Boyer

Crowthorne House
Nine Mile Ride
Wokingham
Berkshire
RG40 3GZ

T 01344 753220

F 01344 753221

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

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

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 Councils 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 Councils report in detail, we have noted several fundamental issues and inaccuracies, with the Councils 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 Councils 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 Counsels 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.

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 Councils 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 Councils 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 Councils 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 access (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 show 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 year 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 Councils 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 is does not apply, either underplays the abundant and significant VSC or does not give them due wight 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 Councils 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 then goes onto 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. The is a significant lack of consistency in this assessment.

The assessment of footprint is 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 has 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 that 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 Councils 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 there off, 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 panning merits of this particular unique case, weigh overwhelming 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.

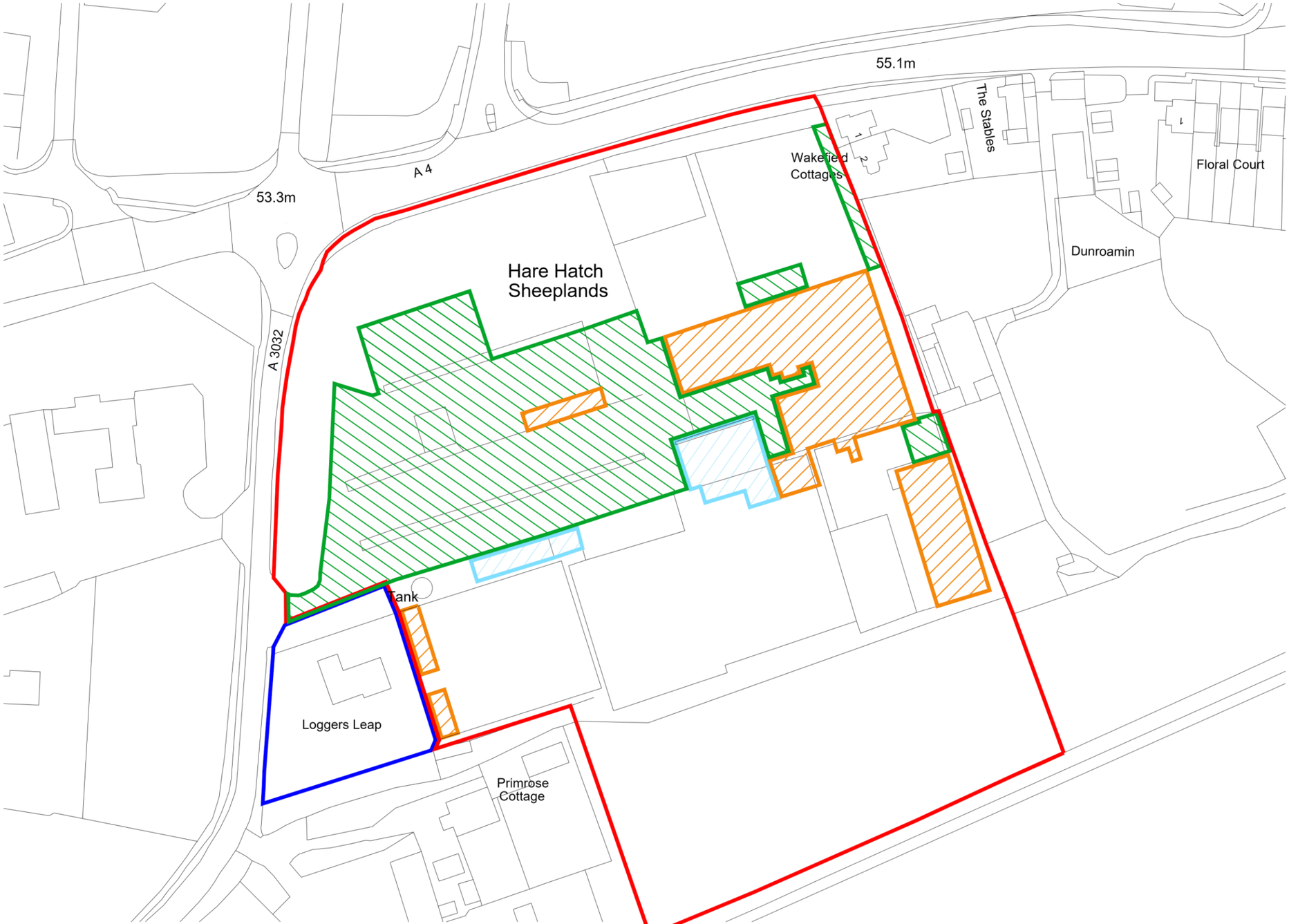
Yours sincerely

Alyson Jones BSc MPhil MRTPI Director

Appendix 1 – Comparison with WBC PDL Plan

Appendix 2 – Other Matters

Appendix 1



Notes:

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.

Rev	Date	Description	Drawn	Chkd
-	04.03.22	First Issue	AW	AJ

Client

Hare Hatch Sheeplands

Boyer

Project

Harehatch Sheeplands

Drawing Title

Comparison with WBC Previously Developed Land Plan

Drawing No.	SK410	Job Ref.	19.1005
Scale @ A3	1:1250	Revision	-
Scale Bar	0 10 20 30m		

Boyer Planning Ltd, Crowthorne House, Nine Mile Ride, Wokingham, Berkshire, RG40 3GZ

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.

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.

Boyer