Proposed Brief for WHPC Meeting October 15th 2019 – DRAFT 1

Introduction
Both Jules Cranwell and the Wisley Action Group have approached the Parish Council to consider making a donation towards the costs for the Judicial Review challenges to Guildford Borough Council's adopted Local Plan: Strategy and Sites 2015 – 2033

It was agreed at our Parish Council meeting in September that Charles Hope (Chair), Mel Beynon (Vice-Chair) and Catherine Young (Lead for Planning) would meet to review the questions raised by Ian Davison (SSALC Solicitor) in relation to the JRs if using S137, and put forward a recommendation on our response to this request for the PC to approve at its next meeting.

Following our meeting on Tuesday 24th September 2019 the following points were agreed as responses to the questions posed:

Question	**JR**
Is supporting the JRs in the interests of the Parish Council's Residents? *(It needs to be shown that the Parish Council has thought through all the likely issues and taken a view based on what they knew and the advice they were given at the time).*	Yes – see success criteria question below. In West Horsley there was overwhelming opposition to the draft Local Plan from our residents, in particular to the loss of our Green Belt status and the sites identified for development which it was felt would change the open rural character of our village beyond recognition. There were also significant concerns raised with regard to the lack of infrastructure to support the Local Plan proposals – medical services, school places, impact on the station and local shops, as well as limited public transport services to name a few. With particular focus on Wisley, it was felt that should this development go ahead, there would be a significant **negative** impact on the Horsley's in total.
Who is controlling the litigation /who makes the decisions / what if the council disagrees with the continuance etc?	West Horsley Resident JR – controlled by Jules Cranwell on behalf of Guildford residents Wisley – by WAG and Ockham PC All 3 JRs are being handled by CPRE's solicitor and were submitted together. If there is a continuance in proceedings it is unlikely that we would have any input into this. If we were to be asked for future donations that would have to be considered at the time by full Parish Council.
Is the contribution capped or open ended?	Both the West Horsley Resident and the Wisley JRs have confirmed that it is acceptable to make a conditional donation on a capped basis with no acceptance of liability. Jules Cranwell has confirmed in writing that Parish Councils would not have any liability regarding costs and that full liability would all rest with him. Dr Travers, Chair of Ockham PC stated that any contributions to the Wisley JR could be made on a 'donation basis without any acceptance of liability'. *Parish Councils need to state this in writing when making the donation, as per Ian Davison's advice. Parish Councils may also want to specify that they expect a return of their donation*

	(on a pro rata basis) should the JRs be successful and win costs or should there be any funds left at the end.
Has the council made a reasoned evaluation of the chances of success / what success looks like / what would happen if the JR was successful?	One of the PCs noted that if the West Horsley Resident JR is successful, it will be a general win, meaning GBC will have to go back to the drawing board in terms of the site allocations and may leave some greenbelt sites out of the Plan, but not necessarily all of them. It is not known which ones will go and which ones will stay. It would see a revision to specific policies in the Local Plan e.g. Policy S2. As per Jules's response to Send PC, if the JR was successful, it would require the larger sites in the Greenbelt, such as the recent approval for the Tannery lane site, to be reviewed/reversed, as these represent much more than "limited infilling" in a village, and Greenbelt status would potentially be restored to the 15 villages. Wisley JR – this is specific to the removal of the Wisley strategic site & A3 Burnt Common slip roads.
If the council actively participates in the litigation, it might be at risks of costs.	The Parish Council can specify that it does not want to participate in the litigation as a third party and both the West Horsley Resident and Wisley JRs have confirmed that Parish Councils making donations can cap this with no acceptance of liability. Jules Cranwell has confirmed that he, as the named person on the litigation, would be responsible for costs if unsuccessful.
In order to justify making a donation, Ian's comment is that we would need to have reasonable odds of winning.	Jules Cranwell has commented in writing to Send PC's queries that his lawyer, Kristina Kenworthy, "is also the chair of Surrey CPRE, and extremely passionate about the cause. She believes we have a better than even chance. Her firm is handling all three JRs". It is felt by WHPC that for all three JRs to be submitted to the Court by a reputable judge, and supported through CPRE, that there must be reasonable grounds for success identified by the applicants.

Further information:
Jules Cranwell JR – statement of case prepared by his lawyer, Kristina Kenworthy
Julian Cranwell Claim is based on three grounds:

1. Misinterpretation of the national Green Belt policy regarding exceptional circumstances for the release of land from the Green Belt and or an irrational application of that national Green Belt Policy. Government ministers have been very clear on this and land can only be released from the Green Belt if there are exceptional circumstances to justify altering Green Belt boundaries in order to release the land for housing land in the local plan process. Unmet objectively assessed housing need i.e. the need for more housing cannot of itself equate to the exceptional circumstances test being satisfied. Even if there were exceptional circumstances given to justify the release of Green Belt land, there is no explanation as to why an excess over 4000 homes have been allowed for in the plan. Julian Cranwell questions the logic of releasing land in West Horsley and 14 other villages as providing much needed housing in locations close to village facilities by stating that there are exceptional circumstances to alter the Green Belt boundaries to provide for these allocations. There is nothing exceptional about the desirability of having housing close to

village facilities – that is what sustainable development is all about. What it does not mean is that because there is a market for housing near to a village centre that this provides reason to release land from the Green Belt. The inspector's approach to exceptional circumstances is flawed.

2. The second ground deals with the question of whether the OAN or objectively assessed need figure should be altered in light of environmental constraints – by which we mean the Surrey Hills AONB or Thames Basin Heath SPA, or the long-established Green Belt which has protected Surrey from overdevelopment. The imperative to meet this housing figure, and indeed to surpass it by some 4000 dwellings, is not explained. The Inspector makes no attempt to reduce or to explain why he did not reduce the housing requirement for the borough in light of the Green Belt. The inspector appears to have proceeded on the assumption that the council considered it to be a sound plan without further analysis or any attempt to rebut or test that assumption.

3. The third ground is that there was a failure to revisit the Sustainability Appraisal once the housing requirement figure had been reduced from 12, 426 to 10,678 while the supply figure remained at 14,602. Why did this material change in circumstances, along with neighbouring borough of Woking declaring that it had no unmet housing need (i.e. required to be accommodated in Guildford) not trigger any further assessment? Instead, the Council and Inspector contended that further assessment was unnecessary in spite of a revision of the fundamental starting point of the whole plan – that is to say the OAN or housing need figure. There was no attempt to assess or justify not reconsidering the reasonable alternatives in light of the reduction in the number of houses now required in the borough.

Given the active role played by the public throughout the plan making process it is wholly understandable for them to now ask why the Inspector and Council remained so intransigent and if the adoption of the plan was lawful. The remedy that Julian Cranwell is seeking is for the Policies S2 (spatial development strategy, Gosden Hill Farm, Blackwell Farm, Former Wisley Airfield, and such of the villages as involve Green Belt release and D13 to be quashed. With the result that Council would have to reconsider the spatial development strategy in light of the Court's judgment and to prepare an amended version of the Local Plan for submission to the Secretary of State. Last week Sir Duncan Ouseley, a retired highly experienced High Court judge, granted permission for Julian Cranwell's claim to be judicially reviewed and accepted that the case was significant and should be dealt with as the same time as Compton PC and Ockham PC's related claims and as swiftly as possible. This means that the judge considered that the grounds of the claims are arguable.

In the meantime, three other parties have applied to be joined to the proceedings. It comes as no great surprise that Wisley Property Investments Limited, Blackwell Park Limited and Martin Grant Homes (Gosden Hill) are anxious to be involved in the proceedings, although it is less obvious what additional legal arguments they will bring to the proceedings when the Council is preparing to defend the local plan as adopted in April. There are therefore eight parties to the litigation including the Secretary of State for Housing Communities and Local Government. The Judge's Order directed that there should be no duplication of documentation or argument and the co-operation of all the parties is expected in this regard.

At present it is anticipated the hearing will be three days on the 5th, 6th and 7th of November 2019.

Conclusions

There is confirmation that West Horsley Parish Council (WHPC) would be able to make a conditional donation, and would not be liable for any costs should the JR(s) to which they had donated not be successful.

WHPC are clear that they could expect a return of funds on a pro rata basis if the JR(s) to which they donated were successful, providing there were funds remaining.

The Barrister's view indicates that there is more than a 50% chance of success and therefore it is a reasonable option to donate.

There is an expectation from our residents that the Parish Council should support the Resident's JR, as evidenced from the comments on local social media sites. The strength of opinion of our residents towards the Local Plan is evidenced in the overwhelming number of objections received during the consultation process on the Draft Local Plan, and attendance by a significant number of Horsley residents at the Local Plan hearings held last year.

Recommendations

With regard to the JR submitted by our West Horsley resident, Julian Cranwell, to challenge the Guildford Borough Council Local Plan, the Parish Council pledge the sum of £8,000 as a conditional gift and not as a third party.

With regard to the Wisley JR submitted on behalf of Ockham PC and WAG to challenge the allocation of the Wisley Site within the GBC Local Plan, the Parish Council pledge the sum of £2,000 as a conditional gift and not as a third party.

WHPC in so doing will not accept any liability in relation to legal action although it would like to be kept informed of further developments with the JRs progress.

In the event of both or either JR being successful and costs being awarded, WHPC will expect its contribution (on a pro rata basis) to be returned.