



**WOKINGHAM
BOROUGH COUNCIL**

Civic Offices
Shute End
Wokingham
RG40 1BN

PLANNING COMMITTEE - WEDNESDAY, 9TH MARCH, 2022

In response to the current Covid-19 pandemic, the above meeting is to be held physically with limited physical capacity in line with Government guidelines. In order to allow the public as much opportunity to read and consider information provided to Members, the attached Supplementary Planning Agenda is to be published and made available earlier than is standard for meetings of the Planning Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Susan Parsonage'.

Susan Parsonage
Chief Executive

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Supplementary Planning Agenda Planning Committee – 9 March 2022

Planning Applications

**83. Site Address: Land South East of Finchampstead Road, South Wokingham
Strategic Development Location Wokingham (SDL)
Application No: 192325, Pages 13-142**

Additional representation

Since publication of the agenda, one additional representation has been received from a correspondent who had also responded to the original and first re-consultation. No new planning issues were raised: the issues and responses to them are covered in the summary of representations.

Correction

Paragraph 9 has not been updated to reflect the reduction in the number of dwellings proposed by 19 from 190 to 171: the total dwellings approved in the SDL would be 2,456 rather than 2,475. This does not alter the assessment that the proposals are consistent with the Core Strategy requirement for around 2,500 dwellings.

Conditions

There is a cross-reference missing from **Condition 3 xii)** on page 8 of the agenda (Report with Correct Cross-References – Application 192325). It should read

*xii) on and off-site highway works necessary to mitigate the impact of the development pursuant to conditions **44**, 45 & 46;*

Explanation of **Condition 20**: where the development would affect very high distinctiveness lowland fen habitat, it is proposed to move (translocate) the affected habitat to another location, where the right conditions exist/can be created for it to establish successfully. In this case the drainage strategy creates to an on opportunity to deliver a suitably damp habitat in the SANG. The donor site is where the habitat is currently and the receptor site is where it would be moved to.

An **additional condition** is recommended as follows

60. No dwelling shall be occupied until the foul drainage capacity to serve it has been provided.”

Reason: to avoid sewage flooding and/or potential pollution incidents in accordance with Core Strategy policies CP1 & CP4 and MDDL policy CC09.

together with an informative

35. With regard to condition 60, early engagement with Thames Water is recommended to establish either that there is sufficient foul water capacity to serve the development or

that any necessary wastewater network upgrades required to accommodate the additional flows from the development are programmed.

84. Site Address: Land At 1040 And 1100 Series Eskdale Road, Winnersh Triangle Business Park, RG41 5TS
Application No: 214183, Pages 143-174.

Since publication of the agenda, one additional representation has been received from Winnersh Parish Council on 3 March 2022 in response to the notification of Planning Committee meeting. The response re-stated comments provided by Parish Council on 16 February 2022 where it confirmed it had no objections and no observations to make in respect of revised plans. These comments should be read in conjunction with the original comments from 18 January 2022 where Winnersh Parish Council noted that “*Given the significant economic benefits, both direct (including employment) and indirect through the supply chain, that would arise from the development of facilities to facilitate the filming creative arts sector, Winnersh Parish Council is supportive of the application.*”

Corrections and clarification

Condition 1:

Substitute the *Transport Statement prepared by Motion* reference as follows:

Drawing/Document Title	Drawing Number	Revision
<i>Proposed Sound Stages 1 & 2 Floor Plans and Elevations</i>	<i>2697-TP-102</i>	<i>P1</i>
<i>Proposed Workshops 1 & 2 Floor Plans and Elevations</i>	<i>2697-TP-103</i>	<i>P1</i>
<i>Proposed Workshops 3 & 4 Floor Plans and Elevations</i>	<i>2697-TP-104</i>	<i>P1</i>
<i>Proposed Workshops 5 & 6 Floor Plans and Elevations</i>	<i>2697-TP-105</i>	<i>P1</i>
<i>Proposed Workshops 7 & 8 Floor Plans and Elevations</i>	<i>2697-TP-106</i>	<i>P1</i>
<i>1040 Security Hut Proposed Plans and Elevations</i>	<i>2697-TP-107</i>	<i>/</i>
<i>1100 Security Hut Proposed Plans and Elevations</i>	<i>2697-TP-108</i>	<i>/</i>
<i>Site Layout</i>	<i>2697-TP-101</i>	<i>P7</i>

Summary Information Table

Update to the detailed floorspace figures of each structure as shown in Summary Information table. When added, these figures now match the total 7,242m² of E use class floorspace stated:

- reduction of 25m² for each of two sound stages,
- reduction of 13m² for each of workshops 1-4
- increase of 36m² for each of workshops 5-7

SUMMARY INFORMATION		
Site Area	1.97 hectares	
Previous land use(s)	Hardstanding, overflow car park	
Proposed floorspace of each use	7,242m ² of E use class comprising:	
Change in floorspace (+/-)	Sound Stage 1	1,775m ²
	Sound Stage 2	1,775m ²
	Workshop 1	437m ²
	Workshop 2	437m ²
	Workshop 3	437m ²
	Workshop 4	437m ²
	Workshop 5	486m ²
	Workshop 6	486m ²
	Workshop 7	486m ²
	<u>Workshop 8</u>	<u>486m²</u>
	Total	7,242m ²
Number of jobs created/lost	250 direct jobs (including those arising from associated occupation of other buildings) and 250 indirect jobs	
Proposed parking spaces	95 proposed, 59 lost	

Paragraph 16:

The first sentence of paragraph 16 should read:

"Each of the proposed eight workshops is a rectangular structure; workshops 1-4 have a footprint of 450m² (20m x 22.5m) whilst workshops 5-8 have a footprint of 500m² (20m x 25m)."

Additional condition

Additional condition added:

External materials

17. Within three months of the date of this planning permission, details of materials to be used in the construction of roofs of buildings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be so-implemented prior to the development being brought into use.

Reason: To ensure that the external appearance of the building is satisfactory and to safeguard the building. Relevant policy: Core Strategy policies CP1 and CP3

85. Site Address: Hare Hatch Sheeplands, London Road, Twyford RG10 9RS
Application No: 214108, Pages 175-221

2019 appeal decision

The officer report refers to the 2019 appeal decision. For assistance, this is included.

Additional submissions

Further submissions in support of the proposal have been received following the publishing of the agenda. The submissions were received from:

- 1) 12 Weir Pool Court, Twyford RG10 9GY
- 2) 156 Reading Road, Woodley RG5 3AA
- 3) 18 Hilltop Road, Twyford RG10 9BL
- 4) 2 Penfield Drive, Wargrave RG10 8AP
- 5) 2 Red Cottage, Marlow Road, Bourne End SL8 5PW
- 6) 20 St Ronan's Road, Reading RG30 2QE
- 7) 28 Munro Avenue, Woodley RG5 3QY (x2)
- 8) 31 Willowside, Woodley RG5 4HJ
- 9) 4 Snowdrop Grove, Winnersh RG41 5UP
- 10) 4 Stanton Close, Earley RG6 7DX
- 11) 4 Troutbeck Close Twyford RG10 9DA
- 12) 40 Chalklands, Bourne End SL8 5TJ
- 13) 40 Copse Drive, Wokingham RG40 1LX (x2)
- 14) 45 Warblington Close, Tadley, Basingstoke RG26 3YW
- 15) 48 Ridgeway, Wargrave RG10 8AS
- 16) 7 Llewellyn Park, Twyford RG10 9NB
- 17) 9 Springfield Park, Twyford RG10 9JG
- 18) 94 Drovers Way, Woodley RG6 3PS
- 19) Blakes Lane, Hare Hatch RG10 9TA (no number supplied)
- 20) Colemansmoor Road, Woodley (no number supplied)
- 21) Hurley Lodge, Hurley SL6 5ND
- 22) Longfield Road, Twyford (no number supplied)
- 23) Ridgeway, Wargrave RG10 8AS (no number supplied)
- 24) The Manse, 119 Emmer Green, Reading RG4 8TR
- 25) No address supplied
- 26) No address supplied
- 27) No address supplied
- 28) No address supplied

- 29) No address supplied
- 30) No address supplied
- 31) No address supplied
- 32) No address supplied
- 33) No address supplied

Additional submissions were also received from those that had previously written in support:

- 34) 49 Wessex Gardens, Twyford RG10 0BA
- 35) 51 New Road, Bourne End SL8 5BT
- 36) 65 New Wokingham Road, Crowthorne RG45 6JG
- 37) 78 Broadwater Road, Twyford RG10 0EU
- 38) 8 Morton Place, Theale RG7 5QW (x2)
- 39) 9 Paddock Heights, Twyford RG10 0AP

All of the submissions recommend overturning of the recommendation and the specifics of the comments have already been addressed in the officer report. However, for completeness, officer consideration of the comments is contained below:

- Recommendation is illogical and without justification
- Proposal meets Section 13 of the NPPF
- Improvement to the Green Belt
- Would allow for a visual improvement to the site
- Openness of the site will be improved

Officer comment: The officer report notes a visual improvement through redevelopment of dilapidated structures and a net reduction in openness (in terms of numerical volume calculations) but also refers to an increase in building bulk closer to the road. This forms part of the basis for Reason for Refusal 1 and the departure from Green Belt policy in the NPPF and the Council's Development Plan.

- Provides employment and other economic benefits
- Refusal would lead to a loss of employment
- There are no adverse landscape, ecological, arboricultural or transport impacts
- The woodlands, allotments, increased biodiversity and energy efficient building are a positive aspect that should be supported
- Removal of buildings would benefit local wildlife
- Views of the residents should be given due weight
- Provides good retail and café facilities as well as allotments and play area for the community
- Customer service and range and quality of the products is excellent
- Allotments have mental health benefits

Officer comment: The above factors, including employment, landscape and ecological benefits, community support and community benefit are noted in the main body and the conclusion of the report and given due consideration in the planning balance.

- Business assistance rather than hindrance should be provided

Officer comment: Paragraph 84 of the NPPF is supportive of developing rural businesses and this has been given due consideration. See paragraph 49 of the officer report.

- Refusal will result in the business folding and the land being made derelict or redeveloped for alternative purposes such as housing

Officer comment: This is not a relevant planning consideration. The scheme is to be assessed on its merits and theoretical alternative outcomes for the site are not part of the assessment.

- There is a vendetta against the Council
- Sheeplands is not being treated fairly

Officer comment: The application is assessed against planning policy in the NPPF and the Development Plan only.

- Provides local independent alternative to chain centres

Officer comment: The application relates to the site and not the operator and so whether it relates to an independent business or a national chain is not relevant to the planning consideration of the proposal.

- Refusal will result in a reduction in trade in surrounding businesses

Officer comment: There is no specific evidence provided to support this statement.

- Other businesses have not been affected by the existing retail trade

Officer comment: The Council does not oppose the development on retail impacts, as noted from paragraph 56 of the officer report.

- Other development in the area has been allowed on greenfield sites

Officer comment: Each application is assessed on its merits, including its location within the settlement limits, Green Belt or countryside.

Agent response

The planning agent has submitted a lengthy rebuttal to the recommendation, arguing that the Council's assessment is flawed and that an appeal with an application for costs would be submitted in the event of a refusal. The primary concern turns on the Council's interpretation of previously developed land (PDL) at paragraphs 29-45 of the officer report and the implications that this poses for the assessment of whether the development is inappropriate development in the Green Belt.

The letter in full is attached but a summary is contained herein. Given the length of the rebuttal, the limited time period in which to respond and as the supplementary agenda is not the most appropriate mechanism to undertake further planning assessment, the Council's response is not intended as a full response.

The comments include:

- The test for whether it is previously developed land (PDL) has been incorrectly applied, as asserted in the Wheeler Street appeal decision
- The test for PDL in paragraph 149 of the NPPF cannot be applied to the definition in Annex 2 of the NPPF
- It is wrong to ignore consents for non-horticultural uses, their curtilage and fixed infrastructure or extant permissions. Curtilage of the farm shop or café (kitchen, service, access) has not been included (or even for the outdoor retail, animal housing, exhibition space)
- The site would only not constitute PDL if it were solely in agricultural or horticultural use
- The Council agrees that the site is one planning unit and it follows that it is previously developed land
- While the definition of PDL does not reference mixed use, it also does not reference any other 'acceptable' uses which constitute PDL either, so this point is not clear
- Just because it is in horticultural use does not mean that it is not PDL
- Car park and service yard has not been included in PDL
- Farm shop could benefit from mezzanine floorspace
- Approved car park extension area has not been included
- The definition of PDL is that what was in last use allows for temporary uses to be included as PDL
- The table at paragraph 19 is inaccurate as it does not include extant permissions, the car park or office block, creating a misleading picture of the facts

Officer comment: There remains a difference in opinion in the approach taken in considering previously developed land. The Council maintains that the approach taken at paragraphs 29-45 is an entirely valid approach. By way of brief summary, the contention relates to when the whole site is considered the planning unit, whether the definition of previously developed land would allow consideration of specific uses and buildings on the site or whether the whole site should be considered as a whole.

For clarity, paragraph 39 of the officer report makes clear that PDL includes the farm shop, café and offices. It would, by extension, include other areas such as curtilage and the car park. However, the Council concludes that the curtilage around these buildings is tightly constrained because of the physical nature of the buildings and their uses. Further, the extent of the PDL as specified in the plan after paragraph 39 relates to that part of the site that is to be redeveloped and this is done as a comparative tool. Extant permissions have not been considered because at this point, they have not been enacted.

The Council does not believe that Wheeler establishes an appropriate test for considering previously developed land as applied on the subject site. Paragraph 32 of the officer report explains why.

- There is no consistency with the 2019 appeal decision because they are assessed under different paragraphs of the NPPF

Officer comment: Paragraph 40 of the officer report is drawing the conclusion that the Inspector also considered the 2019 proposal as inappropriate development. This should not be interpreted as implying that the assessment in reaching this conclusion was the same.

- The development is not unsustainable when considering the conclusions of the report, particularly when considered against out-of-date policies

Officer comment: Reference to unsustainable in Reason for Refusal 2 is a broad summary of the proposal in terms of Green Belt policy band.

- There is a lack of weight and consideration of the very special circumstances
 - No consideration of economic benefits despite reference these benefits in paragraph 149 of the report. Paragraph 81 of the NPPF requires significant weight to be applied to economic growth
 - Little weight has been given to viability and abandonment of site is tied to this assessment and should be relevant
 - No weight has been applied to community, social and environmental benefits or community support
 - Abuse of process is relevant as it has led to the current circumstances
 - Business competition is dismissed, contrary to 2019 appeal decision
 - Biodiversity net gain should be a VSC as legislation has not been enacted
 - Other benefits such as public sector equality and footpath access have not been considered

Officer comment: The concern seems to be the detail of which the Council has provided in reaching the conclusion as to whether very special circumstances would outweigh any harm. Paragraphs 48-51 are intended merely as a summary of these considerations. To clarify, paragraph 51 is an acknowledgement that the very special circumstances that have not been disputed in the preceding paragraphs are relevant to this consideration. Appropriate weight has been provided in the conclusion of the report.

- Reason for Refusal 2 is contradictory in that it says there is not closer to the A4 but would result in additional bulk

Officer comment: The premise behind Reason for Refusal 2 is that although the new building does not extend any closer than the existing structures, there is still additional building bulk extending north from the existing farm shop in an area that is either currently devoid of any built development or has a much lower height.

- The reduction in footprint figures at paragraph 79 do not include the glasshouses and this implies a 725% increase and it is not explained why

Officer comment: For clarity, paragraph 79 excludes the glasshouses because the intention is to illustrate the increased footprint of the permanent retail footprint.

- Reliance upon past conditions to require glasshouses to be removed cannot be justified as these buildings are immune from enforcement

Officer comment: There is no suggestion that this is the case.

- The comparison to the height of Dobbies at paragraph 79 does not account for retaining walls and ground level differences

Officer comment: The comparison in height of Dobbie is used to illustrate the difference in building heights as would be appreciated from the road. Changes in levels or retaining walls are not sufficiently significant to be appreciable in this appreciation.

- Council's landscape officer supports the proposal and it is not explained why there is a contradiction of this advice

Officer comment: Paragraph 76 of the officer report makes this distinction. For clarity, the landscape officer has assessed the visual impact in landscape terms. The assessment at paragraphs 78 and 79 of the officer report are a planning assessment of bulk and scale of built development.

- No assessment of intensified activity impacting upon the Green Belt and there are contradictory statements at paragraph 88

Officer comment: Paragraph 45 makes this assessment under consideration of the impact upon the Green Belt. This harm extends to the character of the area at Reason for Refusal 2.

- Increase in employment allows significant opportunities in the Employment Skills Plan

Officer comment: There is agreement that in the event of an approval, Reason for Refusal 3 would not apply.

- Appendix 2 offers several other clarifications in the officer report to demonstrate the arguments presented by the agent.

Officer comment: It is not the intention to respond to each and every specific point as part of this supplementary agenda, many of which are comments.

**86. Site Address: Auto Trader House and Hartman House, Danehill, Lower Earley
RG6 4UT
Application No: 214046, Pages 241-267**

No update.

**87. Site Address: Indigo House, Mulberry Business Park, Wokingham, RG41 2GY
Application No: 213975, Pages 279-296**

No update.

Pre-emptive site visits

None.

7th March 2022
Our Ref: 19.1005/LV/AJ

Mr T Saunders
Wokingham Borough Council
PO Box 157
Shute End
Wokingham
Berkshire
RG10 1WR

T 01344 753220

F 01344 753221

Via email

Dear Mr Saunders

Re: Hare Hatch Sheeplands – Planning Application Ref: 214108

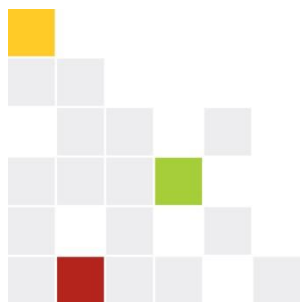
We write with reference to the above planning application, our recent site visit with Simon Taylor on 14 February 2022 and the Council's Committee report which has been published ahead of the Planning Committee Meeting on 9th March 2022. We are very disappointed to note that the proposals have been recommended for refusal, with three reasons for doing so. It is however positive that there are no technical matters that would warrant the refusal, other than an absence of a legal agreement to address skills training, something we had not been made aware of and is something that you will appreciate can be easily remedied.

Whilst we acknowledge that the final decision on the proposals will be made by Committee Members, having read the Council's report in detail, we have noted several fundamental issues and inaccuracies, with the Council's assessment of the most pertinent matters, which are simply wrong.

We believe it is critical that these are drawn to your attention, to ensure that Members are given fully accurate information at the Committee Meeting.

Based on all the evidence submitted and material planning issues to be considered together with the previous appeal decisions, it is not clear how the conclusions drawn and presented in the Council's Reasons for Refusal (RfR), particularly one and two, can be reached. Therefore, we urge the Council to review its report to reflect on the matters set out below, so as to avoid further unnecessary and substantial appeal costs. Given the significant public interest, the Council's flawed assessment of the issues and history of the site, our Client would have no choice but to seek a Public Inquiry and a claim of full costs.

It should also be noted that we have sought Counsel's opinion regarding the substance of the refusal reasons and matters raised from the report, and this is reflected in the proceeding comments, which have been fully endorsed.



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In summary the issues are:

Reason for Refusal 1

1 The wrong test has been applied in relation to the previously developed land (PDL). As the site is a single planning unit in a mixed use (Sui Generis use), as the Council has agreed, all the structures and land within the redline constitute PDL, making partial redevelopment in the Green Belt acceptable, subject to the caveats. This reflects the Wheeler Street Appeal Decision.

2. In the Council's assessment on PDL, the tests at Paragraph 149 of the NPPF (related to appropriate development exceptions including temporary uses) cannot by 'extension' be applied to the definition in Annex 2 Definition of PDL. They are separate, unlinked tests. The PDL test is the 'last use' test, regardless of whether temporary or not.

3. Even taking the Council's approach to PDL which is wrong, the Council's assessment is fundamentally flawed by ignoring all the consents for non-horticultural uses, their curtilage and the fixed surface infrastructure as per the Definition of PDL in Annex 2 of the NPPF. Further to which extant consents have not been considered.

4. The Council indicate their conclusions are consistent with the 2019 Appeal Inspector at para. 40 regarding PDL, however the Inspector had applied different tests due to it being a re-use under para. 150 of the NPPF. It is notable that the wording at para. 150 uses different language and meaning to that in the PDL definition in Annex 2, further reinforcing that no 'extension' can be in the wording made as suggested in 2 above.

5. The proposition that the proposals are an unsustainable form of development, is contrary to the conclusions drawn throughout the Committee Report.

6. Notwithstanding that the site is PDL and therefore redevelopment is acceptable in the Green Belt, Very Special Circumstances have been demonstrated and the Council have not adequately assessed and considered the VSC and have given contrary weighting to matters previously given great weight by the 2019 Appeal Inspector. The key issues are:

- i) The Council do not attribute any weight to the economic benefits of supporting rural business; ii) Little consideration or weight is given to viability/business need for change and likely dereliction/abandonment, despite not disputing the evidence;
- iii) No weight is attributed to the community, social and environmental benefits nor the significant public support unlike the 2019 Appeal Inspector;
- iv) The abuse of process is relevant given the Council's actions of enticing the withdrawal of the enforcement appeal for retail uses took away the right to appeal and is acutely relevant to current operations and viability;

- v) The Council dismiss business competition as a VSC in complete contrast to the 2019 Appeal Inspector; vi) It is wrong to conclude the significant Bio-diversity Net Gain is not a VSC. The anticipated 10% minimum will not become secondary legislation until November 2023 and the development far exceeds those requirements; and
- vii) The Council's VSC does not take into account the numerous other benefits that the Council highlight as benefits and positives for the scheme throughout the report nor the enhancements under the Public Sector Equality Duty (PSED) providing significantly improved access.

Reason for Refusal 2

- 7. In relation to harm to the Green Belt and openness the Councils assessment is contradictory and should take into account the removal of all the footprint and volume being removed. The proposals are not closer to the New Bath Road. The overall bulk proposed is significantly reduced. The Council's Landscape Officer confirms that there will be a beneficial change in landscape and visual openness in respect of the Green Belt.
- 8. There is no assessment made that intensified activity will harm the character and spatial openness of the Green Belt.

Reason for Refusal 3

- 9. A Legal Agreement can be provided to deal with skills training. Indeed, the increase in jobs from 32 to 69 full time equivalents provides significant opportunities as well those created during construction.

We set out below a detailed assessment of the matters which we have summarised above.

RfR 1 – Inappropriate development in the Green Belt

"The increase in permanent retail and café floorspace represents inappropriate development within the Green Belt without sufficient very special circumstances. It is an unacceptable and unsustainable form of development resulting in harm contrary to Section 13 of the National Planning Policy Framework 2021, Policies CP1, CP3, CP11 and CP12 of the Core Strategy 2010 and Policies TB01 and TB21 of the Management Development Delivery Local Plan 2014."

Paragraph 19 and Paragraph 32-40 – Appropriate Development in the Green Belt – Wrong Test Applied

The fundamental issue is whether the proposals constitute 'appropriate' development in the Green Belt. The Council has come to the conclusion that they do not, however the basis for coming to that conclusion is fundamentally flawed.

Our planning statement and supporting documents set out a very detailed analysis of this principal consideration, setting out how the development would not be inappropriate in the Green Belt by Virtue of paragraph 149 (g) of the NPPF.

The proposed development is clearly not inappropriate in the Green Belt and is therefore appropriate, as an exception under NPPF para. 149 (g). This is on the basis that the site is a single planning unit in a 'mixed' or *sui generis* use. Therefore not solely used for horticultural/agricultural

purposes, thus constituting previously developed land (PDL) as defined in the NPPF Annex 2 Glossary.

It is a well-established principle, supported by appeal decisions, that land and buildings in a mixed use constitute PDL, as they are not “in or last used for agriculture/horticulture” as per the Annex 2 definition – their use is *sui generis*. The site would only not constitute PDL if it were solely in agricultural or horticultural use. By way of example, the *Wheeler Street* appeal decision referenced in the Councils report, which was submitted with the application, supports this exact point. The circumstances in that appeal are clearly very similar to that at HHS. The site was found by the Inspector to be a single planning unit in a mixed use of retail and horticulture, thus PDL.

The Council say in their report (para. 32) that there are significant differences between the appeal and Hare Hatch: that *Wheeler Street* had a lawful permanent retail use; was a smaller site; and the retail permission applied to the whole site, on the basis of it being a single planning unit, in mixed use. However, HHS also has lawful retail uses. The fact that the site is smaller is irrelevant when considering PDL. Therefore, the appeal and circumstances at HHS are indeed closely aligned.

This is particularly the case as it is noted that the Council have now agreed that the site is a single planning unit in a mixed use. Historically, the Council have insisted the site is solely in horticultural use or that the other permitted uses are somehow separate from the horticultural elements of the site. The Councils agreement that the site is single planning unit in a mixed use is welcomed (para. 35 & 36) and it should therefore follow, that the areas of the site being developed constitute PDL.

It is then at this juncture, despite acknowledging the site as a single planning unit (land and buildings within the application site) comprise a mixed use, that the Council state the site is not PDL (para. 37 to 39). This seems to be based on a misinterpretation of the definition of PDL and the conflating of two different and unlinked ‘tests’ in coming to a view as to what constitutes PDL.

The Council say (at para. 37) that because the definition of PDL does not explicitly reference a ‘mixed use’ as constituting PDL, that this somehow allows horticultural uses on the site to be disaggregated from other uses on a mixed-use site. However, while the definition does not reference mixed use, it also does not reference any other ‘acceptable’ uses which constitute PDL either, so this point is not clear.

The starting point, as set out in the definition of PDL in the NPPF Annex 2, simply states that PDL is:

‘Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure’

No use is mentioned. It merely then just sets out a list of specific exclusions, the most relevant being:

‘land that is or was last occupied by agricultural or forestry buildings’.

Clearly, therefore, the site and land in this case is occupied by permanent structures in a mixed use (office, farm shop, café, customer facilities, glasshouses (in various uses), etc), associated fixed infrastructure (including the car park, service yard) and the associated curtilage, that are by the Councils own assessment part of a single planning unit in a ‘mixed’ *sui generis* use. Therefore, the land is not or was not ‘last occupied by agricultural buildings’. It is occupied by buildings in *sui generis* use. It is therefore unclear how the Council can conclude the site is in a mixed use but not PDL.

Paragraph 38 Wrong tests applied in defining Horticultural/Non-Horticultural Areas

Notwithstanding that the wrong test has been applied as set out above, it is simply incorrect to state that 70% of the site remains in horticultural use and, for the reasons above, to then say that those areas in 'horticultural' use are not PDL.

Even if one was to take the approach the Council takes at para. 38 of its report, attempting to disaggregate horticultural uses from others as part of the mixed use (contrary to concluding the site is in a mixed use), to try to reconcile that some areas are PDL and some are not; the Council's own assessment is clearly erroneous on the basis that it has not included for example the car park, not all of the service yard, nor the curtilage of what it considers to be non-horticultural uses (as per the PDL definition). These are large areas and clearly serve and form part of the mixed site use (included on application boundary plans of numerous applications). For the Council to not include such areas or to even look to calculate such areas as the curtilage, as part of its own calculations at para. 19 or the assessment at para. 38 is entirely misleading.

Further to which, not all extant permissions have been included or considered. For example, an area for 40 car parking spaces to the north-west of the application site (off the service yard) was erroneously covered by the Enforcement Notice and the tarmac area had to be removed and seeded with grass, when it didn't need to be. This point has subsequently been raised and the original approved plan for the parking spaces was 'reapproved' in the recent permission to confirm the service yard could be used for all site uses (as per the various original application documents). This was approved and can be implemented, however it is not reflected in any of the Council's figures or taken into account. The farm shop could also benefit from 200 sqm of retail mezzanine, when taking the Council's approach of splitting out uses (under Section 55(2)(a) of the TCPA 1990 and Article 44 of the TCP (Development Management Procedure) (England) Order 2015).

Curtilage

We also note that despite being required by the PDL definition in Annex 2 of the NPPF, that no consideration has been given to the curtilage of the structures. When taking the Council's narrow approach to PDL, which we consider to be wrong here, then it is still a requirement to consider curtilage.

The farm shop and café are both served by a much larger area than the simple line around the structures in terms of curtilage. Indeed, the café has to be accessed via the outdoor area and then through a glasshouse. The kitchen servicing is done to the rear, again through other glasshouses. The farm shop similarly has a curtilage much broader than that shown and as with the café would include the car park, service yard, access to customer toilets etc.

In relation to the outdoor retail space to the north-east, the area has a much broader curtilage than shown on the plans or it could not be accessed. Similarly, the exhibition space and quirks space to the south-east have to be accessed (as shown on the redline plans approved). Indeed, even the timber store has a curtilage that extends through other glasshouses and through the car park so that it can be accessed (as required by the Council and as shown on the approved redline plans).

We also note that the Council took the view, in relation to the selling of Christmas Trees back in 2017 (pre garden shop) that the trees could not be sold outside in the area between the service yard and glasshouses as they formed part of the farm shop curtilage and therefore fell outside of Schedule 2 Part 4 Class B of the GDPO 2015 and they had to be sold in the very far western part of the site (as

per my response letter to WBC Legal c/o Ms Severin dated 12 December 2017).

Paragraph 39 and 19 - Temporary Permissions

The Council's assessment also suggests at para. 39 that the buildings subject to temporary permissions should be excluded from PDL. The Council suggest that as Green Belt para. 149 (g) of the NPPF excludes 'temporary buildings' from being appropriate development that any building in a 'temporary' use should also be excluded from the NPPF definition of PDL. We consider this a fundamentally flawed assessment for the following reasons.

The Council seek to suggest that as para. 149 (g) of the NPPF which allows for the redevelopment of PDL for the infilling, partial or complete redevelopment in the Green Belt (i.e. new buildings), includes an exclusion in relation to temporary buildings then 'by extension' the definition of PDL (in NPPF Annex 2 Glossary) must exclude temporary uses, despite being wholly unrelated paragraphs and completely separate tests. In relation to PDL, the NPPF only requires consideration as to whether the land is or was occupied by a permanent structure(s), including the curtilage of the land and any associated infrastructure test only refers to structures, including the curtilage of the developed land. These are therefore completely separate tests and no 'extension' can be made at all.

The definition of PDL in Annex 2 is clear that, inter alia, it is only "land that is or was last occupied by agricultural or forestry buildings...." The site is mixed use and therefore all the buildings are considered to be PDL. However, even taking the Council's approach, it is clear that the approach does not reflect the glossary wording and therefore the test, which clearly relates to the last use of the structure and does not distinguish between permanent and temporary.

Therefore, the temporary nature of permissions do not exclude the relevant buildings from being PDL as they are not used purely for agriculture/horticulture. They are currently used for their permitted non-horticultural uses and other permitted uses as part of the mixed use. Even if the temporary uses cease, their last use was not agricultural (but rather the temporary permitted use as part of a mixed use) nor would its current use be (back to the mixed use, sui generis use). Therefore, either way, the structures, curtilage and associated fixed surface infrastructure would remain as PDL.

As a result, as shown in the planning statement, even if you separate parts of the planning unit (which as explained would not be the appropriate approach), the proposed development is plainly only taking place on parts of the site that are occupied by 'permanent structures including curtilage and associated fixed surface infrastructure' and these areas of land are not currently or last occupied by buildings solely in agricultural use.

On this point, the Councils Plan at para. 19 showing 'non-horticultural uses' is inaccurate. For example, it does include the approved car park (as referenced above), the service yard extends further west and has a storage building, the permitted area for the 40 car park spaces to the north of the service yard/car park (referred to above) and the office block/customer toilets. Further to which there is no consideration of curtilage. This creates a misleading picture of the facts on the ground. Notwithstanding that the whole site is in a mixed use, we attach a more accurate drawing showing the permitted non-horticultural areas as part of the mixed use site at **Appendix 1**, but does not include the curtilage which would extend this area even further. The figures have previously been provided in our Planning Statement.

Paragraph 40 – The Garden Shop Inspector applied a different test related to NPPF Para. 150

The Council indicate that the assessment set out in the Committee Report at para. 40 is consistent with the 2019 Appeal Inspectors decision at paragraph 20. Paragraph 20 does indicate that the temporary garden shop proposals were inappropriate development. However, the Inspector had to apply a different test in that instance in relation to inappropriate development under para. 150 rather than 149 of the NPPF, as set out in the Inspector's Paragraph 19 and again the Council should not conflate the two tests as they assessed different things.

The 2019 proposals were considered by the Inspector against the NPPF test as to whether they met the re-use of buildings test under para. 150 of the NPPF which states:

*“Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:
[inter alia]*

(d) the re-use of buildings provided that the buildings are of permanent and substantial construction;”

Para. 150 requires that in order for the re-use of buildings to be appropriate development, they need to be both permanent and of substantial construction. The 2019 Inspector found that the glasshouses were permanent but were not of substantial construction and the proposal was therefore considered inappropriate under that test. As such the proposals fell to be inappropriate development as referred to in the Inspectors paragraph 20 and not, as indicated by the Council at para. 40, due to the retail use per se, which was assessed on the basis as to whether it could be ancillary or not. Again yet a different test.

Para 38 – 40 – Why you cannot conflate between para. 149 / 150 of the NPPF and the PDL definition

Reference to para. 150 does however provide a further example as to why the Council is wrong in seeking to make an 'extension' between para. 149 and the definition of PDL as previously indicated. Para.150 dealing with Green Belt and immediately after para.149, does not use the same terminology referring to buildings which are 'permanent and substantial construction' where as the PDL definition, only refers to 'permanent' and not 'substantial'. These are different tests and you cannot conflate between the two and the same applies in relation to para. 149. Further to which the PDL Annex 2 definition does not deal with 'buildings' as per para. 149 but refers instead to 'structures'. The 2019 Inspector notes this at paragraph 40 of the allowed decision.

Therefore, in conclusion even in taking the Council's wrong approach to PDL, the glasshouses subject to the temporary permissions are in permanent structures last in a mixed use or nonhorticultural use and therefore fall to be PDL and their curtilage and fixed surface infrastructure are included as well.

RfR1 Unacceptable and unsustainable form of development resulting in harm

Given that there is no reference within the Committee Report to the development being 'unacceptable' other than in RfR1, it is anticipated that this wording relates to the matters raised above regarding inappropriate development, which we have already addressed.

Paragraphs 52-55 Unsustainable Form of Development not Justified

RfR 1 also refers to the proposals being an 'unsustainable form of development'. We assume this relates to Para 52-55 of the Committee Report and note that report sets the

assessment against a number of adopted policies, which have been found to be out of date in a number of appeals. Notwithstanding this, the Committee Report concludes that there is insufficient justification to refuse the application these grounds. It is therefore contradictory to include 'a sustainable form of development within RfR1.

In any event, the 2019 Appeal Inspectors assessment on sustainability indicated that nurseries are of necessity located in rural areas, however the Committee Report suggests that "by 'extension' this applies to garden centres but only by degree". Yet it is a well-recognised fact that most garden centres are located on former nursery sites which are in rural areas.

Further to which, the retail impact assessment included and has been accepted by WBC Planning Policy that there are no other sites available for a garden centre in wider area. We also note the loss of bulky goods retail outlets generally in the wider area (around Reading station and the proposed loss of the Bracknell Peel Centre) to residential, which will only make such sites for garden centres harder to come by.

We also note that the 2019 Appeal Inspector also noted at paragraph 24 that CP11 of the Core Strategy did not apply in terms of accessibility given it does not reference accessibility or transportation (see para 52 of the Committee Report).

The approach to HHS in this context also appears contradictory to that in relation to recent applications at Squires Garden Centre, Heathlands Road, Wokingham with regard to rural locations, where a positive view was given on this matter in similar circumstances.

The only other reference to sustainability in the Committee Report is in relation to 'Sustainable Design' section paragraphs 121 – 123 which recognises the positive benefits of the proposals including addressing the Council's climate emergency intentions and the likelihood of exceeding the Council's policies in relation to carbon emissions.

RfR1 Summary

Given the above, it can only be concluded that the development passes the first limb of para. 149 (g) of the NPPF, insofar as that it is not 'inappropriate development' but an appropriate partial redevelopment of PDL. The second limb is addressed in the planning statement and demonstrates the development will not have a greater impact on the openness of the Green Belt than the existing development, as indeed also appears to be agreed by the Council's Landscape Officer.

As such, VSC should not need to be demonstrated.

RfR 1 Without sufficient Very Special Circumstances

As noted above RfR1 indicates that Very special circumstances are not demonstrated, which is addressed in full below, notwithstanding the above.

Paragraphs 41 – 46 Very Special Circumstances (VSC)

It is noted that VSC were submitted as part of the application. It needs to be recognised that these were submitted should the Council not agree the development is appropriate development. However, this was done on the expectation that given the Council's previous stance on the use of the site explained, they would not agree the site was a single planning unit and in a mixed use (various officer reports/appeal statements). Given this conclusion, as outlined above, it follows that VSC do not need to be considered.

Notwithstanding, we have reviewed the Councils assessment of the submitted VSC and again, there fundamental flaws in its approach. We also note that there is no assessment of the proposals in relation to the 5 purposes of the Green Belt, which is addressed in our Planning Statement. It is therefore also important to point this out as if Members consider VSC are required to be demonstrated, these are judged fairly and in a balanced way. The following issues are identified in the assessment:

1. At para 49, the Council seem to recognise the economic benefits of supporting rural business and rural diversification under par 84 of the NPPF as a VSC in this case but (inexplicably) do not attribute any weight to these. Further, the Council singularly fails to recognise, address or apply the requirement of National policy at para. 81 of the NPPF that, '**Significant weight**' should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development;
2. Very little consideration has been given by the Council to viability/business need for change on the site. This has been a key driving factor for the application, since it is clear even the temporary permissions do not allow for the business to the survive in the long term. The assessment is clear, there is no prospect of returning to a horticultural nursery with limited retail opportunities. The Council do not dispute the conclusions (para. 49) but give it no detailed consideration or apparent weight as a key VSC. The Council also says that the real possibility of dereliction or abandonment outlined in the viability assessment are irrelevant but these issues are clearly tied to the sites viability as set out in the assessment;
3. At the end of para 49 it identifies some the community, social and environmental benefits of the development as VSC, but again does not attribute any weight to these benefits. It is clear from nearly 400 comments of support and also support from the Rt. Hon. Theresa May MP that community benefit and support is substantial and should attract significant weight accordingly. The Inspector in the 2019 appeal gave this weight as a VSC but the Council conversely seem to be giving it very little consideration – being afforded only 'minor' weight in planning balance (para 134);

4. At para. 50 the Council state that Abuse of Process is not relevant. However, as set out in the Planning Statement, the Council's actions of enticing the withdrawal of the enforcement appeal against the enforcement notice for lawful retail uses on the site took away the right to appeal. It is acutely relevant as this has had a significant 'knock on' effect to the sites' operations, viability and now the need for the development proposed;
5. At para. 46, the Council acknowledge the 2019 appeals VSC including business competition is a VSC and relevant but then contradict this in para 50. It is clear from the 2019 appeal and the viability assessment that the ability to compete with close-by businesses in this case is a material planning consideration and a VSC, as found by the Inspector;
6. At para. 50 It is simply wrong to conclude the significant BNG on the site is not a VSC. A BNG of 10% is not currently a minimum requirement and will not be until secondary legislation is introduced (currently at least 18 months away, in November 2023 at the earliest) and it is clear the proposed development far exceeds these requirements. Therefore, much like additional affordable housing above policy provision, additional BNG can be VSC in the Green Belt and the additional BNG in this case, well above and beyond future legislative requirements, is a net benefit and forms part of the VSC. It would be a clear error of the Council to proceed on any other footing.
7. In considering VSC at para 49 and 50, the Council's considerations do not consider numerous other benefits that the Council later highlights as benefits and positives for the scheme (such as the new footpath linking the A4 and public transport stops (para. 96)) and does not consider the enhancements the development achieves under the Public Sector Equality Duty (PSED). Providing an improved layout, building and parking provision will significantly enhance accessibility for and the experience of people with protected characteristics which can also be a considered VSC. Conversely, at para 86, in suggesting there would be 'no significant adverse impacts' it suggests there is some adverse impact, albeit not significant. It is not clear how there is any adverse impact in this context and only positives are being brought forward.

Overall, it is clear that the Councils assessment of the VSC, even though it does not apply, either underplays the abundant and significant VSC or does not give them due weight or proper consideration which is of significant concern. Given the strength and evidence of VSC in this case, it appears irrational to not conclude the VSC would outweigh any harm to the Openness of the Green Belt, if that is what the Council concludes.

RfR 2 – Harm to the Character of the Area

"By virtue of the intensified activity associated with the change of use to retail and the increased bulk closer to New Bath Road, the harm to the character and spatial openness of the Green Belt and countryside is contrary to Section 13 of the National Planning Policy Framework 2021, Policies CP1, CP3, CP11 and CP12 of the Core Strategy 2010 and Policies TB01 and TB21 of the Management Development Delivery Local Plan 2014."

There are numerous inconsistencies between the refusal reason and the assessment outlined in the report, which show that RfR 2 is not well founded.

Paragraphs 41 – 45 and Paragraphs 71 - 79 Contradictory Assessment of the effect of the Proposal on Openness of the Green Belt and Countryside

This RfR suggests the intensified activity from increased retail space and bulk of the building closer to New Bath Road will cause harm to the character and spatial openness of Green Belt (suggesting a visual and spatial impact) and also impact to the character of countryside.

In this context, in assessing openness at para 42. the Council acknowledges the substantial reduction in building footprint and volume. However, at para. 44 and 45 suggests there are two issues in context of openness, being that the increased intensity of the site and the provision of a more 'permanent' building and more 'bulk' closer to the A4. The Council reference the 2019 Appeal to generally support this proposition. However, as indicated above, the 2019 appeal is not comparable in this context, as this was for a *re-use of existing buildings* assessed under para 150 of the NPPF and not para. 149, with no structures being removed to off-set the impacts on openness in the round, which is required in this case.

In terms of the visual and spatial impacts on openness, the Council's conclusions on openness directly contradicts their own Landscape Officers expert's advice. At para. 75, the Landscape Officers agrees, "*there will be a beneficial change in landscape and visual openness in respect of the green belt, due to a spatial change within the site, with an overall beneficial change in the visual and spatial openness in respect of the green belt*". This is contrary to RfR 2 and it is not explained why Officers have disregarded their expert's advice on this critical matter.

At para 45, the report states there will be additional bulk next to A4. Para. 79 reports says, "*it would not extend any closer to the A4 than the existing glasshouses*" contrary to RfR 2 at para 45. However, the report then goes on to say '*because of its increased height and footprint as well as its solid nature (as distinct from the glasshouses), it would be a much more prominent feature in the site and when viewed from the A4. This forms the primary basis for the imposition of Reason for Refusal 2*'. But the primary reason for RfR 2 is framed around visual and spatial impacts on GB openness. There is a significant lack of consistency in this assessment.

The assessment of footprint in paragraph 79 is also irrational and misleading by excluding the footprint of all glasshouses. The assessment on Green Belt openness in para 42 includes the glasshouses but then does not do so in assessing this issue at para 79. Quoting a footprint increase of 725% (which is not even explained) when the Council have already agreed there is a substantial footprint reduction at para. 42 that has included the glasshouses is non-sensical. The table at para. 42 is clear that there will be a decrease in footprint of 58% and a reduction in volume of -35% (Applicant's figures based on topographical survey). They are existing buildings and structures on the site that plainly reduce openness on the site so loss of these would need to be considered in terms of the Green Belt tests.

The Council cannot rely on the glasshouse being demolished under the condition of their original permission as a purported justification as to why they should not be considered in this context, as those conditions have no relevance after 2012 (expired after 10 years) and in any event the condition only related to one glasshouse to the south and two other smaller elements of glasshouse, one of

which is part occupied by the café. The condition therefore does not relate to 'many' of the glasshouses purported at para. 79. The Committee Report is clearly misleading and inaccurate. They are permanent buildings on the site and can remain as such.

Paragraph 79 – Dobbies comparison

At para. 79 a comparison is made with the height of Dobbies on the opposite side of the road, however the assessment does not take into account the significant ground level changes at Dobbies with the main front door having to be accessed via a long ramp to address the increased height of the main part of the building. In addition, to the front of the Dobbies main elevation, there is a significantly high retaining wall in front of the building. Nor does the Dobbies roof accommodate solar panels. It should also be noted that the café element of HHS is at a much lower height than the rest of the structure.

RfR 2 and Paragraph 88 – No justification related to Intensified Activity

In terms of the increased activity, there is very little said on the matter in the Committee Report despite being referenced in the RfR2, and at para. 88 contradictory comments are made. The Council state here that *'Whilst there will be increased activity associated with the retail and café uses (including vehicle movements), it is well contained within the site and sited amongst the backdrop of other garden centres and the background noise of the A4. On this basis no objection is made'*. Therefore, it is difficult to reconcile how the Council consider the activity will harm spatial openness when balanced against the benefits to visual and spatial openness identified from the significant reduction in built form.

Overall, it is evident a contradictory and inconsistent approach to assessing this issue is not reconciled in the RfR and clearly not born out of well-founded assessment. It is not supported by the Council's own experts or applicant's experts and evidence.

RfR 3 – Lack of Employment Skills Plan

This reason is noted, and it is recognised it would be dealt with under a s106 agreement. It therefore, needs to be made clear to members that this RfR is solely based on the lack thereof, which can clearly be resolved if the development is recommended approval, as it should be. The applicant had not been made aware of this issue prior to publication of the Committee Report.

Further matters are considered in **Appendix 2**.

Conclusions

It is clear that neither of the primary RfR, one and two have any merit and are based on a flawed assessment of the key issues and the conflating or simple wrong application of the relevant tests. The application should clearly should not be recommended for refusal on the grounds submitted,

given the Councils Report. Given the case presented, the development clearly accords with the Development Plan and the NPPF and we cannot see how any reasonable decision maker could conclude the case to the contrary. We urge the Council to carefully consider this as all the evidence, the facts and the planning merits of this particular unique case, weigh overwhelmingly in favour of the scheme.

The proposed scheme is a high quality and sustainable development. It is an appropriate redevelopment of previously developed land in the Green Belt that will not have greater impact on the site openness, and brings with it a plethora of significant social, economic and environmental benefits. It has significant community support and importantly provides a solid basis for the business, site, and Council, to move forward in a positive and stable way.

We look forward to receiving your response to the above matters prior to the Committee Meeting on Wednesday. However, should you have any queries or questions in the meantime, please do not hesitate to contact either myself or Luke Veillet.

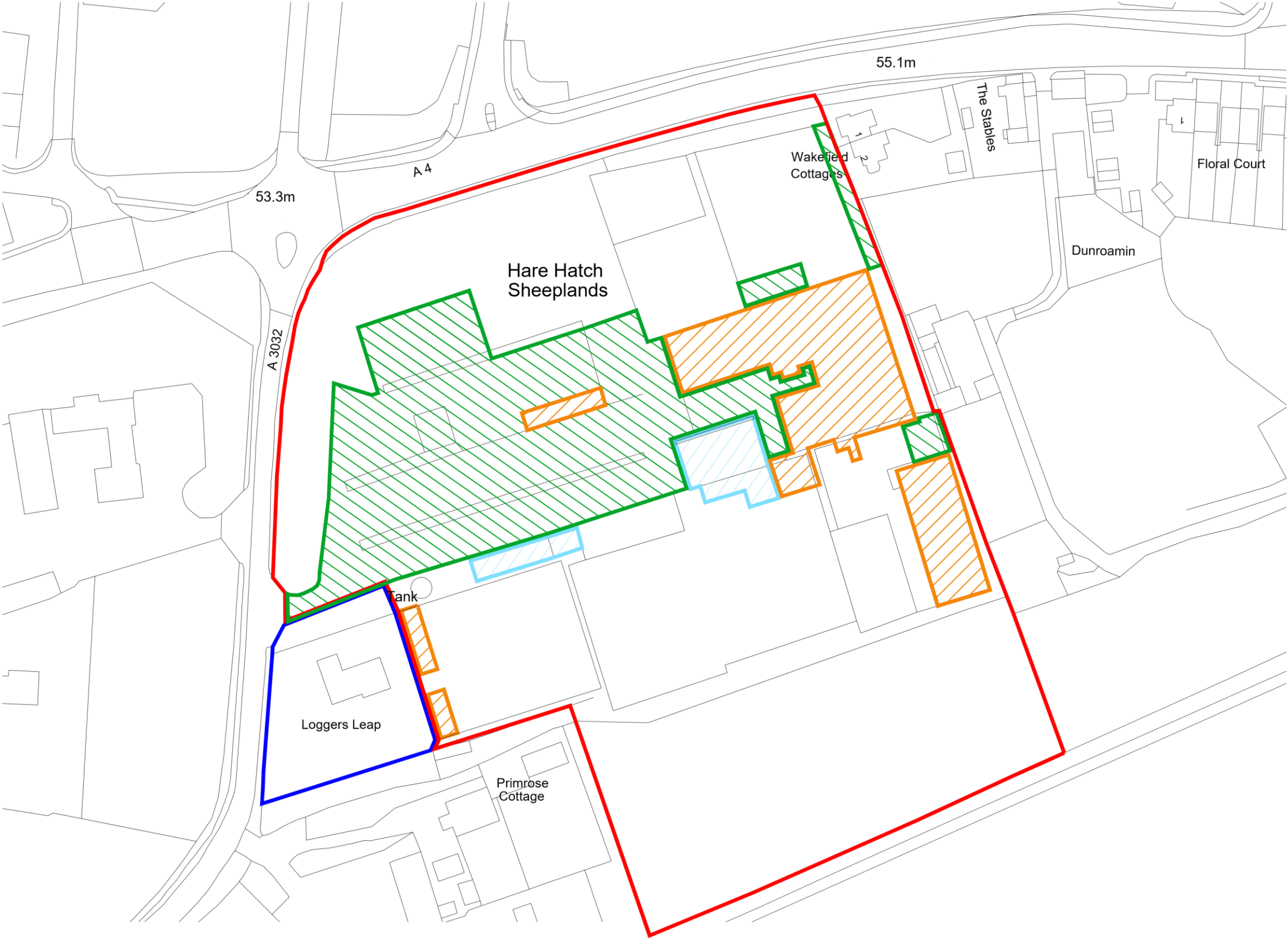
Yours sincerely

Alyson Jones BSc MPhil MRTPI Director

Appendix 1 – Comparison with WBC PDL Plan

Appendix 2 – Other Matters

Appendix 1



Notes:
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Do not scale from this drawing. All contractors must visit the site and be responsible for taking and checking Dimensions.

- Key:**
- Site Boundary of Mixed Use Site - Sui Generis Use Class constituting PDL
 - Hardstanding areas with non-horticultural consents (incl. extant consent).
 - Structures with non-horticultural consents (incl. extant consent/lawful).
 - Buildings to be retained
 - Blue Land

N.B. It should be noted that this plan does not show the associated curtilage of the areas shown in orange and blue.

-	04.03.22	First Issue	AW	AJ
Rev	Date	Description	Drawn	Chkd

Client
Hare Hatch Sheeplands

Boyer

Project
Harehatch Sheeplands

Drawing Title
Comparison with WBC Previously Developed Land Plan

Appendix 2

Other Matters

Paragraph 4 – the words ‘and plants’ are missing after shrubs

Table after para. 4 – there were over 8,000 sqm of glass on the site when the current owner purchased the site in 1992

Paragraph 6 – the site was not in just a wholesale use in 2002 as implied (circa 60% of sales were retail by 2000 as set out in the Agricultural and Viability Assessment) and it was not a tree nursery.

Paragraph 10 – It should be clarified that the redevelopment proposals were subject to detailed preapplication discussions that took place over a prolonged period (as referred to the in Agricultural and Viability Assessment).

Paragraph 11 – the Abuse of Process is not set out and is relevant in the planning history, given that the Council were found to have enticed my Client to withdraw his Enforcement Appeal and as noted by the Judge, the EN could have been withdrawn to allow the determination of the CLE and for it to be appealed if necessary.

Paragraph 12 – There is reference to the additional 180 sqm of external retail being approved. It should be clear that this was specifically for the sale of trees, due to the difficulties and risks of growing them on before sale.

Paragraph 19 – the plan and table are wrong as per the above as it misses out the car park, full extent of the service yard, the extant car park area etc. Paragraph 20 – Area M included an area of authorised parking

Paragraph 21 – the LPA withdrew from the EN Appeal.

Paragraph 22 – it should be made clear the circumstances relating to the EN withdrawal, arose as a result of the later confirmed Abuse of Process by the Council.

Paragraph 23 – the Abuse of Process was confirmed in 2019 due to significant delays relating to full disclosure being made by the Council.

Paragraph 24 – the very limited car storage was not paid for and was an attempt to make the site look like it was still operating following the compliance activities. The activities being investigated are considered ancillary.

Paragraph 53 – There is reference to the Twyford AQMA which is a conclusion drawn by the Officer rather than raised in the Transport Statement or Highways response.

Paragraph 56 – it is considered that the wording of Policy TB18 (c) is not drawn from the Policy consultation response.

Para 137 – b) The reason for refusal related to the RIA being flawed in its basis (see the Policy Response) therefore a ‘proper’ assessment could not be drawn) (see reason for refusal 4).

Para.138 – the conclusions are not borne out by the assessment, including technical the responses.

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Nuclear Zone - It is not clear why the site is identified as being in the special case zone or whether this is just standard for the whole Borough.

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Appeal Decision

Hearing Held on 13 February 2019

Site visit made on 13 February 2019

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 14 March 2019

Appeal Ref: APP/X0360/W/18/3193969

Hare Hatch Sheeplands Nursery, London Road, Twyford, Berkshire RG10 9HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Hare Hatch Services Limited against Wokingham Borough Council.
 - The application, Ref 173316, is dated 10 November 2017.
 - The development proposed is a temporary change of use of part glasshouse and small outdoor area from plant growing to nursery related restricted sales.
-

Decision

1. The appeal is allowed and planning permission is granted for a temporary change of use of part glasshouse and small outdoor area from plant growing to nursery related restricted sales at Hare Hatch Sheeplands Nursery, London Road, Twyford, Berkshire RG10 9HW in accordance with the terms of the application, Ref 173316, dated 10 November 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:500 and 1:1000 application plans received by the local planning authority on 10 November 2017 and the Planning Statement dated 25 September 2017.
 - 3) The use hereby permitted shall be discontinued and all goods and paraphernalia associated with the retail use shall be removed from the application site on or before three years from the date of this decision.
 - 4) No goods shall be displayed or sold other than the following:
 - i.) Bought in plants for immediate sale – including bedding plants, shrubs, trees, house plants etc
 - ii.) Tools and equipment - including forks and spades, hedge shears, loppers, secateurs, gloves, boots etc
 - iii.) Growing media - including composts, grits, sands, bark etc
 - iv.) Fertilisers and chemicals – including fertilisers, pesticides, herbicides, lawn treatments, woodcare, salt etc

- v.) Irrigation - including micro watering systems, hose pipes, watering cans, accessories etc
- vi.) Landscaping and design - including plant supports, fencing, garden arts and ornaments, stones, aggregates, solar lights, etc
- vii.) Containers including - pots - indoor and outdoor (plastic and terracotta), seed trays, hanging baskets, patio tubs, accessories (pot feet, plant caddy's) etc
- viii.) Seeds and bulbs - including seeds, bulbs, seed potatoes, vegetable sets etc
- ix.) Bird/bee/wildlife care - including insect habitats, bird food, hedgehog house's etc
- x.) Grow your own - including netting, vegetable troughs, vegetable beds, plastic growing units (mini greenhouses), greenhouse accessories, allotment accessories etc
- xi.) Christmas trees, decorations and Santa's grotto (seasonal)

Procedural matters

2. An Enforcement Notice served in 2013, and an associated High Court Injunction obtained in 2017, prevents the unauthorised use of land at Hare Hatch Sheeplands. The terms of the Injunction though do not prohibit the submission of further planning applications.
3. Given the planning enforcement history in relation to Hare Hatch Sheeplands, which also includes a ruling that there was an Abuse of Process obtained by the appellant, it is clear that the relationship between the main parties is difficult. In determining this appeal however, I have reached my decision on the planning merits of the application before me.
4. The Council has provided a copy of its officer report on the application. Its conclusion was that if the appeal had not been made against non-determination it would have declined to determine the application in accordance with section 70C of the Town and Country Planning Act 1990. I have therefore treated this report as indicative of the decision the local planning authority would have taken in relation to the application if it had retained its jurisdiction.
5. Hare Hatch Services Limited is in liquidation. However, no evidence has been produced demonstrating that the company has been dissolved. Accordingly, I have determined the appeal on the basis that the right of appeal for Hare Hatch Service Limited remains.

Application for costs

6. An application for costs was made in advance of the hearing by Hare Hatch Services Limited against Wokingham Borough Council. An application for costs was also made in advance of the hearing by Wokingham Borough Council against Hare Hatch Services Limited. These applications are the subject of a separate Decision.

Main Issues

7. The main issues are:

- whether the proposal is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework ('the Framework') and development plan policy;
- the effect of the proposal on the character and appearance of the area; and,
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

8. Hare Hatch Sheeplands is located within the Metropolitan Green Belt where new development is strictly controlled. It comprises a nursery, which the appeal relates to, a café and a farm shop. The application is for a nursery related sales area for a temporary period of three years in order to allow the horticultural business to grow and provide sufficient time to review with the Council the requirements for the business.
9. The local planning authority has argued that the horticultural use and related plant sales at the nursery have been abandoned. Whilst some of the glass houses are not completely weather tight, I saw that they were in a reasonable state of repair. On the basis of the evidence provided it appears that with the unauthorised uses that were occurring few of the glasshouses have been in horticultural use in recent years. However, during this time the nursery continued to house part of the National Collection of Haworthia from which plants for sale are cultivated. Therefore whilst other uses on the site have occurred, I find that as a matter of fact and degree the horticultural use of the nursery and related plants sales have not been abandoned.
10. If the sales from the proposed sales area were ancillary to the horticultural use at Hare Hatch Sheeplands Nursery, or *de minimis*, then the proposal would not constitute a material change of use and so could not be inappropriate development. Outside development limits retail development that is ancillary to a primary existing use is supported by policy TB18 of the of the Wokingham Borough Managing Development Delivery (Local Plan) (WBMDDLDP).
11. Three considerations have been referred to by the parties to determine whether this would be the case: whether the range of products proposed sold would be ancillary; the size of the sales floor area in relation to the horticultural area; and, the proportion of sales made up of imported products.
12. In relation to the first, the range of products that would be sold includes fencing, garden arts, ornaments, solar lighting, stones, aggregates and items for bird, bee and wildlife care. This goes beyond what can reasonably be considered to be ancillary to horticultural use which typically includes items such as growing media, bulbs, containers, fertilisers and chemicals.
13. Turning to the second consideration, I saw during my site visit that a significant amount of the 8,141sqm of glasshouses will be in horticultural use this year, as will a material part of the outdoor growing area. On this basis the proposed sales area of 499sqm represents a small area of the indoor and outdoor space devoted to horticultural use.

14. In relation to the third consideration, the appellant has produced turnover figures for the last two years and a projection for 2019. The projection for this year is that with the new sales area and increased sales of nursery plants turnover for the nursery would be 59% higher than without the sales area.
15. It is not possible to accurately determine how much of this increase would be due to items sold from the proposed sales area and how much would be due to the increased propagation and growing on of plants within the nursery. Although the level of activity in the greenhouses is increasing I saw that this is from a low base. In my judgement, on the balance of probabilities, the sale of products from the sales area would account for materially more than 20% of the nursery turnover. Such a level of sales could not reasonably be considered to be *de minimis*.
16. I have found that the range of products that would be sold from the proposed sales area would not be ancillary to the horticultural use, and that whilst the sales area would be relatively small, the scale of sales would not be *de minimis*. As a result, the proposed sales area would constitute a material change of use, and thus development, and would not comply with policy TB18 of the WBMDDLDP. The proposal therefore falls to be assessed against planning policy in relation to new development in the Green Belt.
17. Paragraph 146 of the Framework states that certain forms of development in the Green Belt are not inappropriate. These include the re-use of buildings of permanent and substantial construction and material changes in the use of land. This is on the proviso that openness is preserved and development does not conflict with the purposes of including land within the Green Belt. In this case, in my view, the most relevant of such purposes set out in the Framework is to assist in safeguarding the countryside from encroachment.
18. Policy CP12 of the Wokingham Borough Core Strategy and policy TB01 of the WBMDDLDP oppose inappropriate development in the Green Belt. In order to define inappropriate development and protect the Green Belt, policy CP12 refers to a previous national policy document and policy TB01 refers to an earlier version of the Framework. However, as both of these documents include the two exceptions described above, for the purposes of this appeal these policies are consistent with the Framework. Having regard to paragraph 213 of the Framework, I therefore attach considerable weight to them.
19. The proposed sales area would mainly be contained within glasshouses. Whilst permanent these buildings, by virtue of the thin aluminium frames and extensive use of glass, are lightweight in nature and are not of substantial construction. With regard to the smaller outdoor element of the sales area, with the items proposed to be sold there would be a slight reduction in openness. If it is as popular as hoped for the sales area would also make the site busier with noticeably more visitors. This would manifest itself in increased car parking associated with visitors, staff employed in the sales area and more deliveries which would also adversely affect openness. However, the temporary three year nature of the permission sought lessens the harm to openness that would be caused.
20. Taking all these matters together, whilst allowing restricted sales for a period of three years would have a limited adverse effect on openness and the erosion of the countryside at this location, it would constitute inappropriate

development. As a result, it would be contrary to policy CP12 of the Core Strategy, policy TB01 of the WBMDDL and the Framework.

Character and appearance

21. The nursery forms part of the loose cluster of buildings and dwellings at Hare Hatch which are focussed around the roads that pass through the settlement. Bounded on two sides by a road side hedge, its large corner plot sits within a wider agricultural landscape of large hedged fields and occasional copses of trees.
22. In views from Bath Road to the north, the small external extent of the outdoor sales area and the products it would contain would not be readily visible over the height of the boundary fence. In those views that would be possible the sales area would be seen against the taller backdrop of the glasshouses. The increased parking and deliveries associated with the sales area though would be more clearly visible in views from the adjacent roads and from within the nursery. However, the urbanising effect that would result would be lessened by the temporary nature of the permission so that the adverse effect caused to the character and appearance of this rural area would be limited.

Other matters

Accessibility

23. Nurseries are of necessity located in rural areas. Moreover, by the nature of what they sell the majority of customers have to travel by car in order to take home the plants and related items they have bought. Therefore whilst policy CP6 of the Core Strategy supports granting planning permission where a choice of sustainable transport options is available, given the nature of a horticultural nursery, such provision is not appropriate in this instance.
24. Reference has been made to policy CP11 of the Core Strategy which relates to development outside development limits. However, as the wording of this policy does not include reference to accessibility or transportation it is not relevant to this matter.

Future intentions of the appellant

25. Given the history of enforcement at Hare Hatch Sheeplands, the Council is concerned that if the appeal is allowed further applications will be made to expand retail sales. However, each application is assessed on its merits and as allowing this appeal was influenced by the importance of the sale of a restricted range of products to the viability of the horticultural business such circumstances are unlikely to apply to proposals for wider retail use. As a result, granting temporary permission for the development would not set a precedent for future widespread retail use at Hare Hatch Sheeplands.
26. Concern has also been expressed that the appellant would apply for a permission without a time constraint if temporary permission for the development is granted. If this did occur though the planning balance would be altered as the harm caused to openness and the character and appearance of the area would be increased. As a consequence, it does not necessarily follow that permission would be granted.

Other considerations

27. As I have found that the proposed sales area would be inappropriate development in the Green Belt it should not be approved except in very special

circumstances. It is therefore necessary to consider the grounds put forward by the appellant, to determine whether there are any material considerations which would amount to very special circumstances that would outweigh the harm by reason of inappropriateness, and the harm that I have identified to the character and appearance of the area.

Customers' expectations, re-building of the nursery

28. The nature of the horticultural business has changed in the last decade with the wholesale market dominated by very large nurseries and imports. As a result, the majority of smaller traditional nurseries, such as Hare Hatch Sheeplands Nursery, now only sell direct to the public.
29. Customers visiting a nursery expect to be able to buy related products. Whilst the range of products proposed for sale goes beyond that which I have found to be ancillary, it would help the nursery compete with other nearby businesses that also sell plants. On the basis of the submitted financial information, it is apparent that a sales area selling these items would help safeguard the existence of the nursery and help the business grow by increasing turnover and profitability.
30. Such development is supported by policy CP11 of the Core Strategy which supports proposals that contribute to diverse and sustainable rural enterprises. Furthermore, paragraph 83 of the Framework advises that decisions should enable the development and diversification of agricultural and other land based rural activities. This is a matter therefore to which I attach significant weight in favour of the proposal.

Popularity and value to the community

31. The appellant has operated the nursery since before the turn of the century and has improved the appearance of the site, which at the time the company took it over was in a rundown condition. A considerable number of letters in support of the appeal and the business have been sent in, including from the local Member of Parliament. There have been no letters of objection. It is clear from the letters received, and from those who spoke at the hearing, that the nursery is a popular, highly appreciated small independent business that is much valued by the local community. As the proposed sales area would help the nursery to survive and develop, I attach notable weight in favour of the proposed development to the public support for the appeal and the value placed on the business by the local community.

Employment

32. At the time of the application in November 2017 there were eighteen full time equivalent staff employed at Hare Hatch Sheeplands. The current situation is that there are now ten full time equivalent staff employed in addition to the owner, his partner and the finance director. The sales area would generate employment for three full time jobs. It would also help secure the employment of those people within the existing staff currently working within the nursery.
33. The nursery business also has a track record of providing employment opportunities to young people. Working with local schools it has provided the foundation for the future careers of students in horticulture.
34. Therefore, whilst there is high employment in the area and the lowest ever rate of unemployment nationally, I attach noteworthy weight to the employment

benefits, including in relation to young people, that the proposal would help to secure.

Conclusion

35. The sale of the range of products proposed by the appellant would not be ancillary to the horticultural use or *de minimis* and the re-use of the glass house and outdoor area for this purpose would constitute inappropriate development. By definition, inappropriate development would be harmful to the Green Belt as described in paragraph 143 of the Framework.
36. The harm by reason of inappropriateness in relation to the appeal scheme is added to by the limited harm that would occur to the character and appearance of the area. In accordance with paragraph 144 of the Framework, I attach substantial weight to the harm that would be caused to the Green Belt and the associated harm that would be caused to the character and appearance of the area.
37. However, I find that, cumulatively, the other considerations put forward by the appellant are considerable and, in this case, clearly outweigh the harm to the Green Belt by reason of inappropriateness and the harm to the character and appearance of the area. As a result, the very special circumstances necessary to justify the development exist in compliance with paragraph 143 of the Framework.
38. Reference has been made by the local planning authority to a number of appeal decisions including in relation to Hare Hatch Sheeplands and nearby garden centres. All but one of these appeals were dismissed. However, equally I have been referred to other similar appeal decisions by the appellant which were allowed. It is an established principle that each case is assessed on its merits. The Inspectors in the appeals referred to exercised their judgement on the basis of circumstances of the appeals and the evidence before them, as have I in relation to this appeal. As a consequence, reference to these decisions has not altered my conclusion in relation to this appeal.

Conditions

39. In the interests of certainty, I have imposed a condition specifying the relevant drawings and documents that the development is to be carried out in accordance with.
40. Permission is sought for a temporary period of time to allow the horticultural business to grow and allow sufficient time to review with the Council the requirements for the business and future plans for the wider site. As the local planning authority notes, it would also provide an opportunity to assess the effect of the use on the Green Belt and countryside. The Council refers to use of a planning obligation to ensure that the retail use ceases after three years. However, as the Framework notes, obligations should only be used where it is not possible to secure compliance through the use of a condition. This is not the case here.
41. The appellant's view is that the Council has been uncooperative and intransigent in its approach towards development at Hare Hatch Sheeplands. As a result, a longer period than the three years applied for is now sought. In my judgement however, a three year permission from the date of this decision provides an adequate time period to achieve the appellant's stated aims.

42. In order ensure that the items sold are related to and support the horticultural use, the type of goods that can be sold need to be restricted to those that formed part of the application. To check compliance, visits from time to time will need to be carried out by the Council. Whilst the Council's resources may be limited such checks would be straight forward to carry out and a breach easy to detect. Consequently, I do not consider such a condition would be unenforceable.
43. I have required all these matters by condition, revising, where necessary, those suggested by the Council to reflect the advice contained within Planning Practice Guidance.

Ian Radcliffe

Inspector

APPEARANCES

FOR THE APPELLANT:

Miss Jones	Barton Willmore
Mr Scott	Owner

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Head	Wokingham Borough Council
Mr Gardner	On behalf of Wokingham Borough Council
Mr Headley	Wokingham Borough Council

INTERESTED PERSONS:

Mr Heather	local resident
Mr Moore	local resident
Mr A'Bear	local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appeal Decision ref APP/R0660/X/09/2115961
- 2 Wokingham Borough Council's analysis of Hare Hatch Sheeplands financial information

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