

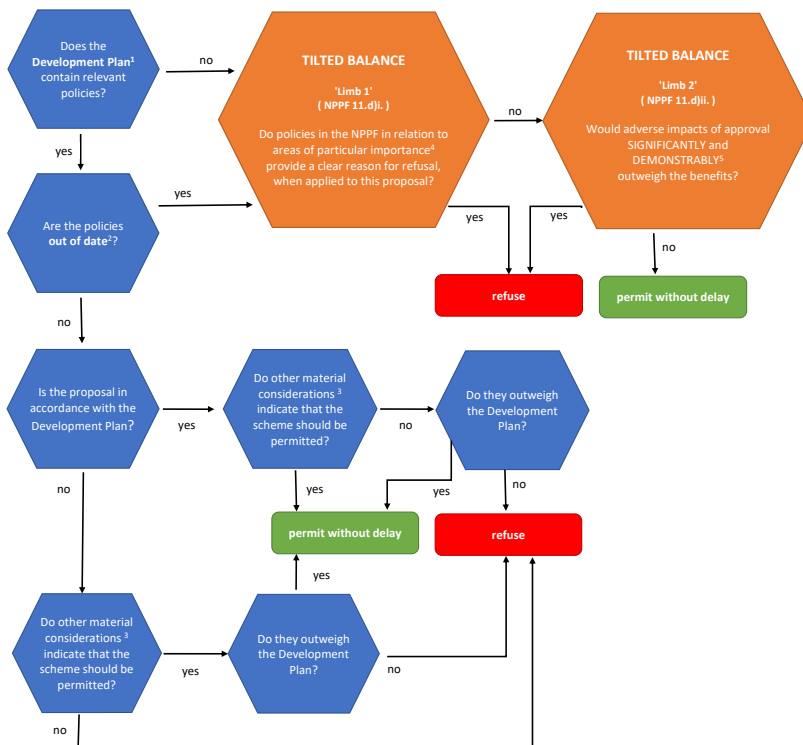
Paragraph 11, NPPF: The 'tilted balance'

Planning Legislation\* requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise. This means that the decision taker must take as a starting point the Development Plan and balance it and all other material considerations to arrive at a decision on whether or not to grant planning permission. If the harms outweigh the benefits, planning permission will usually be refused.

Paragraph 11 of the NPPF, under the 'presumption in favour of sustainable development', sets out circumstances where this balancing exercise should be weighted towards granting permission. This is the case where there are no relevant policies in the Development Plan or the relevant policies are 'out of date'. These circumstances become a material consideration, which 'tilts' the balancing exercise from a neutral balance to one where there must be compelling reasons for permission to be withheld.

The flow chart below is designed to help explain the circumstances where the tilted balance must be applied.

\*Town and Country Planning Act 1990 Act, section 70(2) and Planning and Compulsory Purchase 2004 Act section 38(6)



NOTES

<sup>1</sup> The Development Plan is always the starting point for decisions. In Havant it consists of:  
HBC Core Strategy (2011)  
HBC Site Allocations Plan (2014)  
HCC Hampshire Minerals and Waste Plan (2013)  
Emsworth Neighbourhood Plan (2021)  
**NB plans that have not yet been adopted are NOT part of the Development Plan.**

<sup>2</sup> On housing proposals 'out of date' includes situations where the local planning authority cannot demonstrate a **five year supply** of deliverable housing sites with the appropriate buffer; or where the **Housing Delivery Test** indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

<sup>3</sup> Other Material Considerations may include:

The NPPF  
An emerging policy or plan at advanced stage of preparation  
Supplementary Planning Documents (SPDs)  
Previous planning decision, including appeals  
Views of statutory consultees  
**NB this is NOT an exhaustive or definitive list**

<sup>4</sup> Consider only those designations noted in footnote 7 of the NPPF, which are relevant in Havant:

Habitats sites and/or and SSSIs and land needed as mitigation  
Local Green Spaces  
Areas of Outstanding Natural Beauty (Chichester Harbour)  
Irreplaceable habitats (including ancient woodland and veteran trees),  
Designated heritage assets,  
Areas at risk of flooding or coastal change.

<sup>5</sup> NB applying the tilted balance does NOT exclude Development Plan policies from being considered in the balance.

However, a high bar for refusal is set here. It is not enough for there to be some harm or negative effects, or for a scheme to be less than ideal (e.g. where it does not comply with local or national policy in some regard).  
The harm must be **significant and demonstrable**.

1. With respect, the HBC Policy response dated 14th March 2024 appears inconsistent with itself, and does not to accord with the current law and practice, nor the Council's flow chart on the relevant matters in issue. The Applicant takes issue with the points contained in the Council's Conclusions as are in red below .

## Conclusions

*Notwithstanding the Council's lack of an up to date five year housing land supply position, the site is outside of the urban area, and would be inconsistent with local and national policies on rural areas. In particular, the proposal does not meet any of the specific circumstances set out by paragraph 84 of the NPPF. Whilst the site would meet the definition of PDL, the development would not be consistent with any national or local policies for the countryside. As such, there remains a policy objection in the context of policies CS17 and AL2 of the Adopted Local Plan. Added to that, there are constraints which the applicant would need to address in terms of the potential impact on the mature trees within the site. There is also a need to consider whether the existing house is of heritage significance.*

2. A It is common ground that Paragraph 11 of the National Planning Policy Framework applies .  
Emphasis in red .

*“11. Plans and decisions should apply a presumption in favour of sustainable development.*

*For plan-making this means:-*

*...[not relevant here] .....*

*For decision-taking this means:*

*c) approving development proposals that accord with an up-to-date*

*development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

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<sup>7</sup> The policies referred to are those in this Framework (rather than those in development plans) relating to: *habitats sites* (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; *designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72)*; and areas at risk of flooding or coastal change.

<sup>8</sup> This includes, for applications involving the provision of housing, situations where: *(a) the local planning authority cannot demonstrate a five year supply* (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; *or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years.*

2. B The leading case on Para 11 d is Monkhill v SSHCLG 2019 EWHC 1993 (Admin) - Holgate J

Mr Justice Holgate , at para 39, sets out the 15 relevant points to consider on Paragraph 11 d  
A correct summary of those points is very well illustrated in the Council's own "Tilted Balance" flow chart, at the head of this commentary.

The Council has not applied the correct tests according to the flow chart and "Monkhill".

[Note Monkhill above was appealed - case report - Monkhill Ltd v SSHLG Rev1 [2021] EWCA Civ 74 but the Holgate J 15 points were approved by the Court of Appeal where the final decision

decision turned solely on matters related to an Areas of Outstanding Natural Beauty not relevant here] See para 18 of the Appeal case report -

*18. Holgate J. set out (in paragraph 39 of his judgment) 15 points on the "meaning and effect" of paragraph 11 of the NPPF, and a shorter, eight-point "practical summary" (in paragraph 45). The 15 points are common ground in this appeal, and in my view rightly so. They include these propositions:*

*" ...*

*5) Where there are relevant development plan policies, but the most important for determining the application are out-of-date, planning permission should be granted (subject to section 38(6) [of the Planning and Compulsory Purchase Act 2004]) unless either limb (i) or limb (ii) is satisfied;*

*6) Because paragraph 11(d) states that planning permission should be granted unless the requirements of either alternative is met, it follows that if either limb (i) or limb (ii) is satisfied, the presumption in favour of sustainable development ceases to apply. The application of each limb is essentially a matter of planning judgment for the decision-maker;*

*7) Where more than one "Footnote 6" policy is engaged, limb (i) is satisfied, and the presumption in favour of sustainable development overcome, where the individual or cumulative application of those policies produces a clear reason for refusal; [Note Footnote 6 relates to plan making not decision making as here]*

*...*

*10) Under limb (i) the test is whether the application of one or more "Footnote 6 policies" provides a clear reason for refusing planning permission. The mere fact that such a policy is engaged is insufficient to satisfy limb (i). Whether or not limb (i) is met depends upon the outcome of applying the relevant "Footnote 6" policies (addressing the issue on paragraph 14 of NPPF 2012 which was ... resolved in [Barwood Strategic Land II LLP v East Staffordshire Borough Council [2017] EWCA Civ 893] at [22(2)]);*

*11) Limb (i) is applied by taking into account only those factors which fall within the ambit of the relevant "Footnote 6" policy. Development plan policies and other policies of the NPPF are not to be taken into account in the application of limb (i) (see Footnote 6). ... ;*

3. It is common ground that at 1.8 years identified supply, HBC is well below its 5 year Housing Delivery requirement.

In Monkhill, at Para 15, of the appeal case it was observed that "a 3.37 to 4.6 year supply was " a significant shortfall"

Paragraph 11.d of the National Planning Policy Framework applies a presumption in favour of sustainable development as above

4. As the Flow Chart correctly suggests, the first question is does the Development Plan contain relevant policies?

No - there are no relevant policies relating to "previously developed land in the non urban area". Even if there are local plan policies which apply, these encourage development on previously developed land or defer to the NPPF . For the full argument see paras 36 - 41 below

5. If it may be argued that there are local plan policies which do not support the application - Are those policies out of date (the latest is dated 2014 ) - yes - by definition - see footnote 8 above - as the Council cannot demonstrate a 5 year housing supply

6. Although the presumptions in Para 11 d are accepted as relevant here , the Council suggests -

“ The lack of five year supply has the **potential to trigger** a presumption in favour of sustainable development in line with paragraph 11d of the NPPF. The scheme’s potential contribution to the 5 year supply **must be afforded weight in the overall planning balance, although 1 unit is limited in its potential contribution to the supply.** “

7. With respect, the parts in red are do not accord with the current law.

8. The lack of 5 year supply does not just raise a “potential to trigger the presumption” nor does it simply “afford weight ...” as the Council suggests .

Para 11 d “requires the granting of permission “ unless 11 d i or ii apply . See flow chart . The Council’s starting position seems to be to refuse, because the site is non urban, whereas the starting position in law requires the grant of permission unless... .

Whether “non urban” is a relevant, or even a determinative, factor depends on the proper application of 11 d i , and d ii (see paras 9-35 ) and S 38 Planning and Compulsory Purchase Act 2004 (as to which see paras 39 -41 below.)

The presumption- to grant permission unless ... - applies irrespective whether the application is for 1 or 10 houses.

9. **Para 11 d i** - to refuse permission the Council must show a “clear reason” for refusal. This is rather more than that some footnote 7 matters are engaged. See para 10 and 11 of the 15 tests in Monkhill -

*10) Under limb (i) the test is whether the application of one or more "Footnote 7 policies" provides a clear reason for refusing planning permission. The mere fact that such a policy is engaged is insufficient to satisfy limb (i). and*

*11) Limb (i) is applied by taking into account only those factors which fall within the ambit of the relevant "Footnote 6" policy. Development plan policies and other policies of the NPPF are not to be taken into account in the application of limb (i)*

10. The Council has “engaged” the following potential “footnote 7” matter and b) is conceded by the Applicant :-

- a) Habitat as to Brent Geese and wading birds
- b) Habitat as to Bats
- c) Heritage value of the existing house
- d) Impact on the Natural environment - Trees .
- e) The other matters raised as to parking and high quality design are common issues easily dealt with by appropriate conditions and so not clear reasons for refusal .

11. Habitat as to Brent Geese and wading birds - see the Phillips Ecology report dated 14th February 2024 - para 12.5 - “Given the type and limited extent of the habitats present the site is considered to provide negligible sustainability for over wintering waders and wildfowl associated with the Chichester and Langstone Harbour SPA.”

There is therefore no “clear reason” to refuse on this basis

12. Habitat as to Bats - see Phillips ecology report- there is no current evidence of bats in the existing garage, nor the existing house, nor in the surrounding trees. The issue is possible bat nesting in the ash trees at the entrance referred to in para 13.4 “ .....the ash trees at the entrance will need to be removed regardless of the application due to poor health and proximity to the highway West Lane“

Even if it is found that there are Bat nest sites in these trees, the trees will still have to be felled and that will be done fully in accordance with the relevant legislation. The issue is therefore how to mitigate any potential loss of any potential ( note - none yet identified) nesting sites. With the appropriate ecological guidance and mindful of the relevant legislation, it will always be possible to do this. The diseased and dangerous trees cannot remain .

See also Paras 22 and 23 below which set out the proactive approach required of Local Authorities in NPPF Para 38, and the use of conditions and obligations, as set out in NPPF para 55.

This matter can easily be dealt with by way of suitable conditions/obligations attached to any outline or detailed planning permission, provided the Council properly applies NPPF 38 and 55. Whilst potential Bat habitat , (although there is no evidence of such ) is engaged, it is easily resolvable, and therefore not "a clear reason" for refusing permission.

13. Heritage value - Whether or not the existing house has any heritage value appears irrelevant. The existing house is not part of the proposed development site. The application makes clear that it will remain completely undisturbed by the proposal. It is not "a clear reason " to refuse permission. In the event of any doubt, again Para 38 and 55 should be used to apply conditions if it is indeed a heritage asset.

14. Impact on the natural environment - Trees - See Para 3.5 of the Phillips Ecology report - *"... habitats are largely modified with no assemblages of noteworthy species recorded . Mature trees are of greatest ecological value however some are in poor health and will require remedial work"*. In this respect the site is no different from many . The Applicant has indicated a willingness to engage with the Council as to tree matters and with a Council approach in accordance with NPPF paras 38 and 55, this aspect should easily be capable of being dealt with by reasonable conditions at the outline or reserved matters stages . It is therefore submitted that tree issues are not "a clear reason" to refuse permission.

15. It is submitted that the presumption in favour of granting permission does not fail by reason of 11d i. so long as the Council approaches the matter in accordance with NPPF Paras 38 and 55. However if the Council thinks it does, please submit all and any statutory provision or case law to that effect.

16. If the 11 d i test is passed, as suggested it is - then , as per the flow chart - consider Para 11 d ii - *"the presumption in favour of granting permission applies unless :-*

*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework [NPPF] taken as a whole."*

17. It is common ground that :-

- a) the site is in a non urban
- b) that it is not Green Belt
- c) that it is "previously developed land" - The council has referred to the Dartford case - Dartford BC v SSLG [2017] EWCA Civ 141. The Applicant agrees that to be the relevant case which confirms that the application site, being the part of the curtilage of an existing structure is "previously developed land" - "PDL" . That being the case, reference to the NPPF as to policies on PDL is required - see below.

18. Can it also be described as "isolated".? The HBC position appears unclear as to whether it is "isolated", or not, as follows:-

- *Isolation*

*In this case, it is noted that the applicant does not consider the development would result in an 'isolated home' under paragraph 84 of the NPPF. The Dartford case considers this matter and indicates in the case that any proposed development within the curtilage of an existing permanent structure, it follows that a new dwelling within that curtilage will not be an "isolated home" (paragraph 15). In any event, the development would not meet any the circumstances set out under paragraph 84 of the NPPF.*

19 . With respect, that wording appears to agree that the new dwelling "will not be an isolated home " although the argument then proceeds as if it is in fact "isolated" by going on to discuss NPPF para 84.

Dartford - para 15 - in its entirety - reads as follows :-

*“However, the definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that a new dwelling within that curtilage will not be an "isolated" home. There will already be a permanent structure on the site. Paragraph 111 states:*

*Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value.”*

20. Dartford could not be clearer - it determines that the site is previously developed land (no argument has been raised, nor could it, that it is of “high environmental value”) . It is also not isolated as the proposed development is “within the curtilage of an existing permanent structure” ie the existing house 106 West Lane. NPPF Para 84 as raised by the Council relates only to “isolated buildings in the countryside” and cannot therefore be relevant.

21. Dartford was also considered, and approved, in Braintree DC v SSHCLG 2018 EWCA Civ 610 in connection with the meaning of “isolated”.

22. Para 11 d ii therefore requires consideration of “ the NPPF framework taken as a whole” in respect of “previously developed land” which is “not isolated” and in a “non urban area” The relevant paragraphs appear to be as follows.

23. NPPF para 38 - which is self explanatory.

Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

24. NPPF para 55- [which relates to the suggested approach to the bat habitat and tree, and possible heritage issues raised above] *Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*

25. NPPF para 60-

*To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.*

The Council’s suggestion that this application should not be considered as it only concerns one dwelling is inconsistent with the aim to meet as much of identified housing need as possible.

26. NPPF para 70-

*Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:*

- .....
- d) *support the development of windfall sites through their policies and decisions—giving great weight to the benefits of using suitable sites within existing settlements*

*for homes; and*

- *e) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.*

As to d) - this should be regarded as a windfall site within an existing settlement (that being the 104-110 West Lane cluster).

As to e) - This large garden is “a large site “ for the existing one house and at only 1.8 years housing supply, surely every one counts .

27. NPPF Para 83 -

*To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.* Here the 104 -110 West Lane cluster - is a” settlement “ in accordance with the decision in Braintree above, and supports local services in Fleet, Stoke and West Town .

28. NPPF 84 does not apply as following Dartford and Braintree above, the site is not “isolated” .

29 . NPPF 89 - relevant parts underlined. It is submitted that this is a very clear indicator that this application is fully encouraged by the NPPF.

*Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.*

30. NPPF Para 123 refers to “previously developed land” - which is the agreed situation here .

*Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and*

*healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.*

31. NPPF para 124 - relevant parts underlined and self explanatory

*Planning policies and decisions should:*

- ....
- *c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;*
- *d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure) and*

32 . NPPF para 129- deals with housing density

*-Area-based character assessments, design guides and codes and masterplans can be used to help ensure that land is used efficiently while also creating beautiful and sustainable places. Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.*

In this case the substantial existing curtilage to the existing dwelling results in low density housing. The proposal ensures the development makes optimal use of the potential of the site which it is noted will then be approximately the same size as 104 West Lane and would leave 106 West Lane approximately the same size as 108 West Lane, thus forming a consistent and cohesive cluster.

33. Although not within “Green Belt” it may be helpful to compare how an application such as this might fare in the rather more restrictive Greenbelt - NPPF Para 146a - which relates to changing Greenbelt boundaries but the Policy implications are clear in relation to brownfield and under utilised sites

146. *Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has*

*examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:*

- *a) makes as much use as possible of suitable brownfield sites and under utilised land:*

*34. NPPF Para 154 - A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:*

*a-f ) .....*

*g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*

- *– not have a greater impact on the openness of the Green Belt than the existing development; or*
- *– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.*

The site is invisible from public view , and being already a treed site, which is intended to be continued, the single storey building proposed would have no material effect on , let alone “greater impact on ” or “ substantial harm to”, the openness of the surrounding land. It is noted that no neighbour has opposed this application.

35. It is submitted that the NPPF “framework taken as a whole” for previously developed, non isolated land in non urban areas (and also the Greenbelt ) fully supports and in fact encourages an application of this nature. No adverse impacts have been identified (other than the 11d i matters dealt with above ) and there appear to be none that would “significantly and demonstrably” outweigh the development of previously developed land clearly identified as beneficial and encouraged in the NPPF (see particularly para 89) and the Local Plan (see Para 39 below referencing Para 8.2 of the Local Plan ). If the Council disagrees with this conclusion, please submit all and any statutory provision or case law to that effect .

36. What effect does the Local Plan have and also Section 38(6) of the Planning and Compulsory Purchase Act 2004 “ where in making any determination under the Planning Acts, regard is to be

had to the development plan, the determination shall be made in accordance with the plan unless material consideration indicates otherwise.”

37. Unlike the NPPF, the HBC development plan makes no specific reference to its approach and is silent as to “previously developed land in non urban areas” - There are no “relevant development plan policies” relating to this agreed scenario.

38. Of Holgate J’s fifteen points in Monkhill, relating to para 11 d , points 4 and 5 apply :-

*4) Where there are no relevant development plan policies, planning permission should be granted unless either limb (i) or limb (ii) [of NPPF Para 11 d ] is satisfied;*

*5) Where there are relevant development plan policies, but the most important for determining the application are out-of-date, planning permission should be granted (subject to section 38(6)) unless either limb (i) or limb (ii) is satisfied;*

39. So there are either no relevant policies or, if there are, they are out of date (no 5 year housing provision) and therefore a “material consideration “ indicating that the Local Plan “may be disregarded” and therefore of no effect but, even if it is, it is worth noting:-

*“8. Local Plan Policy CS17 Concentration and Distribution of Development within the Urban Areas Development will be permitted that makes the most effective use of land in the borough ..... and 1 .....and*

*2 Prioritises development on previously developed land, including redundant, derelict or underused land and buildings within the urban area. [ author note - this relates to all PDL wherever in the district, and not just that in the urban area ]*

*.*

*3. ....*

*Development in the non-urban areas will only be permitted if it is consistent with the policies for the countryside set out in national policy.”*

The use of the word “countryside” above is clarified in Para 8.02-

*The areas beyond the urban areas (previously countryside) are now defined as non-urban areas.*

It is submitted above that this application is consistent with, and in fact positively encouraged by, the “national policy” (which can only refer to the NPPF ) so is also therefore meets, and is consistent with, 8.3 of the Local Plan.

40 . *Havant Borough Local Plan (Allocations) Adopted Version, (Havant Borough Council, 2014)*

*POLICY AL2 URBAN AREA BOUNDARIES AND UNDEVELOPED GAPS BETWEEN SETTLEMENTS*

*The urban area boundaries for Emsworth, Havant and Bedhampton, Hayling Island, Leigh Park and Waterlooville are defined on the Policies Map.*

*The Borough’s undeveloped gaps [not relevant here] are .....*

*Land outside the defined urban area on Hayling Island is ‘non-urban’ rather than undeveloped gap.*

*Development of exceptional affordable housing in the non-urban areas of Hayling Island is not considered appropriate or necessary and is likely to be refused planning permission.*

This application is not for “exceptional affordable housing”. In any event AL 2 is silent on previously developed land in the non urban area and so CS17 Para 8.3 above invoking the NPPF rules for countryside land applies as discussed above.

41 . Note also that the local plan also defines previously developed land in the same way as the NPPF and the Dartford case.

*“Previously Developed Land (PDL): This is land that was or is occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. PDL is often referred to as brownfield land.”*

42. If the Council disagrees that the local plan:-

- a) either “prioritises development on previously developed land” (Para 8.2 of CS17 ) or
- b) defers consideration of this application to the countryside framework of the NPPF (Para 8.3 of CS 17 ), please
- c) submit all and any statutory provision or case law to that effect.

#### 43 CONCLUSION

- a) This commentary sets out what appears to be the legislation and case law on the points in issue. It is submitted that the application passes the 11d i and ii tests, provided the Council properly applies Para 38 and 55 of the NPPF, so that permission should be granted albeit with appropriate conditions as to Bat habitat issues, and as commonly the case, trees, high quality design and, if required, Heritage issues.
- b) If the Council disagrees with any aspect of the commentary, please identify the legislation and/or case law which contradicts the particular interpretations set out and in particular as follows .
  - i) as to the effect of NPPF Para 11 d - as requested in para 15 above
  - ii) as to the NPPF policies on previously developed non isolated land in the non urban area - as requested in para 35 above and
  - iii) as to S 38(6) and local plan issues - as requested in para 42 above

Kim Taylor - Dated 29th April 2024

Retired , non practising, solicitor, with experience of planning matters

*Appendix- full case references*

*Dartford Borough Council v The Secretary of State for Communities and Local Government & Ors*  
*[2017] EWCA Civ 141*

*Braintree District Council v Secretary of State for Communities and Local Government & Ors*  
*[2018] EW*

*Monkhill Ltd v SSHCLG 2019 EWHC 1993 (Admin)*

*on appeal Monkhill Ltd v SSHCLG 2021 Rev1 [2021] EWCA Civ 74*