

**APPEAL BY BARGATE HOMES, LAND AT LOWER ROAD, BEDHAMPTON**

**PINS REFERENCE: APP/X1735/W/20/3259067**

**CLOSING SUBMISSIONS ON BEHALF OF HAVANT BOROUGH COUNCIL**

**Structure**

- (1) The development plan (Inspector's issue 3)
- (2) Harm to the Old Bedhampton Conservation Area (Inspector's issue 1)
- (3) Public benefits (Inspector's issue 1)
- (4) Other material considerations
- (5) The planning balance (Inspector's Issue 3)
- (6) Conclusion

**The development plan: main policies and weight**

- 1 The development plan comprises the Havant Borough Core Strategy and the Havant Borough Local Plan (Allocations) development plan document (the "Allocations Plan"). The plans were adopted in March 2011 and July 2014 respectively. The plan period is 2006 to 2026.

The spatial strategy

- 2 Core Strategy policy CS9 makes provision for the delivery of some 6,300 homes. They are to be developed in accordance with the spatial strategy specified by policy CS17. It concentrates new housing in the Borough's five main urban areas. It also prioritises the re-use of previously developed land and buildings within those

areas. Development in the countryside is to be controlled “in accordance with national policy”. That must mean in accordance with paragraphs 77 to 79 of the National Planning Policy Framework.

- 3 The boundaries of the urban areas are defined by Allocations Plan Policy AL2 and the Policies Map. The appeal site is located outside the urban boundary of Havant and Bedhampton. Officers concluded that the result is the proposal conflicts with the development plan.<sup>[1]</sup> Mr Wood agrees. Each is plainly correct.
  
- 4 The Core Strategy pre-dates the publication of the National Planning Policy Framework. The Allocations Plan was examined having regard to the policies of the Framework, but its policies and proposals are tied to those of the Core Strategy. In that context, the Council recognises the requirement that is set by policy CS9 is out-of-date. Further, the objectively assessed need for housing calculated in accordance with the Standard Method cannot be accommodated within the boundaries that are identified by AL2 and the Policies Map.<sup>[2]</sup> That does not invalidate the spatial strategy. The *policy boundary* that is defined on the Policies Map can only be afforded limited weight. However, the *object and general operation of the policy*, which is to promote urban concentration and the re-use of PDL, is entirely consistent with the Framework, and continues to attract full weight.
  
- 5 Against that background, one of the oddities of this case is that the first reason for refusal does not cite policies CS17 and AL2. Mr Wood properly conceded that may reflect the imperative to deliver the current objectively assessed need for housing, and a 5 year housing land supply. On that basis, he clarified his evidence was that the Appellant’s scheme is unacceptable because of the harm it will cause to the significance of the Bedhampton Conservation Area, not that the development of the site is objectionable in principle. The latter issue will be explored by the

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<sup>[1]</sup> CD-P4, p.72, para 8.1

<sup>[2]</sup> CD-P17, Appendix 2 and CD-P11, policy DR1

examination of the draft Local Plan, which is programmed to take place this summer. For present purposes, it is sufficient to note the scheme is contrary to development plan policies which officers considered to be “of particular relevance”.<sup>1</sup>

### Heritage policies

- 6 Policy CS11 is intended to safeguard the natural and historic environments. Paragraph 4 of the policy specifically provides that planning permission will be granted for development that protects and (where appropriate) enhances heritage assets. Conversely, it may be inferred that if that object is not satisfied planning permission should be refused. Mr White QC pressed Mr Wood to concede the absence of any requirement to balance harm with the public benefits of development diminishes the weight that should be attached to this policy. Mr Wood disagreed. It probably does not matter who is right. CS11 is applied by policy DM20 of the Allocations Plan. Mr White QC and Mr Wood agreed that when DM20 is read with paragraph 9.10 of the written justification it is revealed to comply with the Framework. Thus, DM20 is up-to-date and carries full weight.

### Design

- 7 The Council’s notice of decision also cites conflict with policy CS16. Its object is to promote “high quality design”. That is to be achieved by requiring development to identify and respond positively “to historic or local character within or close to the proposed development site.” The Secretary of State has identified good design “as a key aspect of sustainable development”.<sup>2</sup> The National Planning Policy

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<sup>1</sup> CD-P4, p.12 under “Planning Policy”

<sup>2</sup> NPPF para 124

Framework also requires that planning decisions should ensure development is sympathetic to local character and history.<sup>3</sup> CS16 therefore attracts full weight.

- 8 That leads neatly to consideration of the first key issue identified by the Inspector, viz. “the effect of the proposed development on heritage assets with particular regard to the setting of the Old Bedhampton Conservation Area.”

### **Harm to the significance of the Old Bedhampton Conservation Area (Inspector’s issue 1)**

- 9 Old Bedhampton Conservation comprises 5 Character Areas. The parties agree the development affects the setting of Character Areas 1 and 5. Therefore, my task in closing is:-

- (1) To describe the essential aspects of the special historic character and appearance of the Conservation from which it derives its significance. (Hanson step 1)
- (2) To describe setting and its contribution to significance. (Hanson step 2)
- (3) To assess the impact on setting and significance, having regard to the way in which design mitigate any harm. (Hanson steps 3 and 4)
- (4) To arrive at an overall judgment on whether and the extent to which the scheme harms significance. (Hanson step 5)

### The significance of Old Bedhampton Conservation Area

- 10 The special interest of the Conservation Area derives primarily from: (1) The quality of its historic core, comprising an attractive collection of listed buildings set in

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<sup>3</sup> NPPF para 127(c)

large plots, which exhibits a more open grain than nineteenth and twentieth century development. That is complemented by (2) the Mill complex of buildings, and Old Manor Farm, which are a reminder of Bedhampton's wealthy agrarian past; (3) an unusual assemblage of springs, ponds and streams, which supported the Mills and sustained the village from earliest times and (4) an informal network of quiet, sinuous historic roads, running generally east-west, which hark back to the village's historic location on the main road between Chichester and Portsmouth.

#### Setting and its contribution to the significance of the Conservation Area

- 11 The open farmland to the south and south west of Lower Road adjoining the western edge of Character Area 1 and lying to the south of character Area contributes to its significance by reinforcing the historic village's rural character and agrarian origins.<sup>4</sup> That is acknowledged by the March 2019 Heritage Statement, Mr Trehy XX, and is uncontroversial.<sup>5</sup>
- 12 The farmland contributes towards the significance of the two character areas in slightly different ways.
- 13 On leaving Character Area 1 and heading south then west along Lower Road, the farmland provides a crisp transition from an enclosed townscape to open views across farmland.<sup>6</sup> That contrast reinforces an appreciation of the former and maintains a visual and functional connection with the village's agricultural past. The contribution of this setting to significance should not be underestimated. By virtue of changes in level and the screening effect of vegetation growing along the railway embankment to the south of the appeal site, the unbroken swathe of agricultural land that includes the appeal site is all that remains and easily

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<sup>4</sup> OBCAA pp. 8 and 33, paras 2.3, 2.8 and 4.12

<sup>5</sup> See also ToR Heritage Statement, March 2019, p.11, para 4.4

<sup>6</sup> ToR Heritage Statement p.9 para 3.23

appreciated as one leaves the Conservation Area along Lower Road. That experience is primarily visual. It is not confined to an oblique view towards cottages adjacent to Old Manor Farm from the western edge of Character Area 1; there is an extended and dynamic experience along the whole of Lower Road, which provides long views south over fields towards the railway. The preservation of rural character notwithstanding the proximity of modern housing estates is reinforced by the narrow, sinuous quality and relative tranquillity of Lower Road, which is very lightly trafficked. Its intactness, quietude and “rural feel” adds to its value as a foil to nineteenth and twentieth century urban sprawl to the north of Lower Road, which together with the A27 to encircle the historic core.<sup>7</sup> The integrity of the whole of this area and not just the appeal site is vital to the continuing legibility of Character Area 1.

- 14 Character Area 5 is tightly drawn around the Old Manor Farm complex. Dating from around 1889<sup>8</sup>, the farm is an historic building which marks a particular phase of the village’s agricultural past. As a new model farm, the building was planted quite deliberately away from the old village core.<sup>9</sup> The buildings are visually distinctive and attractive. Mr Trehy states the courtyard of farm buildings and the adjacent row of three houses “retain a coherent appearance of dark brick with slate roofs”.<sup>10</sup> The appearance of the building combined with its age marks it out as a “building of local historic interest”.<sup>11</sup> That was accepted by Mr Trehy who agreed it ranks as a “non-designated building of local historic interest”.<sup>12</sup>
- 15 Mr Trehy agreed the setting of the Farm and (as it became) Character Area 5 includes the appeal site by reason of their functional and visual interdependence. However, that relationship, and thus the contribution of this setting to

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<sup>7</sup> OBCAA, p.8, para 2.3

<sup>8</sup> OBCAA p.24, para 3.40

<sup>9</sup> ToR Heritage Statement, p.3.23

<sup>10</sup> ToR Heritage Statement, p.8, para 3.21

<sup>11</sup> See e.g. CD-P11, p.258

<sup>12</sup> CD-P3 Design and Access Statement, para 1.28(xii)

significance, is much stronger than for Character Area one. This is clear from paragraph 3.26 of the March 2019 Heritage Statement, which states:-

“The open land of the application site is not important to the setting of individual listed buildings within the conservation area; the agricultural landholding related to Manor Farm....”

16 “Quite so”, submits the Council. That relationship is, moreover, best appreciated in a series of views from Lower Road south towards the railway, both oblique and direct, all open and uninterrupted, which clearly reveal visually the evidence of the historic farm buildings’ tie to the fields beyond.

17 There is a further point to be made on the differential contribution of the open land to the setting of Character Area 5 compared with Character Area 1. In his March 2019 Heritage Statement Mr Trehy writes:-

“As part of the setting of the conservation area the site is the least distinctive area, and the most influenced by adjacent development.”<sup>13</sup>

18 Mr Hanson disagrees strongly with that assessment; his opinion is that the general layout and aesthetic of the fields remain as illustrated in historic mapping dating back to 1840.<sup>14</sup> Further, he concludes:-

“The contribution of the fields to understanding and appreciating Old Manor Farm (and the character area’s individual contributions to the significance of the conservation area) is principally experienced from Lower Road, where the fields are viewed to the side and the backdrop to the traditional rural buildings” ....<sup>15</sup>

19 Thus, whilst the farmland of the *appeal site* is perceived at a distance as part of a wider swathe of open land in the setting of Character Area 1, it is an absolutely

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<sup>13</sup> ToR Heritage Statement, p.11, para 4.4

<sup>14</sup> Hanson PoE p.16, para 3.29

<sup>15</sup> Ibid.

essential and immediate part of the setting of Manor Farm. That tie is not seriously eroded by modern development since the critical aspect of setting is towards the farm, away from housing on the north side of Lower Road.

### Impact and mitigation

- 20 When the Appellant formulated its design the DAS *recorded* Old Manor Farm is a non-designated heritage asset of local historic interest. That is not the same as appreciating and responding to the setting and significance of what became Character Area 5 of the Old Bedhampton Conservation Area.
- 21 Mr Trehy agreed that as a non-designated heritage asset Manor Farm possessed significance and a setting that contributes to its significance as such. Mr Trehy further agreed the setting of the non-designated heritage asset is the same as that for the designated heritage asset which is now Character Area 5 of the Conservation Area. Therefore, it is surprising the Appellant did not carry out a systematic assessment of the farm's significance, setting or the contribution of setting to significance, not least because early in the application process it knew there was a proposal to extend the Conservation Area to include Manor Farm.
- 22 So how did the Appellant approach the design of a proposal adjoining a heritage asset that has become a conservation area? The answer that is revealed by the Design and Access Statement is that it merely nodded at the presence of a building of local historic importance<sup>16</sup> but made no effort to develop a design that preserved or enhanced it.
- 23 Specifically:-

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<sup>16</sup> DAS CP-3, p.13



- (1) The “Site Analysis” plan and the commentary on p.24 indicates a focus on protecting *the development* from overlooking by residents of Manor Farm. The response is to introduce heavy planting along the boundary with Manor Farm, rather than pulling development away from it to maintain at least some degree of openness.
- (2) The disposition of the bulk of the open space to the south of the site is dictated by the particular drainage strategy that has been adopted and as a response to noise from the railway and the land use to the west. The result is that with the exception of a narrow view down “Narrow Marsh Lane” there will be no view through the appeal site to open space adjacent to the railway. Instead, the open farmland setting will be replaced by the interlocking fascades of 5 rows of houses to the north of the “Green Buffer and Open Space”: if in doubt see CP-3, p.24.
- (3) The Appellant actually relies upon the “built form” of “converted farm buildings and farm cottages” as the basis upon which “The proposed layout is to extend this built form along Lower Road”. That is what the layout drawing illustrates. The result is to reinforce the barrier to open view that currently exist south from the western edge of Character Area 1 to the eastern boundary of Manor Farm. That is problematic for two reasons. First, it erodes openness. Second, it destroys an essential feature of the farm’s setting, which is its *relative separation and isolation* from the core of the village, which will be eliminated by the appeal proposal’s “extend[ed] built form.”
- (4) The design of the dwellings on the appeal site was calculated to “complement the architectural character and appearance of Manor Farm”; that may be so, but is not the same thing as designing to preserve or enhance significance.

(5) Consequently, in the words of the Design and Access Statement:-  
“This development will have a rural feel, a *nod* towards the location and historical use of the site.”<sup>17</sup>

24 In September 2019, Character Area 5 was formally incorporated into the Conservation Area. Mr Trehy agreed that materially increased the importance of Manor Farm, which became part of a designated heritage asset. That all the Appellant continued to do was “nod” at its obligations under s.72 of the 1990 Act is graphically illustrated by the Appellant’s Heritage Addendum. This was intended to respond to the designation of Manor Farm as part of the Conservation Area. Mr Trehy conceded this document also failed to make a systematic assessment of significance, setting and the contribution of setting to significance. There was no further design response. Instead, the Addendum simply asserts “The proposed development has been designed as a careful response to the features of the site and the wider context”. That is true in the sense revealed by the DAS. But the design process took no account of significance or the contribution of setting to significance.

25 The meat of the response is to be found at paragraphs 3.2 and 3.3 of the Addendum. Mr Trehy’s very fair response to XX revealed those points to be window dressing. He agreed the set back of houses and views along Lower Road towards Old Manor Farm are of no importance in heritage terms. He agreed that views of private gardens would not retain a link with the farm’s agrarian past. Nor is it obvious how the planned housing estate will maintain a “rural feel”. Mr Trehy also emphasised the document alludes to the retention of agricultural land to the west of Manor Farm. However, the retention of that much reduced element of setting does not address the issue of the loss of the site’s *isolation* as a result of it being assimilated into a continuous run of development along Lower Road. As is revealed by the DAS site analysis, its contribution to a sense of quiet rurality is somewhat

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<sup>17</sup> DAS CD-P3, p.25

diminished by the workshop and carpark in the northern part of the site, which is both a scruffy visual detractor and a source of significant noise. This appeal illustrates the point that even if the setting of a heritage asset is not completely lost, its erosion can impact seriously on significance.

#### Overall assessment

- 26 If the appeal is allowed, the rural setting of Character Areas 1 and 5 will be suburbanised. Character Area 5 will cease to be legible as an historic farm complex, set away from the village in the countryside, representing a distinct marker of a particular phase of Bedhampton's development as an agricultural community. It will be assimilated into a substantial new housing development that is designed to "complement" the buildings, so that they assume the identity of this new area of urban sprawl.
- 27 In the light of these facts, the Council's highly experienced Conservation Officer found the scheme would cause less than substantial harm to the significance of the Conservation Area. Mr Hanson's assessment is that there would be caused moderate, less than substantial harm to significance. Mr Trehy evidence that the scheme's impact on setting will cause no harm to significance is an outlier. Mr Hanson's evidence is to be preferred.
- 28 Mr Hanson suggested that the harm he found could be mitigated to a degree by creating "breathing space" around Old Manor Farm; that is, a stand-off. That might entail reorganising the open space provision. Or it might require fewer houses to be built. In reality, the optimum solution may require a combination of each approach; a stand-off coupled with a view of open land through a visually permeable layout.
- 29 The point is that there is a better design response to setting and significance, which giving due weight to heritage considerations would produce a better

scheme. It is not enough to argue this inquiry has thoroughly investigated issues of setting and significance. Whilst that is true, it is equally obvious little that we have learnt was input into the design of the scheme; the highpoint of the Appellant's case is that it does not propose to develop the field to the west of the site (which is owned by the former owners of the appeal site).

### **Public benefits**

30 The striking thing about the selection and weighting of the public benefits that are claimed is the absence of any systematic basis for attributing weight. When asked how he made this calculation, Mr Jobbins' response was "planning judgment". That is fair enough, provided it is clear precisely how a judgment is made. However, Mr Jobbins was unable to elucidate any framework to explain the judgments he made; his judgments appeared to be based on a personal "rule of thumb". With that in mind, it is submitted that the weight attributed to a benefit ought to reflect:-

- (1) The importance attached to a particular benefit by the Secretary of State.
- (2) The character and quantum of a benefit, which should be evidenced.
- (3) Whether the benefit that is claimed is really mitigation, required to offset harm that would otherwise arise and thereby make a scheme acceptable.
- (4) Whether there is evidence of a particular need for a certain benefit in the locality; the greater the need for a certain benefit, the greater the weight that should be attached to it.
- (5) Whether a benefit merely reflects a policy requirement, so that a scheme delivers no more than is acceptable, or whether policy requirements are exceeded (taking account of (4)).

31 Having regard to those parameters, and turning to consider the list of benefits set out in section 5 of Mr Jobbins' proof of evidence, the Council concedes it is unable to demonstrate more than a 4.1 year supply of land for housing. That is a

significant shortfall. In accordance with the priority given by the Secretary of State to significantly boosting the supply of housing, the delivery of 50 new homes, including 15 affordable homes should be afforded substantial weight.

32 The other public benefits claimed by the Appellant, in so far as they are properly regarded as benefits at all, attract much less weight for the following reasons:

- (1) The provision of public open space is a benefit. However, Mr Jobbins conceded there is no evidence of any shortage of public open space in the vicinity of the appeal site. That which would be provided is required to make the scheme acceptable. Its location, tucked away to the rear of the appeal site in an area prone to be used as attenuation ponds and subject to noise from the railway and the industrial user of land to the west, is unlikely to make it popular with the public at large, although it might be used by those who live on the appeal site. For these reasons it should be afforded limited weight.
- (2) The suggestion that the development's sustainable location is a public benefit is surprising. It is not a benefit of the development at all; it is an attribute of the *appeal site*. Frankly it would be surprising if any significant development were to be permitted in other than a sustainable location. This attribute of the site should not be accorded any weight.
- (3) The energy and water efficiency of the new homes is less a public benefit than a private benefit, which will accrue primarily to their occupiers. It is also a policy requirement. This benefit therefore attracts limited weight.
- (4) The biodiversity gain that is claimed is in reality a site wide ecological mitigation strategy.<sup>18</sup> The contribution that will be made towards securing

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<sup>18</sup> Jobbins PoE, p.24 para 5.8

nitrate neutrality is also a policy compliant mitigation measure. Mitigation negates harm; it is not a benefit. It ought not to attract any weight.

- (5) The felling of protected trees is probably very rarely viewed as a benefit. In this case, it is claimed as such because it will better reveal the open fields that contribute to the setting of the Conservation Area. However, that benefit could be secured without the development of 50 new homes and the attendant harm that would cause. It is also required as part of a landscaping scheme to mitigate the harm that would otherwise be caused by the development. Therefore, this benefit, if it be such, should attract very little weight.
- (6) Turning to the economic benefits that are claimed, the Appellant fails to quantify the scale of the direct, indirect and induced economic benefits of the scheme, their timing or duration. Therefore, although the development would certainly give rise to some economic benefits, on the evidence before this inquiry they ought only to be accorded limited weight.

33 Viewed in the round, the main public benefits of the scheme are 50 market and affordable houses. The other benefits that are claimed cannot be entirely discounted, but they have no material effect on the NPPF para 196 balance. On that basis, the Council's case is that the scheme's public benefits do not offset the moderate less than substantial harm that is caused to the significance of the Conservation Area.

#### **Other material considerations**

34 The draft local plan is not at an advanced stage for the purposes of development management. Policy H20 is also subject to sustained and high volume of

objections. Having regard to NPPF paragraph 48, it should be accorded very limited weight.

### **The Planning Balance (Inspector's issues 3 and 4)**

- 35 By reason of the fact the scheme lies outside the urban area boundary, the less than substantial harm that would be caused to the significance of the Old Bedhampton Conservation Area, which in turn is a result of poor design, the development conflicts with the most important policies of the development plan, viz. CS17, AL2, CS11, CS16 and DM20.
- 36 That gives rise to a presumption under section 38(6) of the 2004 Act that planning permission should be refused unless other material considerations indicate otherwise.
- 37 The National Planning Policy Framework is an important material consideration.
- 38 The tilted balance of paragraph 11(d) of the Framework is brought into play by the Council's inability to demonstrate a 5 year supply of land for housing; in so far as CS17 and AL2 restrict the supply of land for housing, they are rendered out of date: para 11(d), footnote 7.<sup>19</sup> However, the Council submits paragraph 11(d) is subsequently disengaged by the operation of paragraph 11(d)(i) footnote 6 policies on designated heritage assets: the harm that would be caused to the Old Bedhampton Conservation Area would not outweighed by the development's public benefits, and that amounts to a clear reason for refusal of planning permission.

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<sup>19</sup> The Appellant also contends CS11 is out of date because it does not incorporate any provision for balancing harm with public benefits. That is a somewhat academic point: Mr Jobbins conceded DM20 is Framework compliant, and that is the operative development management policy for the protection of heritage assets.<sup>19</sup>

39 The upshot is the presumption in favour of sustainable development embodied in paragraph 11 of the NPPF does not weigh in favour of the scheme.

40 Notwithstanding what has just been said, the Council accepts it must take urgent and effective action to remedy the shortfall in the supply of land for housing and accelerate housing delivery. For the purposes of this decision, it is material to take account of the very real prospect of it doing so<sup>20</sup>, based on the following facts:-

(1) The Local Plan will be examined in 2021, and once adopted will secure a 5 year supply of land for housing.

(2) The Council has agreed a methodology with Natural England to secure nutrient neutral housing development. That has allowed it to lift the embargo on the grant of planning permissions which suppressed housing delivery in 2019 and 2020.

(3) The Council's recently adopted Housing Delivery Action Plan adopts a proactive approach to bringing forward development on sites allocated in the draft Local Plan provided they comply with relevant policies of the Plan (and, it may be inferred, are acceptable in other respects).

41 The Inspector will recall Mr Jobbins' repeated praise of the Council's application to this task. There is every reason to believe its efforts will bring about a rapid improvement in the supply of land and housing delivery.

## Conclusion

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<sup>20</sup> *Gladman Developments Limited v Secretary of State for Housing Communities and Local Government and Others* [2021] EWCA Civ 104 at [27] citing *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) at [82]



42 The Council does not oppose the principle of development. Mr Wood made that clear, and in any event that is indicated by the draft Local Plan. But this scheme is not acceptable. It has been formulated without any or any proper assessment of the significance of Character Area 5 of the Old Bedhampton Conservation Area, the contribution setting makes to that significance and the effect on setting and significance. That was expressly conceded by the Appellant's heritage witness. It follows that the design could not and did not respond to the imperative that development should be devised to protect or enhance significance. Nor does it. It significantly erodes the distinctive open, rural setting of Character Area 1, and sever the functional and visual relationship of Character Area 5 from land with which it intimately associated. That part of the Conservation Area will be swamped by development calculated to mimic its architectural style. It will cease to be recognisable as a distinct and distinctive signifier of Bedhampton's agricultural past. Instead of standing away from the village core and set in an open farmscape it will be swallowed up by suburbia.

43 The harm to setting and significance is obvious. It has triggered an avalanche of well-founded objections. There is undoubtedly a better design solution that retains openness, separation and legibility. That may require fewer houses, their redistribution or both. The Secretary of State attaches great weight to good design and the protection of heritage assets. Having regard to those priorities and the primacy of the development plan you are therefore invited to dismiss this appeal. You need not worry that will slow down housing delivery. The Council is taking effective action to boost house building on sites which include the appeal site. But the Appellant must first deliver up a sensitive, heritage led, high quality design.

TIMOTHY LEADER

5<sup>th</sup> February 2021