
Appeal Decision

Inquiry held on 4-6 and 10-11 March 2015

Site visit made on 10 March 2015

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 May 2015

Appeal Ref: APP/Z3825/A/14/2224668

Land North of Old Guildford Road, Broadbridge Heath, West Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by **Gleeson Developments Ltd and The Trustees of the C J Lucas's Children's 1967 Settlement** against the decision of Horsham District Council.
 - The application ref. DC/13/2408, dated 16 December 2013, was refused by notice dated 27 June 2014.
 - The development proposed is the erection of up to 165 residential dwellings (use class C3) including affordable housing, a 60-bed care home (use class C2) with separate staff accommodation, two new vehicular accesses, associated infrastructure, groundworks, open space and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 165 residential dwellings (use class C3) including affordable housing, a 60-bed care home (use class C2) with separate staff accommodation, two new vehicular accesses, associated infrastructure, groundworks, open space and landscaping on land north of Old Guildford Road, Broadbridge Heath, West Sussex in accordance with the terms of the application, ref. DC/13/2408, dated 16 December 2013, subject to the conditions set out in the schedule at the end of this decision.

Application for Costs

2. At the Inquiry an application for costs was made by **Gleeson Developments Ltd and The Trustees of the C J Lucas's Children's 1967 Settlement** against Horsham District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application form indicates that all matters of detail except access are reserved for future determination. However, the application was accompanied by two Parameter Plans (drawing nos. 1155/03 and 1155/04) which set out more detail about the proposed distribution of land use and building heights respectively. I have taken these drawings into account in my decision.
4. The Council has confirmed that it no longer wishes to pursue its 3rd and 4th refusal reasons, which relate to highway safety/capacity and infrastructure contributions respectively.

Preamble and Main Issue

5. Although the main parties dispute the scale of the shortfall, it is common ground that the Council is unable to demonstrate a five year housing land supply, as is required by the National Planning Policy Framework (the Framework). It follows from paragraph 49 of the Framework that relevant policies for the supply of housing cannot be considered to be up-to-date.
6. The appeal site lies outside the built-up area for Broadbridge Heath. In such circumstances, policy DC1 of the Horsham District Council Local Development Framework (LDF) General Development Control Policies (GDGP) sets out specific requirements which must be met if new development is to be permitted. The appeal scheme does not accord with the relevant criteria and, as such, it conflicts with that policy.
7. The Council accepts that the approach to the supply of housing set out in the GDGP and the Core Strategy (CS), both of which were adopted in 2007, is out of date in terms of the Framework. In fact, its concern about the ability of the adopted development plan to deliver the required amount of housing predates **the Framework's publication. In 2009**, the Council approved a Supplementary Planning Document (SPD) on Facilitating Appropriate Development (FAD) which contains a list of criteria by which land adjoining built-up area boundaries might be considered for housing development, notwithstanding the provisions of the development plan.
8. Previous Inspectors have attached weight to the FAD. For example, the Inspector who allowed an appeal for approximately 75 dwellings at Storrington (ref. APP/Z3825/A/14/2215437) in November 2014, stated that the FAD was, to an extent, capable of over-riding the policies on housing provision in the adopted development plan. However, while relevant development plan policies are clearly out of date in that respect, it seems to me that the FAD itself cannot be considered to wholly accord with the requirements of the Framework. First, it is promoted as an SPD rather than a Local Plan, an approach that is at odds with the plan-led system encouraged by the Framework. The scope of the FAD exceeds that described for SPDs in the relevant regulations¹, which post-date **the FAD's approval**. Second, the **FAD's requirement that proposals** should accord with all of its 18 criteria does not incorporate the balancing exercises that are required by the Framework. Third, the FAD requires compliance with national policy documents that have been superseded by the Framework.
9. Although the FAD was not mentioned in the refusal reasons for this appeal, such conflict was alleged by the Council at the Inquiry². Nevertheless, for the above reasons I afford the FAD little weight in this decision.
10. Paragraph 14 of the Framework states (unless material considerations indicate otherwise) that where the development plan is absent, silent or out-of-date planning permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. It was accepted at **the Inquiry by the Council's planning witness that, given the position described**

¹ Specifically regulations 5 and 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

² Opening statement by Mr Beglan.

above with regard to the five year housing land supply and paragraph 49 of the Framework, the balance set out in paragraph 14 should be applied in this case.

11. A different argument was presented **in the Council's closing submissions**³, namely (in summary) that the scheme should not benefit from the presumption in favour of sustainable development set out in paragraph 14 of the Framework as it did not (on the case presented by the Council) amount to sustainable development in the terms of the Framework. However, notwithstanding the comments made in William Davies Ltd and Jelson Ltd v SSCLG and N W Leicestershire District Council⁴, subsequent decisions such as Dartford BC v SSCLG and Landhold Capital Ltd⁵ do not endorse a formulaic sequential approach to the consideration of whether or not a particular proposal amounts to sustainable development in the terms of the Framework. In any event, the provisions of paragraph 49, which refers to the presumption in favour of sustainable development and which, in this case, engages paragraph 14, falls **within the Framework's definition (at paragraph 6) of what, taken as a whole, constitutes the Government's view of what sustainable development in England means in practice for the planning system.** It is therefore necessary to apply the paragraph 14 balancing exercise in the present case.
12. In view of the above, there is a single main issue in this appeal: whether the proposal amounts to sustainable development, bearing in mind, first, that relevant policies for the supply of housing cannot be considered to be up-to-date and, second, the need to take into account other relevant considerations, most particularly the **scheme's** effects on:
 - (a) landscape character and visual impact; and
 - (b) the setting, and therefore the significance, of Swan Ken, a grade II listed building.

Reasons

Landscape Character and Visual Impact

13. The appeal site comprises two arable fields on the northern edge of the settlement of Broadbridge Heath. The fields are crossed by a public footpath that runs north from Old Guildford Road to a junction (to the north of the site) with a footpath that continues north-east past the corner of Broomwicks Wood and another that runs north-west (passing to the north of Swan Ken) to join Broadbridge Heath Road. It is common ground that these footpaths are well-used by local people for dog-walking and other recreational purposes. It is also apparent from both the presence of additional informal footpaths and my own observations that such activities are not confined to the above-noted rights of way. For example, an informal footpath runs along the northern edge of the western part of the appeal site between the north-south footpath and an adjoining recreational area on the eastern side of Broadbridge Heath Road.
14. The appeal site and its surroundings have been the subject of a number of landscape studies. In the 2003 Horsham District Landscape Character Assessment (the 2003 LCA), the site lies within a larger area (Area 3) that includes other features such as Warnham Deer Park, which is a major historic parkland, and Warnham Mill pond. Neither the site nor Broadbridge Heath are

³ Closing submissions by Mr Beglan.

⁴ [2013] EWHC 3058 (Admin).

⁵ [2014] EWHC 2636 (Admin).

mentioned in the bullet points that refer to the character of the area concerned⁶: while the document refers to the valley of the Boldings Brook forming a settlement edge, this watercourse runs along the edge of Horsham on the opposite side of the A24 rather than the northern side of Broadbridge Heath. Accordingly, I share the appellants' view that the applicability of the **document's findings** about landscape quality and visual characteristics to the appeal site should be approached with caution. This reduces the weight that I can attach to the 2003 LCA in the present appeal.

15. A more focussed assessment is provided by the Horsham District Landscape Capacity Assessment (April 2014) (the 2014 LCA). This identifies the appeal site within Local Landscape Character Area 33 (Land North of Broadbridge Heath) – an area that is smaller than Area 3 of the 2003 LCA. The 2014 LCA has clearly considered the capacity of the appeal site to accommodate new development in landscape terms. I have heard no substantive criticism of the **study's methodology and I afford it weight** accordingly.
16. The landscape character sensitivity of area 33 is set out in five bullet points in the 2014 LCA⁷. Key relevant aspects include: a very gently undulating landform with small steam valley; a small to medium scale field pattern; the formation of a soft settlement edge to Broadbridge Heath; a mostly unspoilt rural character and a landscape that is in good condition. Not all of these **points are restated in the first sentence of the relevant 'landscape capacity'** section of that document. However, I reject the appellants' view that important elements of the **area's landscape character sensitivity can be** confined to the references in that later paragraph. It seems to me that most of the factors listed in the first five bullet points (summarised above) are relevant.
17. The assessment **summary of the 2014 LCA states that area 33 has a 'low-moderate' capacity to accommodate medium scale housing** development. It explains⁸ that this means that '[t]he area only has potential to be able to accommodate development in limited locations without unacceptable adverse landscape and visual impacts or compromising the values attached to it, taking account of any appropriate mitigation'. The document⁹ **defines 'medium scale housing development' as schemes of approximately 100-500 dwellings** associated with urban extensions to Category 1 settlements, comprising mainly two storey developments of no more than 8.5 metres in height at an average of 35-40 dwellings per hectare. They may include some smaller areas of no more than three storey height flats as well as community/retail facilities.
18. It is common ground that Broadbridge Heath is a Category 1 settlement. While the submitted building heights plan denotes most of the proposed housing area **as '2-2.5 storey development; maximum building height 11 metres'**, this is **intended to allow the introduction of 'landmark' buildings at appropriate** locations. I have no reason not to **accept the appellants' assertion that mainly** two storey housing development is intended in line with the 2014 LCA and, in any event, the detailed scale and appearance of the scheme remain to be determined. Accordingly, it seems to me that, as a matter of principle, the 2014 LCA does not preclude the appeal scheme.

⁶ 2003 LCA – page 163.

⁷ 2014 LCA – page 52.

⁸ 2014 LCA – page 16.

⁹ 2014 LCA – page 7.

19. The landscape witnesses for the Council and appellants have both considered the appeal scheme using the most recent Guidelines for Landscape and Visual Impact Assessment (GLVIA3). They reach different conclusions. Both parties criticise actions undertaken by the other at earlier stages in the process. The Council notes **discrepancies between the appellants' initial landscape evidence** (prepared using an earlier GLVIA methodology) and the present proposal, querying whether the scheme can therefore **be described as 'landscape-led'**. The appellants highlight what they see as differences between the landscape case that is now being made and the comments that were given by the Council at officer level prior to planning permission being refused. For the avoidance of doubt, my assessment of this matter is based upon the evidence that has been presented to the Inquiry and is informed by my own visits to the appeal site and its surroundings¹⁰.
20. To my mind, the appeal site demonstrates the characteristics of many other edge-of-settlement locations. Arable fields with, in this case, well-developed hedgerows, adjoin the edge of residential back gardens in Broadbridge Heath. Boundary vegetation generally provides the soft settlement edge referred to in the 2014 LCA, although one residential development (Hollands Field) is easily seen from within the site. This is a detracting feature. As a result of built development, hedgerows and other vegetation on the northern side of Old Guildford Road public views across the site from Old Guildford Road are limited.
21. As such, **the Council's evidence** overstates the value of the site in respect of Old Guildford Road. In particular, I do not accept that the site provides a clear open countryside gap between Horsham and Broadbridge Heath as is alleged: Horsham lies to the east of Broadbridge Heath (the site is to the north) and the boundary between the two is emphasised by the presence of the A24 dual carriageway. Moreover, there is almost continuous built development on the south side of Old Guildford Road opposite the site.
22. However, when moving northwards on the public footpath through the site from Old Guildford Road, the landscape quickly opens up, affording views over a largely undeveloped area of countryside. Such views contrast with the built-up character of the housing areas to the south of Old Guildford Road. When looking north along the footpath, which lies on the eastern side of a substantial hedgerow, the settlement edge and the Hollands Field housing to the west do not appear prominent: most views are focussed on the open rural landscape to the north. **It therefore seems to me that the appellants' evidence**¹¹ understates the value of such views.
23. Nevertheless, the 2014 LCA describes the landscape value of area 33 as **'moderate'**¹². Drawing the above together, and with reference to the GLVIA methodology, I take a similar view: to my mind, **the site's overall landscape value at the local level lies closer to 'medium' (as stated by the appellants) than 'high' (as stated by the Council)**. However, I share the view of both main parties that the site's **landscape condition is 'good'**. **While I note the Council's view that the site's landscape susceptibility should be ranked as 'high', this seems to me to pay insufficient attention to the presence of the adjoining Hollands Field development. Although not prominently seen in views from the**

¹⁰ In addition to the accompanied site visit on 10 March 2015, I made unaccompanied visits to the site and its surroundings using public roads and footpaths on 4 and 5 March 2015.

¹¹ **Notably paragraph 4.19 of Ms Simes' proof of evidence.**

¹² 2014 LCA – page 52.

footpath (as noted above), these buildings appear visually dominant from within the western field, which as a result does not have a wholly greenfield setting or context. Furthermore, as is accepted by both main parties, the susceptibility of the landscape receptors varies across the site: the overall ranking would therefore seem to me to lie between 'high' and 'medium'.

24. The 2014 LCA (in respect of area 33) refers to a combined landscape sensitivity of **'moderate-high'** to medium scale housing development. **The Council's assessment of the site's landscape sensitivity is 'medium-high'**. My comments above suggest that the site should be ranked towards the lower end of that assessment.
25. I turn to consider the magnitude of the **scheme's effects**. **While the site's trees and hedgerows would be largely retained, they would be seen in the context of landscape elements within a built development rather than in association with open arable fields.** This would amount to a substantial and significant change that would be particularly marked in respect of the north-south footpath through the site. This would change from a route through the fields to a route flanked by housing development and a care home.
26. Although planting is proposed on the northern edge of the site, it is clear from the illustrative montages prepared by the appellants¹³ that even in the later **years after the scheme's completion the new housing would be seen from the footpaths to the north of the site.** While the appellants state that the scheme would, in practice, simply move the **built-up area's edge some distance to the north of its present position,** the resulting effect would appear as a marked urban encroachment in such views¹⁴: at present the built-up area of Broadbridge Heath is well set-back on or near the skyline.
27. **The Council also raises concern about the scheme's effects on the site's sloping topography.** While there was an error in the appellants' submissions in respect of the difference in levels across the site, I have seen no substantive evidence that this materially affected **the appellants' consideration of the scheme's likely impacts or effects.** A more detailed site section forms part of the evidence base. Insofar as it can be determined at the outline stage, it appears that the **appeal scheme would reflect the site's existing contours: marked changes in levels are not proposed.** It has not been demonstrated that the sustainable drainage solutions that are suggested by the appellant would necessarily result in the creation of unduly harsh or discordant design features. Such details would, in any event, require separate approval.
28. Nevertheless, taking the above matters together, I consider that the magnitude of the landscape effects for the scheme **would be 'high' rather than 'neutral-medium' as suggested by the appellants.** In GLVIA3 terms, bearing in mind **my comments above about the site's landscape sensitivity, this results in the significance of these effects in landscape terms being ranked at 'moderate-substantial adverse'**.
29. **In terms of visual impact, the appellants' landscape witness accepts that effects of a 'major-moderate negative' significance would be experienced with regard to residential receptors and users of the public footpath through the site, with less significant effects being experienced by other receptors (for**

¹³ Appendices to Ms Simes' proof of evidence.

¹⁴ For example viewpoint 6 in the appendices to Ms Simes' proof of evidence.

example occupants of vehicles passing the site on Old Guildford Road). To my mind, this does not differ markedly from the overall **conclusion of the Council's landscape witness that a 'moderate/substantial adverse' visual effect would be experienced**, albeit that it would be limited in geographical extent. I have no reason to take a different view.

30. Paragraph 109 of the Framework states that the planning system should contribute to and enhance the natural and local environment by (among other matters) protecting and enhancing valued landscapes. **While the appellants' landscape witness took the view that 'value' in that context implies a formally designated landscape¹⁵, such an interpretation is at odds with the decision in Stroud DC v SSCLG and Gladman Developments¹⁶. However, with reference to the same decision, the appeal site, while representing attractive countryside on the edge of a settlement that is popular with local people, does not in my view contain particular physical attributes **that would 'take it out of the ordinary'. It does not therefore amount to a 'valued' landscape in the Framework's terms.****
31. Local residents¹⁷ raise particular concerns that the appeal site forms one of only two areas of accessible countryside within the Parish (the other being to the south of Broadbridge Heath). Reference is also made to the loss of **'recreational open space'**¹⁸. However, recreational open space is not being lost: the appeal site is agricultural land with no formal access other than the above-noted footpath. The presence of the Parish boundary to the north of the appeal site is of no relevance to the degree of accessibility that is available: local residents can, and do, walk along the footpath into the neighbouring parish to the north. The footpath would be retained and open countryside would remain accessible from the settlement. I afford these concerns limited weight.
32. Drawing these factors together, I consider that the proposal would be likely to result in landscape and visual effects with a **'moderate/substantial adverse'** significance. As such, the scheme would create harm in respect of both landscape and visual impact. This would conflict with CS policies CP1 and CP3 and GDCP policies DC2 and DC9.

Listed Building

33. Swan Ken is a detached dwelling lying to the north of the appeal site. Its listing citation (grade II) refers to it as a sixteenth-century timber-framed building with plaster and red brick infilling, restored and modernised in 1927. Particular features mentioned include a tile-hung gable with an over-sailing first floor at the south end, a Horsham slab roof and a brick and stone chimney breast also at the south end. The listing makes no reference to either the **building's setting or to other structures within the building's curtilage.**
34. The dwelling, which is an amalgam of two buildings (Dog Kennel Cottage and **Swan's Farm**), lies within an almost-square garden area with hedges to the south and east. This in turn is located within a larger area of grounds, which **adjoins part of the northern edge of the appeal site. This part of Swan Ken's grounds is well-vegetated and contains a pond.**

¹⁵ Ms Simes in cross-examination.

¹⁶ [2015] EWHC 488 (Admin).

¹⁷ See for example the statement by Councillor Curnock.

¹⁸ See for example the statement by Mr Henderson.

35. A significant amount of historical information has been presented by the **Council's heritage witness in respect of Swan Ken's setting**. In summary, it is clear that the building has had a historic association with the wider landscape in which it sits. The property has been in the ownership of the Shelley family (the Field Place estate)¹⁹: its name and nature suggest an involvement in hunting activities, in line with other local place-names. However, while the poet Percy Bysshe Shelley was born in, and lived in, Field Place, no evidence has been presented that he had a significant relationship with Swan Ken or that his writings were influenced by the building or its setting. More recently, the house was occupied by the novelist Georgette Heyer for a six month period: however, there is no evidence that the property or its surroundings had a particular influence on her writings. To my mind, **the Council's case overstates the significance of the evidence relating to these figures**.
36. Nevertheless, it is not disputed that the wider surroundings of Swan Ken, including the appeal site, form part of the listed building's setting. **The rural nature of much of this land contributes to the significance of this rural dwelling. However, I share the appellants' view that this setting is now only partly rural in nature.** The urban edge of Broadbridge Heath, including the Hollands Field houses, also lies within the setting of Swan Ken, as is **accepted by the Council's heritage witness**²⁰. Historically, the land to the north of Old Guildford Road also lay within the ownership of the Shelley family. Today, the built-up area appears as the background to views of Swan Ken from the public footpath to the north of the listed building. Although not easily seen from the upper level of Swan Ken (due to the orientation of relevant windows), glimpsed views of the houses in Hollands Field are seen from its patio area and adjoining glazed living room. Dwellings on Old Guildford Road are seen on the skyline in south-easterly views from the upper windows of Swan Ken. The nearby recreation ground is however well-screened by the above-noted boundary vegetation.
37. **For these reasons, I do not accept the view of the Council's heritage witness that the setting of Swan Ken has an 'undeveloped character'. Neither is the building 'isolated': it is clearly perceived in the above-noted views as lying within sight of the edge of the built-up area.** Nevertheless, I agree with Council's heritage witness that the unbuilt nature of the appeal site acts to separate Swan Ken from the housing to the south. Such separation, which is consistent with the significance of the building as a rural dwelling, would be reduced by the appeal proposal. To my mind, this would amount to a greater **level of harm than the 'minor' magnitude that is suggested by the appellants' heritage witness: it would amount to an actual and irreversible loss of some of the rural elements of the asset's setting.**
38. **The main parties agree that the resulting harm would not be 'substantial' in the terms of the Framework.** I have no reason to take a different view. As already noted, I disagree with **the assessment of the appellants' heritage witness about the level of harm that would be caused. However, I feel that the Council's heritage witness overstates the scheme's effects in this context.** While the housing now proposed would be closer to Swan Ken than at present, a distinct visual separation would still remain between the listed building and the new edge of the built-up area. Specifically, this would be provided by the proposed allotments at the western end of the site (which would lie between Swan Ken

¹⁹ Land Ownership Map (1840-44) appended to Ms Murphy's proof of evidence.

²⁰ Ms Murphy in cross-examination.

and Hollands Field), the proposed strip of landscaping **within the site's** northern boundary, existing vegetation on and around that boundary and the separation that is provided by the grounds of Swan Ken itself. These factors would combine to reduce the urbanising effect resulting from the greater proximity of new houses to Swan Ken. **The Council's heritage witness²¹** attached little value **to the additional landscaping that is suggested in the appellants' more recent** illustrative layout: given the presence of existing vegetation as noted above I share that assessment. Accordingly, a condition requiring adherence to that scheme (as discussed at the Inquiry) would not meet the test of necessity.

39. For these reasons, it seems to me that a moderate amount of harm would result to the significance of Swan Ken, rather than the 'high' level suggested by **the Council's heritage witness or the 'minor' level stated by the appellants.** This would be less than substantial in the terms of the Framework. Nevertheless, it would still amount to harm to the setting of a designated heritage asset. As such, the appeal scheme would conflict with GDCP policy DC13. However, as was accepted by the Inspector in the above-noted Storrington appeal, policy DC13 is inconsistent with the Framework in that it does not admit the weighing of public benefits against harm. This is an important material consideration to set against this policy conflict.

Conclusion on the Main Issue

40. As paragraph 132 of the Framework makes clear, when considering the impact of a proposed development on the significance of a designated heritage asset **great weight should be given to the asset's conservation.** Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard shall be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses. Given that the harm identified above would be less than substantial, it is necessary – in line with paragraph 134 of the Framework – that it should be weighed against the public benefits of the proposal. As discussed at the start of this decision, it is also necessary to undertake a wider balancing exercise in line with paragraph 14 of the Framework.
41. The public benefits of the appeal proposal would, in my view, be considerable. **The most important of these is the scheme's contribution towards meeting an acknowledged need for housing in the District.** The present shortfall in housing **delivery is substantial: while the Council's December 2014 Annual Monitoring Report** indicates that the shortfall from its five year land supply is 2,015 units, that total has been assessed against an annual requirement (of 650 units) that is below the minimum annual target (of 750 units) now suggested in the Interim Conclusions of the Inspector currently examining the Horsham District Planning Framework (HDPF). The actual shortfall is therefore likely to exceed the 2,015 unit figure.
42. **The Council's planning witness** notes that the appeal site is not proposed for allocation in the emerging HDPF: this part of the settlement boundary for Broadbridge Heath is proposed for retention. However, given that the examination of that document is ongoing, and noting that the Local Plan Inspector has required the Council to consider how it can meet the higher level of housing need that he has identified, limited weight can be attached to the

²¹ Ms Murphy in cross-examination.

HDPF's provisions in that regard. It is noted that prematurity with regard to the HDPF's preparation has not been cited as a refusal reason in this case.

43. Notwithstanding this, it is clear from the emerging HDPF that the Council does not propose to meet all of the required housing need through allocations. A significant element (750 units) is proposed to come forward as windfall developments. (A further 1,500 units are intended to be delivered through neighbourhood planning, but a neighbourhood plan is not proposed for Broadbridge Heath). In preparing its submissions to the Local Plan Inspector in October 2014, the Council sought to demonstrate that its housing development trajectory was realistic and that the HDPF would provide a five and ten year housing land supply²². The appeal site is included in the list of sites within that document: its suggested capacity (of 250 units) markedly exceeds that of the scheme that is now proposed. Further clarity in respect of that document was provided by an e-mail from the Council dated November 2014²³. This states that the site was one of those upon which the **Council 'relied'** to achieve the figure presented to the Local Plan Inspector. Table 1 of the e-mail shows that 125 units were envisaged as being delivered from the site within years 1-5: a significant proportion of the total of 484 **'deliverable'** dwellings.
44. The fact that this evidence was supplied to the HDPF Inspector some time after planning permission was refused for the appeal scheme shows a clear lack of **consistency in the Council's approaches to the present appeal and the Local Plan examination. The Council's planning witness**²⁴ was unable to satisfactorily explain why the appeal site was presented to the Local Plan Inspector in such terms if, as he contended, the Council had a fundamental objection in principle to the site being developed for housing. While he suggested that any additional shortfall arising in the event of this appeal being dismissed would be met elsewhere in the District, I have seen no evidence that the site has been removed from the anticipated housing supply and replaced by another. It is notable that the above-noted evidence was presented to the Local Plan Inspector in the context of a housing target that has subsequently been increased.
45. **While a draft version of the Council's proposed main modifications was tabled** during the Inquiry²⁵, that document does not seek to amend the earlier evidence on housing supply that was provided in October and November 2014 by explicitly deleting the appeal site. In any event, given that the relevant document is in draft – and bearing in mind that the HDPF examination is yet to be concluded – I can only afford it limited weight.
46. Taken together, these matters increase the weight that I attach to the appeal **site's potential contribution to meeting the District's housing needs.** The local highway authority, West Sussex County Council (WSSCC), considers Broadbridge Heath to be in a sustainable location and notes that the site is accessible by foot to various facilities and services: these include the Shelley Primary School (existing and proposed), Broadbridge Heath Leisure Centre, Broadbridge Retail Park, Broadbridge Industrial Estate and the Tesco superstore²⁶. I do not, in that context, accept the view of some local residents that the site is isolated

²² HDPF Examination: HDC Response to Inspector's Issues for Discussion Matter 6: Housing (October 2014).

²³ E-mail from Ms Emma Faith (HDC) to HDPF Programme Officer dated 5 November 2014 (Document 8 below).

²⁴ Mr Gunne-Jones in cross-examination and in response to **Inspector's questions.**

²⁵ Agenda papers for the HDC Extraordinary Council Meeting on 18 March 2015 (Document 13 below).

²⁶ Statement of Common Ground between WSSCC and Odyssey Markides (December 2014).

from such facilities: walking routes are available and the distances involved are not excessive.

47. **I can deal with the scheme's other benefits more shortly. The Council does not** dispute the benefits that would arise from the provision of affordable housing and a care home, given the acknowledged need for both. Economic benefits **including new jobs, as set out in the appellants' Economic Benefits statement,** have not been substantially disputed. Given the degree of usage of informal paths within the site, it seems to me that the intended provision of a formal east-west footpath providing a link to the adjoining recreation ground would also be beneficial. The proposed allotments would meet a District-wide need, although their need on a settlement level was queried by local residents. The appellants have rightly conceded²⁷ that other aspects of the scheme with a neutral effect cannot be considered as positive advantages in the overall planning balance.
48. Taking all of the above matters together, I consider that the appeal scheme would provide clear and substantial benefits – most notably by delivering housing to meet an acknowledged shortfall in an accessible location. The harm that I have identified in respect of landscape and visual impact would be **'moderate/substantial adverse'**. In respect of the grade II listed building of **Swan Ken, a 'moderate' amount of harm would result to its significance.** Even when taken together, and having regard to the duty of section 66(1) in respect of the listed building, these adverse effects in respect of the environmental dimension of sustainable development (with reference to paragraph 7 of the Framework) would not be of a scale sufficient to significantly and demonstrably outweigh the **scheme's clear and substantial benefits** in the social and economic dimensions. I therefore conclude that the appeal proposal would amount to sustainable development in the terms of the Framework. The particular circumstances set out above are sufficient to over-ride the conflicts with relevant development plan policies that are described above.
49. I recognise that the appeal scheme has attracted a significant amount of local opposition. The view has been expressed that allowing this appeal would be contrary to the principles of localism. Nevertheless, such principles do not mean that national policy should be set to one side. In the present case it is the failure of the Council, as local planning authority, to provide adequately for **the District's housing needs** that has led to existing Local Plan policies for the supply of housing to be deemed out-of-date, thereby requiring an overall planning balance to be undertaken in the context of paragraph 14 of the Framework.

Other Matters

50. Local residents also raise concerns in respect of a number of other matters. As already noted, the Council has withdrawn its refusal reason in respect of the **scheme's highway effects.** Local residents point to parking problems in the **site's vicinity and note that accidents have occurred along this stretch of Old Guildford Road.** However, in the light of the submitted Transport Assessment (TA), Residential Travel Plan and Section 106 Agreement (which seeks to secure contributions towards off-site highway improvements), no objection to the scheme is raised by WSCC. **While the assumptions underlying the 'Saturn' modelling used by WSCC in respect of traffic movements west of Horsham are**

²⁷ Ms Simes and Mr Edwards in cross-examination.

disputed, no substantive alternative technical evidence has been advanced. It is clear from both the TA and the highways statement of common ground that recent residential planning permissions and infrastructure proposals around Broadbridge Heath have been taken into account. The latter include traffic calming proposals for Billingshurst Road/Old Guildford Road. Work is underway on the A24 Farthings Hill junction improvements. Given these factors, I have no reason to disagree with WSCC's **view that local roads and junctions are adequate** in terms of safety and capacity to cater for traffic arising from the development.

51. Concerns have also been raised about **the scheme's effect on wildlife**. The **appellants' Ecological Impact Assessment** concludes that the scheme's overall impacts would, in the medium term, be likely to be beneficial. I agree with that assessment. Arable land and semi-improved grassland would be removed, and new habitats including woodland, wildflower grassland and areas of water would be created. It is also queried whether adequate drainage would be achieved, particularly with respect to the stream that flows through the pond next to Swan Ken. However, it is clear that this watercourse already experiences run-off from surrounding land including the appeal site. The **appellants' Flood Risk Assessment** and Surface Water Drainage Strategy document demonstrates that it would be possible to achieve to provide on-site attenuation that would limit surface water run-off to existing greenfield rates. There is no technical evidence to the contrary.

Planning Obligations

52. The appellants have submitted (1) a planning agreement under Section 106 of the Act with WSCC in respect of contributions towards fire and rescue, libraries, education and (as noted above) transport improvements and (2) a unilateral undertaking under the same section of the 1990 Act in respect of the provision of affordable housing and allotments, restrictions on the occupation of the care home staff accommodation, and contributions towards allotment management and maintenance, community facilities, NHS services, public art, open spaces and recreation. Bearing in mind the justification for these requirements set out in the accompanying statement²⁸, I am satisfied that these obligations accord with the requirements of CIL Regulation 122. I also consider that the provision of these obligations addresses some of the concerns raised by some local residents about **the scheme's effects on local services** – notably in respect of the availability of medical services.

Conditions

53. A list of agreed conditions, together with two additional conditions, was tabled at the Inquiry. I have considered, and where necessary amended, these in line with national policy and guidance. Otherwise than as set out in this decision and conditions, it is necessary that the development should be carried out in accordance with the approved plans, including the two parameter plans, for the avoidance of doubt and in the interests of proper planning. However, given the requirement to accord with the parameter plans there is no need to also require compliance with the Design and Access Statement. For the reasons set out above, it is not necessary to impose an additional restriction on building heights or to ensure that landscaping **accords with the appellants' updated**

²⁸ S106 Agreement – Summary of Key Planning Obligations (Document 17 below).

illustrative layout. The two additional conditions have not therefore been imposed.

54. Given that many details will be considered at the reserved matters stage, a number of the suggested conditions fail the test of necessity – namely those relating to landscape works, landscape management (this is also addressed by the submitted unilateral undertaking), external materials and boundary treatments. Details of finished floor levels are also more appropriately required at the reserved matters stage when the layout and appearance are considered.
55. In order to ensure satisfactory provision of the respective matters in line with relevant development plan policies, details are needed of other matters that are not subject to reserved matters approval – namely external lighting, drainage, refuse storage arrangements, archaeological investigation and a means of addressing any land contamination. In order to protect trees within the site an arboricultural method statement should be submitted, approved and put into practice. One condition is adequate for this. In order to safeguard **neighbours' living conditions it is necessary for a construction method** statement to be submitted, approved and implemented and for delivery hours during construction to be restricted. Construction of accesses, internal roads and parking areas, as well as the stopping up of any other vehicular access, is required for highway safety reasons, while it is necessary to improve the footpath through the site to ensure that access to the countryside is maintained as described above. Compliance with sustainable building requirements is needed in line with the development plan.

Overall Conclusion

56. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed.

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: nos. 1155/00, 1155/01, 1155/03, 1155/04, 12-123-001, 12-123-002A.
- 5) Development shall not commence until details of the proposed means of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until drainage works have been constructed in accordance with the approved details.
- 6) Development shall not commence until a programme of archaeological works has been undertaken in accordance with a written specification and

- timetable that has previously been submitted to and approved in writing by the local planning authority.
- 7) Development shall not commence until a detailed arboricultural method statement setting out protection measures for trees to be retained has been submitted to and approved in writing by the local planning authority. All works shall be undertaken in accordance with the approved details.
 - 8) Development shall not commence until a construction method statement has been submitted to and approved in writing by the local planning authority. All works shall be undertaken in accordance with the approved details. The approved statement shall provide for:
 - working hours on site;
 - parking of vehicles for site operatives and visitors;
 - the loading and unloading of plant and materials;
 - traffic management, including delivery times, lorry routeing and traffic control, as necessary;
 - the storage of plant and construction materials;
 - the erection and maintenance of any hoardings;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction;
 - measures to control noise and vibration during construction; and
 - a scheme for the recycling or disposal of waste from the construction works.
 - 9) The residential development hereby approved shall not commence until a vehicular access onto Old Guildford Road has been constructed in accordance with approved drawing no. 12-123-001.
 - 10) The care home hereby approved shall not commence until a vehicular access onto Old Guildford Road has been constructed in accordance with approved drawing no. 12-123-002A.
 - 11) External lighting to serve the public areas of the development hereby permitted shall not be put in place until details have been submitted to and approved in writing by the local planning authority. Development shall accord with the approved details.
 - 12) If any contamination is found during the construction of the development hereby permitted, a report specifying the measures to be taken to remediate the site to render it suitable for the development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures.
 - 13) No deliveries to and from the site in connection with the construction of the development hereby permitted shall take place outside the following hours: -
 - 0730 – 1730 Mondays - Fridays
 - 0800 – 1300 Saturdays
 - And not at all on Sundays and Public Holidays.
 - 14) No dwelling hereby permitted shall be occupied until the internal access roads and parking areas serving that dwelling have been constructed in accordance with the details approved pursuant to Condition No. 1 above.
 - 15) No dwelling hereby permitted shall be occupied until the existing public footpath crossing the site (FP1580) has been improved in accordance

with details that shall previously have been submitted to and approved in writing by the local planning authority.

- 16) No dwelling hereby permitted shall be occupied until all vehicular accesses to the site other than those shown on the approved drawings have been stopped up.
- 17) No dwelling hereby permitted shall be occupied until provision has been made for the storage of refuse and/or recycling bins for that dwelling in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.
- 18) The dwellings hereby approved shall achieve Code Level 3 in accordance with the requirements of the Code for Sustainable Homes: Technical Guide, or its equivalent rating in any national measure of sustainability for house design that replaces that scheme. No dwelling shall be occupied until a Final Code Certificate has been issued for it by an accredited assessor certifying that Code Level 3 or its equivalent has been achieved.

M J Hetherington

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Wayne Beglan	of Counsel Instructed by Mr Paul Cummins, Solicitor to Horsham District Council (HDC)
He called	
Ms Eimear Murphy BSc(Hons) MRTPI IBHC DipUD	Murphy Associates
Mr David Huskisson DipLA CMLI	David Huskisson Associates
Mr Alan Gunne-Jones BA MRTPI	Planning & Development Associates

FOR THE APPELLANT:

Mr Rupert Warren QC	Instructed by Mr Huw Edwards, Partner, Barton Willmore LLP
He called	
Ms Liz Simes DipLA DipUD CMLI	fabrik Ltd
Mr Jonathan Smith BA(Hons) MA MCIFA IHBC	CgMs Ltd
Mr Huw Edwards MSc MRTPI	Barton Willmore LLP
Mr Andrew Wilford	Barton Willmore LLP (conditions session only)

INTERESTED PERSONS (in order of appearance):

Councillor Malcolm Curnock	Ward Councillor and member of HDC Development Control North Committee
Mrs Vivien Edwards	Local resident
Mr Derek Sturt	Local resident
Ms Kate Bruges	Owner of Swan Ken
Ms Joanna Reeve	Local resident
Dr Jonathan England	Local resident and representative of Broadbridge Heath Parish Council
Mr Colin Edwards	Local resident

List of Documents tabled at the Inquiry

- Document 1: Letter of notification of Inquiry
- Document 2: Opening statement on behalf of the appellants.
- Document 3: Opening statement on behalf of Horsham District Council (HDC).
- Document 4: Statement by Councillor Curnock and attached plans.
- Document 5: Statement by Mr Colin Edwards.
- Document 6: Notes on traffic modelling by Dr England.
- Document 7: Judgement in Stroud District Council v SSCLG and Gladman Developments Ltd [2015] EWHC 488 (Admin).
- Document 8: E-mail exchange including e-mail from Ms Emma Faith (HDC) to the HDPF examination programme officer.
- Document 9: Statement by Ms Kate Bruges.
- Document 10: Statement by Mr G P McMullen.
- Document 11: Statement by Miss Rachel C Piggott.
- Document 12: Statement by Mr K M Henderson.
- Document 13: Agenda papers for the HDC Extraordinary Council Meeting on 18 March 2015.
- Document 14: Judgement in Cheshire East BC v SSCLG and Richborough Estates Partnerships LLP [2015] EWHC 410 (Admin).
- Document 15: Schedule of draft conditions.
- Document 16: Proposed additional conditions.
- Document 17: CIL Compliance Statement for submitted planning obligations.
- Document 18: Unilateral Undertaking under section 106 of the Act made to HDC.
- Document 19: Agreement under section 106 of the Act between the owners, the developer and West Sussex County Council.
- Document 20: Closing submissions on behalf of HDC.
- Document 21: Closing submissions on behalf of the appellants.

Costs Decision

Inquiry held on 4-6 and 10-11 March 2015

Site visit made on 10 March 2015

by Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 May 2015

Costs application in relation to Appeal Ref: APP/Z3825/A/14/2224668 Land North of Old Guildford Road, Broadbridge Heath, West Sussex

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gleeson Developments Ltd and The Trustees of the C J Lucas's Children's 1967 Settlement for a full award of costs against Horsham District Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 165 residential dwellings (use class C3) including affordable housing, a 60-bed care home (use class C2) with separate staff accommodation, two new vehicular accesses, associated infrastructure, groundworks, open space and landscaping.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. **The costs application and the Council's response were submitted in writing.** With reference to PPG paragraph 16-049-20140306, the applicants' case is, in summary, that the Council behaved unreasonably by refusing planning permission for the appeal scheme. One of the examples of unreasonable behaviour mentioned by the PPG is preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. **The appeal scheme was considered by the Council's Development Control (North) Committee on 17 June 2014.** A transcript of the meeting, the accuracy of which has not been challenged by the Council, has been provided by the applicants. At that meeting, planning permission for the appeal scheme was refused against officer recommendation. Four reasons are listed on the decision notice. These can be summarised as relating to: (1) landscape and visual impact; (2) effect on a grade II listed building (Swan Ken); (3) highway safety/capacity; and (4) infrastructure provision.
4. **Prior to the Inquiry's commencement, the Council indicated that it did not intend to pursue its 3rd and 4th refusal reasons.** The 4th refusal reason refers to the absence of a legal agreement: given that this was not submitted until the

- final day of the Inquiry, it was not unreasonable to maintain a 'holding objection'. The matters referred to in the 4th refusal reason were not in dispute between the main parties and they did not take up undue time at the Inquiry. The 4th refusal reason is therefore subservient to the other three reasons.
5. Unlike the 4th refusal reason, the 3rd reason (highway safety/capacity) makes no reference to the possibility that the **Council's** concerns could be addressed by the submission of a legal agreement. Substantive highway concerns were voiced by many of the Committee's members. However, no alternative technical evidence was presented to overcome the advice contained in the case officer's report. In summary this concluded that, in the light of information **provided by the appellants' transport consultants**, the application would comply with policy DC40 of the General Development Control Policies document. During the subsequent appeal process the local highway authority (West Sussex County Council [WSSCC]), which had previously objected to proposal, agreed a Statement of Common Ground and entered into a planning agreement with the appellants. No case against the development on transport grounds was put to the Inquiry by the District Council or WSSCC. The 3rd refusal reason was therefore unjustified and unreasonable. However, its withdrawal during the appeal process clearly saved Inquiry time.
 6. I turn to consider the two remaining substantive objections, which relate to the matters in the 1st and 2nd refusal reasons. As described in my main decision, the planning balance that is required by paragraph 14 of the National Planning Policy Framework (the Framework) is of central importance. At the Inquiry, **the Council's advocate set out a particular interpretation of the** policy approach in respect of that paragraph. For the reasons set out in my main decision, I have not accepted his submission and have applied the paragraph 14 balance to the appeal scheme. This requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate that development should be resisted.
 7. **The case officer's report to the** Committee undertakes such an assessment. Members were therefore made aware of the relative balance of weight between adverse impacts and benefits that would be necessary to justify a refusal of planning permission. The report recognises (in broadly similar terms to my decision) that some harm would be caused to landscape character/visual impact and the setting of Swan Ken. However, such harm was balanced **against the scheme's benefits** – including its contribution towards meeting 'an over-arching and evidential need for housing across the District, both in terms of **market and affordable provision' as well as the provision of care home** facilities. The report concluded that in view of the absence of significant harmful effects, approval was recommended.
 8. Members are not bound to follow the recommendations of Council officers. However, the relevant policy context still applies and, as such, it was necessary for the Committee – **in departing from the case officer's assessment** – to also consider the appeal scheme in the context of the paragraph 14 planning balance. However, that paragraph is not referred to at all in the **Council's** decision notice. The decision notice does not mention the existence of a housing land supply shortfall. Its only reference to a balancing exercise is the reference to paragraph 134 of the Framework in respect of the listed building.

However, the scheme's benefits are not described in that context and it is not explained why they are considered insufficient to outweigh the harm identified.

9. I have carefully read the transcript of the Committee meeting. The need to undertake a planning balance was indeed recognised, notably by the local ward member (Councillor Curnock). However, he refers to the need to consider **whether the 'benefits of the development outweigh the harm', adding that 'therefore it is a subjective decision, it is not one based on planning policy.'** Clearly, that represents a departure from paragraph 14 which requires the adverse impacts to *significantly and demonstrably* outweigh the benefits in order for planning permission to be granted (my italics).
10. I accept that it would be wrong to subject verbal remarks to an undue level of forensic scrutiny. However, given that at least six other Committee members explicitly endorsed **Councillor Curnock's comments** at the meeting, such comments assist in understanding what was in the Committee's mind when it made its decision. Neither the meeting transcript nor the eventual decision notice demonstrate that its members took a different approach to that described by Councillor Curnock when applying the planning balance.
11. While the Committee disagreed with the case officer about what weight should be attached to different elements of the planning balance, it does not follow that attaching greater weight to an adverse impact (or attaching lesser weight to a benefit) would necessarily justify refusing planning permission. As already described, the adverse impacts have to significantly and demonstrably outweigh the benefits to justify such an outcome. It is not apparent from either the decision notice or the meeting transcript that the Committee undertook such an explicit balancing exercise. The absence of such consideration is consistent with a view that the proper basis for objecting to the proposal was not fully appreciated by Committee members.
12. **Furthermore, it does not appear that the members' assessment** of harm in respect of the matters addressed by reasons 1 and 2 was based upon any additional expert or technical evidence other than that presented by the relevant Council officers. Given that assessments **from the Council's Landscape Architect and Design and Conservation Officer** in respect of (respectively) landscape harm and the effect of the setting of the listed building were before the Committee, it seems to me that similarly robust technical evidence and an objective analysis is required to adequately support a contrary view.
13. I note in that context that the Committee did not visit the site before making its decision. While it is to be expected that some members (most notably the ward member) would have known the site and its surroundings well, it is by no means certain that all of the Committee would have had sufficient local knowledge to be able to assess the scheme, the local landscape and the effect **on the listed building's setting in** an appropriate level of detail.
14. In the event, the Council presented a substantial amount of evidence to the Inquiry in respect of both remaining refusal reasons. As set out in my main decision, I have – in some respects – preferred that evidence to the evidence **that has been presented by the appellants' witnesses.** I have found that harm would result in respect of both substantive issues, albeit not on the scale suggested **by the Council's** heritage witness (although I have agreed with both main parties that **the extent of that harm would be 'less than substantial' in the terms of the Framework).** However, like the Council's case officer, I have also

found that, overall, the level of such harm would not be significant enough to justify a refusal of planning permission in the terms set by paragraph 14.

15. Drawing the above together, I consider that it was unreasonable to refuse planning permission on landscape/visual impact and listed buildings grounds **when the Council's case officer had raised no objection** in the light of relevant technical assessments and where there was no other expert or technical evidence upon which to rely. Given that the 3rd refusal reason was withdrawn and not subsequently defended, it was also unreasonable to refuse planning permission on transport grounds. As set out above, it appears on the evidence that the paragraph 14 balancing exercise was not properly appreciated by Committee members and that such a balancing exercise was not explicitly carried out. These factors amount to an unreasonable refusal of development which should clearly have been permitted. The applicants have been caused to incur costs in respect of an appeal that they should not have had to make.
16. The applicants also raise concerns about **the Council's behaviour** following the refusal of planning permission, notably with respect to the inconsistent stance that it has taken to **the site's development potential in its evidence to this Inquiry** compared to its submissions to the ongoing Horsham District Planning Framework examination. However, in view of my comments above there is no need to consider that matter in any further detail in this decision.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Horsham District Council shall pay to Gleeson Developments Ltd and **The Trustees of the C J Lucas's Children's 1967 Settlement, the costs of the appeal** proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
19. The applicants are now invited to submit to Horsham District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

M J Hetherington

INSPECTOR