amongst the policies that are most important for determining the Application. These policies are wholly consistent with the NPPF.
88. The Application is therefore in breach of up-to-date development plan policies, including policies which go to the very heart of the acceptability of the scheme. There are no particular material considerations that weigh in favour of the Application. By contrast, the Council can demonstrate a 6.9 year housing land supply, and a 99% delivery record, a material consideration that weighs heavily in favour of upholding the adopted character and design policies.
89. In light of the above policy conflicts, Sections 70 and 38(6) of the TCPA1990 and of the PCPA2004 and Paragraph 130 of the NPPF require the Council to refuse the development and it would be wholly reasonable to do so.
90. For these reasons, my clients urge the Council to uphold its own character and design policy expectations, and to refuse the Application.

Yours sincerely,



Simon Kelly
Richard Buxton Solicitors

Encl: Annex?

Site Layout, the Original Application (reference 18/00650/FUL)

Site Layout, Application reference 19/00497/FUL (the Application)

Annex: Planning Policy and Legal Background Summary

Policy Background

NPPF Policy

1. Paragraph 124 of the NPPF states that “[g]ood design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”. Paragraph 127 requires development to “add to the overall quality of the area”, to be “sympathetic to local character and history, including the surrounding built environment” and “[to] establish or maintain a strong sense of place”. Paragraph 170 of the NPPF requires planning decisions to contribute to and enhance the local environment by “recognizing the intrinsic character and beauty of the countryside”.
2. Notably, Paragraph 130 requires decision makers to refuse development of poor design that fails to take the opportunities available for improving the character and quality of an area.
3. Paragraph 11 contains the ‘presumption in favour of sustainable development’, which states that where the policies which are most important for determining the application are out-of-date, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits of the proposal. Paragraph 213 explains that policies are not out-of-date simply because they were made before the publication of the NPPF: “[d]ue weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given”.

Development Plan Policies

4. The policies that are most important to determining the Application relate to its countryside location, the impact of the proposal on the character of the receiving area and design.

Countryside Policies

5. Policy CS9 of the Council’s Core Strategy DPD (2008) states that:

“The Council will protect land outside settlements for its own sake, particularly from development that would adversely affect the character, appearance or function of the land”.
6. The supporting text explains that the policy will be implemented through subsequent policies and guidance in further local development documents (at para. 125).
7. Saved Policy EN8 of the Local Plan states that:

“The countryside will be protected for its own sake. Outside the defined settlement boundaries, development will be permitted only where it would not adversely affect the character, appearance or function of the land ...”
8. The policy is subject to a limited number of exceptions, none of which apply to the Application.

9. Local Plan Policy H5 prohibits new dwellings outside settlement boundaries unless (amongst other requirements) there is a need for the dwellings that cannot be met within the settlement, and it “would cause no harm to the character of the area, neighbouring land uses, or to the relationship between the settlement and the surrounding landscape”.
10. Draft Policy LP11 of the emerging Local Plan states bluntly; “[t]he Council will protect areas of countryside for their intrinsic character and beauty. A development proposal within the countryside will only be supported if it [meets exceptions i-viii]. None of the exceptions apply to the present Application.
11. Please note that:
 - Draft Policy LP11 is in essentially the same terms as saved policy EN8. Assuming that the Council considers draft Policy LP11 to be consistent with the NPPF (otherwise, why would it be promoting the policy as part of the emerging Local Plan?), it follows that saved policy EN8 is equally consistent.
 - Policy H5 is a flexible policy that allows residential development in the countryside that does not harm the character of the area. As such, it is consistent with paragraph 170 of the NPPF, and should in any event be given full weight.

Character Policies

12. The Core Strategy places a particular emphasis on preserving the character of an area:
 - Policy CS1 (Sustainable Development) supports development which (amongst other requirements) “[p]rotects and enhances ... the character and quality of local landscapes and the wider countryside”.
 - Policy CS2 (Locational Principles) promotes a sequential approach to development and requires development to be “consistent with the character, accessibility and provision of infrastructure and services within that settlement”.
 - Policy CS9 requires land outside settlements to be protected from development that would adversely affect the character, appearance or function of that land.
13. The saved policies of the Local Plan take a similar approach:
 - Policy EN8 prohibits development in the countryside that would adversely affect the character, appearance or function of land or damage the landscape quality.
 - Policy EN20 requires development to “be in sympathy with the appearance and character of the local environment” and to promote or create the local character and a sense of local identity.
 - Policy H5 prohibits new dwellings outside settlement boundaries that would harm the character of the area, or the relationship between the settlement and the surrounding landscape.
14. Section 2.1 of the Bracknell Forest Design SPD (2017) states that a “well designed development relates well to its surroundings. It should be integrated into its context and should respond positively to local character”.

Design Policies

15. Character aside, there are a number of adopted design-specific policies.
16. Policy CS7 (Design) requires a high-quality design for all development, and development to:
- i. build on the urban, suburban and rural local character, respecting local patterns of development and the historic environment; ...
 - ii. provide safe communities; ...
 - vi. provide high quality usable open spaces and public realm ...”
17. Policy CS8 (Recreation and Culture) requires development to either retain and improve existing Recreational Facilities and/or provide and maintain new Recreational Facilities. “Recreational Facilities are generically defined as including open space, ... and are of prime importance to improving and maintaining the quality of life in the Borough” (para 98), and include Open Space of Public Value (comprising active open space which includes children’s play area, and passive open space which is semi-natural open space). Para 101 of the document notes that “[t]he majority of new development will have an impact upon the provision of open space ... [and that] ... [t]he Council will seek to satisfy demand created by occupants of new development, by the provision of additional facilities.
18. Policy EN20 (Design considerations in new development), requires development to:
- “be in sympathy with the appearance and character of the local environment and appropriate in scale, mass, design ... layout and siting, both in itself and in relation to adjoining buildings, spaces and views”;
 - Promote or where necessary create, local character and a sense of local identity;
 - Provide appropriate layout and design features to improve personal and general security, including the natural surveillance of public spaces, including ... open space”.
19. Supporting paragraph 2.124 explains that each of the policy criteria must be satisfied for a proposal to be acceptable. Supporting paragraph 2.133 notes that adverse effects on the amenity of surrounding properties “will often occur ... where new driveways are constructed alongside rear garden boundaries [and] where new walls, particularly involving extensions of two storey or higher, are located along side rear garden boundaries”.
20. Policy R4 (Provision of open space of public value) requires development sites larger than one hectare to provide public open space equivalent to 4.3 ha / 1000 residents. Paragraph 7.23 explains that this open space will be divided (approximately 50/50) between active (sports grounds and children’s play areas) and passive (parks and planted habitats) recreation space. Paragraph 7.26 stresses that areas of balancing ponds, highway verges, residual and unusable landscape strips, and screening planting areas are excluded from the definition of public open space.
21. The Council adopted the Bracknell Forest Design SPD in 2017. This contains a number of policies that are relevant to the Application.

22. Section 3.5 (Addressing edges) requires development “on the edge of a settlement, on greenfield sites or in the countryside [to] respond to the unique character and setting of each site, taking into consideration a thorough understanding of the local pattern of settlement and its setting in the wider landscape...”(para 3.5.3). Paragraph 3.5.4 requires built up area edge locations to incorporate soft landscaping to soften the edge of the settlement and to help integrate new housing into its rural setting. It goes on to state that “[d]evelopment should face outwards onto all existing and proposed open spaces ... and provide active frontages to animate and overlook them ...” (para 3.5.6). With respect to backland development, it states that such development “should be subordinate” and “not harm the existing character of the local area, ... relate positively to the existing layout and existing urban form ... [and] not be taller than the existing buildings ...” (Paras 3.6.2 and 3.6.3).
23. The SPD sets out specific guidance as to the built form. Paragraph 3.7.2 comments “[t]he height of buildings should respond to a number of factors, including the “existing heights and degree of variation in height in the local context”. Paragraph 3.8.15 states: “[g]enerally, changes in material should relate to the form of the building and should have a clearly identifiable role in its design”. The following photographs from the SPD illustrate what the SPD considers to be a poor use of materials:



Legal Background

24. The Council will be well aware that planning applications must be determined in accordance with development plan policy unless material considerations indicate otherwise (Town and Country Planning Act 1990, s. 70(2) and the Planning and Compulsory Purchase Act 2004, s. 38(6)).
25. The mere fact that a policy predates the NPPF does not automatically mean that it is ‘out-of-date’. As Dove J commented in the case of *Peel Investments (North) Limited* [2020] JPL 279: “there is nothing in the relevant provisions of the Framework to suggest that the expiration of a plan period requires that its policies should be treated as out-of-date. Indeed, to the contrary, the provisions of para. 213 specifically contemplate that older policies which are consistent with the Framework should be afforded continuing weight”.

26. Whether or not a policy is consistent with the NPPF is a matter of reasonable planning judgement. With specific reference to countryside policies, some guidance on the application of Paragraphs 11 and 213 of the NPPF can be gleaned from the comments of Deputy Judge Rogers QC in the case of *Clive Gare v Babergh DC [2019] EWHC 2041 (Admin)*. In that case, the judge dismissed Babergh Council's argument that a 2014 Core Strategy Policy that prohibited development outside of settlement boundaries other than in exceptional circumstances and subject to a proven local need, was necessarily inconsistent with the NPPF:

"I am far from satisfied that Policy CS2 can properly be said to adopt a blanket approach. It can be contrasted with the policy considered by Lang J in *Telford & Wrekin BC v SSCLG [2016] EWHC 3073 (Admin)* at [45] – [46] ... which provided that development within the countryside "will be strictly controlled". Additionally, unlike that policy, CS2 post-dated the NPPF and its consistency with it had been considered as part of the independent examination conducted under section 20, Planning and Compulsory Purchase Act 2004. There had been no material change in the relevant parts of the NPPF since the policy was adopted in 2014 (although they had been re-arranged within the document). In particular, the distinction between valued landscapes (to be protected and enhanced), and other parts of the countryside (whose character and beauty is to be recognized) was already clear in the 2012 NPPF.

27. As I explained in my letter of 14 May 2020, the material considerations that must be taken into account include previous decisions on similar proposals. In the case of *North Wiltshire District Council v Secretary of State for the Environment and Clover (1993) 65 P. & C.R. 137* Mann LJ commented (at page 145):

"It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgement indisputable ... I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgement. He is therefore free upon consideration to disagree with the judgement of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision". (emphasis added)

28. While there is no statutory duty to provide reasons for approving a planning application, the Courts have repeatedly held that the particular circumstances of a case may require reasons to be given (*Oakley v South Cambridgeshire District Council [2017] EWCA Civ 71* at para 61, and *Dover District Council v CPRE Kent [2017] UKSC 79* at para 57). Those circumstances include in particular (as Mann LJ suggests above) the situation where, as here, a local planning authority having already refused a planning application on a particular site, subsequently resolves to approach what a substantially similar application.