



Department for  
Communities and  
Local Government

Jonathan Lieberman  
Boyer Planning  
UK House  
82 Heath Road  
Twickenham  
TW1 4BW

Our Ref: APP/D3830/V/14/2211499  
Your Ref:

4 September 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION BY THAKENHAM HOMES (SOUTHERN) LIMITED  
LAND OFF COLLEGE LANE, HURSTPIERPOINT, WEST SUSSEX BN6 9AB  
APPLICATION REF: 13/01250/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jennifer Vyse DipTP DipPBM MRTPI, who held a public local inquiry on 1<sup>st</sup> and 2<sup>nd</sup> April 2014 into your clients' application to Mid-Sussex District Council ("the Council") for a development comprising 81 dwellings, access roads, car parking facilities, footways, footpaths and associated infrastructure plus change of use of 4.3 ha of land to informal open space with landscape planting and other works in accordance with application No 13/01250/FUL dated 12 April 2013.
2. On 19 December 2013, the application was called-in for decision by the Secretary of State under section 77 of the Town and Country Planning Act 1990 because the proposal concerns matters which may conflict with national policies on important matters.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the application be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

4. The Secretary of State agrees with the Inspector that, for the reasons given at IR1.3, the minor amendments agreed following the calling in of the application do not/need not materially change the nature of the development for which permission is sought and that

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those with an interest in the outcome of this application will not be prejudiced by its determination on the basis of the revised details.

5. The Secretary of State also notes (IR1.5) that the Council did not present any evidence to the inquiry.

### **Matters arising following the close of the Inquiry**

6. The Secretary of State received a representation from Dr Keith Corbett, dated 16 July 2014, expressing concerns about the environmental assessment undertaken with particular reference to Great Crested Newts. The Secretary of State has given careful consideration to this representation and is satisfied that it raises no new issues not covered at the inquiry and upon which he requires further information. Copies of this correspondence may be obtained, on written request, from the address at the bottom of the first page of this letter.

### **Policy considerations**

7. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the Mid Sussex Local Plan, adopted in May 2004; and the Secretary of State agrees with the Inspector that the policies most relevant to this case are those referred to at IR5.3-5.6.
8. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework) and the subsequent planning guidance; as well as the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. He has also had regard to the Submission version of the Hurstpierpoint and Sayers Common Parish 2031 Neighbourhood Plan and, in that context, the Written Ministerial Statement on Neighbourhood Planning published on 10 July 2014.

### **Main issues**

#### Whether the contribution to the supply of housing is outweighed by other considerations

9. The Secretary of State agrees with the Inspector (IR13.2) that, although the site lies in open countryside where development would be contrary to the relevant policies of the development plan, the Council has a substantial shortfall in its five-year supply of housing land so that the presumptions in paragraphs 14 and 49 of the Framework imply that permission should be granted unless the adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. He therefore further agrees with the Inspector (IR13.3) that the main consideration in this case is whether the potential contribution to the supply of housing is outweighed by the effect of the proposal on the character and appearance of the surrounding countryside including, in particular, the role of the application site as part of a defined Local Gap.

#### Status of emerging Neighbourhood Plan (NP)

10. The Secretary of State has given careful consideration to the arguments set out by the Inspector at IR13.4-13.12, including those advanced on behalf of your clients and those of the Parish Council and other objectors, about the weight to be given to the emerging NP. He notes (IR13.12) that, at the time of the Inquiry into this case, the Inspector

concluded that only little weight could be afforded to the NP proposals as a material consideration. However, since that time, the Submission Version of the NP has completed its public consultation (on 23 May 2014) and has now been submitted to the Council for examination. Therefore, although the NP has yet to complete its assessment by an independent examiner and, if approved, be put to public referendum, the terms of the Framework and the guidance mean that it can now be given more weight than when the Inspector was considering it.

11. In the light of this, the Secretary of State considers it appropriate (as stated in the Written Ministerial Statement of 10 July 2014 - referred to in paragraph 8 above) to give local people an opportunity to ensure they get the right types of development for their community while also planning positively to support strategic development needs. The Secretary of State has therefore given significant weight to the fact that the emerging NP has identified housing allocations elsewhere within the NP area and that the Council has yet to complete an up-to-date objectively assessed housing needs analysis against which to measure the overall NP proposals. In the light of these, he considers it appropriate, as things currently stand, to tip the planning balance in favour of the emerging NP proposals, while accepting that these may need to be revisited in due course.

#### Character and appearance, including Local Gaps

12. For the reasons given at IR13.13, the Secretary of State agrees with the Inspector that the settlement boundaries on which the operation of Local Plan policy C1 relies are out of date, so that policy C1 itself should also be regarded as out of date to the extent that it seeks to restrict the supply of housing.
13. The Secretary of State agrees with the Inspector that, for the reasons given at IR 13.14-13.15, Local Plan policies C2 (Strategic Gaps) and C3 (Local Gaps) do not envelope the entire settlement boundary of Hurstpierpoint and, in any case, policy C2 is not offended by the development proposed.
14. With regard to policy C3 (and the policy of similar intent included in the emerging NP), the Secretary of State agrees with the Inspector (IR13.16-13.20) that, although policy C3 is out of date in so far as it impacts upon the supply of housing, it continues to serve an important planning function in preventing the coalescence of the settlements of Hurstpierpoint and Hassocks and maintaining their separate identities and amenity, with no conflict with the thrust of the Framework. The Secretary of State has also carefully considered the arguments set out by the Inspector at IR13.21-13.23 and agrees with her conclusion that the proposed development would undermine the purposes of the Local Gap and change its character. He agrees that the Gap continues to serve a useful and much valued planning purpose (irrespective of the landscape capacity assessment of the site) and that an increase in built development would result in a small but nevertheless significant diminution of openness.

#### Highways and parking

15. For the reasons given at IR13.24-13.27, the Secretary of State agrees with the Inspector's conclusion at IR13.27 that the proposed development would not result in material harm in terms of any impact on the safety and free flow of traffic on the local highway network.

### Living conditions

16. The Secretary of State agrees with the Inspector's conclusion at IR13.28 that, subject to conditions, there would be no material adverse impact on the living conditions of local residents.

### Trees and ecology

17. For the reasons given at IR13.29-13.32, the Secretary of State agrees with the Inspector's conclusion at IR13.33 that the development proposed would not have a material adverse impact on the ecological or arboricultural interest of the application site.

### Flooding and drainage

18. For the reasons given at IR13.34-13.39, the Secretary of State agrees with the Inspector's conclusion at IR13.40 that, subject to appropriate conditions, the proposed development would not exacerbate existing sewage disposal problems, nor would it either be at risk from flooding or exacerbate the flood risk in the wider area.

### Heritage Assets

19. For the reasons given at IR13.41-13.43, the Secretary of State agrees with the Inspector that the special interest and significance of Wickham Farmhouse (Grade 2 listed) would not be materially affected by the development of the application site. Similarly for the reasons given at IR13.44, the Secretary of State agrees with the Inspector that there would be no material harm to the character, appearance or setting of the Hurst Wickham Conservation Area and therefore no harm to its significance as a heritage asset. He also agrees with the Inspector (IR13.45) that the imposition of an appropriate condition to secure any necessary investigation would afford sufficient protection to any archaeological remains which might otherwise be disturbed.

### Accessibility

20. For the reasons given at IR13.46-13.47, the Secretary of State agrees with the Inspector that the existing public transport provision in the area, and the walking and cycling links included in the scheme, would be sufficient to ensure a reasonable prospect of access being available by sustainable transport modes to those services and facilities required by people on an everyday basis.

### Planning balance

21. The Secretary of State gives substantial weight to the benefits of the scheme, as identified by the Inspector at IR13.48-13.50 and IR13.53-13.54 including, in particular, the fact that the Council accepts that it does not have a five year housing land supply; so that the development needs to be considered in the context of the presumption in favour of sustainable development as set out in the Framework. However, against that, the Secretary of State agrees with the Inspector that the justification for the Local Gap also carries substantial weight, bringing the application scheme into conflict with the Local Plan and the Framework taken as a whole (IR13.56) in terms of failing to meet the environmental dimension of sustainability. Additionally, since the Inspector submitted her Report to the Secretary of State, the NP has made a significant step forward and is now at the formal examination stage (see paragraph 10 above), reaffirming the Local Gap designation in the Local Plan. In the light of this, the Secretary of State agrees with the Inspector's conclusion at IR13.57 that the scheme cannot be regarded as sustainable development.

## **Conditions**

22. The Secretary of State has considered the proposed conditions and the Inspector's comments on them at IR11.1-11.17. He is satisfied that the conditions recommended in Appendix C to the IR are reasonable and necessary and meet the tests of the Framework and the guidance. However, he does not consider that these overcome his reasons for refusing the appeals.

## **Obligation**

23. The Secretary of State has considered the terms of the planning obligation submitted at the Inquiry and considered by the Inspector at IR12.1-12.12. He agrees with the Inspector (IR13.55) that these meet the Framework tests and comply with the CIL Regulations. However, for the reasons set out above, he does not consider that these provisions are sufficient to overcome his concerns with the proposed scheme as identified in this decision letter.

## **Overall Conclusions**

24. Overall, the Secretary of State considers that, although the application scheme would help to meet the shortfall in housing land in the Council's area, it would not accord with the terms of the development plan or the Framework. The long established Local Gap is already particularly narrow and vulnerable in the vicinity of the application site, so that the proposal fails to satisfy the environmental dimension of sustainable development as set out in the Framework.

## **Formal Decision**

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby refuses your clients' application for a development comprising 81 dwellings, access roads, car parking facilities, footways, footpaths and associated infrastructure plus change of use of 4.3 ha of land to informal open space with landscape planting and other works in accordance with application No 13/01250/FUL dated 12 April 2013.

## **Right to challenge the decision**

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

27. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by Jennifer Vyse DipTP DipPBM MRTPI

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

Date 30 April 2014

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**TOWN AND COUNTRY PLANNING ACT 1990**  
**PLANNING APPLICATION MADE BY**  
**THAKEHAM HOMES (SOUTHERN) LIMITED**  
**TO**  
**MID-SUSSEX DISTRICT COUNCIL**

Inquiry opened 1 April 2014

Land off College Lane, Hurstpierpoint, West Sussex BN6 9AB

File Ref: APP/D3830/V/14/2211499

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**File Ref: APP/D3830/V/14/2211499**

**Land off College Lane, Hurstpierpoint, West Sussex BN6 9AB**

- The application was called in for decision by the Secretary of State by a Direction made under section 77 of the Town and Country Planning Act 1990 on 19 December 2013.
- The application is made by Thakeham Homes (Southern) Limited to Mid-Sussex District Council.
- The application No 13/01250/FUL is dated 12 April 2013.
- The development proposed comprises 81 dwellings, access roads, car parking facilities, footways, footpaths and associated infrastructure plus change of use of 4.3 hectares of land to informal open space with landscape planting and other works.
- The reason given for making the Direction was that the proposal concerns matters which may conflict with national policies on important matters.
- On the information available at the time of making the Direction, the matter on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application, was the extent to which the proposed development is consistent with the Government's policies, in particular housing, contained in the National Planning Policy Framework.

**Summary of Recommendation: That the application be refused.**

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**1. Procedural and Background Matters**

- 1.1 The Inquiry sat for two days (1-2 April 2014). I undertook an accompanied visit to the site and its surroundings during the second day.
- 1.2 Notwithstanding a recommendation for refusal, at its meeting on 11 July 2013, the District Council's South West Area Planning Committee resolved that planning permission should be granted, subject to conditions and subject to the applicant first entering into an Agreement under Section 106 of the Town and Country Planning Act 1990 (as amended). However, prior to issue of the formal decision, the application was called in by the Secretary of State for his determination, alongside appeals relating to two other housing developments: one at Kingsland Laines, Sayers Common<sup>1</sup> and one at Little Park Farm/Highfield Drive, Hurstpierpoint.<sup>2</sup>
- 1.3 Subsequent to the calling in of the application, the applicant agreed minor amendments to the scheme with the District Council. At the Inquiry, it was confirmed that, for the most part, the alterations related to what were referred to as 'slight tweaks' to several of the elevations to the dwellings proposed. A further difference is a possible alternative location for the proposed pumping station within the proposed wildlife corridor (shown on plan No 7777 as Option 2). Whilst the Parish Council felt that Option 2 did not represent an appropriate location, being located within a wildlife/landscape area, it was accepted that the final location was a matter that could be dealt with by planning condition. I consider that the amendments do not/need not materially change the nature of development for which permission is sought. Accordingly, and with the Wheatcroft principles in mind,<sup>3</sup> I am satisfied that those with an interest in the outcome of this application would not be prejudiced were the Secretary of State to determine the proposal on the basis of the revised details.<sup>4</sup>

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<sup>1</sup> Appeal Ref: APP/D3830/A/12/2189451 – 120 dwellings in total

<sup>2</sup> Appeal Ref: APP/D3830/A/13/2203080 – 157 dwellings in total

<sup>3</sup> Bernard Wheatcroft Ltd v SSE for the Environment and Another (1980)

<sup>4</sup> These are the plans listed at condition 29 in Appendix C below.

- 1.4 Shortly before the Inquiry opened, the Government published its Planning Policy Guidance (planning guidance). The advice set out therein, at ID: 21b-014-20140306,<sup>5</sup> resulted in the striking through of some of the written evidence of the Parish Council.
- 1.5 The District Council, although represented at the Inquiry by Mr King in order to assist with the discussion on conditions and the planning obligation, as well as administrative matters, did not present any evidence to the Inquiry. Accordingly, this Report does not contain a statement of case on the part of the District Council.
- 1.6 This Report includes a description of the application site and its surroundings, the gist of the representations made at the Inquiry and in writing, and my conclusions and recommendation. Lists of appearances and documents are attached as Appendices A and B respectively. Recommended conditions, in the event that planning permission was to be granted, are set out at Appendix C. References to documents are given as footnotes.

## **2. The Site and its Surroundings<sup>6</sup>**

- 2.1 The 7.86 hectare application site lies on the southeastern side the village of Hurstpierpoint, north of Wickham Hill (B2116) and to the south of the separate hamlet of Hurst Wickham. Hurst Wickham is a designated Conservation Area. To the east is the settlement of Hassocks, with the town of Burgess Hill lying some 4 kilometres to the northeast.
- 2.2 The site is laid to grass and was previously used for the grazing of horses. A small watercourse runs across the site from east to west, dividing the larger southern part, most of which is proposed to be developed, from the narrower northern part which, together with a wildlife corridor along the eastern site boundary, would be retained as open space.
- 2.3 The northern site boundaries, which comprise hedgerow and hedgerow trees, are adjoined by an open field close to College Lane, with the northernmost extent of the site adjoining the southern garden boundaries of a couple of large detached properties on Hurst Wickham Close (Hurst Wickham Rise and Little Court).
- 2.4 The eastern site boundary runs alongside Belmont Lane, a single width private access road and public bridleway that is sunken into the land at various points. The boundary between Hurstpierpoint and Hassocks runs along Belmont Lane at this point. The lane is lined by mature trees with an understorey of hazel and hawthorn.
- 2.5 The southern boundary of the site is formed by the rear gardens to properties on Wickham Hill and a small paddock area. In the main, the boundary is marked by existing trees and hedgerow. The western site boundary abuts the rear gardens of dwellings along College Lane. Whilst the boundaries to some of those properties are quite open, others are defined by shrubs and trees.

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<sup>5</sup> Headed '*In what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity?*'

<sup>6</sup> More detail on this is set out in the officer's report, the Planning Statement, the Design and Access Statement and the Landscape and Visual Assessment that accompanied the application, plus APP/2/P and APP/2/A.



- 2.6 Vehicular access to the site would be taken from College Lane, immediately to the north of No 31, opposite to an attractive flint cottage (12 College Lane) and Wickham Farmhouse (14 College Lane) a Grade II listed building.
- 2.7 Ground levels fall gently from both north and south, towards the small water course that dissects the site. There are two small ponds at the eastern end of the stream. Beyond the site levels rise, in particular to the south, where the Wickham Hill properties are on a ridge and are elevated in relation to the application site. The site is, effectively, enclosed by a shallow ridge to the north and the more pronounced ridge to the south. Around the site, the land use is urban to the west and south, agricultural with fields of pasture to the east, beyond Belmont Lane, urban fringe to the northwest, where there is a paddock/field running up to a converted barn and former stables (Hurst Wickham Barn) and partly residential to the northeast, with the extensive grounds around Belmont and a number of other properties.

### **3. Planning History**

- 3.1 In March 2013, planning permission was refused for 93 dwellings on the site and associated infrastructure, plus change of use of an area of land to informal open space with landscape planting and other works, on land at College Lane.<sup>7</sup> Six reasons for refusal were set out in the Decision Notice. They related to the location of the site within a Countryside Area of Development Restraint and a Local Gap; unsatisfactory design and layout; failure to provide necessary infrastructure and affordable housing contributions; drainage issues; and potential impact on protected species. Although an appeal against that decision was lodged, it was withdrawn prior to determination.

### **4. The Proposal**

- 4.1 Permission is sought for the erection of 81 dwellings, access roads, car parking facilities, footways and footpaths and associated infrastructure, plus change of use of land to informal open space with landscape planting and other works.
- 4.2 The scheme comprises 57 market properties as a mix of two, three and four bed houses and a one bed flat, and 24 affordable units as a mix of one and two bed flats, two, three and four bed properties. The plans show detached, semi-detached and terraced houses and bungalows, of a traditional Sussex vernacular design in the main. The palette of external materials includes brick, tiles, timber boarding, slate and flint.
- 4.3 Vehicular access would be from College Lane, some 10m to the north of No 31. The road layout would be broadly circular, around a landscaped amenity space within the centre of the site. A pedestrian/cycle link to Belmont Lane is shown within the southeast corner of the site and a pedestrian walkway is shown winding through the proposed landscaped park and wildlife corridor along the eastern boundary with Belmont Lane, and along the northern site boundary. That land would be transferred to the Parish Council, were planning permission to be granted.
- 4.4 Two ponds associated with the proposed sustainable surface water drainage arrangements (SUDs) are shown as located within the parkland area, as well

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<sup>7</sup> Application No 12/03972/FUL

as a habitat pond and a locally equipped area for play. The plans also indicate that the pumping station associated with the development would be located within this area – option 1 sites the facility to the north of the access road, just off College Lane; option 2 shows it located adjacent to the eastern site boundary, within the wildlife corridor, served via a new access drive off Belmont Lane (both are shown on Plan No 7777).

- 4.5 All the roads and footpaths would have properties fronting onto them and there are no areas where there would be dead frontages facing onto the public realm. Car parking courts have been placed to the rear of dwellings to minimise the impact of car parking on the development.

## 5. Planning Policy and Guidance

- 5.1 In addition to the National Planning Policy Framework (the Framework) reference was made to:

*The Mid Sussex Local Plan*<sup>8</sup>

- 5.2 At the time of the Inquiry, the statutory development plan for the site included the saved policies of the Mid Sussex Local Plan, adopted in May 2004. The policies referred to below are those most relevant to the issues raised by this application.

- 5.3 The application site lies adjacent to, but outwith, the defined settlement boundary for Hurstpierpoint, in a Countryside Area of Development Restraint. Within such areas, policy C1 resists new development other than in particular circumstances, in order to protect the countryside for its own sake. The site also lies within a Strategic and Local Gap, defined by the Local Plan as areas of countryside with special qualities. Policies C2 (Strategic Gaps) and C3 (Local Gaps) safeguard those areas with the specific objective of preventing coalescence and retaining the separate identity and amenity of settlements. Development within the gaps is resisted unless it is necessary for the purposes of agriculture, or some other use that has to be located in the countryside, it makes a valuable contribution to the landscape and amenity of the gap and enhances its value as open countryside, and it would not compromise individually or cumulatively the objectives and fundamental integrity of the gap.

- 5.4 Policy B10 reflects the statutory duty to protect listed buildings and their settings.

- 5.5 Policy H4 seeks to secure 30% provision of affordable units on sites proposing more than 15 dwellings.

- 5.6 Policies G3, CS9 and CS11 require that the infrastructure necessary to support new development either exists or can be provided, including new community facilities.

*The Mid Sussex District Plan*<sup>9</sup>

- 5.7 The submission version of this emerging plan was submitted to the Secretary of State in July 2013. Following a Hearing session in November 2013, the

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<sup>8</sup> PC/1/A Tabs PC2 and PC5, APP/1/A Tab 10 and Doc 17 Appendix 1

<sup>9</sup> PC/1/A Tab PC3

Examining Inspector issued a Note advising of his conclusion that the legal duty to cooperate had not been met, suggesting that the Plan be withdrawn.<sup>10</sup>

- 5.8 The Plan is still the subject of considerable objection and remains to be independently tested, both in relation to the duty to cooperate, and whether it meets the full objectively assessed needs for market and affordable housing in the housing market area. As set out in the SoCG, this Plan has now been withdrawn and carries no weight in the decision-taking process. In the event, no policies from the emerging plan are referred to or relied on by the parties.

*The Hurstpierpoint and Sayers Common Parish 2031 Neighbourhood Plan – Submission Version<sup>11</sup>*

- 5.9 At the time of this Inquiry, the Submission Version of the Neighbourhood Plan, together with a Basic Conditions Statement,<sup>12</sup> Consultation Statement<sup>13</sup> and updated Sustainability Appraisal (incorporating SEA)<sup>14</sup> had been submitted to the District Council and the South Downs National Park Authority (the emerging Plan straddles both local planning authority areas, with Mid Sussex taking the lead).
- 5.10 Although it was hoped that the Local Authority consultation process would have been underway by the time of the Inquiry, a single issue relating to the Habitats Regulations was outstanding: the District Council had received legal advice that, since the District as a whole is impacted by the Ashdown Forest Special Area of Conservation and Special Protection Area, all Neighbourhood Plans within Mid Sussex needed to be screened to assess whether they are likely to have a significant effect on the special characteristics of the Forest.
- 5.11 A Habitats Regulations Assessment of the now withdrawn District Plan found that the only likely significant effect relates to recreational disturbance from visitors to the Forest. Since the majority of such visitors originate from within 7 kilometres of the Forest, it was held that new residential development within that zone would be required to mitigate those effects. A letter from the District Council, dated 28 March 2014,<sup>15</sup> confirms that the parish of Hurstpierpoint and Sayers Common is wholly outside the 7 kilometre zone and thus, the screening opinion is likely to indicate that there are no significant effects. Nevertheless, a formal assessment still needs to be carried out. The letter confirms that a screening statement will be published shortly, along with the Council's decision on the legal check.<sup>16</sup> The plan can then move forward to the six week consultation stage, prior to Examination.
- 5.12 The Submission Version of the Neighbourhood Plan does not allocate the application site for housing development. Instead, it lies in countryside within a defined Local Gap. Policy C1 '*Conserving and Enhancing Character*' is permissive of development in the countryside for particular purposes, where it would maintain or, if possible, enhance the quality of the rural and landscape quality of the parish, where it is supported by other policies in the Plan. Policy

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<sup>10</sup> Doc 6

<sup>11</sup> Ibid Tab PC4

<sup>12</sup> Ibid Tab PC6

<sup>13</sup> Ibid Tab PC7

<sup>14</sup> Ibid PC8

<sup>15</sup> Doc 4

<sup>16</sup> The letter confirms that the Council has no concerns about the legality of the process for consultation etc.

C3 'Local Gaps and Preventing Coalescence' is permissive of development in the countryside provided that it would not individually or cumulatively result in coalescence and the loss of the separate identity of neighbouring settlements, and provided that it would not conflict with other countryside policies within the Plan. Local Gaps between particular settlements are identified. They include the gap between Hurstpierpoint and Hassocks, and between Hurstpierpoint and Burgess Hill.

- 5.13 Given the reasons for the Secretary of State calling in this application, I deal with the weight to be afforded to the emerging Neighbourhood Plan in Section 13 of this Report.

#### *Supplementary Planning Documents*

- 5.14 The Council has produced a number of Supplementary Planning Documents (SPDs). Although part of the Local Development Framework, they are not part of the development plan. Of particular relevance to this application is the Development and Infrastructure SPD, adopted in February 2006, which sets out guidance on the Council's approach to the calculation of developer contributions.<sup>17</sup>

## **6. Agreed Matters**

- 6.1 A statement of common ground (SoCG) between the applicant and the District Council (but not the Parish Council who had Rule 6(6) status at the Inquiry) was submitted prior to the Inquiry. Among other things, it is agreed, in summary, that:
- The application site lies within a Countryside Area of Development Restraint (Local Plan policy C1). Within this area, only certain categories of development are allowed as an exception to the general policy of restraint that applies. The proposal does not fall into one of these exceptions and the site is not allocated for housing in the Local Plan. As such, the development proposed is contrary to policy C1.
  - The site also falls within the Burgess Hill and Hurstpierpoint/Keymer/Hassocks Strategic Gap (policy C2 of the Local Plan) and the Hurstpierpoint and Hassocks Local Gap (policy C3 of the Local Plan).
  - There is already further development to the northwest of the application site and the development proposed would not bring the existing settlement boundary of Hurstpierpoint any closer to Burgess Hill than it already is and the proposal would not compromise the Strategic Gap. There would be no coalescence in this regard.
  - The Local Gap between Hurstpierpoint and Hassocks is already relatively small (some 0.9km when measured in a straight line from the rear gardens on College Lane, Hurstpierpoint, to the rear gardens of properties on London Road in Hassocks) although there is some ribbon development along to the south of the site on Wickham Hill that already affects the gap, and further development at Hurst Wickham. The proposals include a wildlife/landscape corridor on the eastern side of the development (along Belmont Lane) of 50-

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<sup>17</sup> Doc 17

60 metres in width (the majority of the buffer is 60m in width) that will assist in preventing the coalescence between Hurstpierpoint and Hassocks.

- The housing supply policies of the Local Plan are out-of-date because they do not provide housing numbers beyond 2006.
- The housing figure that has been subject of examination is the revoked South East Plan figure of 17,100 new dwellings in the period 2006 to 2026 (equating to an annual figure of 855). The Council cannot currently demonstrate a five-year housing land supply for the District against this figure. Against the revoked South East Plan figure, the Council can only demonstrate, at best, 2.43 years of supply. It is also agreed that a 20% buffer should be applied to reflect performance in past housing completions.
- The recent (27 November 2013) High Court decision in *Cotswold District Council Vs SoSCLG*<sup>18</sup> sets out important legal tests that apply to the calculation of a five year supply of housing land, the calculation of a buffer, and the interpretation of paragraph 49 of the Framework in terms of policies being out of date. The judge in that case stated:  
*'...the Secretary of State did not err in disregarding Local Plan Policy 19. The second sentence of paragraph 49 of the Framework says that relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply. Miss Sheikh submits that Local Plan Policy 19 restricts development, including housing development, and so is not a housing policy for the purposes of paragraph 49 of the Framework. The short answer is that Local Plan Policy 19 is a policy relating to the supply of housing (amongst other developments). It restricts development, including housing development. As the inspector correctly held, applying the Framework, Local Plan Policy 19 should be disapplied "to the extent" that it "seeks to restrict the supply of housing": see paragraph 14.44 of the report in the Highfields appeal.'*
- With regard to paragraph 49 of the National Planning Policy Framework, it is agreed that, for the purposes of housing supply, Local Plan policies C1 and C2 are out-of-date.
- All of the dwellings would meet the authority's dwelling space standards<sup>19</sup> and no issue is taken with the proposed layout and design principles demonstrated by the development proposed, which includes a direct pedestrian link from the site onto Belmont Lane. The layout has also been designed to meet Secured by Design standards. The proposed Sussex vernacular style and materials palette is appropriate here.
- A Landscape and Visual Assessment was submitted in support of the application. It assesses the application site as being low to medium in terms of landscape quality, as it is not subject to any national designations and has an urban fringe quality. It assesses the landscape value as being low to medium as the site has no public access and there are no wilderness or cultural associations that are important. The report concludes that the sensitivity of the landscape to the proposal would be low to medium because

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<sup>18</sup> APP/1/A Tab 7

<sup>19</sup> Doc 17

the site is well enclosed and not widely visible, it is associated with the existing urban edge and the new houses would not be out of context in their partly suburban setting.

- The distance separation between existing and proposed dwellings would be sufficient to protect the living conditions of existing residents.
- There is sufficient highway and junction capacity on the local highway network to safely accommodate anticipated traffic movements associated with the development proposed, even when considered in conjunction with other possible developments at Sayers Common and Little Park Farm/Highfield Drive.
- The impact of the proposed development on air quality for sensitive receptors in the vicinity of Stonepound crossroads will be negligible.
- The application would provide 30% affordable housing as required by Local Plan policy H4.
- The survey work undertaken demonstrates that the development proposed would have no material adverse implications for protected species.
- The site is in Flood Zone 1, where there is a low risk of flooding from rivers or other sources of flooding. The Council's drainage engineer considers that the proposal would provide improvements over the current situation and there would be no increase in surface water discharge from the site.
- In respect of sewage, the original plans showed a pumping station to the north of the vehicular access to the site which would connect to the foul sewer that runs along College Lane.
- The site is not within a conservation area nor does it have any listed buildings within it. Given the distance between the development site and Hurst Wickham Conservation Area, it is agreed that the development would not have any material effect on its character or appearance. The nearest of the dwellings proposed would be within approximately 60 metres of the grade II listed Wickham farmhouse (No 14 College Lane). Given the existing and proposed landscaped screening, it is agreed that the development would not have a material effect on its special interest or setting.
- There is potential for below ground heritage assets and a scheme of investigation will need to take place prior to the commencement of development.
- The New Homes Bonus is a material planning consideration which should weigh in favour of granting consent for the development proposed. There would also be economic benefits in terms of the direct boost to the local economy during the construction phase and subsequent benefits from additional dwellings in the locality.
- Mid Sussex Health Care provides primary care in this area and has no objection to this application.
- It is agreed that the provisions of the Section 106 Agreement ensure that the local infrastructure can accommodate the proposed development.

- There would be no adverse impact on the setting of the South Downs National Park.

## **7. The Case for the applicant - Thakeham Homes (Southern) Limited**

- 7.1 The applicant's opening and closing submissions to the Inquiry set out a résumé of the company's case.<sup>20</sup> The material points are summarised below.
- 7.2 Although recommended for refusal, Mid Sussex District Council resolved to grant planning permission for the development subject only to the completion of a Section 106 Agreement. Before that Agreement could be completed, the application was called in by the Secretary of State for his own determination. The decision to call in the application was surprising, given the modest scale of the proposed development; the accepted lack of a five year supply of housing land in Mid Sussex; the early stages the emerging development plan had reached; the Government's policy in the National Planning Policy Framework supporting housing development; and the Secretary of State's call-in criteria. Nonetheless, it was called in and there has been benefit in testing the substance of the objections to the proposed development.

### *Objections and the main objectors*

- 7.3 The principal objector and only Rule 6 party has been the Hurstpierpoint and Sayers Common Parish Council. As made clear in cross-examination, the only significant and demonstrable adverse impact it relies on, and which it says outweighs the benefits of the development, is the impact on the Local Gap between Hurstpierpoint and Hassocks. Save for that one point, the Parish Council did not present any evidence or even argue that the development would have a significant adverse impact (individually or cumulatively) on those matters raised by individual objectors in their written representations and identified by the Inspector at the start of the Inquiry.<sup>21</sup>
- 7.4 The Wickham Action Group (WAG) representing local residents also presented evidence through Mr Gunne-Jones. However, it was also principally concerned with the impact the development would have on the Local Gap and its case did not add materially to that advanced by the Parish Council. The impact on the Local Gap is addressed further below.
- 7.5 The only other person opposed to the development who chose to give evidence at the Inquiry itself, was Mr Maidment. He appeared to be concerned with the foul and surface water drainage arrangements and suggested that there were fundamental concerns with capacity in the sewerage that needed to be addressed. His 'evidence' should be treated with considerable caution. He did not object to the development before appearing at the Inquiry itself, notwithstanding that he (a) accepted that he had been aware of the application when made last year; and (b) he said in cross-examination that, if he had fundamental concerns about something, then he was someone who 'stood up and was counted.' When pressed why, in that case, he had not

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<sup>20</sup> Docs 1 and 13

<sup>21</sup> i.e. the effect of listed buildings; flooding and drainage; works of site clearance; the capacity and safety of the highway network (including College Lane); parking provision in Hurstpierpoint; the impact on health and other facilities; wildlife; the amenity of residents from (including noise, light, loss of privacy, loss of outlook and overshadowing); and the impact on the public footpath.

objected to the application, his response was that he relied on the Council and that if he objected to every application he wouldn't spend any time with his family. That was not consistent with him having a fundamental concern, let alone one which justifies the refusal of permission. In any event, there are two proposed conditions which meet his concerns.

7.6 Moreover, as is evident from the SoCG, there is much agreement with the District Council on a wide range of matters, including: -

- 1) The District has only 2.43 years supply of housing land at most and the Council cannot therefore demonstrate that the District has a five-year supply of housing land, contrary to paragraph 47 of the Framework.
- 2) Consequently, policies C1 & C2 of the Mid Sussex Local Plan (2004) are out of date.
- 3) The layout and design of the proposed development is supported by the Council's Urban Designer and has well-located amenity and play areas, direct pedestrian routes through the site and the design of the affordable housing units works particularly well.
- 4) Although within the Strategic Gap, the proposed development would not result in any coalescence between Hurstpierpoint and Burgess Hill.
- 5) Although within the Local Gap, the proposed development would not result in any coalescence between Hurstpierpoint and Hassocks.
- 6) There will be no loss of amenity to existing neighbouring residents.
- 7) There will be no material adverse impact on highway safety or congestion on the local road network from the development, on its own or cumulatively with proposals at Little Park Farm and Kingsland Laines.
- 8) There will be no adverse impact on ecology or heritage.
- 9) The proposed surface water drainage will improve the current situation.
- 10) There will be no adverse impact on the South Downs National Park.
- 11) With the completion of the Section 106 Agreement, local infrastructure (including health care and education) can accommodate the proposed development.

7.7 Therefore, discounting Mr Maidment's objections, the Parish Council and WAG's cases at the Inquiry raise a narrow issue for determination. Namely, whether the development is sustainable development having regard to the effect on the character and appearance of the countryside (including the National Park) and whether any harm significantly and demonstrably outweighs the benefits of the proposal.

#### *Benefits*

7.8 There is no disagreement as to what the benefits of the development would be. These are set out by Mr Ross in his proof of evidence at paragraphs 9.14 and 9.15. The Parish Council did not dispute those benefits and WAG



expressly agreed that the benefits identified by Mr Ross should be weighed in the planning balance exercise.

- 7.9 Hurstpierpoint is a sustainable settlement with a full range of shops, services and facilities where additional housing development is encouraged. The application site is adjacent to existing urban development and the accepted benefits include delivering 81 market and affordable houses within the next 5 years, at a time when the Council has a serious and substantial shortfall of housing land (see below), in a sustainable location with easy (non-car) access to the full range shops, services and facilities and transport modes available in Hurstpierpoint and Hassocks. The development would also make a significant economic contribution in terms of job creation and the additional spending generated by new residents, in addition to non-financial benefits.
- 7.10 The benefit of delivering 81 houses should be given very substantial weight, because of the Council's desperate need for housing land. The Framework requires the Council to demonstrate that it has a five-year supply of deliverable housing sites. As accepted by Mr Mayhew in cross-examination, the purpose of that requirement is to boost significantly the supply of housing (Framework paragraph 47). The District Council, Parish Council and WAG all agree that the Council cannot demonstrate that it has a five-year supply of deliverable sites. Neither the Parish Council nor WAG has undertaken any analysis of exactly what the shortfall is, although Mr Mayhew accepted in cross-examination that the greater the shortfall, the greater the weight that should be given to the benefits of making a contribution to the need for housing. By any measure, the deficiency is a very significant one. At most, the supply is 2.43 years, i.e. less than half the amount required by the Framework. However, the true figure is substantially less than that.
- 7.11 The housing need taken from the revoked South East Plan is 855 dwellings per annum and is consistent with the more recent objective assessment undertaken by Nathaniel Lichfield and Partners (NLP), which identifies a range between 620 – 880 dwellings per annum.<sup>22</sup>
- 7.12 The requirement to deliver 855 new dwellings per year generates a need for 4,275 new dwellings over the next five years (5 x 855). However, the Council accepts that its historic underperformance in delivering housing means that a 20% (rather than a 5%) buffer should be applied to the five year requirement, in accordance with the second bullet point to Framework paragraph 47. This brings the five-year requirement up to 5,310 new dwellings (4,275 x 20%). To this must also be added (a) the 2009 – 2013 shortfall of 1,574; and (b) the shortfall for 2013/14 of 290. The approach of adding the existing shortfall (or undersupply) to the total requirement is supported by the recent planning guidance (ID 3-035-20140306) which advises that 'Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible.'
- 7.13 The exercise conducted by Mr Ross,<sup>23</sup> at which he arrives at a land supply of 1.42 years is, therefore, entirely supported by the Framework and the planning guidance and demonstrates the real shortfall in the Council's housing

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<sup>22</sup> APP/1/A Tab 13

<sup>23</sup> APP/1/P Table 1 (p. 25)

land supply. No-one has sought to challenge Mr Ross's assessment and at only 1.42 years, the shortfall is extremely serious. To put the shortfall in context, even if planning permission was granted for all 3 schemes before the Secretary of State (i.e. the present application at College Lane, Little Park Farm and Kingsland Laines) the five-year supply of housing land would still be only 1.53 years.<sup>24</sup>

- 7.14 The shortfall for the District also has to be seen in the context of the need for additional housing in Hurstpierpoint itself. The most up to date objective assessment of the District's full housing needs is that carried out by NLP. That confirms the requirement for 855 new dwellings a year taken from the RSS and used for the purposes of calculating the five-year land supply position. But, all the more importantly, it identifies a need in Hurstpierpoint for between 700 – 1,500 new homes in the period 2011 – 2030. That report has not been challenged by any of the parties to the Inquiry. It concludes as follows: -

*'5.17 Whilst the district-wide assessment concludes that an objective assessment for Mid Sussex District would fall within the range 12,400 – 17,600 dwellings in total it is considered that of this District-wide requirement, between 700 and 1,500 dwellings should be delivered within Hurstpierpoint Parish, if it is to maintain its role in helping to meet its own and the District's housing needs.'*

*5.18 A level below 700 dwellings within Hurstpierpoint would not meet the likely minimum estimates of migration-led pressures for housing need and demand within the settlement. The implication of this is that, locally, house prices may become relatively less affordable and housing pressures upon other settlements in the area, would increase commensurately. A level below 270 dwellings would not meet even the local needs associated with change within the existing population.'*

*5.19 Whilst this assessment provides an estimate of needs within Hurstpierpoint, the District-wide strategy may legitimately seek to meet this need in other locations as part of a spatial strategy that takes account of all policy in the Framework. However, housing needs across the District will still need to be met (or provided for elsewhere in the housing market area) to meet the requirements set out in the Framework.'*

- 7.15 Mr Mayhew's reliance on Scenarios A and B modelled in the NLP Report<sup>25</sup> to suggest that the need in Hurstpierpoint was less than 300, is entirely misplaced. NLP makes clear that these 2 scenarios were modelled on the basis of nil migration.<sup>26</sup> It said that: -

*'Whilst nil migration scenarios are wholly hypothetical, as they assume no-one can move in and no-one can move out of the area, they do provide a basis for considering what indigenous housing needs are, if migration were to be excluded.'*

- 7.16 Plainly, nil-migration is a wholly unrealistic scenario and cannot realistically be assumed. However, it underlines the inadequacy of the Neighbourhood Plan,

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<sup>24</sup> APP/1/P Table 3

<sup>25</sup> APP/1/P Tab 13 paragraphs 4.34 and 4.35

<sup>26</sup> Ibid paragraph 4.31

which has a target of 252 new houses. That figure is not enough to meet even the wholly theoretical nil-migration scenarios modelled by NLP (Scenario A = 270 and Scenario B = 265).

- 7.17 The evidence, therefore, robustly demonstrates that there is a pressing need for new housing not only in the District as a whole, but that there is an acute need in Hurstpierpoint itself. In these circumstances, it is submitted that very great weight should be given to the significant benefits of being able to deliver quickly 81 dwellings through the grant of full permission for the proposed scheme.

*Impact on the Local Gap*

- 7.18 Against these benefits must be weighed any significant and demonstrable adverse impacts. The only adverse impact which the Parish Council and/or WAG seeks to rely on, is the actual or perceived effect that the development would have on the Local Gap. They say that development of the application site will result in the coalescence of Hurstpierpoint with Hassocks and argue that the proposed development is in breach of policy C3 of the Local Plan which, they argue, should be given full weight as an up-to-date development plan policy. No case was presented to the effect that the application scheme, cumulatively with other unidentified development, would cause coalescence.
- 7.19 The significance of whether policy C3 is up-to-date arises from Framework paragraph 49 and the Government's policy that housing applications should be considered in the context of the presumption in favour of sustainable development, as set out in paragraph 14; and that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a five-year supply of housing land (which manifestly it cannot do).
- 7.20 In this regard, it is submitted that policies C1, C2 and C3 are all relevant policies to the supply of housing land. They all seek to restrict development (including housing development) in certain areas, whether that is in the countryside (C1) or specifically in Strategic Gaps (C3) or Local Gaps (C2) and no distinction should be drawn between them. It does not matter that C1 has a wider application than C2 or C3, which seek to restrict development only in particular areas or for particular purposes. Moreover, it is submitted that they have to be read together and collectively restrain any housing development outside the settlement boundary of Hurstpierpoint. They plainly are relevant policies for the supply of housing in that they constrain new housing development from coming forward outside the historic settlement boundaries of Hurstpierpoint set in the Local Plan, notwithstanding its credentials as a sustainable settlement and the Government's policy objective that the supply of housing should be boosted significantly.
- 7.21 The District Council rightly accepts that policies C1 and C2, insofar as they restrict housing, are relevant housing supply policies for the purposes of Framework paragraphs 49 and 14. It conceded as such at the Little Park Farm appeal and in the Report to Committee and SoCG for the present application. Policies C1 and C2 have also been found to be relevant housing land supply

policies on at least 2 occasions by Inspectors since the publication of the Framework.<sup>27</sup>

- 7.22 If, as has previously been found and accepted, policy C2 is relevant to housing supply and is out of date in so far as it relates to housing land supply, there is no logical reason why C3 should be treated any differently. They both restrict development (including housing) except in very limited circumstances and are substantially in the same terms, as WAG agreed in cross examination, albeit directed at different areas. The Parish Council also accepted in cross-examination that policies C2 and C3 stand or fall together. The District Council's officers recognise that to be the case too, and in the Report to Committee for the present application said: -

*'It is clear from the Inspector's decision at Black Swan Close in Pease Pottage,<sup>28</sup> that policy C3 relating to local gaps (which as [sic] the same aim as policy C2 relating to strategic gaps) may be regarded as being out of date insofar as it relates to housing land supply. However it is also clear from this appeal decision that harm resulting from coalescence is a material consideration that can be taken into account when determining planning applications.'*<sup>29</sup>

- 7.23 Reliance on the High Court decision in the *William Davis* case<sup>30</sup> by the Parish Council and WAG is misplaced. Quite apart from the fact that such reliance was demonstrably an afterthought by the Parish Council (apparently because Mr Mayhew incorrectly thought that C3 was not in dispute, notwithstanding paragraph 5.3 of Thakeham's Statement of Case), that case was concerned with a different policy in a different development plan in a different local authority area.
- 7.24 Sprung upon him in cross-examination, Mr Ross correctly said that policy E20 engaged in the *William Davis* case was similar to Policy C3 of the Local Plan, but that it had to be seen in the context of the other policies in that Plan, which he did not have. We do not have the other policies that may have provided the context for Lang J's judgment in the *William Davis* case. We do, however, have all the relevant policies in the Mid Sussex Local Plan. As submitted above, when policies C1, C2 and C3 are considered together, it is plain that any housing development is restricted outside the settlement boundary of Hurstpierpoint.
- 7.25 Moreover, Lang J applied a very restrictive (and, it is submitted, incorrect) meaning to the expression 'relevant policies for the supply of housing' in paragraph 49 of the Framework. The better view (and the one accepted by the Council) is that arrived at by Lewis J in the subsequent *Cotswold District Council* case.<sup>31</sup> At paragraph 72 of the judgement he said, in relation to Policy 19 (also shown to Mr Ross, who agreed that it was more like Policy C1 in the present case) that (emphasis added):-

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<sup>27</sup> APP/1/A Tab 7 Crawley Down appeal, paragraphs 7, 8 and 24, and Tab 17 Pease Pottage appeal, paragraphs 9, 10, 17-19 and 38.

<sup>28</sup> Ibid Tab 17

<sup>29</sup> APP/1/A Tab 3 page 81

<sup>30</sup> *William Davis Ltd and Jelson Limited vs SSCLG and North West Leicestershire DC [2013] EWHC 3058 (Admin)*

<sup>31</sup> *Cotswold DC v SSCLG and Fay and Son Limited [2013] EWHC 3719 (Admin)*

*'Thirdly, the Secretary of State did not err in disregarding Local Plan Policy 19. The second sentence of paragraph 49 of the Framework says that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply. Miss Sheikh submits that Local Plan 19 restricts development, including housing, and so is not a housing policy for the purposes of paragraph 49 of the Framework. The short answer is that Local Plan Policy 19 is a policy relating to the supply of housing (amongst other development). It restricts development, including housing, development. As the Inspector correctly held, applying the Framework, Local Plan Policy 19 should be disapplied "to the extent" that it "seeks to restrict the supply of housing..."*

- 7.26 It is accepted by everyone that policy C1 restricts development (including housing) and is out-of-date. Policies C2 and C3 impose an even greater layer of restriction on development (including housing) in those areas defined as Strategic and Local Gaps. But the fact that they are more restrictive of development in specific areas, rather than the countryside as a whole, cannot mean that they, in distinction to policy C1, do not relate to the supply of housing. They plainly do. As Lewis J said in rejecting the Council's argument in the *Cotswold* case, policies C2 and C3 '*restrict development, including housing, development.*' That is properly understood by the Council, hence its concession at the Little Park Farm Inquiry, and was already understood by the Inspectors who determined the Crawley Down and Pease Pottage appeals (see footnote 27 above).
- 7.27 Save for its impact on the Local Gap, no one has argued that Hurstpierpoint is not a sustainable settlement for new housing; or that the application site is not a sustainable location within Hurstpierpoint; or that the proposed development is not sustainable. Thus, the consequence of Policies C1, C2 and C3 being out of date, insofar as they seek to restrict the supply of housing (as they undoubtedly do), is that planning permission should be granted unless there are any adverse impacts which would significantly and demonstrably outweigh the benefits.
- 7.28 This raises the question whether there are any such significant and demonstrable adverse impacts. The only impact relied on by the Parish Council and WAG is the impact on the Local Gap and, even if harm can be shown, that harm would have to significantly and demonstrably outweigh the acknowledged benefits.
- 7.29 It is submitted that there is no harm to the Local Gap. Even if there is some harm, that does not significantly outweigh the benefits. Mr Murphy has undertaken a full landscape and visual impact assessment in accordance with standard methodology<sup>32</sup> that has been approved by the Council.<sup>33</sup> In addition to his conclusions, which were not challenged, that the only effects on the landscape would be a long term slight adverse effect, he concluded that there would be no adverse impact on the Local Gap. To understand this, the aims of policy C3 have properly to be understood. It is not a policy which seeks to retain land in the Local Gap undeveloped for its own sake and is not a landscape designation. Its purposes, as is clear from paragraph 3.30 of its

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<sup>32</sup> APP/2/A Tab A

<sup>33</sup> Ibid Tab C

explanatory text, are protect the Local Gap *'in order to prevent coalescence and retain the separate identities and amenity of the settlements.'* In the present case, the settlements are Hurstpierpoint and Hassocks and the question which has to be asked, is whether development on part of the application site would cause Hurstpierpoint and Hassocks to coalesce or result in the separate identities or amenity of those settlements being lost.

- 7.30 The answer from the only qualified expert to have undertaken any structured assessment and to give evidence at the Inquiry on the issue (i.e. Mr Murphy) was 'no' and he was not challenged on his conclusion, or the reasons for arriving at it. Instead, there is only an assertion by the Parish Council (and WAG) that because the application site currently forms part of and contributes to the Local Gap, any development on it will harm the Local Gap.
- 7.31 Not only is that simplistic but, in the Parish Council's case, inconsistent with the advice that its own landscape advisors (Hankinson Duckett Associates)(HDA) have given when carrying out a comprehensive assessment of the landscape around Hurstpierpoint for the purposes of preparing its Neighbourhood Plan.<sup>34</sup>
- 7.32 Mr Mayhew made no reference to the HDA report, notwithstanding its clear relevance to the issue and it had to be brought to the Inquiry's attention by Thakeham. When asked in cross-examination whether the application site was capable of accepting any development he said no, other than perhaps field shelters and certainly not housing development. However, that personal view is not supported by the HDA report.
- 7.33 The HDA report makes clear that it was prepared, *inter alia*, to evaluate and appraise key sites that protect the separation between Hurstpierpoint and surrounding towns and settlements,<sup>35</sup> and to identify areas where future development would be inappropriate and areas where development may be suitable.<sup>36</sup> It divided the landscape around Hurstpierpoint into Landscape Character Areas. Two of those areas are of particular relevance to the present application: Area 15 (Hurstpierpoint Eastern Farmland) and Area 13 (Hurstpierpoint Eastern Low Weald).
- 7.34 Area 15 is essentially the application site and was assessed by HDA as: -
- 'Bound to the south and west by settlement, which has an urban influence on the character area... Forms the setting to the East of Hurstpierpoint. Development within this area would be consistent with the existing settlement pattern of Hurstpierpoint.'*
- 7.35 Based on that analysis, HDA concluded that Area 15 had a moderate landscape sensitivity and a medium capacity to accept development. Insofar as its importance to the Local Gap is concerned, the HDA report at paragraph 7.2.1 identified that Area 15 *'to some extent'* maintained the separation between Hurstpierpoint and Hassocks (in contrast to Areas 16 and 18) before saying: -

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<sup>34</sup> Ibid Tab D

<sup>35</sup> Ibid Tab D paragraph 1.1

<sup>36</sup> Ibid Tab D paragraph 1.4

*'Area 15 has a Medium landscape capacity [for development] as the character area relates more closely to the surrounding settlement than Area 16, which has more significance when considering the perception of a gap between Hurstpierpoint and Hassocks';*

and, at paragraph 4.3.5: -

*'This character area has a strong relationship with the eastern edge of Hurstpierpoint, which gives it an urban influence. The fields within the character area are relatively flat and are screened from the east by vegetation.'*

- 7.36 Astonishingly, when the HDA assessment was put to Mr Mayhew, and that his evidence that the application site was incapable of accepting any development (other than some field shelters) was inconsistent with that advice, his response was to say that he disagreed with the Parish Council's landscape advisors.
- 7.37 In light of that answer, it must also follow that he also disagrees with HDA's assessment of Area 13 (which comprises Little Park Farm and is an allocated site in the Neighbourhood Plan for housing) although it was assessed as being *'an area of rural agricultural land that forms the separation between the eastern edge of Hurstpierpoint and Hurst Wickham'* and as *'an intact and rural landscape with little urban influence from Hurstpierpoint or Hurst Wickham'* with *substantial* landscape sensitivity and a *low* capacity for development. If not, then it is inexplicable, on the Parish Council's own evidence base, how Little Park Farm came to be allocated in the Neighbourhood Plan for housing development, but the application site appears not even to have been considered.
- 7.38 The out-turn from the evidence is that the qualified landscape consultants agree that the application site is not wholly rural in character, is heavily influenced by urban development on two sides of the application site and only performs a limited role in protecting the Local Gap. They also agree that the application site has a moderate capacity for development and this is respected by the proposed development which: -
- (1) Occupies only the southern part of the site leaving 4.5 hectares of the northern and more elevated half undeveloped and as parkland.
  - (2) Does not extend as far as the existing development along Wickham Hill, which is closer to Hassocks and, although described as ribbon development, is three rows of development deep in parts.
  - (3) Retains a landscaped buffer between the eastern edge of the proposed development and Belmont Lane, providing substantial screening from the east.
- 7.39 The consequence of a proper understanding of the character of the landscape, the role the application site performs in that landscape, and the form/design of the proposed development, is that the landscape character of the field will undoubtedly change, but there will be no adverse effect on the role that the Local Gap performs in preventing coalescence and/or retaining the separate identity and amenities of Hurstpierpoint and Hassocks. Therefore, there are no significant and demonstrable adverse effects to weigh against the benefits and, in accordance with Framework paragraph 14, planning permission ought

to be granted. However, even if the Inspector were to find that there was some adverse effect on the Local Gap, it is submitted for the reasons set out above that they do not outweigh the significant benefits of the scheme.

*The Neighbourhood Plan*

- 7.40 An issue identified by the Inspector in opening the Inquiry, was the weight to be given to the emerging Neighbourhood Plan. This arose because, whereas the District Council and Thakeham say that no or little weight should be given to it, the Parish Council argues that substantial weight should be given to it (notwithstanding that it has formally withdrawn its objection on the grounds of prematurity).
- 7.41 If, as is submitted above, there is no significant and demonstrable adverse effect on the Local Gap to weigh in the balance against the acknowledged benefits of the scheme then, even if substantial weight is given to the Neighbourhood Plan, the outcome ought not to be any different because it does not add any additional protection to the Local Gap to policy C3 of the Local Plan. In any event, the Parish Council's submission that substantial weight should be given to the Neighbourhood Plan is untenable in light of the following matters: -
- (1) The Neighbourhood Plan is not at an advanced stage in its preparation. The Submission version has been sent to the Council, but it has not started its publicity period because of issues associated with the possible need to carry out an appropriate assessment under the Habitats Regulations. As a consequence it is simply unknown what the extent or nature of the objections and representations are likely to be, or how they might be resolved. It cannot be said that there will be no objection and the evidence is that there was significant objection to the consultation draft. Even after the publicity period closes, it will have to be examined, put to a referendum and adopted by the Council.
  - (2) The housing target in the Neighbourhood Plan of 252 new dwellings<sup>37</sup> is underpinned by the housing assessments done for the emerging District Plan, which the Council has resolved to withdraw because of its failure to comply with its duty to cooperate. Although the Examining Inspector did not have to reach any conclusion on the Council's assessment of housing need in arriving at his conclusions on the duty to co-operate, it is clear from his letter that he had reservations as to whether the Council's full housing need, taking into account the position of neighbouring local authorities' housing needs, had been objectively assessed.
  - (3) Mr Mayhew accepted, in cross examination, that the target of 252 dwellings was not derived from any full objective assessment of the housing need for Hurstpierpoint.
  - (4) Notwithstanding that the Neighbourhood Plan identifies a need for 140 – 395 new dwellings to meet its need (although that has not been fully and objectively assessed) and states that a target at the higher end of the

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<sup>37</sup> Following an interjection on the part of the Parish Council, this was confirmed as the figure for Hurstpierpoint, not the Parish as a whole - see section 5.3 of the Submission Version of the Plan. (PC/1/A Tab PC 4) The total for the Parish is 282-292.



range would be appropriate, he was unable to explain how the figure of 252 had been derived, except to rely on the two sentences in the last paragraph of section 5.1 of the Neighbourhood Plan (i.e. a target towards the higher end of the range, tempered by the larger allocations at Burgess Hill).

(5) There are clear tensions between the Council, who regard all the policies in Chapters 1 – 10 of the Local Plan to be strategic, and the Parish Council who disagree.<sup>38</sup>

(6) There plainly has been a failure to consider reasonable alternatives to the allocated housing sites in policy H2 of the Neighbourhood Plan. Mr Mayhew accepted, in cross examination, that the assessment undertaken in the Sustainability Appraisal of options H1 and H3 was concerned with broad areas for possible housing and that no assessment of the allocated sites against reasonable alternatives (including the application site) had been undertaken. That failure alone is a clear breach of the Strategic Environmental Assessment Regulations which the Submission Draft of the Neighbourhood Plan has to comply with, in order to meet the Basic Conditions.

(7) In any event, the assessment of policies H1 and H3, and the preference for Option B, is highly questionable, as the view that Option B was marginally more favourable than the other options in relation to the protection and preservation of the countryside and setting of the village was inconsistent with the HDA assessment and only explained by Mr Mayhew's disagreement with that professional advice. Similarly, he accepted that the application site had no impact on the National Park, and that there was no issue as regards access to services and facilities. He had to accept that the application site was closer to the train station at Hassocks than Option B and was unclear how this had been taken into account in the assessment.

(8) Lastly, he was unable to point to a single example of a decision taker giving an emerging Neighbourhood Plan, which was yet to enter its publicity period, substantial weight.

7.42 For all these reasons, it would be irrational to give the Neighbourhood Plan more than minimal weight.

#### *Third Parties*

7.43 A number of other matters have been raised by the third parties, although no evidence has been presented by anyone in relation to them. WAG suggested that the Council had not been satisfied that there was nothing in them, having recommended the planning application for refusal. That is incorrect. Even the officers were only recommending refusal on the basis of the impact to the Local Gap and none of the other matters were considered to be sufficient to recommend refusal of the application. The matters raised by third parties are addressed, but they are not considered to be the principal or main issues on which the application falls to be determined.

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<sup>38</sup> PC/1/A Tab PC6 paragraph 7.3 and 7.4

### *Conclusion*

- 7.44 The application is one for sustainable development. It will make a real contribution to meeting the housing needs of the District and Hurstpierpoint, at a time when the Council has a very serious shortfall in its five-year supply of housing land. The only adverse impact relied on by the objectors at the Inquiry related to the Local Gap, but the evidence from the qualified landscape consultant is that the application site has capacity to accept development without compromising the objectives of the Local Gap. That view is supported by the Parish Council's own landscape advisors. The unchallenged evidence is that the proposed development will not result in coalescence, or result in any loss of identity or amenity of Hurstpierpoint or Hassocks. Planning permission should be granted, as resolved by the Council.

## **8. The Case for Sayers Common and Hurstpierpoint Parish Council (Rule 6(6) party at the Inquiry)**

- 8.1 The opening and closing submissions for the Parish Council set out a résumé of its case.<sup>39</sup> The material points are summarised below.

### *Sustainable Development*

- 8.2 It was accepted by all parties that the site lies within a Countryside Area of Development Restraint, as defined in the adopted Local Plan. Whilst policy C1 seeks to restrict housing in such locations, it is also accepted that the Local Planning Authority cannot presently demonstrate a five year housing land supply.<sup>40</sup> As such, Framework paragraph 49 is relevant which, in turn, engages paragraph 14. This sets out a presumption in favour of sustainable development. This comprises three dimensions: economic, social and environmental. These roles should not be undertaken in isolation, but should be sought jointly and simultaneously.<sup>41</sup>

### *Local Gap*

- 8.3 The application site is located on the eastern edge of Hurstpierpoint, and currently comprises semi-improved grassland.<sup>42</sup> It is part of the defined Local Gap between Hurstpierpoint and Hassocks as set out in Policy C3 of the Local Plan.
- 8.4 Mr Ross sought to argue that policy C3 is out of date.<sup>43</sup> His justification for this relies heavily on the High Court decision in *Cotswold District Council v Secretary of State for Communities and Local Government & Anor [2013] EWHC 3719 (Admin)*. However, that relates to a policy that sought to apply general control on development outside of development boundaries (Policy 19 of the Cotswold District Local Plan 2001-2011 (Adopted 2006)). Mr Ross accepted, in cross-examination, that that policy was more akin to the construction of Policy C1 than Policy C3 of the Mid Sussex Local Plan.

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<sup>39</sup> Docs 2 and 12

<sup>40</sup> Set against the housing targets in the South East Plan

<sup>41</sup> Framework paragraph 8

<sup>42</sup> APP/2/A Tab A paragraph 3.7.11

<sup>43</sup> APP/1/P paragraph 7.18

- 8.5 It is submitted that policy C3 is not out of date. In support of this, reference is made to the High Court decision in *William Davis Ltd & Jelson Ltd v Secretary of State for Communities and Local Government and North West Leicestershire DC [2013] EWHC 3058 (Admin)*.
- 8.6 That case relates to a Green Wedge area (policy E20 of the North-West Leicestershire Local Plan (Adopted 2002)). In cross-examination, Mr Ross accepted that the construction of this policy appeared to relate more to a specific area (like policy C3 of the Mid Sussex Local Plan) but he was not willing to give a definitive view on this.
- 8.7 Notwithstanding Mr Ross's reluctance on this point, it is submitted that the *William Davis* case<sup>44</sup> clearly demonstrates that policy C3 is not to be treated as a policy for the supply of housing within the meaning of the Framework, and is therefore not out of date.
- 8.8 Policy C3 notes that Local Gaps are identified in areas between towns and villages which are particularly vulnerable to development pressure, the loss or erosion of which would have a harmful effect on the character of the rural areas and the amenity and setting of villages. The Local Plan designates these local gaps to give specific policy protection, in order to prevent coalescence and retain the separate identities and amenities of settlements.<sup>45</sup> Policy C3(c) seeks to specifically prohibit development in Local Gaps that would compromise individually, or cumulatively, their objectives and fundamental integrity.
- 8.9 This Gap is already relatively small at this point, some 0.9km when measured in a straight line from the rear gardens on College Lane to the rear gardens on London Road in Hassocks.<sup>46</sup>
- 8.10 Mr Ross accepts that the application site plays a role in preventing coalescence, but he considers that this is limited and that the site has some capacity to contain development.<sup>47</sup>
- 8.11 When asked by the Inspector to clarify the role of the space between Hurstpierpoint and Hassocks, which includes the application site, having regard to paragraph 17 of the Framework, Mr Ross confirmed that it was an historic designation that sought to maintain the gap and separate identity of the two villages.
- 8.12 Mr Murphy acknowledged that his Landscape and Visual Impact Assessment (LVIA) and so, in turn, his consideration of the likely landscape and visual effects of the proposed development,<sup>48</sup> are based on a methodology that does not include consideration or weight attached to the Local Gap policy.<sup>49</sup>
- 8.13 Mr Murphy's analysis of the proposed development in relation to non-landscape quality designation policies, such as policy C3, is reserved for Section 5 of his proof. In this, he accepts that the site does make a

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<sup>44</sup> In particular, paragraph 47 of the judgement

<sup>45</sup> Mid Sussex Local Plan paragraph 3.30 (PC/1/A Tab PC2)

<sup>46</sup> SoCG paragraph 6.10

<sup>47</sup> APP/1/P paragraph 7.24 and in cross examination

<sup>48</sup> APP/2/P Section 4

<sup>49</sup> APP/2/A Appendix D of Tab A (Section 10) and in cross examination

contribution to the objectives of the Gap, but does not consider this to be 'significant'.<sup>50</sup>

- 8.14 It can thus be seen that there is a consensus that the site is both within, and makes a contribution to, the objectives of the Local Gap. The dispute lies over the extent of the contribution.
- 8.15 We submit that the contribution is significant. It is an integral part of the Gap.
- 8.16 The application proposal would result in the substantial urbanising development of the site, significantly eroding the separation of Hurstpierpoint from Hassocks. This would harm the individual identity and character of these two settlements. This would conflict with policy C3 of the Local Plan, as well as paragraph 109 of the Framework, which seeks the planning system to protect and enhance valued landscapes.
- 8.17 That harm would significantly and demonstrably outweigh the benefits of the development when assessed against the policies in the Framework as a whole. As such it is submitted it does not represent sustainable development.

*The Emerging Neighbourhood Plan*

- 8.18 The Parish Council has been working on its Neighbourhood Plan for over two years.<sup>51</sup> The first three stages<sup>52</sup> had been completed by summer 2013 and, in early March 2014, the Parish Council provided the Submission Version Neighbourhood Plan, with the associated requisite documents to the District Council.<sup>53</sup>
- 8.19 The District Council has confirmed that it is carrying out the required formal legal check of the documents and has only one outstanding issue. In light of recent legal advice, they consider it is necessary to screen to assess whether the Plan will have a significant effect on the special characteristics of the Ashdown Forest SAC and SPA. It is confirmed, given that the Parish is wholly outside the 7 kilometre zone, that the screening opinion is likely to indicate there are no such significant effects.
- 8.20 It is anticipated that that the Plan will shortly move forward to its local authority publicity period.<sup>54</sup>

*Weight to be attached to the emerging Neighbourhood Plan*

- 8.21 Framework paragraph 216 gives guidance on the weight to be attached to emerging plans. This has now been helpfully expanded by the recent planning guidance, which makes clear that an emerging Neighbourhood Plan may be a material consideration.<sup>55</sup> It sets out factors for the decision-maker to consider in determining what a material consideration is and what weight to give it.

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<sup>50</sup> APP/2/P paragraph 5.3.16 and in cross examination

<sup>51</sup> PC/1/A Tab PC7 Section 3

<sup>52</sup> Planning Guidance: summary of key stages ID 41-080-20140306

<sup>53</sup> PC/1/A Tabs PC4, PC6, PC7 and PC8

<sup>54</sup> Doc 4

<sup>55</sup> Planning Guidance: ID 41-007-20140306

- 8.22 Mr Ross, acknowledging the progress of the Neighbourhood Plan, agreed that it is now a material consideration that carries weight. However, he considers that this should be 'very limited.'<sup>56</sup>
- 8.23 The Parish Council disputes this, and it is submitted that the Neighbourhood Plan has reached a sufficiently advanced stage that it should carry significant weight in the determination of this application.<sup>57</sup>
- 8.24 The Consultation Statement sets out the quality and effectiveness of the consultation that has informed the plan's proposals.<sup>58</sup> This shows that at the Regulation 14 Consultation stage, of the 30 responses received, only two, including the applicant, requested that the Plan should include higher housing numbers.<sup>59</sup>
- 8.25 The Neighbourhood Plan seeks to support the delivery of housing growth within the Parish over the plan period, comprising 282 - 292 new dwellings on land beyond settlement boundaries,<sup>60</sup> with more in built up-areas.<sup>61</sup> This was on the basis of an analysis and selection of a preferred growth scenario detailed in the Neighbourhood Plan.<sup>62</sup>
- 8.26 Mr Ross criticises the level of proposed housing delivery in the Neighbourhood Plan. In his Supplementary Proof, he argues that this is in part due to the fact that the figure of 10600 new homes required in the District between 2011-2031, as set out in DP5 of the now withdrawn Mid Sussex District Plan Submission Version (May 2013), does not meet the District's full and objectively assessed housing need.<sup>63</sup> However, in cross-examination, he accepted that there is no evidence that this was the basis of the withdrawal of that plan. Rather, it was a failure in the duty to co-operate.
- 8.27 Mr Ross accepted that, whilst NLP have made representations on this basis, neither the District Council nor the Planning Inspector who undertook the initial Hearing Session on the District Plan, have concluded that this figure is incorrect. In particular, the Inspector noted that he could not draw a conclusion one way or the other because he had not seen all the evidence.<sup>64</sup>
- 8.28 Mr Ross argued that the Parish should seek to deliver 700-1500 new homes over the plan period based on the conclusions of the NLP report May 2013.<sup>65</sup> He acknowledged that these figures were derived from different in-migration scenarios. They did not, therefore, relate to housing need within the Parish alone, but were based on projections of local housing need that is helping the district.<sup>66</sup>
- 8.29 The housing target set out in the Submission Version Neighbourhood Plan is not a full and objectively assessed housing need for the Parish. Indeed, Mr

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<sup>56</sup> APP/1/Sup paragraph 2.15 and in cross examination

<sup>57</sup> PC/1/P paragraph 8.39

<sup>58</sup> PC/1/A Tab PC7

<sup>59</sup> Ibid PC7 Section 7

<sup>60</sup> Local Plan Proposals Map (PC/1/A Tab PC5)

<sup>61</sup> PC/1/A Tab PC4 Chapter 5

<sup>62</sup> Ibid paragraph 5.1

<sup>63</sup> APP/1/Sup paragraph 3.15

<sup>64</sup> Doc 6 paragraph 36

<sup>65</sup> APP/1/A Tab 13

<sup>66</sup> As accepted in cross examination

Ross accepted that this was difficult to do, due to the limitation on obtaining background data at the Parish level.<sup>67</sup> It is however, determined on a proportionate evidence base, as required by the new planning guidance.<sup>68</sup>

- 8.30 The Submission Version Plan, and the supporting suite of documents, have considered a range of housing sites, concluding that housing development in Hurstpierpoint, outside the settlement boundaries is best delivered on sites contained in Policy H3. This does not include the application site.
- 8.31 Indeed, within the Neighbourhood Plan, the application site is identified as a Local Gap between Hurstpierpoint and Hassocks. Its development would, therefore, conflict with policy C3 of this Plan, which seeks to prevent development that would individually or cumulatively result in coalescence and loss of separate identity of these two villages.

#### *Conclusion*

- 8.32 The approach to the determination of this application flows from the advice in Framework paragraph 14, and whether the scheme represents sustainable development, defined by the three limbs and roles.
- 8.33 The proposal would result in the substantial urbanising development of the site, significantly eroding the separation of Hurstpierpoint from Hassocks. This would harm the individual identity and character of these two settlements. This would conflict with policy C3 of the Local Plan, a policy that is not out of date having regard to Framework paragraph 49, as well as paragraph 109, which seeks that the planning system protects and enhances valued landscapes.
- 8.34 The Submission Version Neighbourhood Plan is a material consideration, having regard to guidance in both the Framework and more recently the planning guidance. It is considered that that this Plan should carry significant weight in the determination of the application. The Plan does not support housing growth in this location, but favours other sites around the fringes of the village. Furthermore it defines the site as a Local Gap, reflecting the objectives and purpose of policy C3.
- 8.35 It is considered that the harm resulting from the development is adverse and would significantly and demonstrably outweigh the benefits. It does not represent sustainable development.
- 8.36 For these reasons, and in light of the evidence given on behalf of the Parish Council, planning permission should be refused.

## **9. The Case for Interested Parties**

- 9.1 Oral representations made in addition to the written submissions:

The case for Wickham Action Group (represented by Mr Gunne-Jones)<sup>69</sup>

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<sup>67</sup> Mr Ross – evidence in chief

<sup>68</sup> Planning Guidance: ID 41-040-20140306

<sup>69</sup> Doc 7

- 9.2 Our main objections are that the development conflicts with the adopted development plan and the emerging development plan and that the development would cause adverse impacts that would not significantly and demonstrably outweigh the benefits of providing additional housing.
- 9.3 In terms of the development plan, the protection of this important parcel of open countryside can be traced back to at least the 1960s if not earlier. It has been maintained as an open area between Hurstpierpoint and neighbouring Hassocks for a considerable time. In the East Sussex County Development Plan and the local Town Plan, approved in July 1967, the site was designated as 'white land' and was therefore to remain, for the most part, undisturbed.
- 9.4 In a 1988 appeal decision for the erection of two bungalows, the function of the land was considered.<sup>70</sup> Attention is drawn to paragraphs 5 and 6 of the Decision. In particular, paragraph 5 cites an earlier 1973 Decision in which the Inspector referred to the important contribution which the open view from College Lane made towards the open break between the two settlements.
- 9.5 A consultation draft of the Mid Sussex Local Plan (1996 and again in 1997) included general policies for the whole of the District. A District-wide housing consultation exercise was held in early 2000, which helped to determine the housing allocations of the Local Plan.
- 9.6 The Deposit Draft was published and placed on deposit in November 2000. Following consideration of objections received, the Council published and placed on deposit, a revised deposit draft (August 2001). In December 2001, the Council published a number of proposed pre-Inquiry changes. The Inspector's Report following examination of the Plan was published in July 2003 and the Plan was adopted in May 2004. The point being that the maintenance of this Local and Strategic Gap has withstood close scrutiny in the Local Plan examination process.
- 9.7 This status has been carried over in the Draft District Plan, which was initially published for consultation in October 2011, was published as a Proposed Submission District Plan in May 2013, and was submitted to the Secretary of State in July 2013. In that Draft Plan, the application site falls within designated open countryside. Policy DP9 of the Plan states that:

*Strategic Objectives: 3) To protect valued landscapes for their visual, historical and biodiversity qualities.*

*Evidence Base: A Landscape Character Assessment for Mid Sussex.*

*Development will be permitted in the countryside, defined as the area outside of built-up area boundaries on the Policies Map, where:*

- It is necessary for the purposes of agriculture, or some other use that has to be located in the countryside;*
- It maintains or where possible enhances the quality of the rural and landscape character of the District;*
- It takes account of the economic and other benefits of the best and most versatile agricultural land and seeks to use areas of poorer quality land in preference to that of higher quality; or*

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<sup>70</sup> Appeal reference APP/D3830/A/87/81067/P4 attached to Doc 7

• *It is supported by a specific policy reference elsewhere in the Plan including DP11 Sustainable Rural Development and the Rural Economy, DP12 New Homes in the Countryside, DP17 Sustainable Tourism and DP30 Rural Exception Sites.*

*The Mid Sussex Landscape Character Assessment, the West Sussex County Council Strategy for the West Sussex Landscape and other available landscape evidence (including that gathered to support Neighbourhood Plans) will be used to assess the impact of development proposals on the quality of rural and landscape character.*

*Built-up area boundaries are subject to review by Neighbourhood Plans or other appropriate planning documents.*

- 9.8 Our point is that the application site has been afforded protection from development for a period in excess of 50 years and that its status has been tested through four rounds of consultation and one examination.
- 9.9 Support for the protection of the site is sustained in the draft Neighbourhood Plan as well, which was published in March 2013 and was the subject of public consultation in April/May of the same year.
- 9.10 To consider release of the site against such a strong protectionist stance would, therefore, be wholly unreasonable and unjustified.
- 9.11 With regard to our second substantive objection, the applicant's case is that, in the absence of a five year supply of housing land, the proposal should benefit from the presumption in favour of housing development that derives from the Framework. They claim that the Council, other Inspectors, and the High Court support the view that Local Plan policies C1, C2 and C3 are housing supply policies which, in the absence of a five year supply of housing land, are out of date. We do not support that view and direct attention to a High Court decision.<sup>71</sup> Other appeal decisions also support our view. The Inspector dealing with an appeal on Storrington Road, Washington in West Sussex,<sup>72</sup> found that numerous policies in that case were not wholly out of date, since they did not deal exclusively with housing supply, each instead setting out principles and requirements that related to development in general. It goes on to confirm that those principles and requirements reflect some of the core planning principles of Framework paragraph 17, such as the need to take account of the character of different areas and recognise the intrinsic character and beauty of the countryside.<sup>73</sup>
- 9.12 In our view, Local Plan policies C2 and C3 are not housing supply policies *per se* and thus, they are not out of date. They are still valid and the development proposed conflicts with their provisions. However, even if they were to be considered as out of date, then the Framework does not open the door to an automatic grant of planning permission. It requires that a test be applied: are there any adverse impacts that would significantly and demonstrably outweigh the benefits of granting planning permission when assessed against the policies of the Framework when taken as a whole? One of the Framework policies (paragraph 109) is that the planning system should contribute to, and

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<sup>71</sup> *William Davis Ltd and Jelson Limited vs SSCLG and North West Leicestershire DC [2013] EWHC 3058 (Admin)*

<sup>72</sup> Attached to Doc 7 - Appeal ref: APP/D3830/A/12/2176793 paragraph 29

<sup>73</sup> *Ibid* paragraph 30



enhance the natural and local environment by protecting and enhancing valued local landscapes. The application site falls within a landscape that has been valued by the community and has been protected for more than 50 years. It is protected in the emerging District Plan and the emerging Neighbourhood Plan.

- 9.13 Whilst there may be benefits that derive from the development proposed, they do not outweigh the loss of such a valued landscape. When assessed against the Framework as a whole, the proposal conflicts with policies and therefore, even in the alternative scenario envisaged by Framework paragraph 14, the proposal should be rejected.

#### The case for Mr Maidment

- 9.14 The opening statement for the applicant referred to the weight to be given to the Neighbourhood Plan, the purpose of which, together with localism, is to empower local people. Even the earlier Structure Plan promoted partnerships. I am particularly concerned that the sewage infrastructure for the development proposed is an afterthought. The original siting for the proposed pumping station would not allow sufficient storage provision for a minimum of 24 hours. The applicant now suggests that it could be located within the wildlife corridor along the eastern site boundary. Where would the sewage go? The Council's drainage officer has not commented on the revised location.<sup>74</sup> Where is the partnership in that?
- 9.15 The sewage infrastructure on which the application site would rely is the Goddards Green Plant. In storm conditions the four combined sewer overflows linked to the plant discharge untreated sewage into the local water network, which they can do under current legislation. This is a problem, since there is no definition of storm conditions. In 2004, there were 134 such discharges. The application needs to be accompanied by sufficient detail to demonstrate that the on-site pumping station proposed will operate properly, stopping pumping and holding back the sewage in wet conditions. It is not sufficient to leave these matters to be dealt with by conditions.
- 9.16 Any surface water run-off from the site would go into Herring Brook before getting to the River Adur. Herring Brook is a protected chalk stream and a protected habitat. Any discharge to the stream will need proper management to prevent pollution.
- 9.17 Protection is afforded to this land as a Strategic and Local Gap. That protection has been in place for many years. This is the first time that the strength of the policy protection has been tested. If the application is allowed at the first attempt, it does not say much for proactive planning.

## **10. Written Representations**

- 10.1 Some 255 letters of objection were submitted at application stage. These are summarised in the officer's committee report. The many responses submitted in relation to the call in, summarised here, cover much the same ground:

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<sup>74</sup> On day 2 of the Inquiry, the Council produced a note from its Senior Drainage Engineer confirming that no objections were raised in principle to either of the two locations for the proposed pumping station shown on Plan No 7777.

- Existing foul and surface water drainage and flooding problems would be exacerbated.
- Trees and hedges on the site have already been grubbed out and hoardings have been erected that hide the site. Buildings materials and containers have also been moved onto the site. All this in advance of any decision by the Secretary of State.
- The emerging District Plan has been rejected by the examining Inspector and the application site is not identified as a suitable or sustainable location for development in the draft Neighbourhood Plan. Allowing development here would be to ignore the wishes of local people as expressed in the Neighbourhood Plan which is at an advanced stage.
- The village boundary between Hurstpierpoint and Hassocks runs along the eastern side of the application site. 96% of those who responded to the Neighbourhood Plan agreed that local gaps should be protected to avoid coalescence of settlements. The application site is such a parcel of land. If the development was to go ahead, Hurstpierpoint would lose its separate identity. There is already talk of development on the Hassocks side of the boundary. It is vital that this gap be kept open and undeveloped to prevent coalescence.
- Contrary to policies C2 and C3 of the Local Plan and the Framework.
- The development would exacerbate existing congestion problems on the very narrow High Street in Hurstpierpoint and at the Stonepound crossroads on the A273. In addition, Stonepound crossroads is already an air quality management area because of high levels of nitrogen oxide.
- The location of the proposed site access is dangerous.
- Even with its very restricted width, College Lane has seen a considerable increase in traffic over the last few years, as drivers seek to avoid the bottlenecks, in addition to people taking children to an ever expanding College. There are no footways along the lane for the most part and it cannot cope with any further increase in traffic.
- Parking in the village and at the station is impossible and local services, schools and facilities are already stretched to their limit.
- Local planning policies and the wishes of local people are being ignored. Localism seems to have been overwhelmed and destroyed. The Neighbourhood Plan is at an advanced stage and takes account of the issues that will affect the village. The application site was excluded from the Plan in favour of more appropriate and sustainable sites which provide for the construction of some 255 homes to meet future housing needs of the Parish. The application is premature, pre-empting the Neighbourhood Plan process.
- Local residents are being besieged by applications for new residential development, with little regard for the realities of daily living. The development will seriously and permanently harm the character of this area and the village feel will be lost forever.
- Impact on local wildlife and ecological interest.

- Impact on the character and environment of Belmont Lane, a bridleway.
- Not a sustainable location in terms of access to bus services. Future residents will be reliant on their cars.
- Impact on the setting of historic buildings opposite the proposed site access, and on the nearby Hurst Wickham Conservation Area. Impact on the setting of the South Downs National Park.
- Concern that Members overrode the recommendation of officers to refuse the application.
- Increased noise and light pollution.
- Visual impact of the built development proposed, particularly during winter months.
- The parkland open space proposed would be a long distance from the centre of the village and so would be of very little use to most of the local community. There is already a large recreation ground at the Wickham Hill end of Belmont Lane, serving the needs of all those in the area.

10.2 In addition, representation was received on behalf of Rydon Homes Limited, the appellant in relation to a proposed development at Little Park Farm/ Highfield Drive, which is the subject of a separate Report that is currently with the Secretary of State.<sup>75</sup> The representation was accompanied by copies of documents relating to that appeal, namely the Statement of Common Ground, proofs of evidence of Messrs Huskisson and Hough, and the closing submissions for the District Council and Rydon Homes.

10.3 Among other things, the representation makes the following points:

- A similar application for 93 dwellings on the site was refused. The changes made do not fundamentally alter the nature and impact of the proposal and do not justify a different decision.
- The College Lane site was assessed in the Council's SHLAA in 2009, 2010 and 2013. It concludes that the site is not considered currently developable due to unacceptable contribution towards coalescence of Hurstpierpoint and Hassocks and could set a precedent for the further expansion of Hurstpierpoint to the north and east.
- The emerging Neighbourhood Plan proposed the allocation of the Little Park Farm/Highfield Road sites, which are fundamental to the implementation of the vision and objectives of the Neighbourhood Plan. The College Lane and Sayers Common (Kingsland Laines) sites were not included in the Plan.
- The Parish Council continues to object to the College Lane and Sayers Common sites, consistent with the reasons for not including them as housing allocations in the Neighbourhood Plan.
- The evidence base to the Neighbourhood Plan includes a specific local scale landscape character area assessment and it was the subject of a

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<sup>75</sup> Appeal Ref: APP/D3830/A/13/2203080

Sustainability Appraisal and has been the subject of a full consultation exercise. In accordance with paragraph 216 of the Framework, the Neighbourhood Plan can be afforded significant weight.

- The College Lane proposal is prejudicial to the Neighbourhood Plan and provides few benefits to the local community beyond the provision of housing.
- If the consequence of a grant of permission on the College Lane site were to have a negative impact on the prospects of the Rydon Homes proposal, that would be a further adverse impact to be weighed in the balance against the Thakeham scheme.

## 11. Conditions

- 11.1 A list of conditions suggested by the Council and the applicant is set out at Section 7 of the SoCG, with additional conditions emerging during the related discussion. All conditions were discussed in detail at the Inquiry. Alterations to some were subsequently made in the interests of precision and, in some cases, to deal with implementation. In the event that planning permission was to be granted, recommended conditions based on those suggested and discussed at the Inquiry, are attached at Appendix C below.
- 11.2 It was agreed that suggested condition 23, which relates to the submission of a Travel Plan, be deleted since its provisions are duplicated in the Section 106 Agreement.<sup>76</sup>
- 11.3 The trees and vegetation shown as 'to be removed' on plan No THA18444-03A, which forms part of the Arboricultural Method Statement submitted with the planning application,<sup>77</sup> had already been removed by the time of the Inquiry. I am also mindful that bats are protected by other legislation. On that basis, suggested condition 7, which required that the trees to be removed be checked for bats prior to removal, and suggested that a licence may be required if bats were found to be present, no longer serves a useful purpose and I have not included it in the list of recommended conditions attached at the end of this Report.
- 11.4 In addition to the standard condition relating to the time limit on commencement of development, (1) a condition to control external materials is necessary in the interest of visual amenity. (2) Details of boundary treatments, including the boundaries to the development site and inter-plot boundaries, are necessary in the interest of visual amenity and to protect the living conditions of future occupiers. (3) To avoid duplication, the parkland and wildlife corridor (land hatched blue on Plan 3 attached to the Section 106 Agreement) is excluded from this and other conditions. Paragraph 3.2 of the Section 106 requires that a separate parkland landscape plan for that hatched area be submitted to and agreed by the District Council. If permission was granted, the land would, ultimately, be transferred to the Parish Council.
- 11.5 Hard and soft landscaping details, together with ongoing management and maintenance requirements, are required in the interest of visual amenity and

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<sup>76</sup> Doc 3

<sup>77</sup> Prepared by ACD Arboricultural dated 17 January 2013

protecting/improving biodiversity. (4, 5, 6, 7, 8, 9). Although suggested condition 3 included specific reference to the bridge over the SUDs pond, there is no need to refer to it in relation to the details to be submitted as part of the planning conditions, since the Section 106 Agreement requires that those details be submitted to the Council for approval in any event.<sup>78</sup>

- 11.6 The ecology update letter (10 June 2013)<sup>79</sup> confirms that the majority of the site is sub-optimal in terms of supporting reptile species. Reptiles are, however, known to be using the eastern edge of the site. A condition to secure the mitigation and enhancement measures set out in that letter is necessary in the interest of nature conservation. (10)
- 11.7 The applicant has already removed most of the trees and vegetation shown as being 'to be removed' on plan No THA18444-03A. However, it is necessary to ensure that the timing of the removal of any further trees/vegetation is undertaken outside the main nesting season, again in order to safeguard nature conservation interests. (11).
- 11.8 In the interest of highway safety, conditions relating to the construction of the site access off College Lane, including visibility splays, the internal access roads and footways, and the cycle/pedestrian link to Belmont Lane, are necessary. Since the access road would also be used by construction traffic, it would be impractical to construct the top layers until such time as construction work is largely complete. Accordingly, the recommended conditions include a requirement for a timetable for construction of the different stages. (12, 13, 14) Details of on-site garaging and parking are required in the interest of highway safety. (15) Provision of cycle storage will promote sustainable travel choices in accordance with national and development plan policies. (16)
- 11.9 A programme of archaeological work is necessary to ensure protection of the heritage assets identified in the applicant's desk based heritage assessment (Thames Valley Archaeological Services South, dated July 2012). (17)
- 11.10 In order to ensure that the development site is satisfactorily drained, and to avoid increasing the risk of flooding elsewhere, a condition is required to secure the sustainable treatment of surface water. At the Inquiry, it was agreed that a condition based on the wording of the PINS model sustainable drainage condition would be more appropriate than suggested condition 13. (18)
- 11.11 The layout plan before the Inquiry (Plan No 7777) includes two possible locations for the underground pumping station. The wording of the recommended condition set out in the schedule below allows for the final position, and associated details, to be assessed by the Council in the first instance, in the interest of visual amenity. (19) Southern Water indicates that the local sewage system does not have the capacity to accept the sewage from further development. Since developers have a right to connect to the local system, irrespective of capacity issues, it is necessary to ensure that suitable disposal arrangements are in place prior to occupation of the dwellings, in

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<sup>78</sup> See the definition of the Parkland Management Plan set out on page 10 of the Section 106 Agreement.

<sup>79</sup> Doc 15

order to prevent pollution, and in the interests of amenity and the environment. (20)

- 11.12 It is necessary to ensure that the play area proposed for the development is secured, together with its future management/maintenance, in order to provide a necessary community facility for future occupiers. (21)
- 11.13 Suggested conditions 6 and 26 relate to external lighting. The reason for suggested condition 6 is to protect wildlife interests, whilst it was confirmed that suggested condition 26 was to protect the living conditions of those existing residents living adjacent to the proposed communal parking area on the western site boundary. Both are valid reasons for the suggested conditions, but I consider that a single condition, requiring that any external lighting would need to be agreed with the Council prior to its installation, would be sufficient to protect those interests. (22)
- 11.14 The applicant's Phase 1 Contamination Assessment Report (May 2012) has identified potential sources of contamination on and close to the site. Conditions requiring an on-site investigation, assessment and, as necessary, remediation measures, will ensure that the health and safety of future residents is protected. (23, 24)
- 11.15 A construction management plan is necessary in the interest of highway safety and to safeguard the living conditions of local residents. (25) Conditions controlling hours of working on the site, and preventing the burning of construction waste, are also necessary to protect the living conditions of local residents. (26, 27)
- 11.16 A number of the dwelling units proposed have relatively limited garden areas. In such circumstances, it would be appropriate to remove permitted development rights in relation to extensions to those dwellings, including the erection of buildings and structures within their curtilages, in order to ensure that sufficient outdoor amenity space is retained for future occupiers and that the living conditions of both adjoining occupiers and future occupiers of the development, are protected. I have however, deleted the reference to plot 53 from the condition. The garden area to that property is larger than many others within the development. (28)
- 11.17 For the avoidance of doubt, and in the interests of proper planning, it is necessary to list the plans to which any permission would relate. (29)

## **12. Planning Obligation**

- 12.1 A completed planning obligation in the form of a bilateral agreement was submitted at the Inquiry.<sup>80</sup> It secures various financial contributions under a number of heads of terms, together with other arrangements.
- 12.2 Relevant baseline information with regard to the context for calculating the contributions sought by the District and County Councils is provided through policies G3 and CS11 of the Local Plan, which require that the necessary infrastructure to support new development should exist, or can be provided.

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<sup>80</sup> Doc 3

The policies support the Council's Development and Infrastructure SPD.<sup>81</sup> The contributions are intended to meet a range of local policy objectives with the aim of overcoming, or substantially mitigating, identified problems.

- 12.3 Consideration of the obligation must be undertaken in the light of the advice at paragraph 204 of the National Planning Policy Framework and the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to it.
- 12.4 Contributions towards primary and secondary education facilities, based on the formulae in the SPD, are secured. The population increase generated by the development proposed would give rise to increased pressure at Albourne and St Lawrence Church of England primary schools, at Hassocks infants' school and Windmills junior school, and Downlands secondary school, which would need to be expanded and/or improved to meet that increased demand, since they are all at or near to capacity.
- 12.5 The libraries contribution would be used to improve services at the Hurstpierpoint library to meet increased demand. Again, the calculation is based on the formula in the SPD.
- 12.6 Future occupiers of the development proposed would place increased pressure on the local highway network. The highways contribution secured (the Total Access Demand Contribution which comprises an infrastructure contribution and a sustainable transport contribution) would be pooled for use towards a cycleway between Hassocks and Sayers Common via Hurstpierpoint, pedestrian enhancements and traffic management along Albourne Road and a school safety zone at St Lawrence Church of England primary school.<sup>82</sup>
- 12.7 There is a shortfall in the provision of outdoor playing space across the District, with the SPD confirming that the leisure and recreation needs generated by new housing development will need to be met by the developer. The recreation (formal sport) contribution secured by the planning obligation is based on the formula in the SPD, supported by Local Plan policies R3 and R4, and would be used to enhance and add capacity to the playing pitch infrastructure at Fairfield Recreation ground. In addition, the community building contribution, based on the SPD formula as supported by Local Plan policy CS9, would be used to help develop the pavilion at the recreation ground as a multi-purpose sports and community facility.
- 12.8 The development of sustainable communities requires the provision of a wide range of local facilities and services. Whilst many are specifically identified in the SPD, others are not specified but are still needed by the respective communities – listing them all would be impractical. I am mindful in this regard, that the Parish Council has an infrastructure programme for 2013-2018. The planning obligation secures a local community infrastructure contribution for those purposes, based on the formula in the SPD.

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<sup>81</sup> Doc 17

<sup>82</sup> These are listed at paragraph 3.4 of the County Council's written submission, which is with third party responses to the application being called in. In addition, see further clarification in Doc 17.

- 12.9 The obligation requires that a Travel Plan be submitted to the Council and that it be approved in writing. It is to be in place prior to first occupation of any dwelling on the site and is necessary to promote the use of more sustainable modes of transport in accordance with national guidance.
- 12.10 As referred to earlier, the planning obligation requires that a landscaping plan for the parkland and wildlife corridor i.e. that area hatched blue on plan 3 attached to the Agreement, is to be submitted to and approved in writing by the District Council. The land is also to be transferred to the Parish Council, together with a sum for landscaping and ongoing management and maintenance. This would ensure that the area would be available for use of the public in perpetuity. In addition, the obligation provides for a resident's management company (RMC) to be set up for the purpose of carrying out ongoing maintenance, renewal and upkeep of the sustainable surface water drainage works (SUDs) (hatched yellow on Plan 3 attached to the obligation). A commuted sum is also secured for those works, to be paid to the RMC.
- 12.11 The obligation secures the on-site provision of 30% affordable housing units (24 units in total). The level of provision accords with policy H4 of the Local Plan and the SPD, and would meet an identified need.
- 12.12 As required by the County Council, and referred to in the SPD, the planning obligation secures the provision of two fire hydrants within the development site, for the safety of future occupiers.



### 13. Inspector's Conclusions

- 13.1 The following conclusions are based on my report of the oral and written representations to the Inquiry, and on my inspection of the site and its surroundings. The numbers in parentheses thus [ ], refer to paragraphs in the preceding sections of the Report from which these conclusions are drawn.
- 13.2 The application site lies adjacent to, but outside the development boundary for Hurstpierpoint as defined on the Local Plan Proposals Map.<sup>[5.3]</sup> In planning policy terms therefore, the site lies in open countryside. General residential development in the open countryside is contrary to the relevant policies of the development plan (policies C1, C2 and C3 of the Mid Sussex Local Plan).<sup>[5.3, 6.1]</sup> However, the Council has a substantial shortfall in its five year supply of housing land.<sup>[6.1, 7.10-7.17]</sup> In such circumstances, Framework paragraphs 49 and 14 make it clear that relevant policies for the supply of housing should not be considered up to date and that permission should be granted, unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
- 13.3 On the basis of the written representations and the evidence presented and examined at the Inquiry, and bearing in mind the Framework's presumption in favour of sustainable development, I consider the **main consideration** in this case to be whether the potential contribution of the development proposed to the supply of housing is outweighed by other considerations, specifically the effect of the proposal on the character and appearance of the surrounding countryside, in particular, the role of the application site as part of a defined Local Gap, when assessed against the policies of the Framework as a whole. First though, I need to address the weight to be afforded to the emerging Neighbourhood Plan.
- 13.4 The Government's recent planning guidance contains advice entitled '*What weight can be attached to an emerging Neighbourhood Plan when determining planning applications?*'<sup>83</sup> It confirms that an emerging Neighbourhood Plan may be a material consideration in the determination of planning applications, although the development plan remains as the starting point. Framework paragraph 216 sets out the weight that may be given to relevant policies in emerging plans in decision taking. Factors to consider include the stage of preparation of the Plan and the extent to which there are unresolved objections to relevant policies.
- 13.5 Thakeham Homes objected to the inclusion of the application site within the policy area intended to prevent coalescence (Neighbourhood Plan policy C3).<sup>84</sup> The company also maintained, among other things, that the Plan should make much greater provision for new homes, and that the application site is preferable to other allocated sites in terms of constraints and deliverability. To the extent that the application site remains within the Local Gap defined by the Neighbourhood Plan, and that the housing numbers were not increased to the extent suggested by the applicant, those objections are clearly unresolved.

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<sup>83</sup> Reference ID: 41-007-20140306

<sup>84</sup> PC/1/A Tab PC7 Section 7.9 pages 23-25 (Consultee No. 27)

- 13.6 The planning guidance confirms that, whilst a referendum ensures that the community has the final say on whether the Neighbourhood Plan comes into force, decision makers should respect evidence of local support prior to the referendum when seeking to apply weight to an emerging Plan. It adds that the Neighbourhood Plan consultation statement should reveal the quality and effectiveness of the consultation that has informed the plan proposals and that it is for the decision maker in each case to determine what a material consideration is and what weight to give to it.
- 13.7 It is clear from the many letters submitted to the Council in response to the planning application, and the responses submitted following its calling in, that local residents are particularly engaged with the emerging Plan and place a great deal of faith in it. I am in no doubt, in this regard, that there is considerable local support for the Plan prior to the formal referendum. The Consultation Statement also demonstrates the quality and effectiveness of the extensive efforts of the Parish Council in seeking to engage the local population with the process. Among other things, the Statement includes an assessment of the comments received during the consultation process and considers the main issues raised, including the applicant's comments in relation to Neighbourhood Plan policy C3, and the number of dwellings accommodated within the Plan.<sup>85</sup>
- 13.8 The applicant maintained that, since there are unresolved objections, and that the Plan has not been to Examination or referendum, it should attract very little weight.<sup>[7.40-7.42]</sup> The Parish Council, supported by local residents, unsurprisingly took the opposite view and held that it should attract substantial weight, given its advanced stage.<sup>[8.18-8.31, 8.34]</sup>
- 13.9 As confirmed in the SoCG, to which the Parish Council is not a party, there has been a change in circumstances since the District Council agreed a statement of common ground with Rydon Homes in relation to the Little Park Farm/ Highfield Drive appeal,<sup>86</sup> relating to an assessment of the weight to be afforded to the Neighbourhood Plan.<sup>87</sup> First, the withdrawal of the District Plan, which currently has no weight in the decision making process – at the time of the previous appeal it had not actually been withdrawn, although it was agreed between the parties in that case that it should be given little weight, other than to the extent that its policies are consistent with the Framework. Second, the Slaugham Parish Neighbourhood Plan 2013-2031 has reached examination stage and the Examiner's Report has been published.<sup>88</sup>
- 13.10 Slaugham is the first Neighbourhood Plan in Mid Sussex to reach examination stage and, as such, the issues that have arisen with that Plan potentially affect other Neighbourhood Plans in the District. One of the key issues raised by the Examining Inspector related to the issue of housing numbers, given the lack of an up-to-date District level Local Plan. As confirmed in the SoCG, she noted that *'it would be useful for the Parish to make an objective assessment of the level of residential development it needs as part of the neighbourhood planning process.'*<sup>89</sup>

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<sup>85</sup> PC/1/A paragraphs 8.12, 8.14, 8.15, 8.50-8.53

<sup>86</sup> Appeal Ref: APP/D3830/A/13/2203080 – currently with the Secretary of State

<sup>87</sup> APP/1/A Tab 19

<sup>88</sup> Ibid Tab 12

<sup>89</sup> SoCG paragraph 4.14 and APP/1/A/ Tab 12 paragraph 9.10

13.11 As set out in the planning guidance, whilst emerging plans may acquire weight during the plan-making process, in the context of the National Planning Policy Framework, and in particular, the presumption in favour of sustainable development, arguments that an application is premature are unlikely to justify a refusal of planning permission, other than in exceptional circumstances (where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework, and any other material considerations, into account).<sup>90</sup> Such circumstances are likely to be limited to situations where both:

- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Plan; and,
- b) the emerging plan is at an advanced stage but has not yet been adopted (or, in the case of a Neighbourhood Plan, been made).

13.12 It might be that the housing numbers in the Plan may need to be re-visited (in the light of the comments of the Examiner in relation to the Slaugham Neighbourhood Plan).<sup>91</sup> I am mindful though, as confirmed in the Consultation Statement for the Neighbourhood Plan, that the amount of housing provided for in the Submission Version of the Plan was formulated in the absence of any considerations of social or environmental constraints, and that the provision of a larger number of dwellings was found to be unsustainable with regard to the Sustainability Appraisal.<sup>92</sup> The Consultation Statement also notes that any larger provision could also fail to meet with the aims of other policies in the Neighbourhood Plan, specifically those which seek protection of the countryside, the National Park, settlement identity and delivery of infrastructure, and that there could be adverse impacts on social objectives and the key Parish Vision of retaining a village feel. Nonetheless, the planning guidance makes it clear that refusal of planning permission on the grounds of prematurity will seldom be justified in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. On that basis, since the local authority publicity period had, at the time of the Inquiry, yet to be commenced, and the Plan has not been submitted for examination it seems, with regard to current guidance and advice, that it can only be afforded little weight as a material consideration in this case.

### *Character and Appearance*

13.13 Local Plan policy C1 is a settlement boundary policy that defines all land beyond settlement boundaries as countryside, where all development (other than recognised countryside uses) is resisted, including housing. In proposing housing development within such an area, there would be conflict with this policy. However, whilst it is not exclusively a housing supply policy, it clearly has significant implications for the supply of housing, given the identified

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<sup>90</sup> Reference ID: 21b-014-20140306

<sup>91</sup> APP/1/P paragraphs 7.35 – 7.36

<sup>92</sup> PC/1/A Tab PC7 paragraphs 8.50-8.53

housing shortfall and the fact that it encompasses all land outside development boundaries. Indeed, the preamble to policy C1 makes it plain that the settlement boundaries in the 2004 Local Plan were drawn to accommodate housing needs judged at the time.<sup>93</sup> I recognise, in this regard, that the 2004 Local Plan only provided for development up to 2006 and does not, therefore, provide for the objectively judged needs for development in 2014 and beyond. That conflict renders the settlement boundaries upon which the operation of the policy relies, out of date by reference to paragraph 215. On that basis, I agree with the District Council and the applicant that, in the light of the Cotswold judgement, the policy should be considered as out of date, to the extent that it seeks to restrict the supply of housing.<sup>[6.1, 7.21, 7.22, 8.2]</sup>

- 13.14 The Local Plan also refers to areas of countryside which have special qualities,<sup>94</sup> which include Strategic and Local Gaps and affords those areas further protection. The application site lies within a defined Strategic Gap between Hurstpierpoint/Keymer/Hassocks and Burgess Hill. It is also within a Local Gap between Hurstpierpoint and Hassocks. Policies C2 and C3 of the Local Plan seek, respectively, to safeguard Strategic and Local Gaps, with the objectives of preventing coalescence and retaining the separate and identity and amenity of settlements. Development within those areas is resisted unless it is necessary for the purposes of agriculture or some other use which has to be located within the countryside; unless it makes a valuable contribution to the landscape and amenity of the gap and enhances its value as open countryside; and unless it would not comprise individually or cumulatively the objectives and fundamental integrity of the gap. The designations are targeted, covering less land than policy C1. In particular, they do not envelop the entire settlement boundary of Hurstpierpoint.<sup>95</sup>
- 13.15 Insofar as policy C2 is concerned, whether or not it accords with the Framework and/or is a policy relevant to the supply of housing, it was a matter of agreement that it is not offended by the development proposed.<sup>[6.1]</sup> Given the location of the application site on the southeastern side of Hurstpierpoint, and the established development pattern here, with existing built development extending further north, closer to Burgess Hill, I agree that the development proposed would not lead to coalescence with Burgess Hill and would not affect the separate identities or amenities of that settlement or Hurstpierpoint.
- 13.16 That brings me to Local Gap policy C3. The explanatory text to the policy<sup>96</sup> indicates that these areas are particularly vulnerable to development pressure, the loss or erosion of which would have a harmful effect on the character of the rural areas and the amenity and setting of villages. In proposing housing development within a Local Gap, the proposal conflicts with policy C3 (and, by implication, policy C3 of the emerging Neighbourhood Plan, which is similar in intent).<sup>97</sup> However, whilst the Parish Council and Wickham Action Group (WAG) maintained that the policy is not out of date,<sup>[8.3-8.7, 8.33, 9.11-9.12]</sup> the applicant took a contrary view.<sup>[7.19-7.27]</sup>

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<sup>93</sup> PC/1/A Tab PC2

<sup>94</sup> Local Plan paragraph 3.25 – see PC/1/A Tab PC2

<sup>95</sup> PC/1/A Tab PC5

<sup>96</sup> Ibid Tab PC2 paragraph 3.30

<sup>97</sup> Ibid Tab PC4

- 13.17 I have had regard to the Cotswold and Davis judgements (the former preferred by the applicant,<sup>[7.23-7.26]</sup> the latter by the Parish Council and WAG<sup>[8.5-8.7, 9.11]</sup>) as well as the appeal decisions and officer report referred to.<sup>[7.21, 7.22, 7.26, 9.11]</sup> Whilst the whole of the relevant Plan in each of the two court judgements referred to was not before the Inquiry, it seems to me that the intention and purpose of the policies at issue can be gleaned. Based on the policy extracts provided by the Parish Council,<sup>[7.24-7.25]</sup> I consider the judgements to be distinguishable, given the justification and purposes of the different policies. For the same reason though, the judgements do not, in my view, necessarily pull in opposite directions.
- 13.18 So, to the extent that policy C3 impacts upon the supply of housing, it is out of date. However, the policy serves an important planning function in preventing the coalescence of settlements. Although not supported by Government policy in the same way, for instance, as Green Belts, the policy identifies smaller areas of separation between settlements. I find nothing inherently unsuitable therefore (either in terms of its location or its characteristics) in the Local Gap designation for this particular piece of 'urban fringe' countryside. It is where it is, simply because it separates two settlements – Hurstpierpoint and Hassocks – and, up to now, has remained open and undeveloped even though the area is not designated in any statutory plan for its landscape or other intrinsic environmental quality.<sup>[9.3-9.10]</sup> It is distinguishable, in this regard, from the Pease Pottage appeal decision relied on the applicant,<sup>98</sup> which makes no reference at all to policy C3.<sup>[7.21, 7.32]</sup>
- 13.19 The application site is, of itself, fairly unremarkable, largely comprising open fields with minor undulations and variations in topography and numerous hedgerows and individual trees. Having said that, it is by no means unattractive, and remains intact and unspoilt, providing pleasant and unobstructed views from College Lane, from Belmont Lane (also a public bridleway) and from the houses that back onto and which overlook the site. Crucially though, it forms what I consider to be an integral part of an area that provides very clear separation between Hurstpierpoint and Hassocks, particularly when seen from College Lane and Belmont Lane. I am mindful, in this regard, that that visual separation has already been lost along Wickham Hill, where ribbon development extends along the northern side of the road between the two settlements.<sup>[6.1, 7.38]</sup> That blurring of the boundaries means, when travelling along Wickham Hill, that there is little sense of leaving Hurstpierpoint and entering Hassocks (or vice versa). To my mind, that serves to enhance the importance, in terms of the character, and thus the function, of the remaining open land within the Gap and its role in retaining the separate identity and amenity of the two settlements.
- 13.20 All in all, I find no conflict with the thrust of the Framework in terms of the Local Gap designation. In particular, I note that Framework paragraph 114 requires that local planning authorities should, among other things, set out a strategic approach for the protection of green infrastructure (a term defined in its glossary as a network of multi-functional green space, urban and rural, that is capable of delivering a wide range of environmental and quality of life benefits for local communities) with paragraph 109 confirming that valued

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<sup>98</sup> APP/1/A Tab 17

landscapes be protected and enhanced. Moreover, one of the core land use planning principles at Framework paragraph 17 requires, among other things, that account should be taken of the different roles and character of different areas, recognising the different characters of the countryside.

- 13.21 I recognise that the applicant has, in consultation with the planning officers, evolved a scheme for the site which is designed to mitigate its impact on the character and appearance of the Local Gap. Indeed, the built development proposed is constrained to the southern part of the site, with an area of parkland/wildlife corridor encompassing the site to the north and along the eastern boundary with Belmont Lane, which would provide an undeveloped buffer some 50-60 metres in width between the housing proposed and Belmont Lane.<sup>[6.1]</sup> I am mindful, in this regard, that neither the officer's report to the planning committee, the Parish Council, or WAG, takes any material point in terms of landscape impact. Indeed, the landscape assessment that informed the emerging Neighbourhood Plan<sup>99</sup> confirms, among other things, that the site has a rural character, although the edge of Hurstpierpoint is visible across the character area, and that it forms the setting to the east of Hurstpierpoint. The assessment indicates that the site has a medium capacity for development. However, that assessment is a landscape capacity assessment and takes no account of its function/role as a Local Gap.<sup>[7.34-7.36, 7.39]</sup>
- 13.22 During cross-examination, it was accepted for the applicant that the site has a role in preventing coalescence, albeit qualified as being a limited role.<sup>[8.10, 8.14]</sup> I recognise, in this regard, that neither the built development proposed, nor the application site as a whole, would entirely 'fill' the gap between the built up edges of the two settlements and the proposal would not, of itself, result in coalescence in that regard. However, the site does extend up to the boundary between the two settlements, as defined by Belmont Lane. Although the parkland/wildlife corridor would provide a buffer between the houses proposed and Belmont Lane, the development would, nevertheless, erode the Gap at what is already its narrowest, and thus its most sensitive, point, the gap between the built up edges of the settlements being as little as 900 metres at this point.<sup>[6.1, 8.9]</sup> In my view, that erosion of the Gap would permanently impair the character of this part of the Local Gap, and thus the amenity and setting of Hurstpierpoint and Hassocks.
- 13.23 With regard to paragraph 109 of the Framework, it is clear from the representations at application stage, and in response to the call in, as well as the number of residents who attended the Inquiry itself, that local people greatly value this green area of open countryside on the edge of Hurstpierpoint and want to preserve its status as a Local Gap, which has been protected from development for many years. In my opinion, the Gap has served, and continues to serve a useful and much valued planning purpose. I consider that the increase in built development here, at the edge of the settlement, would result in a small but nevertheless significant diminution of this part of the Local Gap: physically, it would reduce forever the amount of land available to form the separation function: visually it would introduce built form onto currently open and undeveloped land, reducing the openness of this part of the Gap.

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<sup>99</sup> APP/2/A/Tab D (Character Area 15)

The development would undermine the purposes of the Gap and would change its character.

### *Highways and Parking*

- 13.24 Saved policies T4 and T5 of the Local Plan set out the requirements for parking provision and access to new developments, with policy T6 seeking to secure cycle storage provision within new development. The Development and Infrastructure SPD also sets out maximum parking requirements. There is no conflict in terms of the proposed layout with any of those requirements, which could be secured by condition were planning permission to be granted.
- 13.25 Local residents are very concerned in relation to the highways implications of the development proposed. The application is supported by a Transport assessment (TA), which includes a Travel Plan and Stage One Road Safety Audit. The TA modelled the distribution of the resultant development traffic in relation to the local highway network, to determine whether there are likely to be any capacity issues and to identify which junctions might require further analysis. The local Highway Authority confirms that the access onto College Lane is forecast to operate within capacity, and that there are no capacity concerns in respect of the junction of College Lane and the B2116. Although the development would increase traffic along Hurstpierpoint High Street (an existing bottleneck) based upon the distribution provided, this would equate to just one additional traffic movement there every three minutes at peak times. On that basis, the Highway Authority is satisfied that the development could not be resisted on the basis of increased traffic through the High Street. The Highway Authority also concludes that the development would not lead to any highway safety issues.<sup>[6.1, 7.6]</sup>
- 13.26 Framework paragraph 32 (last bullet) indicates that permission should only be refused on transport grounds where the residual cumulative impacts of development are severe. I am mindful, in this regard, that the applicant has also carried out work in relation to the potential cumulative impact of this proposal together with the application at Little Park Farm/ Highfield Drive in Hurstpierpoint (157 dwellings) and the application at Kingsland Laines in Sayers Common (120 dwellings) both of which are currently with the Secretary of State for determination. Even taking those developments into account, the Highway Authority is satisfied that there would be no material impact in highway capacity terms that could be considered severe.
- 13.27 In the absence of any substantiated evidence to the contrary, I have no reason to demur from the view of the Highway Authority, and find that the development proposed would not result in material harm in terms of any impact on the safety and free flow of traffic on the local highway network.

### *Living Conditions*

- 13.28 The officer's committee report and the SoCG set out a comprehensive consideration of these matters, including visual impact, privacy and loss of light, noise and disturbance and air quality. They conclude that, subject to conditions, there would be no material adverse impact on the living conditions of local residents in these regards.<sup>[6.1]</sup> In the absence of any substantiated evidence to the contrary, I have no reason to disagree to take a different view. There would be no conflict, therefore, with policy B3 of the Local Plan, or with

the thrust of the Framework, which together and among other things, seek to protect residential amenity.

### *Trees and Ecology*

- 13.29 There was considerable disquiet among local residents that the applicant has already moved plant and machinery onto the site and has removed trees and vegetation, particularly along the watercourse that dissects the site.<sup>[10.1, 11.7]</sup><sup>100</sup> However, none of the trees was covered by a preservation order and no permission was required for their felling. In general, the removal of hedgerow and scrub does not require consent either: where it does, it is covered by other legislation and would have been a matter for the contractors involved. Similarly, any impact on protected species, which again are protected by other legislation, would have been a matter for the contractors involved.
- 13.30 The planning application was accompanied by a Tree Report (tree survey and constraint advice), an Arboricultural Impact Assessment and an Arboricultural Method Statement. The layout proposed incorporates the majority of the better more sustainable specimens and the relationship of built development to those trees would not result in situations that may lead to unreasonable pressure being brought to bear by future occupants for heavy pruning. The trees shown as 'to be removed'<sup>101</sup> are identified as Category C (i.e. of low quality with an estimated remaining life expectancy of at least 10 years, or young trees with a stem diameter below 150mm) and were not of a quality that represented a constraint to development of the site. They were located within the interior of the site and their loss was not identified as having any significant adverse impact on the visual amenity of the surrounding area. The imposition of a suitable condition, were permission to be granted, could ensure that the Arboricultural Method Statement was adhered to during the construction process.
- 13.31 Prior to submission of the initial planning application, the applicant commissioned an Extended Phase 1 Habitat Survey and a Great Crested Newt Survey of the site. It identified that several trees on the site supported features which could be used by bats and also that some areas of the site could support common reptile species. All those areas were subsequently surveyed. Subsequent surveys were undertaken in 2013. The later surveys reconfirmed that bats were using the tree lined edges of the site, with numerous individuals using the pond area, where mature trees were present, for foraging. Bats were also recorded using the tree line along Belmont Lane, to the east of the application site. No roosts were identified, but all the trees referred to would be retained in any event. So, even were they used for roosting, the roosts would not be affected by the development proposed and there would be no adverse impact in terms of foraging routes.
- 13.32 The majority of the site was found to be sub-optimal in terms of support for reptile species, although it does support a low population of slow worms. With regard to Great Crested Newts, although there are known populations in the vicinity, they are separated from the site by significant infrastructure (both housing and roads). The development proposed is unlikely to impact upon any

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<sup>100</sup> Also as referred to the discussion on conditions at the Inquiry.

<sup>101</sup> G7 - a group of mixed species trees. T32 – white willow. T36 – common oak. T37 – common alder



reptile species. However, given the slow worm population, the eastern edges of the site, where a wildlife corridor would be maintained, would be fenced off with specialised reptile fencing to ensure that reptiles could not enter the site during construction works. In addition, the wildlife corridor would include enhanced reptile habitat. These are all matters that could be controlled by condition were the application to be successful. All in all, I have no reason to suppose that the favourable conservation status of the bats and slow worms that are using the site would be compromised by the development proposed, subject to appropriate mitigation and enhancement measures.

- 13.33 In the absence of any objective evidence to the contrary, I consider that the development proposed would not have a material adverse impact on the ecological or arboricultural interest of the application site. There would be no conflict therefore, with policies C5 and B7 of the Local Plan, or the objectives of the Framework in this regard, which together seek to minimise the impact of development on biodiversity and trees, providing net gains where possible.

#### *Flooding and Drainage*

- 13.34 Although the application site lies within Flood Zone 1, local residents refer to localised flooding of the site and nearby gardens.
- 13.35 The application is accompanied by a Flood Risk Assessment (FRA). At present, surface water drains overland to the stream that runs across the site from west to east. The stream empties into a pond on the eastern site boundary, with an outfall offsite across Belmont Lane, draining eventually into the River Adur. As set out in the FRA, it is proposed to carry out improvements to the existing watercourse, which would be realigned to run into the existing pond, to be relocated and enlarged. Water levels within the pond would be controlled by the existing culvert beneath Belmont Lane. The culvert, which is currently heavily silted, would be cleared out to ensure that it functions at capacity.
- 13.36 Surface water from the proposed dwellings and roads would be collected in a piped system that would discharge to a new SUDs pond and new ditches that would, in turn, be linked to a new balancing pond. The pond would have the capacity to accommodate surface water from the site during a 1 in 100 year storm plus climate change, with no discharge (since the ditch would be likely to be running full during such an event). Discharge from the pond would be controlled at a lesser rate than the calculated green field run-off rate.
- 13.37 The Council's senior drainage engineer confirms that the arrangement proposed would represent an improvement over the existing situation and raises no objection to the proposal.<sup>102</sup> I have no reason to disagree.
- 13.38 With regard to sewage disposal, the plan originally submitted showed a pumping station to the north of the vehicular access to the site, close to College Lane.<sup>[6.1]</sup> At the Inquiry, it was confirmed for the applicant that the pumping station would be an underground facility, the only above ground evidence being fencing round a hardsurfaced area. In that location, the system would connect to the foul sewer that runs along College Lane. I understand that currently, there is inadequate capacity in the local network to

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<sup>102</sup> Attached to the officer's report to the planning committee.

provide foul sewage disposal to service the development proposed. However, should permission be granted, a Grampian type condition could prevent commencement of development until such time as details of how foul sewage would be addressed have been agreed.

- 13.39 The revised plan submitted for the consideration of the Secretary of State shows a possible alternative location for the proposed pumping station (option 2) on the eastern site boundary, within the parkland/wildlife corridor. At the Inquiry, the Parish Council expressed concern that that location would require the formation of a new access road off Belmont Lane, with implications for the integrity of the buffer zone.<sup>[1.3]</sup> There was also mention of a transformer which, whilst shown on an earlier version of the plan, is not shown on plan No 7777. I share those concerns: although of single track width, the access and turning area shown would have the effect of narrowing the landscape buffer in a part of the site where it is already at its narrowest. Having said that, I am satisfied that the final location of the pumping station could be left to conditions, with details to be considered by the Council in the first instance. Indeed, on day 2 of the Inquiry, the Council produced a note from its Senior Drainage Engineer confirming that no objections were raised in principle to either of the two locations for the proposed pumping station shown on Plan No 7777.<sup>[9.14]</sup>
- 13.40 There clearly are existing problems with localised flooding and sewage disposal. However, based on the information before me, I consider that, subject to appropriate conditions, the development proposed would not exacerbate existing sewage disposal problems. Moreover, it would not be at risk from flooding and flood risk in the wider area would not be exacerbated. There would be no conflict therefore, with policy CS13 of the Local Plan, or with the objectives of the Framework in this regard which, together, seek to protect such interests.

#### *Heritage Assets*

- 13.41 As heritage assets, listed buildings possess significance, which the Framework defines as their value to this and future generations because of their heritage interest. Significance derives not only from the assets' physical presence, but also from their setting, defined by the Framework as the surroundings in which the asset is experienced. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral. I am mindful, in this regard, that there is a statutory duty to have special regard to the desirability of preserving the setting of listed buildings,<sup>103</sup> with paragraph 132 of the Framework advising that the significance of a heritage asset can be harmed by development within its setting.
- 13.42 The applicant's desk based heritage assessment (Thames Valley Archaeological Services South, dated July 2012) confirms that there are listed buildings in the vicinity of the site, the closest being Wickham Farmhouse. Wickham Farmhouse (No 14 College Lane) a grade II listed building,<sup>104</sup> is offset from the proposed site access, on the opposite side of the road. It is a restored 17<sup>th</sup>

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<sup>103</sup> Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

<sup>104</sup> Doc 5

Century (or earlier) timber framed building with red brick infilling, largely refaced with red brick and grey headers on the ground floor with tile hanging above. The farmhouse is a very attractive building, its special interest deriving from its design, detailing, proportions, materials and historical development.

- 13.43 It sits well back from College Lane, behind a large fore garden and detached garage, and occupies a slightly elevated position in relation to the application site. However, there is nothing to indicate, apart from any former agricultural use, that the site had any formal relationship or designed vistas across it related to the farmhouse. Whilst the building can be appreciated in views from College Lane, outside its immediate curtilage, those views of the building would not change as a consequence of the development proposed. All in all, I consider that the application site contributes little, if anything, to the significance of the listed building and its setting, other than allowing for views of the building from private land. However, those views are not country views of the farmhouse, it being clearly seen in the context of the village housing which surrounds it on three sides. The ability to appreciate and understand its past connection with agricultural use would not be materially affected by development of the application site. I find, therefore, that the special interest and significance of the listed building, and its setting, would be preserved.
- 13.44 Hurst Wickham Conservation Area lies to the north of the application site. It is linear in nature, centred along that part of College Lane that winds through Hurst Wickham, once a separate hamlet but now linked to Hurstpierpoint. The Conservation Area is generally inward looking characterised by mid-late 19<sup>th</sup> Century workers' cottages and terraces along the narrow and steeply banked College Lane. Its southern end merges with existing residential development at Highfield Drive and Hurst Wickham Close. That part of the application site on which the dwellings are proposed would be separated from the Conservation Area by the existing open field to the south of Hurst Wickham Barn and the proposed parkland. On that basis, I am satisfied that there would be no material harm to the character, appearance or setting of the Conservation Area, and there would be no harm, therefore, to its significance as a heritage asset.
- 13.45 The applicant's desk based heritage assessment also identifies that the site lies within an area of moderate to high archaeological potential, with important regional sites being recorded nearby. The assessment recommends the imposition of a condition to ensure that a programme of archaeological work is implemented in accordance with a written scheme of investigation that shall previously been submitted to and approved in writing by the local planning authority. Whilst the development proposed, particularly the housing element of the scheme, has the potential to disturb any remains, I have no reason to suppose that the suggested condition would not afford sufficient protection.

### *Accessibility*<sup>105</sup>

- 13.46 The application site lies adjacent to the southeastern side of the Hurstpierpoint, within walking distance of the majority of the facilities provided in the village centre. Hurstpierpoint has the third highest level of service provision of all rural settlements in the District and is identified in the Local

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<sup>105</sup> SoCG paragraphs 2.1-2.3 and the plans attached thereto.

Plan as a local service centre. With a population of around 5,000, it is the third largest rural settlement in the District and I have no doubt that it is a sustainable settlement that can accommodate some future growth. Although there is no railway station or secondary school in the village, these are available in the adjoining village of Hassocks (approximately 1.4km from the application site). The facilities in Hurstpierpoint, and the walking/cycling catchment, are shown on the plans attached to the SoCG.

13.47 I consider that existing public transport provision in the area, and the walking and cycling links included in the scheme, would be sufficient to ensure that access to those services and facilities required by people on an everyday basis, by sustainable transport modes, would be a realistic prospect.<sup>[7,9]</sup>

#### *Benefits<sup>[6.1, 7.8-7.17]</sup>*

13.48 As reported above, the Council accepts that it does not have a five year housing land supply and that, as a consequence, related policies in the Local Plan are to be considered as out of date. In such circumstances, paragraphs 49 and 14 of the Framework indicate that planning permission should be granted for the development proposed, unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.

13.49 I have found no harm in terms of highway impacts, living conditions, trees and biodiversity, flooding and drainage, heritage assets or the sustainability of the location. However, the absence of harm in those regards does not add positive weight in the overall balance as a benefit.

13.50 Benefits of the proposal include the provision of a large area of publicly accessible parkland open space/wildlife corridor, together with a management plan for that area. The dwellings proposed would also make a contribution towards the acknowledged shortfall of both open market and affordable housing within the District. I am mindful, in this regard, that this is a full application with the applicant confirming that the scheme could be delivered within five years if permission was granted. In addition, the development would bring economic benefits in terms of some 70 construction jobs per year; it would support a further 106 spin-off jobs; it would inject some £2 million of total private sector investment; it would generate £2.3 million GVA (gross value added) from construction of the scheme; annual residential expenditure would be in the region of £2 million; it would generate £133,000 additional Council Tax receipts once occupied, and the scheme would attract some £823,000 of New Homes Bonus over the first six year period.<sup>106</sup> I am mindful in particular that, under the Localism Act 2011, the Bonus qualifies as a local finance consideration, and thus is a material consideration in this appeal.

#### *Other Matters*

13.51 Local residents express concern at the capacity of the local health centre. However, NHS Sussex, who were consulted on the planning application, confirm that the new Hurstpierpoint Primary Care Centre was future proofed to accept new patients, the response confirming that the Centre has the necessary capacity to accept new patients from the development proposed.

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<sup>106</sup> APP/1/P paragraphs 9.14 and 9.15

13.52 Other concerns related to impact on the South Downs National Park. At its closest, the application site lies within approximately 194 metres of the Park boundary. However, since the site is separated from that boundary by existing housing on Wickham Hill, the Council took no issue in terms of any adverse impact on the Park itself. I have no reason to disagree.

### *Planning Balance*

13.53 The Council cannot demonstrate a five year supply of housing land. Indeed, there is acknowledged to be a significant shortfall and thus, policies for the supply of housing cannot be considered as up to date. As such, the development needs to be considered in the context of the presumption in favour of sustainable development, elaborated at Framework paragraph 14.

13.54 There are clearly a number of benefits that weigh in favour of the proposed development. I attach much weight to the fact that it would deliver both open-market and much-needed affordable housing, in a sustainable location in terms of access to everyday services and facilities. The development would also assist the local economy, through the generation of construction and other jobs, private sector investment, gross value added, increased local spend, plus Council Tax receipts and a payment to the Council under the New Homes Bonus scheme. There is also the provision of a publicly accessible parkland/wildlife corridor, on land currently in private ownership, which could be enjoyed not only by future residents, but also existing members of the community. The combination of those factors accords with the principal thrusts of the Framework of securing economic growth and boosting significantly the supply of housing, and are sound arguments weighing in favour of the proposal.

13.55 I am also mindful of the matters secured by the planning obligation which, for the reasons set out in Section 12 of this Report, meet the Framework tests and comply with the Community Infrastructure Levy Regulations.

13.56 However, other planning and policy considerations cannot simply be set aside. I consider that the justification for the Local Gap policy carries substantial weight, given its consistency with the Framework. All in all, I am of the view that, whilst the site provides a valuable opportunity to contribute to the District's housing requirements, the scheme is unacceptable in terms of its impact on the Local Gap. Given that the development proposed would take place within what is already a particularly narrow part of the Gap, that harm is serious enough to significantly and demonstrably outweigh the scheme's benefits and brings it into conflict with the development plan and the Framework taken as a whole.

13.57 The Framework confirms that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. Whilst the scheme may meet the economic and social dimensions, it fails in my view, given the harm that I have identified, to meet the environmental dimension. I am not convinced, therefore, that the proposal can be regarded as sustainable development. Accordingly, it does not enjoy the presumption on favour of such development, as set out in the Framework.

## **14. Recommendation**

### **File Ref: APP/D3830/V/14/2211499**

- 14.1 For the reasons set out above, I recommend, on balance, that the planning permission be refused. Should the Secretary of State come to a different conclusion, the conditions set out at Appendix C attached hereto are recommended.

*Jennifer A Vyse*

INSEPECTOR

## **APPENDIX A: APPEARANCES**

### FOR THE APPLICANT:

Mr J Litton of Queen's Counsel He called:	Instructed by Boyer Planning Limited
Mr A Ross BSc(Hons), MA, MRTPI	Director of Boyer Planning Limited
Mr R Murphy BA(Hons), DipLA, DipUD, MAUD, CMLI	Director of Bradley Murphy Design

### FOR THE PARISH COUNCIL (Rule 6(6) party):

Mr D Mayhew BA(Hons), BTP, MRTPI	Director of DOWSETTMAYHEW Planning Partnership Limited
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### INTERESTED PERSONS:

Mr Gunne-Jones	On behalf of Wickham Action Group
Mr C Maidment	Local resident

In addition, Mr S King, Team Leader of the District Council's Planning Investigation and Enforcement Team, attended the Inquiry. He did not give evidence but participated in the discussion on possible conditions and S106 contributions and assisted with administrative matters.

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## APPENDIX B: DOCUMENTS

**SoCG** Statement of Common Ground between the District Council and applicant

### APPLICANT'S DOCUMENTS

<b>APP/1/P</b>	Proof of evidence of Mr Ross
<b>APP/1/A</b>	Appendices to the proof of Mr Ross (Tabs 1-20)
<b>APP/1/S</b>	Summary of the proof of Mr Ross
<b>APP/1/Sup</b>	Supplementary proof of Mr Ross
<b>APP/2/P</b>	Proof of evidence of Mr Murphy
<b>APP/2/A</b>	Appendices to the proof of Mr Murphy (Tabs A-E)
<b>APP/2/S</b>	Summary to the proof of Mr Murphy

### PARISH COUNCIL DOCUMENTS

<b>PC/1/P</b>	Proof of evidence of Mr Mayhew (as amended at the Inquiry)
<b>PC/1/A</b>	Appendices to the proof of Mr Mayhew (Tabs PC1-PC8)
<b>PC/1/S</b>	Summary of the proof of Mr Mayhew
<b>PC/1/Sup</b>	Supplementary proof of Mr Mayhew

### DOCUMENTS TABLED AT THE INQUIRY

<b>Doc 1</b>	Opening statement for the applicant
<b>Doc 2</b>	Opening statement on behalf of the Parish Council
<b>Doc 3</b>	Engrossed copy of the Planning Obligation
<b>Doc 4</b>	Letter from Mid Sussex District Council confirming the need for a Habitats Regulations assessment in relation to the emerging Neighbourhood Plan (28 March 2014)
<b>Doc 5</b>	Statutory list description and location plan for 14 College Lane (Wickham Farmhouse)
<b>Doc 6</b>	Inspector's conclusions on the 'Duty to Cooperate' in relation to the Mid Sussex District Plan (2 December 2013)
<b>Doc 7</b>	Briefing Note from Wickham Action Group
<b>Doc 8</b>	Extract from the recent planning guidance Paragraph ID: 3-035-20140306
<b>Doc 9</b>	Copy of policy 19 referred to in <i>Cotswold DC v SSCLG and Fay and Son Limited [2013] EWHC 3719 (Admin)</i> submitted by the Parish Council in cross examination of Mr Ross
<b>Doc 10</b>	Copy of policy E20 referred to in <i>William Davis Ltd and Jelson Limited vs SSCLG and North West Leicestershire DC [2013] EWHC 3058 (Admin)</i> submitted by the Parish Council in cross examination of Mr Ross
<b>Doc 11</b>	Comments from the Council's Senior Engineer in relation to the 'Option 2 siting' for the proposed pumping station (1 April 2014)
<b>Doc 12</b>	Written copy of the closing submissions for the Parish Council
<b>Doc 13</b>	Written copy of the closing submissions for the applicant
<b>Doc 14</b>	Office copy entries in relation to the S106

### DOCUMENTS SUBMITTED AFTER THE INQUIRY

<b>Doc 15</b>	Letter from PJC Ecology updating survey information (10 June 2013)
<b>Doc 16</b>	Letter and attachment from the County Council explaining the highway schemes referred to in the Section 106 Agreement (8 April 2014)
<b>Doc 17</b>	Dwelling Space Standards and Development Infrastructure Supplementary Planning Documents



## **APPENDIX C: RECOMMENDED CONDITIONS IN THE EVENT THAT PLANNING PERMISSION IS GRANTED**

### **TIME LIMIT**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

### **MATERIALS**

- 2) No development shall take place until a schedule/samples of the materials and finishes to be used in the construction of the external walls, roofs, windows and doors of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

### **BOUNDARY TREATMENT**

- 3) No development shall take place until there has been submitted to and approved in writing by the local planning authority details of the positions, design, materials, finishes and type of boundary treatment to be erected on the site (other than that land shown as Parkland and which is hatched blue on Plan 3 attached to the Section 106 Agreement). The details to be submitted shall also include a timetable for implementation. Development shall be carried out in accordance with the approved details and timetable.

### **TREES/ECOLOGY/LANDSCAPE MANAGEMENT**

- 4) No development shall take place until full details of both hard and soft landscaping for the site (other than that land shown as Parkland and which is hatched blue on Plan 3 attached to the Section 106 Agreement) have been submitted to and approved in writing by the Local Planning Authority. The details to be submitted shall include existing and proposed contours and finished ground levels and minor artefacts and structures (e.g. street furniture, refuse or other storage units, signs, lighting etc). Soft landscaping details shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme. Development shall be carried out in accordance with the approved details.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following first occupation of any of the dwellings hereby permitted, or completion of development, whichever is the sooner. Any trees or plants, which, within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 6) Development of the site, including works of site clearance and preparation, shall not take place other than in accordance with the Arboricultural Method Statement (AMS) submitted with the planning application (prepared by ACD Arboricultural dated 17 January 2013) and the accompanying plan No THA18444-03A.

- 7) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars:
- i) No retained tree shown on plan No THA18444-01 (which forms part of the AMS referred to in condition 6 above) shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped without the prior written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998: 2010 Tree Work - Recommendations.
  - ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- 8) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscaped and open areas, other than privately owned domestic gardens, and that land shown as Parkland and which is hatched blue on Plan 3 attached to the Section 106 Agreement, shall be submitted to and approved in writing by the local planning authority prior to first occupation of any dwelling on the site. The landscape management plan shall be carried out as approved.
- 9) No dwelling shall be occupied until the ecological enhancements set out at paragraphs 4.20-4.27 of the applicant's Extended Phase 1 Habitat Survey/Great Crested Newt Survey (dated May 2012) have been completed and evidence to that effect submitted to and approved in writing by the local planning authority.
- 10) No tree felling/vegetation clearance works, or other works that may affect nesting birds, shall take place between 1 March and 31 August inclusive. In the event that works are required to be carried out during the nesting period, a prior survey to establish the absence/presence of nesting birds should be undertaken by an appropriately qualified ecologist. A report of the assessment, together with proposals for any required mitigation/compensation shall be submitted to and approved in writing by the local planning authority prior to any works being undertaken. Thereafter, the works shall be carried out in accordance with any necessary mitigation/compensation measures.
- 11) Prior to development, or any preparatory works, a reptile mitigation and enhancement strategy, including a timetable for implementation, is to be submitted to and approved in writing by the local planning authority, as outlined in the Reptile and Bat Surveys update letter (10 June 2013). Required mitigation measures shall be implemented in accordance with the approved details and timetable under the supervision an Ecological Clerk of Works.

#### **ACCESS/HIGHWAYS**

- 12) Prior to commencement of development, including works of ground clearance or site preparation, full details of the access to the site off College Lane, including a timetable for implementation of the different stages of its construction, shall be submitted to and approved in writing by the local

planning authority. The access shall be constructed in accordance with the approved details and timetable.

- 13) Prior to first occupation of any of the dwellings hereby permitted, visibility splays of 2.4 metres by 63 metres to the north and 62 metres to the south, shall have been provided at the junction of the site access with College Lane, in accordance with the details shown on plan No T0222-SK02P2 which forms part of the Transport Assessment prepared by DHA Transport, dated April 2013). Once provided, the splays shall thereafter be retained and kept free of all obstructions over a height of 0.6 metre above adjoining carriageway level.
- 14) Prior to commencement of development, details for the construction, surfacing and drainage of the cycle/pedestrian link to Belmont Lane, internal roads, footways and casual parking areas serving the development shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall include a timetable for implementation of the different stages of construction of the different elements. Development shall be carried out in accordance with the approved details and timetable.
- 15) None of the accommodation hereby permitted shall be occupied until the car parking, garaging and visitor spaces associated with that particular unit of accommodation have been constructed in accordance with the approved plans. The respective spaces shall thereafter be retained at all times for their designated purpose.
- 16) None of the accommodation hereby permitted shall be occupied until associated covered and secure cycle parking spaces for that particular unit of accommodation have been provided in accordance with plans and details that shall previously have been submitted to and approved in writing by the local planning authority. The respective spaces shall thereafter be retained at all times for their designated purpose.

### **ARCHAEOLOGY**

- 17) No development shall take place, including any works of ground clearance or site preparation, until a programme of archaeological work has been implemented in accordance with a written scheme of investigation that has previously been submitted to and approved in writing by the local planning authority.

### **DRAINAGE**

- 18) None of the dwellings hereby permitted shall be occupied until sustainable surface water drainage works have been implemented in accordance with details that shall have previously been submitted to and approved in writing by the local planning authority. The submitted details shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation in relation to each phase of the development; and,

- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker, or any other arrangements to secure the operation of the scheme throughout its lifetime.
- 19) No development shall take place until details of the location of the required pumping station, the boundary treatment for the associated enclosure, access thereto, and any necessary transformer, together with a timetable for implementation, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and timetable.
- 20) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage have been provided to serve the development hereby permitted, in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

### **PLAY SPACE**

- 21) Prior to first occupation of any of the accommodation hereby permitted, details of the layout and equipment for the Local Equipped Area of Play (LEAP) shown on the approved plans, together with a timetable for its construction and details of future management and maintenance, shall be submitted to and approved in writing by the local planning authority. The LEAP shall be installed in accordance with the approved details and timetable and retained thereafter. The management/maintenance plan shall be implemented in accordance with the approved arrangements.

### **LIGHTING**

- 22) No external lighting shall be installed within any part of the site (other than within private domestic curtilages) other than in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

### **CONTAMINATED LAND**

- 23) Other than as may be required by an approved scheme of remediation, no development, including works of ground clearance and site preparation, shall take place on any phase of the development hereby permitted until a full contaminated land assessment for that phase has been carried out, and a remediation strategy to deal with any contamination has been submitted to and approved in writing by the local planning authority for the relevant part. The contaminated land assessment shall identify the extent of any contamination and the measures to be taken to avoid risk to the environment, the general public and the proposed development. It shall include a timetable of works. Any necessary remediation strategy shall be implemented in accordance with the approved details and timetable. No part of the development shall be occupied until a Completion Report, confirming that the remediation has been carried out as approved, has been submitted to and approved in writing by the Local Planning Authority.
- 24) If, during development, contamination not previously identified, is found to be present on any phase of the development hereby permitted, then no further development on that part of the site (unless otherwise agreed in writing by the local planning authority) shall be carried out until

remediation works, in accordance with a Method Statement for remediation, including a timetable that has previously been submitted to and approved in writing by the local planning authority, have been completed and a verification report demonstrating completion of the works set out in the Method Statement has been submitted to and approved in writing by the local planning authority. The Method Statement shall detail how the unsuspected contamination shall be dealt with. The verification report demonstrating completion of the works set out in the Method Statement shall include results of any sampling and monitoring. It shall also include any plan for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the local planning authority.

## **CONSTRUCTION**

- 25) No development shall take place, including any works of ground clearance and site preparation, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall address, but is not restricted to the following matters:
- i) measures for the management of construction traffic, including access and routing of vehicles;
  - ii) on-site parking provision for site operatives and visitors;
  - iii) on-site provision for the loading/unloading of plant, materials and waste;
  - iv) on-site provision for the storage of plant and materials used in the construction of the development hereby permitted;
  - v) a detailed site waste management plan that shall identify the main waste materials expected to be generated by the development during construction, together with measures for dealing with such materials so as to minimise waste and to maximise re-use, recycling and recovery;
  - vi) the size, siting and design of any security hoardings to be erected;
  - vii) a communication plan for liaising with the public both prior to and during construction works; and,
  - viii) wheel-washing facilities.

The approved CMP shall be implemented and adhered to throughout the construction period.

- 26) Works of demolition, site clearance, or construction, including the use of plant and machinery on the site, shall not take place other than between 08.00-18.00 hours Monday to Friday and 09.00-13.00 hours on a Saturday, and at no time on Sundays or bank/public holidays.
- 27) No burning of construction waste shall take place on any phase of the development hereby permitted.

## **PERMITTED DEVELOPMENT RIGHTS**

- 28) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any order revoking, re-enacting or modifying that Order) no works falling within Classes A, B

and E of Schedule 2 to Part 1 of that Order shall be carried out to the units on the following plots: 1, 2, 12, 13, 14, 15, 16, 17, 19, 20, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 54, 55, 56, 58, 59, 60, 74, 75, 76, 77, 78, 79, 80, and 81.

## PLANS

- 29) With the exception of the location of the pumping station, the development hereby permitted shall be carried out in accordance with the following approved plans:

12.25.00B	Site location
12.25.81/7777	Site layout
12.25.81/102B	Site sections 1-1, 2-2
12.25.81/103B	Site sections 3-3, 4-4
12.25.81/104B	Site sections 5-5, 6-6
12.25.81/201B	Plots 1/2
12.25.81/202E	Plot 3
12.25.81/203B	Plot 4
12.25.81/204C	Plot 5
12.25.81/205D	Plots 6 and 45
12.25.81/206C	Plot 7
12.25.81/207E	Plot 8
12.25.81/208B	Plot 9
12.25.81/209D	Plot 10
12.25.81/210C	Plot 11
12.25.81/211C	Plots 12/13
12.25.81/212B	Plots 14/15
12.25.81/213B	Plots 16/17/18/19/20
12.25.81/214C	Plot 21
12.25.81/215C	Plot 22
12.25.81/216C	Plot 23
12.25.81/217C	Plots 24/25/26/27
12.25.81/219C	Plot 28
12.25.81/220B	Plots 29/43/44
12.25.81/221B	Plot 30
12.25.81/222C	Plots 31/32/33/34/35

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12.25.81/223B	Plot 36
12.25.81/224B	Plots 37/38
12.25.81/225B	Plot 39
12.25.81/226A	Plot 40
12.25.81/227D	Plots 41/42
12.25.81/228D	Plot 46
12.25.81/229C	Plot 47
12.25.81/230B	Plots 48/49
12.25.81/231C	Plots 50/51/52/65
12.25.81/232C	Plots 53-60
12.25.81/233B	Plot 61
12.25.81/234B	Plot 62
12.25.81/235C	Plot 63
12.25.81/236C	Plot 64
12.25.81/237A	Plots 66-69/70-73
12.25.81/238C	Plots 74/75/76/77
12.25.81/239C	Plots 78/79/80/81
12.25.81/240	Plots 44/29, 37/38 15/16 Twin garages

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## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.