



Ministry of Housing,  
Communities &  
Local Government

Huw Edwards Esq.  
Barton Willmore LLP  
The Observatory  
Southfleet Road  
Ebbsfleet  
Dartford  
Kent DA10 0DF

Our ref: APP/D3830/W/16/3142487  
Your ref: 20834/A3/HE/DM/kf

1<sup>st</sup> March 2018

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY LINDEN LIMITED  
LAND AT HILL PLACE FARM, TURNERS HILL ROAD, EAST GRINSTEAD,  
APPLICATION REF: APP/D3830/W/16/3142487**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David Prentis BA BPI MRTPI, who held a public local inquiry which opened on 25 October 2016 into your client's appeal against the decision of Mid Sussex District Council (MSDC) to refuse your client's application for outline planning permission for up to 200 dwellings, provision of new internal access roads and footpaths, landscaping, open space, sustainable drainage system, earthworks and associated infrastructure and for full permission for the provision of Suitable Alternative Natural Green Spaces (SANGS) in, accordance with application ref: DM/15/0429 dated 2 February 2015.
2. On 26 April 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

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

3. The Inspector recommended that the appeal should be allowed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters arising since the close of the inquiry**

5. The Secretary of State invited the main parties to comment on the implications, if any, of new material or evidence which became available after the close of the inquiry. The table below describes the matters upon which he sought the parties' views:

Ministry of Housing, Communities & Local Government  
Jean Nowak, Decision Officer  
Planning Casework Unit  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel: 0303 444 1626  
Email: PCC@communities.gsi.gov.uk

<b>Date of Secretary of State's letter</b>	<b>New material/evidence</b>	<b>Date circulated to parties</b>
12 April 2017	<p>Submissions from both the PowerHaus Consultancy (dated 31 March 2017) and the East Grinstead Post Referendum Campaign (dated 3 April 2017) about:</p> <ul style="list-style-type: none"> <li>i. The High Court Judgment in the case of <i>Wealden District Council v 1) Secretary of State for Communities and Local Government, 2) Lewis District Council and 3) South Downs National Park Authority and Natural England</i> [2017] EWHC 351 (Admin)</li> <li>ii. Recent information published by Wealden District Council in March 2017 about atmospheric pollution across the Ashdown Forest Special Area of Conservation</li> </ul> <p>and from the East Grinstead Post Referendum Campaign (dated as above) additionally about:</p> <ul style="list-style-type: none"> <li>iii. Recent updating of the Mid Sussex Transport Study Stage-3, made publicly available in February 2017, which provides revised figures for predicted traffic volumes across Ashdown Forest.</li> </ul>	26 May 2017
17 May 2017	The Supreme Court judgment on the cases of <i>Cheshire East BC v SSCLG</i> and <i>Suffolk DC v SSCLG</i> , which was handed down on Wednesday 10 May 2017	9 June 2017
24 October 2017	<ul style="list-style-type: none"> <li>a) The document titled 'Consideration of Options to Strengthen the Five Year Housing Supply' for the public consultation on the Main Modifications of the emerging Mid Sussex District Plan.</li> <li>b) The Secretary of State's letter of 24 October 2017 to Natural England seeking their formal advice on the need for the Secretary of State to undertake an appropriate assessment.</li> </ul>	17 November 2017
17 November 2017	Natural England's letter of 14 November 2017	14 December 2017

A list of post-inquiry representations received by the Secretary of State, including those received in response to the above letters, is at Annex B. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy and statutory considerations**

6. In reaching his decision, 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.
7. In this case the development plan consists of the saved policies of the Mid Sussex District Local Plan 2004 (MSLP), the Small Scale Housing Allocations Development Plan Document 2008 (DPD), and the East Grinstead Neighbourhood Plan 2016 (EGNP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR16-21; and he agrees with the Inspector (IR211) that the DPD has limited weight in the determination of this appeal.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

### *Emerging plan*

10. The submission version of the Mid Sussex District Local Plan 2014-2031 (MSDP) contains policies which are potentially relevant to the appeal, including policies relating to housing, the countryside, the Ashdown Forest Special Protection Area (SPA)/Special Area of Conservation (SAC), infrastructure and transport. It was submitted to the Secretary of State in August 2016, has been through Examination, and consultation on the Main Modifications document ended in November 2017. However, the Local Plan Inspector's key conclusion was that the minimum housing requirement for the Plan period should be uplifted from 800dpa to 1,026dpa. He therefore convened a further hearing on 5 February 2018 to consider the issues relating to a new site allocation on land north of Clayton Mills, Hassocks, intended to contribute to meeting the minimum housing requirement. Thus, having regard to all three of the parameters set out in paragraph 216 of the Framework<sup>1</sup>, the Secretary of State concludes that great uncertainty remains so that the emerging DP should be given limited weight.

## **Main issues**

### *The supply and delivery of housing in Mid Sussex*

11. For the reasons given at IR212-220, as well as the position described in paragraph 10 above, the Secretary of State agrees with the Inspector's conclusion at IR221 that the appeal proposals would make a significant contribution to the delivery of housing in a district where the supply position is challenging, and a welcome contribution to affordable housing.

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<sup>1</sup> that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework,

### *Effect on the character and appearance of the area*

12. Having carefully considered the Inspector's assessment of the effect of the proposed scheme on the character and appearance of the area at IR222-241, the Secretary of State agrees with his conclusions at IR242-244. The Secretary of State agrees that, as the appeal scheme would represent a significant extension of the built environment into the countryside, it would inevitably lead to harm to the character and appearance of the area; but that the visual effects on the surrounding area would be localised and would diminish over time as new planting within the scheme becomes established. Overall, the Secretary of State agrees with the Inspector that the proposals would be contrary to MSLP Policy C1 and EG1, as well as EGNP Policy EG2a, but that they would accord with EGNP Policy EG5 insofar as that policy deals with landscape and visual matters.

### *Effect on the transport network*

13. The Secretary of State notes that, although MSDC withdrew its refusal on transport grounds before the Inquiry (IR245), the Rule 6 party and others maintained objections on highways grounds; and so he has given careful consideration to their concerns (IR246-266) and the Inspector's conclusions thereon (IR267-269). The Secretary of State agrees with the Inspector that the scheme would accord with paragraph 32 of the Framework (IR268) and with MSLP Policy T4 and EGNP Policies EG5 and EG11 insofar as those policies relate to highways and transport (IR269).

### *Effects on biodiversity*

14. For the reasons given at IR270-279, the Secretary of State agrees with the Inspector's conclusion at IR279 that the proposals are unlikely to have a significant effect on the Ashdown Forest SPA/SAC or Site of Special Scientific Value (SSSI).
15. Following his receipt of the IR, the Secretary of State sought advice from Natural England (NE) (see paragraph 5 above) to verify the Inspector's conclusion. They responded that they considered that the increased Annual Average Daily Traffic (AADT) expected from this proposal is significantly below the threshold for potential significance and is considered nugatory and indistinguishable from background variations. They therefore advised that the appeal scheme can be screened out as having no likely significant effect on the Ashdown Forest SAC and SPA, either alone or in combination with other plans or projects, and a full Appropriate Assessment is not required.
16. Overall, therefore, taking account of the Inspector's conclusions on other effects on biodiversity at IR280, the Secretary of State agrees that the proposals would not have any significantly harmful effects on designated nature conservation sites or on biodiversity in general, and that the scheme would accord with MSLP Policy C5 and with EGNP Policy EG16.

### *Effect on the historic environment*

17. For the reasons given at IR282, the Secretary of State agrees with the Inspector that there would be no impacts either on the Grade II listed Hill Place Farmhouse itself or on its setting. Similarly, for the reasons given at IR291-294, the Secretary of State agrees with the Inspector that there would be negligible impact on the significance of the Bluebell Railway.
18. Turning to the Grade II listed Imberhorne Viaduct, the Secretary of State agrees with the Inspector at IR288 that, for the reasons given at IR283-287, there would be "*less than*

*substantial*” harm resulting from the impacts of the appeal scheme on views of the viaduct from ground level and that these are required to be balanced against the public benefits of the proposals. He further agrees that, for the reasons described by the Inspector at IR288, the appeal scheme would greatly enhance the ability to experience the viaduct from the SANGs within the northern part of Parcel A and, for the reasons given at IR289, the public benefits of the scheme as a whole would outweigh the harm to the significance of the designated heritage asset. Nevertheless, the Secretary of State agrees with the Inspector at IR290 and IR295 that there would be some harm to the setting of the viaduct, which needs to be taken into account in the overall planning balance.

19. Overall, the Secretary of State agrees with the Inspector at IR296 that, in respect of the historic environment, the proposals would accord with the Framework and with EGNP Policy EG4.

#### *Suitable Alternative Natural Green Spaces (SANGS)*

20. The Secretary of State agrees with the Inspector at IR314 that the extent of the SANGS would go beyond what would be needed purely to provide mitigation for the appeal scheme and that there would be a related heritage benefit in that there would be enhanced opportunities for the public to experience the listed viaduct and the heritage railway. He therefore also agrees with the Inspector that these are further factors weighing in support of the appeal.

#### **Planning conditions**

21. The Secretary of State has given consideration to the Inspector’s analysis at IR197-203, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision. The Secretary of State agrees with the Inspector’s recommendation at IR201 that the Grampian style condition suggested by the Rule 6 party is not required. The Secretary of State is also satisfied with the Inspector’s explanation at IR202 that his addition to condition 9 would cover any matters relating to the safe operation of the Bluebell Railway which might arise during the construction phase.

#### **Planning obligations**

22. Having had regard to the Inspector’s analysis at IR204-205, the planning obligation dated 19 December 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector’s conclusion (IR204-205) that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

#### **Planning balance and overall conclusion**

23. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with MSLP Policies C1 and EG1 or Policy EGNP EG2a and so is not in accordance with the development plan overall. However, he considers that these policies are inconsistent with the Framework and out of date and therefore carry limited weight.

He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

24. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework indicates that planning permission should be granted unless (a) any adverse impacts of doing so significantly and demonstrably outweigh the benefits when assessed against policies in the Framework as a whole; or (b) specific policies in the Framework indicate development should be restricted.
25. The Secretary of State considers that the housing benefits of the proposal carry substantial weight, and the economic, social and environmental benefits each carry moderate weight, including the fact that the proposals would not have any significantly harmful effects on biodiversity in the area while the SANGS would provide enhanced opportunities for the public to experience the listed viaduct and the Bluebell Railway.
26. Paragraph 134 of the Framework is a 'specific policy' for the purposes of paragraph 14 of the Framework, and the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of Imberhorne Viaduct is outweighed by the public benefits of the proposal. As explained at paragraph 18 above, in accordance with the s.66 duty, he agrees with the Inspector at IR288 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the Viaduct. He considers that the balancing exercise under paragraph 134 of the Framework is therefore favourable to the proposal.
27. Overall, therefore, the Secretary of State concludes that material considerations indicate that, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be determined otherwise than in accordance with the development plan.

### **Formal decision**

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission subject to the conditions set out in Annex A to this decision letter for up to 200 dwellings, provision of new internal access roads and footpaths, landscaping, open space, sustainable drainage system, earthworks and associated infrastructure and for full permission for the provision of Suitable Alternative Natural Green Spaces (SANGS) at land at Hill Place Farm, Turners Hill Road, East Grinstead, in accordance with application ref: DM/15/0429 dated 2 February 2015.
29. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

31. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
32. A copy of this letter has been sent to Mid Sussex District Council and to the Rule 6 party; and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Secretary of State to sign in Authorised by the that behalf

## Conditions

1. No development shall take place until a plan showing the phasing of the development has been submitted to and approved in writing by the local planning authority. The use of the term 'phase' in these conditions refers to the phases shown on the approved phasing plan. Development shall be carried out in accordance with the approved phasing plan.
2. Details of the appearance, landscaping, layout and scale (hereinafter called the "reserved matters") for any phase of development shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 2 years from the date of this permission.
4. The development hereby permitted in any phase must be begun before the expiration of 1 year from the date of approval of the last of the reserved matters for that phase.
5. The submission of reserved matters applications pursuant to the development hereby approved shall demonstrate compliance with approved parameter plan CSa 2365 107 Rev C.
6. No part of the development shall be occupied until such time as the vehicular access has been constructed in accordance with the arrangements shown on drawing 141236/A/08/ Rev C.
7. No development shall take place until temporary arrangements for access for construction traffic have been provided in accordance with details which have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
8. No part of the development shall be occupied until visibility splays of 2.4 metres by 120 metres have been provided at the proposed site vehicular access onto the B2110 Turners Hill Road in accordance with details which have been submitted to and approved in writing by the local planning authority. The splays shall thereafter be permanently maintained and kept free from all obstructions over a height of 0.6 metres above adjoining carriageway level.
9. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:
  - a) hours of working
  - b) construction traffic routing and signage
  - c) location of site offices
  - d) location of plant and materials storage
  - e) the area within the site reserved for the loading, unloading and turning of vehicles delivering plant and materials
  - f) the area reserved within the site for parking for site staff and operatives
  - g) wheel washing facilities
  - h) scheme to minimise impacts on air quality



- i) measures to ensure the safe operation of the Bluebell Railway

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

10. 1. Site Characterisation

No development shall take place until an investigation and risk assessment has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site which has been submitted to and approved in writing by the local planning authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be produced. The report of the findings shall include:

- a) a survey of the extent, scale and nature of contamination
- b) an assessment of the potential risks to
  - human health
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
  - adjoining land
  - ground waters and surface waters
  - ecological systems
  - archaeological sites and ancient monuments
- c) an appraisal of remedial options, and proposal of the preferred option(s)

This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'. No development shall take place until the report of the findings has been submitted to and approved in writing by the local planning authority.

2. Submission of Remediation Scheme

In the event contamination is found, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. No development shall take place until the remediation scheme has been submitted to and approved in writing by the local planning authority.

3. Implementation of Approved Remediation Scheme

The remediation scheme shall be carried out as approved. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be produced. No development shall take place until the verification report has been submitted to and approved in writing by the local planning authority.

#### 4. Reporting of Unexpected Contamination

In the event that contamination is found when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of part 1 of this condition and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of part 2 of this condition.

Following completion of the measures identified in the approved remediation scheme a verification report shall be prepared. No further development shall take place in the affected part of the site until the verification report has been submitted to and approved in writing by the local planning authority.

11. No development shall take place within any phase until details of the surface water drainage and means of disposal for that phase have been submitted to and approved in writing by the local planning authority. No building within that phase shall be occupied until the drainage works have been carried out in accordance with the approved details. The details shall include a timetable for implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and/or any other arrangements to secure the operation of the scheme throughout its lifetime. Thereafter, the drainage works shall be managed and maintained in accordance with the approved details for the lifetime of the development.
12. No development shall take place within any phase until details of the foul drainage for that phase have been submitted to and approved in writing by the local planning authority. No dwelling within that phase shall be occupied until the drainage works have been carried out in accordance with the approved details.
13. No development shall take place within any phase until details of existing and proposed site levels for that phase have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
14. Prior to the commencement of construction of any dwelling a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall be generally in accordance with the framework contained in the Transport Assessment prepared by Vectos (February 2014). Development shall be carried out in accordance with the approved Travel Plan.
15. Prior to the commencement of construction of any dwelling details of the play area shall be submitted to and approved in writing by local planning authority. The details shall include the layout, drainage, equipment, landscaping, fencing, timetable for construction and future management of the areas to be provided. Development shall be carried out in accordance with the approved details.
16. Prior to the commencement of construction of any dwelling details of noise mitigation measures shall be submitted to and approved in writing by the local planning authority. The measures shall be generally in accordance with the recommendations of the Noise Assessment prepared by Acoustic Air Ltd (December 2014). No dwelling shall be occupied until the relevant noise mitigation measures have been implemented in accordance with the approved details.
17. No development shall take place until the applicants, or their agents or successors in title, have secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation and timetable which has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved programme of works.

18. No development shall take place until an Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The Ecological Management Plan shall be generally in accordance with the proposals in the Ecological Summary Report prepared by HDA (December 2014). It shall contain measures to avoid, mitigate and compensate for any impacts on wildlife during the construction period, details of biodiversity enhancements to be incorporated within the development (including provision for their future management) and a lighting strategy including measures to minimise light pollution of wildlife habitats. Development shall be carried out in accordance with the approved Ecological Management Plan and shall thereafter be permanently retained as such.
19. Hard and soft landscape works shall be carried out in accordance with the details approved pursuant to condition 2. The works for any phase shall be carried out prior to the occupation of any building within that phase or in accordance with the programme agreed with the local planning authority. 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 unless the local planning authority gives written consent to any variation.
20. No dwelling shall be occupied until the internal access roads and footways serving that dwelling have been designed, laid out and constructed in accordance with details which have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
21. No dwelling shall be occupied until the car and cycle parking associated with that dwelling have been provided in accordance with details which have been submitted to and approved in writing by the local planning authority. The areas of land so provided shall thereafter be kept permanently available for their approved use.
22. No dwelling shall be occupied until details of the SANG car park have been submitted to and approved in writing by the local planning authority. The details shall be generally in accordance with the illustrative SANG Landscape Character Plan 2136.14/11 prepared by HDA. The car park shall be implemented as approved and made available for use by the public prior to the occupation of any dwelling and shall thereafter be kept permanently available for this purpose.

**SCHEDULE OF REPRESENTATIONS**

<b>Party</b>	<b>Date of letter/e-mail</b>
Rt Hon Sir Nicholas Soames MP (enclosing a letter from David Peacock, Rule 6 Party - dated 23 <sup>rd</sup> January 2017)	7 February 2017
Huw Edwards, Barton Willmore	27 February 2017
Alice Henstock, MSDC	10 March 2017
Mary Power, Director, PowerHaus (obo David Peacock, Rule 6 party - to the Planning Inspectorate)	31 March 2017
Richard Barnby, East Grinstead Post Referendum Campaign (to the Planning Inspectorate)	3 April 2017

**Representations received in response to the Secretary of State's letter of 12 April 2017**

Marian Ashdown, Natural England	19 May 2017
Huw Edwards, Barton Willmore	22 May 2017
Henry Clarke, Director, Rail Estate (obo Bluebell Railway plc)	23 May 2017
Steve Ashdown, MSDC	23 May 2017
Mary Power, Director, PowerHaus Consultancy Ltd (obo Mr Peacock)	7 June 2017
Marian Ashdown, Natural England	12 June 2017
Huw Edwards, Barton Willmore	12 June 2017

**Representations received in response to the Secretary of State's letter of 17 May 2017**

Henry Clarke, Director, Rail Estate (obo Bluebell Railway plc)	23 May 2017
Huw Edwards, Barton Willmore	31 May 2017
Mary Power, Director, PowerHaus Consultancy Ltd	31 May 2017
Steve Ashdown, MSDC	1 June 2017
Mary Power, Director, PowerHaus Consultancy Ltd	16 June 2017

**Representations received by Secretary of State following the close of reference back exercises dated 12 April and 17 May 2017**

Huw Edwards, Barton Willmore	27 June 2017
Mary Power, Director, PowerHaus Consultancy Ltd	7 July 2017
Lois Partridge, MSDC	1 November 2017
Richard Barnby, East Grinstead Post Referendum Campaign	7 November 2017

**Representations received in response to the Secretary of State's letter of 24 October 2017**

Sally Bloomfield, MSDC	13 November 2017
Huw Edwards, Barton Willmore	14 November 2017
Marian Ashdown, Natural England	14 November 2017

**Representations received in response to the Secretary of State's letter of 17 November 2017**

Marian Ashdown, Natural England	29 November 2017
Mary Power, Director, PowerHaus Consultancy Ltd	11 December 2017 (two letters)
Huw Edwards, Barton Willmore	12 December 2017
Richard Barnby, East Grinstead Post Referendum Campaign	12 December 2017
Sally Bloomfield, MSDC	12 December 2017
Marian Ashdown, Natural England	12 January 2018
Richard Barnby, East Grinstead Post Referendum Campaign	15 January 2018
Huw Edwards, Barton Willmore	15 January 2018

**Further representations received by the Secretary of State**

Mary Power, Director, PowerHaus Consultancy Ltd	25 January 2018
Mary Power, Director, PowerHaus Consultancy Ltd	26 January 2018
Kelvin Williams, Wealden District Council	26 January 2018

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

by David Prentis BA BPI MRTPI

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

Date: 24 January 2017

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**TOWN AND COUNTRY PLANNING ACT 1990**

**MID SUSSEX DISTRICT COUNCIL**

**APPEAL MADE BY**

**LINDEN LIMITED**

Inquiry opened on 25 October 2016

Land at Hill Place Farm, Turners Hill Road, East Grinstead, West Sussex RH19 4LX

File Ref: APP/D3830/W/16/3142487

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**File Ref: APP/D3830/W/16/3142487**

**Land at Hill Place Farm, Turners Hill Road, East Grinstead, West Sussex RH19 4LX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Linden Limited against the decision of Mid Sussex District Council.
- The application Ref DM/15/0429, dated 2 February 2015, was refused by notice dated 17 August 2015.
- The proposal is an outline planning application (with all matters reserved except for means of access from Turners Hill Road) for up to 200 dwellings, provision of new internal access roads and footpaths, landscaping, open space, sustainable drainage system (SUDS), earthworks and associated infrastructure and a full application for the provision of Suitable Alternative Natural Green Spaces (SANGSs).

**Summary of Recommendation: The appeal should be allowed**

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**PROCEDURAL MATTERS**

1. The Inquiry sat for 8 days from 25 – 28 October and 1 – 4 November 2016. Accompanied site visits were carried out on 28 October and 3 November and I made unaccompanied visits to the site and surroundings before and during the course of the Inquiry.
2. The application was a hybrid, comprising an outline application for the proposed housing and a full application for the proposed Suitable Alternative Natural Green Spaces (SANGs). In respect of the outline element, all matters are reserved for subsequent approval other than the means of access from Turners Hill Road. The internal access roads within the site would be the subject of approval under reserved matters and/or conditions. There are two application plans which are offered for approval – a parameters plan and the site access plan<sup>1</sup>. There is also an illustrative masterplan and an illustrative SANGs landscape character plan<sup>2</sup>. The Council and the appellant agreed that the layout of a car park within the SANGs land could be adequately covered by a condition.
3. The appeal was recovered by the Secretary of State by letter dated 26 April 2016 for the following reason:  
*The reason for this direction is because the appeal involves a proposal for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority or where a neighbourhood plan has been made.*
4. The Council refused planning permission for reasons which may be summarised as follows:
  - 1) Harm to the rural character of the area and views from the town, a significant adverse impact on landscape character, conflict with the countryside objectives of the Mid Sussex Local Plan, the proposal is not sustainable development for the purposes of the National Planning Policy Framework

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<sup>1</sup> CD2/5 and CD2/7

<sup>2</sup> CD2/10 and CD 2/31

- 2) A severe cumulative impact on the strategic road network
- 3) No adequate mitigation for impacts on the Ashdown Forest Special Protection Area and Special Area for Conservation
- 4) Lack of provision for the infrastructure and affordable housing required to support the development

These reasons for refusal are set out in full in CD3/5.

5. The second reason for refusal was withdrawn by the Council before the Inquiry. However, the Rule 6 party and others maintained objections on highways grounds and there was substantial evidence before the Inquiry on this matter.
6. A draft agreement under s106 of the Town and Country Planning Act between the Council, West Sussex County Council, the site owners and the appellant was submitted at the Inquiry (the Agreement). The Agreement was subject to discussions between the parties during the course of the Inquiry which were concluded at a late stage. I therefore allowed a period after the close of the Inquiry for a signed version to be submitted. The version available for discussion at the Inquiry was in final draft form<sup>3</sup>.
7. The Agreement makes provision for financial contributions to community buildings, sports facilities, primary healthcare, highways works (A22 junction improvements), libraries, local infrastructure, primary education, secondary and sixth form education and Ashdown Forest mitigation. In addition the Agreement contains provisions for the delivery of 30% of the dwellings as affordable housing, highway works in the vicinity of the site access, a potential speed limit reduction on Turners Hill Road, a development phasing plan and the delivery and arrangements for future management and maintenance of the SANGs.
8. The Council considers that the Agreement resolves the matters referred to in the 3<sup>rd</sup> and 4<sup>th</sup> reasons for refusal. At the Inquiry the Council provided written evidence of compliance with Regulation 122 and (where relevant) Regulation 123 of the Community Infrastructure Levy Regulations. Further written evidence was provided by the Council and other relevant bodies in response to my questions<sup>4</sup> on some of the individual obligations. The provision of pedestrian access to the SANGs was of particular concern to the Bluebell Railway. The Council and the appellant could not agree on the provisions relating to future management arrangements for the SANGs and the Agreement contains alternative wording on this matter. I return to these points later in my report.
9. Other than matters relating to the SANGs, the obligations were not generally controversial and no party disputed the Council's evidence on these matters. I see no reason to disagree and have therefore taken the obligations into account in reaching my recommendation. I discuss some of the obligations in greater detail under the relevant headings in this report.
10. The Council has issued a screening opinion confirming that Environmental Impact Assessment is not required for the proposed development<sup>5</sup>.

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<sup>3</sup> The final draft is ID7 and the signed version is dated 19 December 2016.

<sup>4</sup> LPA7, LPA8, LPA9, LPA12, LPA13, LPA14 and LPA15

<sup>5</sup> CD2/33



11. Mr David Peacock was given Rule 6 status and was represented at the Inquiry.

## **THE SITE AND SURROUNDINGS**

12. The site and its surroundings are described in the Statement of Common Ground<sup>6</sup> and in the evidence. The site extends to around 21.33ha of agricultural land, divided into two parcels by the Bluebell Railway. The area to the south east of the railway (Parcel A) is irregularly shaped and is about 9.55ha in extent. It comprises two large fields and part of a third field. The land slopes down to the north east where there is a small area of ancient woodland. The north eastern boundary adjoins the verge of Garden Wood Road and the backs of houses on the edge of the built-up area of East Grinstead.
13. Parcel A is bounded to the south east by Turners Hill Road, beyond which there are some properties set in spacious plots. There is an enclave of houses at Barredale Court, which adjoins Parcel A to the south. To the south west are the premises of Southern Sheeting Supplies Limited, suppliers of building materials, and Hill Place Farm. Parcel B comprises 5 fields to the north west of the railway extending to around 11.78ha. The northern boundary of Parcel B is formed by ancient woodland. A public footpath runs to the south of both parcels. The wider surroundings comprise a predominantly open and undulating landscape of agricultural fields and woodland, interspersed with some buildings, to the south east, south west and west. The urban area of East Grinstead lies to the north east, with the town centre being about 1km away.
14. Land on the opposite side of Turners Hill Road is within the High Weald Area of Outstanding Natural Beauty (AONB). There are two listed buildings close to the site, Hill Place Farmhouse (Grade II) and the Imberhorne Viaduct (Grade II). The Bluebell Railway is a heritage railway which runs from East Grinstead to Sheffield Park. The listed viaduct carries the railway line across a steep sided valley, adjacent to Parcel A. The railway passes between Parcels A and B in a cutting. The Bluebell Railway is recognised as a non-designated heritage asset and is a significant tourist attraction. The site is approximately 4.3km from the nearest part of Ashdown Forest, which is designated as a Special Protection Area (SPA) and as a Special Area of Conservation (SAC). The majority of the SPA is also designated as a Site of Special Scientific Interest (SSSI).

## **PLANNING POLICY**

15. The development plan includes the saved policies of the Mid Sussex District Local Plan 2004 (MSDLP), the Small Scale Housing Allocations Development Plan Document (DPD) 2008 and the East Grinstead Neighbourhood Plan 2016 (EGNP)<sup>7</sup>. The EGNP was passed by referendum on 20 October 2016 and was made on 2 November 2016 (during the course of the Inquiry).
16. MSDLP Policy C1 seeks to protect the countryside by establishing built-up area boundaries. Outside the defined boundaries development is to be restricted to certain limited categories which are not applicable to this case. The appeal site lies outside the development boundary to East Grinstead and is thus within the countryside area of development restraint defined by Policy C1. Policy EG1 is

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<sup>6</sup> CD1/6, section 2

<sup>7</sup> CD7/1 – MSDLP; CD9/3 - EGNP

specific to East Grinstead and states that development which would detract from the overall appearance and character of the town or its setting will not be permitted.

17. Policy G3 seeks to ensure that the infrastructure necessary to support the development can be provided, including by way of appropriate planning obligations. Policy C5 seeks to protect designated nature conservation sites. Policy H4 seeks to achieve a reasonable proportion (generally 30%) of dwellings within residential schemes of more than 15 units as affordable housing. Policy T4 is a transport policy which, amongst other matters, seeks to ensure that there is safe and convenient access to development sites and that development does not cause an unacceptable impact on the local environment in terms of road safety and increased traffic.
18. The EGNP continues the concept of countryside protection, referring to Countryside Areas of Development Constraint. The built-up area boundary is defined in Appendix 1 of the EGNP and in the vicinity of the appeal site it is in the same position as in the MSDLP. Policy EG2 allows for sympathetic conversions, limited small scale development and extensions to existing buildings in the areas of development constraint. However, Policy EG2a states that permission will not normally be granted for development which results in the coalescence of East Grinstead with Crawley Down or Ashurst Wood, results in the perception of openness being unacceptably eroded or which contributes to ad hoc or isolated development of dwellings outside the built up area.
19. Policy EG5 supports housing development on previously developed land. It states that other proposals for new housing development will only be supported subject to compliance with criteria relating to sustainable development, environmental and visual impact, traffic impact, design, housing mix, SPA/SAC mitigation and infrastructure.
20. Policy EG3 promotes good design, Policy EG4 seeks to protect heritage assets, and Policy EG7 deals with housing mix and density. Policy EG11 seeks to ensure that impacts of development on the highway network are appropriately mitigated. Policy EG16 seeks to ensure that residential development within 7km of the Ashdown Forest SPA contributes to the enhancement of SANGs and the Strategic Access Management and Monitoring (SAMM) Strategy.
21. The Council and the appellant agree that the Small Scale Housing Allocations DPD does not contain any policies of relevance to the appeal.
22. The submission version of the Mid Sussex District Local Plan 2014-2031 contains policies which are potentially relevant to the appeal, including policies relating to housing, the countryside, the SPA/SAC, infrastructure and transport<sup>8</sup>. However, the plan is subject to a number of unresolved objections. The Examination of the plan had not commenced at the time of the Inquiry. The Council and the appellant agree that it has limited weight in the determination of this appeal and I share that view.

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<sup>8</sup> The policies are identified at paragraph 5.9 of CD1/6 and the plan is CD7/5

## THE PROPOSALS

23. The application plans and documents are at CD2/1 to CD2/31. The proposals are for up to 200 dwellings together with internal access roads, sustainable drainage systems, open space and landscaping. The general disposition of housing and open space is defined in the parameters plan. The proposed housing would be within Parcel A, with the northern section of Parcel A and the whole of Parcel B being allocated for around 14.7ha of SANGs land. Public pedestrian access to Parcel B is proposed to be from Parcel A, via an existing arch under the railway (the cattle arch), and from the public footpath which skirts the southern edge of Parcel B.
24. The illustrative masterplan provides further details of the way in which the housing areas could be laid out. Areas of ancient woodland and the proposed SUDS features would be contained within the SANGs land. The SANGs proposals include a visitor car park and a 2.5km circular walking route. The application was supported by a number of technical reports, including a landscape and visual impact assessment, an ecology report, a SANGs management strategy, a heritage statement and a transport assessment.
25. The landscape and visual assessment<sup>9</sup> noted that the site falls within the High Weald national landscape character area, a predominantly grassland agricultural landscape comprising irregular small to medium sized fields bounded by hedgerows and wooded shaws. It comments that the site has an undulating landform that is typical of the High Weald, with the north east section of the site being within a steep valley feature. The character of the site is that of fields enclosed by woodland to the north and west. A distinction is drawn between Parcel B, which is said to be very rural in character, and Parcel A which is said to have more urban influences due to the inter-visibility between the site and the urban areas of East Grinstead.
26. The ecological summary report<sup>10</sup> concluded that the proposed development area is dominated by habitats of negligible nature conservation importance. The majority of those habitats which are of nature conservation interest, including woodland, hedgerows, marshy grassland, mature trees and stream would be retained and enhanced through their inclusion in the proposed SANGs. Protected species have been considered, with low levels of bat foraging and evidence of badger presence being noted. Mitigation measures in relation to bats, badgers, breeding birds, reptiles and invertebrates are identified. The SANGs management strategy describes measures by which the retained and created habitats within the SANGs could be managed to maximise their value for wildlife<sup>11</sup>.
27. The heritage statement<sup>12</sup> considers the effects of the proposals on Hill Place Farmhouse and the Imberhorne Viaduct, both of which are Grade II listed buildings. Hill Place Farmhouse was listed for its interior. The heritage statement notes that its former agricultural setting has been much diminished by modern agricultural and industrial buildings associated with the premises of Southern

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<sup>9</sup> CD2/14

<sup>10</sup> CD2/16

<sup>11</sup> CD2/15

<sup>12</sup> CD2/24

Sheeting. It concludes that the appeal scheme would not affect the significance of the listed building. The viaduct is identified as being extremely prominent from within the site and from Garden Wood Road. The significance of the viaduct is said to derive from its historic association with the Victorian railway, the technological innovation that it demonstrates and its strong architectural form. The heritage statement concludes that the proposed development would affect only a small part of an extensive setting and would not therefore be harmful to the significance of the listed building<sup>13</sup>.

28. The transport assessment<sup>14</sup> notes that East Grinstead Railway Station is approximately 600m to the north of the site, providing services to London, Croydon and other destinations. There are also a number of bus stops within 250m of the site. Schools, supermarkets and East Grinstead town centre are all reasonably accessible from the site. Access to the appeal site would be from Turners Hill Road via a new T junction. Highway works in the vicinity of the site access would include a pedestrian crossing improvement and a gateway or traffic management feature on Turners Hill Road.
29. The *East Grinstead Traffic Management Study – Stage 3 Final Report* was prepared for the highway authority by Atkins in May 2012 (the A3 report). The study assessed network capacity at 5 key junctions on the A22 London Road within East Grinstead<sup>15</sup>. This resulted in two scheme options – ‘*Do Minimum Network Enhancement*’ and ‘*Do Something Capacity Enhancement*’. The second option was not taken further. The first option proposed works at 3 junctions:
  - Felbridge Junction (A22/A264) – signal optimisation, widened pedestrian islands, 2 lanes on southbound exit
  - London Road/Imberhorne Lane – signal optimisation
  - London Road/Lingfield Road – replace roundabout with signalised junction
30. These works are referred to in this report as the A3DM works. The signal optimisation at London Road/Imberhorne Lane has now taken place. It is proposed that the highway contribution provided for in the Agreement, together with funding from other schemes, would enable the rest of the A3DM works to be delivered.

## **OTHER AGREED MATTERS**

31. There was extensive agreement on matters of common ground between the Council and the appellant and between West Sussex County Council and the appellant. There were also statements of common ground between the appellant and Surrey County Council and between the appellant and the Rule 6 party relating to highways matters<sup>16</sup>.

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<sup>13</sup> Inspector’s note – this finding is in contrast to that of the Appellant’s heritage witness who concluded that there would be some harm to significance, albeit less than substantial harm.

<sup>14</sup> CD2/13

<sup>15</sup> CD8/21 – the location of the 5 junctions is shown in figure LP/002, the options are summarised in table 22

<sup>16</sup> CD1/6, CD1/7, CD1/8, CD1/11 and ID2

32. The following is a summary of the key points of agreement between the Council and the appellant:

- the housing policies of the MSLP were based on the 1993 Structure Plan and the plan period ran to 2006
- the submission version of the Mid Sussex District Local Plan 2014 - 2031 contains a housing requirement of 800 dwellings per annum (dpa) which has yet to be tested at examination
- the Council cannot demonstrate a 5 year supply of housing sites. In a recent appeal decision at Haywards Heath<sup>17</sup> the Secretary of State accepted the Inspector's finding that the supply in Mid Sussex is between 1.91 and 2.36 years
- the site adjoins the south-western side of East Grinstead which is unconstrained by the Green Belt and AONB designations which apply elsewhere
- the site is in a sustainable location in terms of its accessibility to facilities and services in East Grinstead by sustainable modes of transport
- the proposals would bring economic and social benefits through the delivery of housing, 30% of which would be affordable housing, together with approximately 14.7ha of informal open space in the proposed SANGs
- there are no objections in terms of flood risk and drainage
- the development would not cause harm to the setting of Hill Place Farmhouse. There would be harm to the setting of Imberhorne Viaduct. In the terms of the National Planning Policy Framework (the Framework) the degree of harm would be less than substantial, falling to be considered under paragraph 134. The Council does not advance an objection on heritage grounds
- impacts on ecology and biodiversity are considered to be acceptable and suitable mitigation and enhancement measures could be secured by conditions
- the proposed SANGs would be of sufficient capacity to meet the demands of the development and an appropriate contribution to the Council's SAMM strategy could be secured through the Agreement. The Council has undertaken a Habitats Regulations Assessment Screening Opinion. It is agreed that, subject to appropriate mitigation being secured, the proposals would not have an adverse effect on the Ashdown Forest SPA and SAC, either alone or in combination with other plans and projects
- the Council does not have an objection on highways grounds. The contributions secured through the Agreement would help to fund junction improvements which, together with a travel plan, would mitigate the impact of the proposals on the highway network

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<sup>17</sup> CD10/16

33. The following is a summary of the key points of agreement between the County Council (as Highway Authority) and the appellant:

- the Highway Authority is satisfied that the proposal will provide future residents with the opportunity to use sustainable modes of transport and that safe and suitable access to the site can be achieved
- the traffic generation and distribution associated with the proposals is agreed
- there are existing peak period congestion issues on the A22 in East Grinstead. Traffic associated with the proposals would generate some additional vehicle movements which would inevitably add to congestion and delays, albeit that the increase is unlikely to be discernible compared with the existing situation
- there would be no adverse impact on the Turners Hill Road/West Hill/Brooklands Way junction, on the Turners Hill Crossroads (B2110/B2028) or on any other junction
- the additional modelling work carried out by the appellant in relation to the A22 junctions provides a robust basis for assessing the impact of the proposals
- the proposed improvements are those identified by Atkins in their 'Do Minimum' scenario. The funding provided by the Agreement would enable these works to be implemented. The appropriate approach to assessment is to compare the future year without the development or the improvements to the situation with the development and the improvements
- on this basis the proposed contribution to A22 junction improvements would mitigate the increases in traffic arising from the development and would provide a benefit for all users of the A22. Taking account of the proposed mitigation, there would not be a severe residual impact on the A22

34. Surrey County Council is the Highway Authority for the A22/A264 junction, one of the A22 junctions under consideration at the Inquiry. Surrey County Council has no objection to the proposal and agrees with West Sussex County Council's conclusions in relation to the A22.

35. The following is a summary of the key points of agreement between the appellant and the Rule 6 party:

- it is agreed that there is sufficient information on which to base a decision and that the AM and PM peak hours are the appropriate assessment periods
- the site is accessible by a variety of modes of transport with connections to the town centre, schools, bus stops and the railway station. The proposed travel plan provides suitable measures and initiatives to encourage sustainable travel patterns by future residents
- the traffic generated by the development, the distribution of that traffic and the resulting additional flows through the A22 junctions are agreed

- there will not be a severe residual cumulative impact on the operation of the Turners Hill Road/West Hill/Brooklands Way junction

## **THE CASE FOR THE APPELLANT – LINDEN LIMITED**

### **Introduction**

36. As a society we have completely failed to build enough houses. In England 144,280 houses were started in the year to June 2016, compared with an estimated annual need for 240,000<sup>18</sup>. The next generation now experiences immense difficulties in acquiring homes because they are too expensive. In Mid Sussex the average house price is £335,581 - an incredible amount of money for anyone contemplating home ownership. The average mean annual income is £29,437, so the ratio of average house price to average income is 11.4. In 1997 the lower quartile house price was 4.4 times the lower quartile income. It is now 12.59 times the lower quartile income<sup>19</sup>. Buying a home is becoming a near impossibility for those who live in this area.
37. The only way to break this worsening trend in affordability is to increase supply. This is an authority which should have built over 8,440 dwellings in the past 10 years but it has fallen short by 3,284 units. The planning process has become a major brake on housing delivery and objectors will do everything to stop housing permissions being granted.
38. This is not a development to be feared or disliked but one that will enable 200 families to have the security and comfort that we all yearn for and that every participant in this Inquiry takes for granted. The appeal scheme would provide warm, comfortable and modern homes, 60 of which would be affordable dwellings allowing those most in need to be housed. The affordable housing would benefit the weakest and most vulnerable in society.
39. The Council's main concern is landscape and visual harm. However some landscape harm is inevitable when there is acceptance by all parties that greenfield sites will be needed to meet housing requirements. The emerging local plan envisages some 5,000 houses outside the 2004 settlement boundaries. Mid Sussex is highly constrained, with the greater part designated as either a National Park or an AONB. The fact that the Council is promoting 600 houses in the AONB at Pease Pottage in order to meet its housing requirement amply demonstrates the difficulty in finding suitable housing sites in this district. The Council's resistance to this proposal is inconsistent with its stance elsewhere.
40. The settlement of East Grinstead is highly constrained by Green Belt and AONB. The sector to the south west of the town, where the appeal site is located, is the only direction the town can expand whilst avoiding these designations.
41. The Framework represents a radical change in respect of housing provision intended to boost significantly the supply of housing<sup>20</sup>. It is significant that the

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<sup>18</sup> APP3/2, appendix 3, paragraph 3.5

<sup>19</sup> APP3/2, appendix 5, paragraphs 4.4 and 4.48

<sup>20</sup> CD3/2, appendix 3, paragraph 4.3

secretary of State has recently described the housing land supply position in Mid Sussex as 'woeful'<sup>21</sup>.

### **The scope and nature of the balancing exercise**

42. The three planning witnesses at the Inquiry agree on the nature of the balancing exercises required and the matters to be considered:
- the statutory duty under section 38(6) which requires the determination to be made in accordance with the development plan unless other material considerations indicate otherwise
  - the statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special regard to be paid to the effect of proposals on the setting of a listed building
  - the policy approach set out in paragraph 14 of the Framework
  - the application of footnote 9 of the Framework
  - the application of paragraph 133 or 134 (as appropriate) in the context of the listed buildings
  - the application of paragraph 135 in the context of the Bluebell Railway (a non-designated heritage asset)
  - the re-engagement of paragraph 14 of the Framework

The final point is accepted by the Council but not by the Rule 6 party.

43. There is also agreement in relation to the benefits that need to be considered in favour of the grant of planning permission. The provision of market housing is agreed to be a factor that should be given great weight in the context of a lack of a 5 year housing land supply. The provision of 60 units of affordable housing is agreed to be a factor that should be given significant weight. The provision of economic benefits, social benefits and SANGs which are larger than would be required for the scheme alone are agreed to be factors that should be given some weight<sup>22</sup>.
44. On the other side of the balance the Council and the Rule 6 party contend that there would be harm to landscape character and visual amenity. In addition, the Rule 6 party alleges severe harm to the highway network, that the site access would be unsatisfactory and that there would be substantial harm to the listed viaduct, substantial harm to the non-designated heritage asset and harm to agricultural land. It is also alleged that the access to the SANGs would be inadequate because there would be no guarantee that the cattle arch would be available for public use.

### **The key case for the appellant**

45. This local planning authority is in intensive care in terms of the provision of housing. It has been the subject of strong criticism by the Inspector and the

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<sup>21</sup> CD10/16, paragraph 15 of the Secretary of State's decision

<sup>22</sup> Inspector's note – the weight to be attached to each of these factors was agreed by Mr Ellis and Ms Power respectively in answer to questions from Mr White



Secretary of State in the recent Haywards Heath decision, has failed to have a development plan for 13 years, has failed to build anything like enough houses and has always argued that needs should be met elsewhere<sup>23</sup>. The proposal would result in the provision of up to 200 residential units by one of the UK's most reputable development companies with a track record of delivery and quality.

46. The Secretaries of State for Communities and Local Government have made it their top priority to boost significantly the supply of housing through the publication of the Framework. This Inquiry is exactly the type of battle that the Framework seeks to avoid. The Framework is an attempt to rid this country of a planning system that has failed to provide enough housing over the past 20 years. That failure is not academic but is causing material harm to many who want to live in their own homes.
47. The harm is inflicted on those most in need – the homeless, the young, those in temporary accommodation, those in unsuitable accommodation and those still having to live at home. Difficult decisions need to be taken now in order to get more housing to assist those who need it in the face of concerted objections from those who have housing and demand that this need is not met near them.
48. It is agreed that East Grinstead is a highly sustainable settlement - the second most sustainable settlement in the district. In a highly constrained district, this site could not be more suited for housing. It is within one kilometre of the town centre and is probably the largest undeveloped site on the edge of East Grinstead which is not subject to a restrictive designation. The only justification for refusal advanced by the Council relates to landscape character and visual impact. However, this is a site without any formal identification as a valued landscape. It is large enough to provide very significant mitigation. There are no development control issues that are said to preclude its development, nor are there any infrastructure constraints which have not been addressed through the Agreement.
49. This Council has a woeful record of providing enough housing over the past 10 years. The requirement for 2016 - 2021 is massive. In the Council's own words (in the letter of the 29 September 2016<sup>24</sup>) it is a '*very challenging*' target. Meeting that target will require a complete rethink on planning decisions in order to achieve the delivery that is needed. That is what the Council is doing by promoting 3,500 houses in the open countryside next to Burgess Hill and, more critically, 600 units in the AONB at Pease Pottage. The contention there is that the housing need is so compelling that it represents the exceptional circumstances required to justify major development in the AONB. In contrast, the Council alleges that the harm attributable to 200 houses on an undesignated site at East Grinstead is too great. The Council's approach is completely inconsistent.
50. The alleged impacts do not outweigh the benefits of housing provision. If this site cannot come forward there is no realistic chance of delivering anything close to the 1,700 units now required every year. The overall planning judgement must take account of the limited effects that would be experienced

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<sup>23</sup> The MSDLP had a plan period running to 2006 and was based on the 1993 Structure Plan

<sup>24</sup> CD7/6

by a few people and set these against the benefits to the 200 families who would have the opportunity of a brand new home. Looked at in this way, there is simply no debate.

### **The approach of the parties**

51. The appellant has behaved impeccably throughout, seeking only to assist the Council to meet its housing requirement. The Council, and its officers, have sought to be as even handed as possible. Nevertheless, the appellant does not consider that the Council has carried out a balancing exercise that complies with the Framework. In August 2015 the weight to be given to housing need (including affordable housing need) should have outweighed any identified harm which is inevitable in the provision of housing. Since that decision, various factors have moved the balance towards the grant of planning permission.
52. There has been delay in adopting the new local plan. In February 2016 the Council was projecting the adoption of the plan by August 2016. That has completely fallen by the wayside and the Inspector examining the plan has raised serious issues about whether it complies with the requirements of policy in relation to the objectively assessed need for housing. The Secretary of State has recently described the housing land supply position in the district as '*woeful*'. The second reason for refusal was withdrawn on 14 September 2016. The 3<sup>rd</sup> and 4<sup>th</sup> reasons for refusal have now been resolved by the Agreement. Consequently the balancing exercise, which was always in favour of the grant of planning permission, has moved even more decisively in favour.
53. The position of the Rule 6 party's team is regrettable. The approach has been characterised by a failure to consider any point which weighs in favour of the grant of permission and by a very detailed elaboration of any point which is thought to weigh against. The planning witness produced evidence which failed to engage fairly with the necessary balancing exercises. It provides no assistance in reaching an overall planning judgment because there is no consideration of any of the benefits of the proposal. To accept '*great weight*' to the provision of housing in cross examination and yet make no reference to that judgment in the written evidence shows a degree of bias which discredits the evidence and requires it to be ignored<sup>25</sup>.
54. The objection of the Bluebell Railway is misguided. The proposal would enable many new visitors and residents to see views which are currently unavailable to the public. Visitors to the SANGs would be able to appreciate the majesty of the viaduct close up, have a picnic next to it and watch the trains pass. This would be a major enhancement of the ability to experience the heritage asset. The proposed housing would be no different to what has happened to the viaduct since its construction in 1880. Since then, the town has extended southwards and yet the viaduct has remained impervious to the increased proximity of housing.
55. Turning to the local residents, it is right to note that there were over a hundred objections to the planning application. That is moderate in the context of a

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<sup>25</sup> Inspector's note – in answer to questions from Mr White, Ms Power accepted that great weight should be attached to the delivery of housing in circumstances where there is not a 5 year supply

planning application promoting housing in a very prosperous area of the country. Moreover, it is notable that (other than Mr Peacock, the Rule 6 party) no residents have come to give evidence at the Inquiry.

### **Matters which are agreed**

56. The undersupply of housing in the past 10 years amounts to 3,284 dwellings, having regard to the requirement of 855dpa in the former South East Plan from 2006 - 2014 and 800dpa since that time in accordance with the emerging local plan. The Council accepts that it cannot currently demonstrate a 5 year housing land supply. In the recent Haywards Heath decision the Secretary of State concluded that the supply was between 1.91 and 2.36 years. The Council's planning witness accepted that there has been no material change in the position since that decision<sup>26</sup>. Consequently, it is agreed that paragraph 49 of the NPPF is triggered and that policies that restrain the supply of housing are to be considered out of date.
57. It is agreed that there is a compelling housing need in the district which should be given great weight in the balancing exercise. There is also a compelling affordable housing need which should be given great weight. The Council has identified a need for 474 affordable housing units per annum. The proposed 30% affordable housing provision is compliant with Policy H4 of the MSDLP and the affordable housing mix is agreed to be acceptable. It is agreed that there would be economic and social benefits from the grant of planning permission and that there would be benefit from the 14.7 hectares of SANGs, all of which should be given some weight in the balancing exercise.
58. It is agreed that the site is located in a sustainable location, being around 600 metres from East Grinstead Railway Station and Sainsburys supermarket and 1km from the town centre. The site has no landscape designation. There are no significant planning constraints such as flooding, drainage, archaeology, ecology, biodiversity, trees, noise, residential amenity or contamination which would prevent the grant of planning permission.

### **The policy approach to making the decision**

#### *Mid Sussex District Local Plan 2004*

59. The approach to the development plan requires all the policies to be considered individually and then considered in the round. The breach of one policy does not mean that there is a breach of the development plan as a whole – it needs to be weighed against the policies which are complied with. It is accepted that Policy C1 is breached because the site lies outside the settlement boundary. However, very little weight should be given to this policy because it relates to the supply of housing and is out of date. Moreover, it is not compatible with the Framework. Policy EG1 has ambiguity at its heart. It can sensibly be contended that it applies only to proposals within the town itself.
60. Policy H4 relates to the provision of affordable housing. Full weight should be applied to this policy, which is complied with. Moreover, Policies C5, G3 and T4

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<sup>26</sup> Inspector's note – the Secretary of State's decision (CD10/16) was dated 8 August 2016. In answer to questions from Mr White, Mr Ellis accepted that he was not aware of any material change in the housing supply position since that time

are all complied with. Consequently there is only one policy definitely breached by the proposal and perhaps one other that might be breached. Both of those policies must have greatly reduced weight. In contrast, the policies that are complied with should receive full weight. Therefore it is the contention of the appellant that the proposals are in accordance with the development plan.

#### *The emerging local plan*

61. The Council does not allege that the proposals breach the emerging local plan to the extent that would justify a refusal. No such policies are identified in the reasons for refusal. In any event it is agreed that only limited weight can be given to the plan because there are many objections to it which will need to be considered in the context of the forthcoming examination.

#### *East Grinstead Neighbourhood Plan 2016*

62. Policy EG5 is complied with if the Secretary of State concludes that the proposal is sustainable. The other criteria are clearly complied with. Policy EG2 is clearly subservient to EG5 and is trumped by it<sup>27</sup>. Compliance with Policy EG11 is dependent on the judgment made on the highways evidence – the appellant considers that it is complied with. Therefore it is contended that, overall, the proposal is in accordance with the development plan. Moreover, there is no allegation of any breach of the EGNP in the reasons for refusal.

#### *The National Planning Policy Framework*

63. These proposals comply fully with the Framework. They meet the overarching aim of the Framework to significantly boost the supply of housing. Taking account of all the factors in paragraph 7, the proposals amount to sustainable development.
64. In summary, the appellant concludes that the proposals accord with the development plan which comprises the MSDLP and the EGNP. There are no material considerations that indicate the development plan should not be followed in this matter.

#### **The benefits of the proposal**

65. The proposals would bring forward up to 140 market houses which would make a material contribution to the provision of housing in the district. It is agreed by all three planning witnesses that great weight should be given to the provision of market housing. That is right because, in the past 10 years, the Council has only delivered an average of 516dpa resulting in a shortfall of 3,284 units. The current requirement is a minimum of 800dpa. Allowing for the shortfall and a 20% buffer (which is agreed to be necessary) would result in a requirement of 1,748dpa for the next five years. That is a massive requirement which is over three times higher than the average delivery achieved over the past 10 years. If one considers the objectively assessed need as advocated by Barton Willmore the requirement would be even higher<sup>28</sup>.

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<sup>27</sup> Inspector's note – in answer to my question, Mr Ellis described Policy EG2 as a lower order policy, intended to deal with a different scale of development

<sup>28</sup> APP3/2, appendix 3, paragraphs 0.2 to 0.5

66. The appellant's position is that the Council can only show between 1.97 - 2.37 years supply<sup>29</sup>. This is indicative of a compelling and critical housing requirement as was accepted by the Secretary of State in August 2016.
67. The provision of 60 units of affordable housing should be given significant weight in favour of the grant of planning permission. Past performance shows a complete failure in delivery with an average of only 128dpa having been built in the past 12 years compared with the identified need for 474dpa. Last year not one was built. There are currently 1,420 households on the housing register in the district, including many in East Grinstead<sup>30</sup>.
68. The scheme would bring forward substantial economic benefits, including an investment of £40 million as a result of the development, 315 construction jobs, New Homes Bonus of £1.5 million and additional expenditure in East Grinstead by the new residents. The proposals would also bring forward substantial social benefits including a range of types of market housing and a range of types and tenures of affordable housing. All of these benefits should be given very significant weight. This would be consistent with the approach of the Secretary of State in the Haywards Heath decision<sup>31</sup>.
69. The proposals would result in provision of environmental benefits, including 14.7ha of SANGs land. This area is more than would be required as mitigation for the appeal scheme. It would be an attractive and substantial amenity area for the public, for at least the next 100 years, in close proximity to East Grinstead. This would be an important additional benefit of the proposal and should be given some weight in the planning balance.
70. All 3 planning witnesses accepted that the above factors weigh in favour of the proposal. The witnesses for the Council and the Rule 6 party accepted that there should be great weight afforded to housing delivery, significant weight to affordable housing and some weight to each of the other factors. Added together that provides very strong reasons for granting planning permission.

## **The impacts of the proposals**

### *Effect on landscape character*

71. Any development of agricultural land for housing involves a degree of harm to landscape character. However, in this case that harm is limited because of the physical characteristics and topography of the site which mean that it is visually contained. It is critical to note that the site is outside the AONB and is undesignated. The appellant's landscape witness has explained why the site does not share the characteristics of the AONB. Although the Council and the Rule 6 party contend that this is a valued landscape (in the terms of paragraph 109 of the Framework) this is an argument which has only recently emerged. This line of argument has recently become commonplace from landscape

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<sup>29</sup> Inspector's note – these figures are close to, but not the same as, the figures of 1.91 to 2.36 years reported by the Inspector in the Haywards Heath decision. The difference is not significant and I have assumed that the appellant is content to rely on the findings of the Inspector and the Secretary of State in that decision.

<sup>30</sup> APP3/2, appendix 5, section 5 and paragraph 4.39

<sup>31</sup> CD10/16, paragraph 15 of Secretary of State's decision – noting that this decision related to a smaller number of units (40)

consultants seeking to defeat housing proposals. Paragraph 109 should only apply to land which has merit otherwise it becomes devalued. This argument should be rejected in this case because of what you actually see on the ground. Moreover, weight should be given to previous work on landscape capacity which did not indicate this to be an unsuitable site for residential development<sup>32</sup>.

72. In the context of Mid Sussex the development of this land would result in a remarkably small level of harm to landscape character. In contrast, the Council is proposing to build 600 houses in the AONB at Pease Pottage and 3,500 houses in the open countryside at Burgess Hill. Moreover, the Council is not correct to characterise this site as having a very rural character. When one is on the site, the town spreads out in front of the eye giving a strong sense of being next to the settlement.
73. The proposals would incorporate significant mitigation in terms of landscaping around the site and the provision of the SANGs. The site has enough room to accommodate appropriate landscaping and no credible evidence has been called as to why it would not be effective. By year 10 there would be a significant degree of screening.
74. Taking all the above into account, the degree of harm alleged by the Council and the Rule 6 party is not credible. That was shown in the cross-examination of the Council's landscape witness when it became clear that the worst possible proposal in the most sensitive part of a national park would (on her assessment) be only slightly worse than the appeal scheme. The appellant's landscape consultant has assessed the effect on Parcel A as a moderate adverse effect, reducing to a minor effect after 10 years. Consequently, whilst there would be some harm to landscape character, the overall level of harm would not be substantial or significant. It should not weigh heavily in the planning balance.

#### *Effect on visual amenity*

75. The visibility of the site is very limited, being principally from just three locations - Turners Hill Road, the Bluebell Railway and views from within the town<sup>33</sup>. Turners Hill Road is a busy road which is currently surrounded by housing. The residents there would experience some change to their views. However, planting within the scheme would soften the impact and these properties already have a sense of the close proximity East Grinstead. Views from the Bluebell Railway already encompass much residential development on the approach to East Grinstead. The introduction of more housing, for around 20 seconds of journey time, would not cause any material harm to the passengers on the railway.
76. The views from within the town all have built development in the foreground or residential development in close proximity. This is demonstrated by the photographs provided by the appellant's landscape witness<sup>34</sup>. For a residential development of 200 units it is remarkable how limited views of the development would be. Consequently, although there would be some visual harm, this would be limited.

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<sup>32</sup> APP2/2, appendices 10 and 11

<sup>33</sup> APP2/3, HDA9

<sup>34</sup> APP2/3

### *Effect on the highway network*

77. The policy test is a high one – to refuse permission there needs to be a finding that the proposals would have a severe impact on the highway network<sup>35</sup>. The appellant submits that any harm to the highway network in this case would not get close to being severe. It is accepted that the existing network is currently subject to congestion and delays. However, it is agreed that the traffic generation arising from the proposals would amount to only two cars per minute during the peak periods.
78. Two junctions on the A22 would be improved as a result of the contribution secured by the Agreement. These are the Felbridge junction and the Lingfield Road junction. There would be a material improvement in conditions at these junctions if planning permission is granted. With the addition of the development traffic, together with the improvements, the average delay per vehicle would be reduced as compared with the base scenario at 2021. At the Imberhorne Lane junction, where improvements have already been carried out, there would be only a minor increase in delay of around 3 to 5 seconds per vehicle<sup>36</sup>. There is now a huge amount of material before the Secretary of State and one can see exactly how the network operates now and how it would operate in the future.
79. West Sussex County Council has reviewed the substantial evidence prepared by both the appellant and the Rule 6 party over a two year period and could not be more satisfied with the proposal. Similarly, there is no objection from Surrey County Council, in whose area the Felbridge junction is located. The Council has taken independent highways advice in relation to the evidence prepared by the appellant and the Rule 6 party and has subsequently withdrawn the second reason for refusal. Significant weight can be placed on that stance.
80. The Examiner of the EGNP rejected the contentions of the Rule 6 party notwithstanding having all the evidence put before her. The Examiner's amendments to Policy EG11 clearly allow the proposals to be considered acceptable under that policy. The effect of the Rule 6 party's objection, if upheld, would be to place an embargo on new housing in East Grinstead. That would be unprecedented. Moreover, given that this is the second biggest town in the district, it could only lead to less sustainable sites being developed elsewhere. For all of the above reasons, little weight should be given to this matter in the balancing exercise.

### *Criticisms of the design of the site access*

81. After much discussion, the proposed access arrangements have been accepted by the highway authority. An independent road safety audit has concluded there are no safety issues arising from the proposed access design. The 85th percentile surveyed speed indicates a 40 mph design speed, consistent with the existing speed limit. In any event, the proposals would tend to reduce traffic speeds by the introduction of the new junction, a splitter island and a gateway feature on Turners Hill Road. There is simply nothing in this point.

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<sup>35</sup> The Framework, paragraph 32

<sup>36</sup> APP1/1, paragraphs 4.44 to 4.96 and junction assessments at APP1/2, appendix 5

*Effect on the setting of the Imberhorne Viaduct*

82. The appellant accepts that there would be some harm to the setting of the viaduct. However the effect on significance would be towards the lower end of the spectrum of '*less than substantial harm*' within paragraph 134 of the Framework. It is simply not credible to assert there is substantial harm within paragraph 133. In general allegations of substantial harm are rare, particularly when considering cases such as this where there would be no direct impact on the heritage asset.
83. The significance of the listed viaduct has numerous elements of which setting is but one. Significance derives from the history, architecture and physical characteristics of the structure. The setting is an element of the physical characteristics but not a critical one in terms of significance. The presence of housing is not new to the setting of the viaduct. A third of the viaduct is adjoined by housing which has spread southwards over time with the expansion of the town. The setting of the viaduct is very extensive. It follows that the degree of change to the setting would be small, with the residential component of the appeal scheme being just 5 hectares. The majority of the setting would be unaffected. The photographs relied on by the Rule 6 party are not representative of what would be seen by the human eye. The effect has been exaggerated because a zoom lens has been used.
84. The Rule 6 party's planning witness argued that there would be substantial harm to the significance of the viaduct. This allegation was made for the first time in her proof of evidence. None of the other experts who have considered this matter have reached this conclusion. Even EDP, the specialists previously instructed by the Rule 6 party, did not make such an assertion. Furthermore, very little weight can be given to the Rule 6 party's heritage evidence because it does not follow Historic England's good practice advice on the assessment of effects on setting<sup>37</sup>. Rather than following a sequential process the evidence conflates the various stages of the assessment and gives no weight at all to the benefits of the proposals.
85. Any assessment must include the weighing of the major benefit of opening up the SANGs to the general public. This would provide new views of the viaduct, enabling it to be appreciated close up. Finally, the other public benefits of the proposal must be considered in the context of paragraph 134. A similar balancing exercise was been done in the Haywards Heath decision where the Secretary of State accepted that housing need outweighed any harm to the heritage asset in question<sup>38</sup>. The same approach is commended here.
86. Taking all these factors together there is an acceptance of some minor harm to the setting of the heritage asset. The effect on significance would be at the lower end of the scale of '*less than substantial*' in the terms of the Framework and would come nowhere near the substantial harm suggested on behalf of the Rule 6 party.

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<sup>37</sup> CD14/4

<sup>38</sup> CD10/16, paragraph 11 of the Secretary of State's decision



*Effect on the non-designated heritage asset (Bluebell Railway)*

87. The Rule 6 party's planning witness alleges substantial harm to the non-designated heritage asset. The heritage asset is the whole of the Bluebell Railway which is some 11 miles in length. The provision of housing alongside about 300 metres of the route would barely affect the experience of travelling on the railway. The railway passes through settlements and the appeal scheme would be seen as part of the settlement of East Grinstead which is at the northern end of the line. The sole consequence for passengers would be that the arrival into the built up area of East Grinstead would be brought forward by seconds and the departure from East Grinstead would be delayed by seconds. That would not amount to material harm.

*Effect on agricultural land*

88. An agricultural circumstances report was submitted with the application and the Council raised no concerns in relation to this matter<sup>39</sup>. The Framework is only concerned with the significant development of such land. It is not accepted that the scale of the appeal scheme passes the threshold of significance referred to in paragraph 112 of the Framework. Any housing development in the district is likely to involve some loss of best and most versatile agricultural land. Even the Rule 6 party accepts that this is not an impact which justifies refusal.

*Use of the cattle arch for access to the SANGs*

89. This is a private law matter which is not for this Inquiry. If planning permission is granted the appellant would pursue this matter through the Courts. The appellant would not be at the Inquiry if it did not think it has the necessary rights in law.

**The legal issues to be considered in the decision**

*Approach to the development plan*

90. There is a presumption in favour of the development plan unless material considerations indicate otherwise<sup>40</sup>. In deciding whether a proposal accords with the development plan it is necessary to consider all the policies in the round. The decision letter should say whether or not the decision maker considers the proposal accords with the development plan. The weight to be given to the policies is a matter for the decision maker.

*Approach to the listed building duty*

91. In considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses<sup>41</sup>. Decision makers should give considerable importance and weight to the desirability of preserving the settings of listed buildings<sup>42</sup>. If there is harm to the setting of a listed

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<sup>39</sup> CD2/18

<sup>40</sup> Section 38(6) of the Planning and Compensation Act 2004

<sup>41</sup> Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>42</sup> *Barnwell Manor* [2014] EWCA Civ 137 (CD10/22)

building there will be a strong presumption against the grant of planning permission. However, planning permission can be granted where the harm can be outweighed by material planning considerations powerful enough to do so<sup>43</sup>. The decision maker needs to make it clear that the statutory test in section 66 has been addressed and applied in the decision letter<sup>44</sup>.

*Approach to footnote 9, paragraphs 133, 134 and 135 and paragraph 14*

92. If there is harm to the setting of a listed building then footnote 9 of the Framework applies<sup>45</sup>. Therefore an ordinary or un-weighted balance of harm and benefits should be undertaken and it is necessary to give considerable importance and weight to preserving the listed building, in accordance with section 66. In a case of less than substantial harm, if the benefits of the proposal under paragraph 134 outweigh the harm then the pre-weighted paragraph 14 balancing exercise in favour of sustainable development is re-engaged for the consideration of all harm versus the benefits.

*Approach to the cattle arch dispute*

93. This is not a relevant material consideration for the decision maker as it involves a private law dispute between two landowners.

**Response to the case for the Council**

94. The Council's case makes no real acknowledgment of the crisis with regard to the provision of housing in Mid Sussex. The Council has a huge shortfall and yet thinks it is appropriate to fight proposals totalling 1,000 houses at appeal rather than grant permissions<sup>46</sup>. It is necessary to consider the weight to be given to the benefits of housing delivery. It is commonly accepted that weight is influenced by the extent of need. When undertaking the balancing exercise it is necessary to understand just how compelling the housing need actually is.
95. The assertion that the site forms part of a valued landscape emerged for the first time in the context of this application. Prior to 2015 not one organization had ever concluded this land was of value. The Council's closing submissions unfairly criticised the appellant's landscape witness who had previously been instructed by the Council to undertake a capacity appraisal of the district in 2007. There was no criticism or rejection of that study and it has been used by this authority for many years.
96. The Council's closing submissions on the development plan are not consistent with section 38(6) in that there is no reference to any policies which are complied with. Affordable housing is dealt with in the briefest possible terms. Generally the Council attaches enormous importance to meeting affordable housing needs.

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<sup>43</sup> *Forge Field* [2014] EWHC 1895 (CD10/23)

<sup>44</sup> *South Lakeland* [2014] EWHC 3979 – but note *Jones v Mordue* [2015] EWCA Civ 1243 where it was determined that the claimant must indicate that the decision maker had not given the required considerable importance and weight to the statutory test (CD10/6)

<sup>45</sup> *Forest of Dean* [2016] EWHC 421 (CD10/7)

<sup>46</sup> CD7/6, annex B

97. The Agreement contains some alternative wording relating to the future arrangements for the SANGs. The Council's suggested wording reflects a fear which is not shared by Natural England, or by any other local planning authority with SANGs provision. Not one example of another section 106 agreement which takes this approach has been identified. The Council's approach would impose an additional up-front development cost of £2.4 million. Such an approach is not reasonable and, if accepted, would materially harm the supply of housing.

### **Response to the case for the Rule 6 party**

98. Landscape and visual amenity is the sole remaining reason for refusal in this case. By far the greater part of the closing submissions relates to matters which have no support from the Council, the highway authority or Surrey County Council. Apart from the points on landscape, the Rule 6 party's case has been comprehensively rejected by every relevant statutory body, notwithstanding all the information which has been commissioned.
99. The closing submissions for the Rule 6 party lack any attempt at balance. In any balancing exercise one needs to consider benefits as well as harm. There is no recognition of the strength of Government policy towards housing provision. There is no recognition of the weight which the Rule 6 party's planning witness accepted should be given to housing need, affordable housing, economic and social benefits, the SANGs provision and the sustainable nature of this site.
100. It is not right to say that the emerging local plan is at an advanced stage in view of the level of objections to it and the matters raised by the Inspector conducting the Examination. There is great uncertainty over its final content. The submission that permission should be refused if the development is found to be contrary to the EGNP is not consistent with Section 38(6). Even if the proposals are found to be contrary to the development plan then of course planning permission can still be granted. Moreover, the approach taken to the development plan fails to consider all policies in the round.
101. The Rule 6 party's approach to the effect on the viaduct ignores Historic England's good practice guidance on the setting of heritage assets. The appellant's heritage witness was not challenged on her approach to this matter nor was it argued, in closing, that the Rule 6 party's evidence complies with the guidance. The emphasis on the effect on the Bluebell Railway (a non-designated heritage asset) is an implicit recognition that the viaduct point is not that strong. In any event, it has not been explained how the provision of housing would reduce the attractiveness of the railway and harm the experience of the passengers.
102. The highways evidence provided by Jubb (the Rule 6 party's highways consultant) is unreliable because of its dependence on a queue length methodology which is novel and not fit for purpose. The Secretary of State ought not to rely on a methodology which has only been used once before<sup>47</sup>.

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<sup>47</sup> Inspector's note – in answer to questions from Mr White, Mr Grist confirmed that he had used this method on one previous occasion. He maintained that the approach taken, which uses a video recording taken from a moving survey vehicle, was more accurate than alternative methods in complex queuing situations

Vectos (the appellant's highways consultant) is one of the leading traffic consultancies in the country and yet has never come across this methodology. Whilst it is right to say that Vectos accepted that its enumerators could not always see the end of the queue, in fact that only happened on a total of 3 occasions when a minimum of 37 vehicles was recorded. Moreover, whilst Vectos only carried out turning counts and queue length surveys on a single day, the traffic flows were verified by a week of automatic traffic count data<sup>48</sup>. The assertion that the county, district, and town councils have agreed that the Jubb methodology is fundamentally sound is not accepted. There is no evidence to justify that conclusion.

103. The Rule 6 party has no basis on which to conclude that the adverse effects of the proposals would outweigh the benefits because the witnesses concerned never carried out a proper or valid balancing exercise.

### **Conclusion to the balancing exercise**

104. Mid Sussex is in desperate need of more housing and more affordable housing. It is common ground that housing delivery should be given great weight in this case. There are also material economic, social and environmental benefits that would accrue if planning permission were granted. If one applies the weight to each of these factors that the Council and the Rule 6 party agree ought to be applied, then it follows that very substantial weight should be attached to them collectively.

105. The following impacts should not be regarded as weighty in the balancing exercise:

- the harm to landscape character would be localised and should be given only moderate weight
- the harm to visual amenity would be localised due to the highly contained nature of the site and should be given only moderate weight. All the points where the site would be visible are currently within the town or have built development within the viewpoint
- the allegation of severe harm to the highway network has not been made out and should be given no weight
- the allegation that the design of the access is inadequate has not been made out and should be given no weight
- the allegation of substantial harm to the listed viaduct has not been made out - the harm is properly to be considered as less than substantial and the benefits of the proposal outweigh the harm
- the allegation of harm to the Bluebell Railway has not been made out - little weight should be given to it and paragraph 135 is passed
- there would be no harm due to loss of agricultural land such as to justify refusal

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<sup>48</sup> Inspector's note - in answer to questions from Mr Harwood, Mr Dix stated that automatic traffic counts which had been taken for a week showed that the survey data was representative

- the SANGs would be delivered so this is not a factor that justifies refusal.

106. Consequently the following balancing exercises are passed:

- the proposal accords with the development plan overall and the determination should be in accordance with the development plan unless other material considerations indicate otherwise
- the effect on the setting of the listed building would be towards the lower end of the scale and in the context of paragraph 134 of the Framework the benefits would outweigh the harm
- the proposal is for sustainable development and the paragraph 14 presumption should apply
- the proposal passes the application of footnote 9, paragraph 134 and 135 and paragraph 14 should therefore be re-engaged
- the weighted balancing exercise is thus applied in favour of the grant of planning permission and the impacts would need to significantly and adversely outweigh the benefits which they patently do not do.

107. In accordance with the strong injunction of Government policy, as set out in the Framework, to boost significantly the supply of housing, the appellant respectfully asks that planning permission be granted.

## **THE CASE FOR MID SUSSEX DISTRICT COUNCIL**

### **Introduction**

108. The Council maintains that the appeal should be dismissed because there would be significant adverse impacts on the local landscape character and on views from the town. The proposal is contrary to the development plan and there are other material considerations which also indicate that permission should be refused. The adverse impacts significantly and demonstrably outweigh the benefits of the proposal.

109. There is no dispute as to the benefits arising from the proposal. These include local economic benefits and the potential contribution to the supply of market and affordable housing. There is no dispute that these matters attract significant weight, particularly in light of the recognised housing land supply shortfall. The Council accepts that permission should only be withheld if the harm significantly and demonstrably outweighs the agreed benefits of the proposal. These are matters of agreement and the appellant's case gains nothing from their repetition.

110. The appellant's case is predicated on several false steps and should be rejected. In summary, the appellant has understated the landscape and visual impacts of the proposal, failed to properly appreciate the value of the landscape, analysed the impacts from a predetermined view that the site is capable of accommodating substantial residential development, adopted a methodology which is prone to understate the visual impacts of the proposal and has drawn a series of conclusions which are not properly defensible. Consequently, the appellant's planning evidence has proceeded on a mistaken basis. It has failed properly to apply the statutory test in section 38(6) and has largely ignored the significant conflict with the existing and emerging development plan.

## Effect on landscape and visual impacts

111. A critical issue between the appellant and the other parties is whether the appeal site should be regarded as a '*valued landscape*' for the purposes of paragraph 109 of the Framework. It is agreed that the Council properly considered this point in the Officer's Report<sup>49</sup> and that the reference to paragraph 109 in the first reason for refusal is a reference to the first bullet point of that paragraph.
112. Before considering the expert evidence before the Inquiry, the Council notes the objective evidence that indicates that this landscape is valued:
- it adjoins the AONB
  - it lies almost adjacent to the settlement boundary and forms part of the setting of East Grinstead
  - it is close to, and viewed from, the High Weald Landscape Trail and the Bluebell Railway
  - the attractive landscape setting of East Grinstead is a matter which is reflected in policies which recognise that setting as a constraint on its future development<sup>50</sup>
  - the site lies within a Landscape Character Area which has a strategy for conservation
  - the application attracted 154 letters of objection<sup>51</sup>, many of them raising the adverse landscape impact, including a strong objection on landscape grounds from CPRE.
113. Landscape evidence involves subjective judgments, albeit informed by expertise and robust methodologies. The appellant's landscape witness is an experienced professional. That said, the context of his evidence is important. In 2007 he formed the view that an area including the appeal site had medium/high capacity for development<sup>52</sup>. That view has since been questioned through further work by LUC in 2014 and 2015 and has not been maintained<sup>53</sup>. The SHLAA<sup>54</sup> Landscape Review concluded that a narrower area than that considered in 2007 had a low landscape suitability for development. This assessment attributed value to the site because it was '*potentially an important landscape resource in proximity to settlement*'.
114. The appellant's landscape witness was instructed by Linden prior to February 2014 to provide landscape input to the appeal scheme. This pre-dated the indicative layout (Oct 2014) and the decision on the quantum of development. His landscape and visual assessment of October 2014 did not refer to the LUC

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<sup>49</sup> CD3/2, page 11

<sup>50</sup> See MSDLP supporting text 12.1 to 12.8, and policy EG1, which expressly protects the setting of the town from development which would detract from it (CD 7/1) and EGNP supporting text at 1.9, 2.3 to 2.4, 4.1 to 4.3 and Core Objectives (CD9/3)

<sup>51</sup> CD3/2, page 3 and CD1/10 - 02

<sup>52</sup> APP2/2, appendix 10

<sup>53</sup> APP2/2 appendix 11 ( LUC Capacity Report) and appendix 12 (SHLAA Landscape Review)

<sup>54</sup> Strategic Housing Land Availability Assessment

Capacity report and pre-dated the SHLAA Landscape Review. His own view was therefore set without reference to any other expert analysis of the capacity of the site to accommodate development. It is reasonable to infer that the view taken in 2007 directly informed the content of the planning application through his advice to the appellant in 2014. To this extent he is defending his own scheme, not coming at the matter from a position of neutrality.

115. This evidence is to be weighed against the judgments of others, all of which conclude that the site cannot accommodate this scale of development without significant adverse landscape and visual impacts. In addition to the findings of the SHLAA Landscape Review, this is also the view expressed by no less than three Chartered Members of the Landscape Institute who have reviewed the appeal proposals<sup>55</sup>. The weight of expert evidence before the Inquiry is therefore against the appellant.
116. The appellant's landscape witness regards the proximity of the site to East Grinstead as diminishing the value of the landscape. He relies upon what he calls an '*urban influence*', because of the inter-visibility between the site and the town. The Council's evidence was that the site is emphatically rural in character. In the absence of any urbanising features within the site itself it should not be regarded as being urban in nature. Moreover, the proximity of the town increases the value of the landscape because the site forms part of the valued setting of the town. The topography is such that the site rises away from the settlement beyond the existing urban boundary at the valley floor. There is currently a strong division between urban and rural which would be lost through the proposed development.
117. Contrary to the evidence of the other landscape witnesses at the Inquiry, the appellant's witness argued that the development site lacks the characteristic features of the High Weald and, in particular, of the AONB. He referred to the assart<sup>56</sup> dominated landscape of the High Weald and drew attention to the absence of this landscape type within the appeal site. Faced with evidence that informal fieldscapes are also characteristic of the High Weald AONB, his response was that he was only referring to that part of the High Weald in the immediate vicinity of the site. That response ignores the purpose of the exercise, which is to consider whether the appeal site has landscape characteristics which are consistent with the nationally designated landscape. The Council relies on the careful analysis on this issue in its evidence<sup>57</sup>. The site forms a continuation of the AONB in terms of character and quality and it displays some of the components set out in the AONB statement of significance.
118. The appellant's landscape witness also suggested that Parcel A can be distinguished from Parcel B in landscape terms. This analysis is simply untenable and does not justify his conclusion (reached in 2014) that Parcel A was suitable for development of 200 houses but Parcel B was inappropriate for development. In fact, Parcel A and Parcel B form part of the same topographical

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<sup>55</sup> Virginia Pullan, the East Sussex County Landscape Architect and the Council's advisor on landscape matters at the time of the determination of the application (APP2/2, appendix 14), Rebecca Knight (landscape witness for the Council) and Bettina Kirkham (landscape witness for the Rule 6 Party)

<sup>56</sup> Assart - a field formed by clearing forest

<sup>57</sup> LPA1/1, paragraphs 2.15 to 2.18 and table 2-1

feature and the suggested sharp distinction is not supported by the position on the ground.

119. These issues expose the simple fact that the appellant's landscape witness has sought to write down the value of Parcel A in terms of landscape value. This leads to his conclusion that the site has capacity for development and that the landscape impacts are acceptable. His judgment on these points is influenced by his history of involvement in this scheme. This is demonstrated by his finding that, within Parcel A, the replacement of rural fields with a housing estate is ranked as constituting only a medium-low magnitude of change and a moderate-minor adverse effect<sup>58</sup>. Given the scale of the development proposed, the Council invites the Secretary of State to reject that analysis and to attach more weight to the judgments of the Council's landscape witness. The Council's landscape witness concluded that there would be a significant localised adverse effect on the landscape, moderate-major adverse in the first year declining to moderate at year 10<sup>59</sup>.

### *Visual impacts*

120. The methodology used by the appellant's landscape witness introduces a material departure from the approach set out in the *Guidelines for Landscape and Visual Impact Assessment 3* (GLVIA3). GLVIA3 makes clear that, in assessing the sensitivity of a visual receptor, it is necessary to consider susceptibility and value, neither of which requires any assessment of the magnitude of the impact<sup>60</sup>. The magnitude of the impact falls to be weighed against sensitivity. However, the appellant's approach does take account of magnitude when assessing sensitivity<sup>61</sup>. The effect is that some receptors are regarded as less sensitive because their view of the appeal site is restricted. The significance matrix multiplies sensitivity by magnitude. Consequently, this approach double counts magnitude.
121. For example, in respect of residents in East Grinstead<sup>62</sup>, those receptors are given a medium sensitivity because of limitations on their view of the site and a low magnitude of change because of the same limitations, resulting in a minor adverse effect. If the 'double counting' were avoided, the receptors would have a high sensitivity, a low magnitude of change and moderate adverse effect. The same exercise can be repeated for other receptors.
122. As a result of this methodology, the appellant's landscape witness avoids concluding that there would be an overall significant effect because he avoids 'cumulative moderate effects'<sup>63</sup>. If he removed the double counting, he would conclude that the adverse visual effects would be significant. In addition, he reports lesser adverse effects across the board than those reported by the other

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<sup>58</sup> APP2/2, appendix 2 – magnitude of change for Parcel A assessed as medium at completion and low after 10 years; significance of effect assessed as moderate at completion and minor after 10 years

<sup>59</sup> LPA1/1, paragraphs 3.7 to 3.9

<sup>60</sup> Relevant extracts are at LPA6

<sup>61</sup> APP2/2, appendix 1, paragraph 1.9.1 – for example medium sensitivity may arise from a partial view from a viewpoint of medium value

<sup>62</sup> APP2/2, appendix 3

<sup>63</sup> APP2/2, appendix 1, paragraph 5.3



landscape witnesses. When cross examined he conceded that his methodology departs from GLVIA3, arguing that it is only guidance<sup>64</sup>. However, it is that departure which leads to an entirely different conclusion from those reached by the two other members of his Institute who appeared at the Inquiry. Those witnesses do not depart from GLVIA3, as may be seen from their evidence<sup>65</sup>. For that reason, their assessments should be preferred.

#### *Conclusion on landscape and visual impact matters*

123. First, there is abundant evidence that the appeal site forms part of a valued landscape. There is objective evidence of that in terms of longstanding planning policy recognition of the value of the rural setting of East Grinstead, including through its distinctive topography. There is also expert evidence to support that conclusion through detailed analysis of the physical features of the site applying the methodology of GLVIA3<sup>66</sup>.
124. Second, on a proper analysis the appeal proposals would result in significant localised adverse effects on landscape character and on local visual receptors. These receptors would include communities in East Grinstead, users of a designated landscape trail and passengers on a tourist railway.

#### **Planning balance**

125. There is remarkably little between the Council and the appellant on matters of planning policy. The issue turns on the application of policy and on the assessment of the landscape and visual effects of the proposal.

#### *The development plan*

126. The development plan consists of the MSDLP and the EGNP. These plans sit together, rather than the latter superseding the former. The MSDLP sets a built-up development boundary for East Grinstead which is not altered through the EGNP. The proposal is outside that boundary and therefore contrary in principle to the development plan. The appellant's planning witness accepted this in cross-examination although it is remarkable that his proof of evidence lacks any assessment of whether the proposal complies with the development plan<sup>67</sup>. The only conclusion that can be drawn on the first part of the section 38(6) test is that the proposal is contrary to the development plan.
127. The only development plan policy which the appellant relies on is EGNP Policy EG5. It is suggested that this is a permissive policy, which allows for development outside the boundary of East Grinstead where it meets the criteria set out in paragraphs (a) to (g). In essence, the question of whether the

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<sup>64</sup> Inspector's note – in answer to questions from Mr Turney, Mr Duckett accepted that his approach to assessing the sensitivity of visual receptors did not exactly follow GLVIA3 and that Ms Knight's approach was more consistent with that guidance. However, he maintained that there was a good reason for his approach

<sup>65</sup> LPA1/2, appendix 1, paragraphs 1.23 - 1.35 including tables 1-6, 1-7 and 1-8 and DP2/3, appendix BKA paragraphs 4.3 to 4.8 including tables 6 and 7

<sup>66</sup> LPA1/1, table 2-1

<sup>67</sup> Inspector's note – in answer to questions from Mr Turney, Mr Edwards accepted that the scheme is in conflict with Policy C1 of the MSDLP. He maintained that, if not explicit, this was implicit in his proof of evidence

proposal meets those criteria turns on the landscape and visual impacts of the proposal. For that reason, the Council's planning witness concludes that the proposals are contrary to EG5 and the appellant's witness reaches the opposite conclusion. In any event, the Council submits that the proposals are flatly contrary to policies C1 and EG1 of the MSDLP and the overall conclusion must therefore be that the proposals are not in accordance with the development plan.

*The weight to be attached to development plan policy*

128. It is accepted that the MSDLP policies are not up-to-date. Policies C1 and EG1 are to some extent relevant policies for the supply of housing and accordingly fall to be treated as out-of-date under paragraph 49 of the Framework. However, in the Haywards Heath appeal decision the Secretary of State recognised that Policy C1 is not out of date so far as it seeks to protect the countryside, consistent with paragraph 17 of the Framework. EG1 should also be accorded weight so far as it is an environmental protection policy which reflects the particular value of the landscape surrounding East Grinstead as providing an attractive setting for the town. In this respect, it is not a policy for the supply of housing but a specific policy intended to protect the special setting of this settlement.
129. Policy EG5 of the EGNP is up-to-date. The weight to the policies in the EGNP, so far as they restrict new housing, might be reduced to reflect the absence of five year housing land supply.
130. Overall, the relevant policies of the development plan fall to be accorded reduced weight so far as they seek to restrict new housing development but still attract weight so far as they are environmental protection policies. To this end, the clear conflict with the development plan is a matter which should attract considerable weight.

*Other material considerations*

131. The housing land supply shortfall is a matter which should be given significant weight, as should the other agreed benefits of the proposal. This is set out in short terms because it is agreed between the parties - not because the Council wishes to diminish the weight given to these matters.
132. However, paragraph 109 of the Framework states that the protection of valued landscapes is an important component of national policy. The recognition of the intrinsic character and beauty of the countryside is a core planning principle which is set out in paragraph 17. This point was emphasised in the Minister's letter to the Planning Inspectorate in March 2015 and in various appeal decisions<sup>68</sup>. The appeal site forms part of a valued landscape which provides an important setting for East Grinstead. Loss of that valued landscape should be regarded as significant, both as a matter of ordinary language and through the proper application of landscape and visual impact assessment.
133. The proposal is contrary to the emerging District Plan, which does not extend the development boundary of East Grinstead. Nor does it allocate the appeal site for development. However, despite its advanced stage, the presence of

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<sup>68</sup> LPA2/3, appendix 4 and (for example) an appeal decision at appendix 5

numerous unresolved objections to the plan means that limited weight should be accorded to this conflict.

*Overall conclusions on planning balance*

134. The proposal would deliver benefits in terms of market and affordable housing which should be given significant weight. However:

- it would be contrary to the development plan
- it would be contrary to the emerging District Plan
- it would result in the loss of a valued landscape
- it would fail to recognise the intrinsic beauty of the countryside
- it would cause significant adverse effects to landscape character and to the visual amenity of the area
- it would detract from the consistently recognised and defended rural setting of East Grinstead.

These matters significantly and demonstrably outweigh the benefits. Accordingly, the proposal should not be regarded as sustainable development and the appeal should be dismissed.

**SANGs management**

135. The outstanding issue relates to the financial arrangements for the future management of the SANGs<sup>69</sup>. The purpose of the SANGs is to provide (for at least 80 years) an alternative recreational space to avoid harm to the Ashdown Forest SPA. Without the SANGs, the appeal proposals would be refused on the basis set out in the third reason for refusal<sup>70</sup>. The Council and the appellant agree that the owner should be able to choose whether the SANGs land would be transferred to the Council or managed through a Management Entity.

136. The appellant accepts that the payment of a commuted sum representing the costs of management for 80 years would be reasonable in the event of transfer to the Council. The Council proposes that the same amount of money should be made available if the other option is chosen. This is because, if there were a failure to manage the site, the Council would have to step in to ensure that it continued to serve its purpose of avoiding harm to the SPA. The SANGs would be different from other kinds of green infrastructure. Public access would have to be maintained and management would have to be to a set specification. The Council considers that the development should provide for the funding of the SANGs management in the event of default by the Management Entity.

137. The Council's drafting does that. It ensures that the lifetime costs of SANGs management would be made available in two tranches, before commencement and then after occupation of 75% of the development. The commuted sum would be held in an account on trust. It could be drawn down by the Management Entity on an annual basis over the 80 year period. If the Council

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<sup>69</sup> The alternative drafting is at clauses 5.5A/5.5B and 5.6A/5.6B

<sup>70</sup> See also CD3.1 - the Habitats Regulations Assessment

had to step in, it would have an immediate source of funding for the management of the SANGs.

138. The Appellant's drafting would only provide for a reserve fund. This would not cover the costs of future management in the event of default. The appellant suggests that any shortfall could be addressed through service charges. However, there is no provision for the Council to recover service charges and, in any event, the Council would not wish to assume the administrative burden of collecting service charges from 200 dwellings. Moreover it would be politically unacceptable to require private owners to fund the management of a publicly owned asset. The appellant's drafting invites the public purse to assume the financial risk associated with the step-in scenario. The Council's drafting requires the landowner (who takes the benefit of the permission) to cover that risk. Accordingly, the Council asks that its drafting is preferred if planning permission is granted.

### **Conclusion**

139. For the reasons given above, the Council maintains the first reason for refusal and asks that the appeal is dismissed.

### **THE CASE FOR DAVID PEACOCK – THE RULE 6 PARTY**

140. Mr Peacock is the owner and occupier of Barredale Court, Turners Hill Road, East Grinstead which adjoins the appeal site. He made representations on the planning application supported by reports from planning, highways and environmental consultants. Mr Peacock supports the first two reasons for refusal in respect of landscape and visual impacts and highways. Additionally, the appeal should be refused because of the adverse effect on the setting of the Imberhorne Viaduct, a listed building. Reasons 3 and 4, in respect of the SANGs and other planning contributions, would be resolved by the Agreement.

### **Planning Policy**

141. The development plan comprises the MSDLP, the Small Scale Housing Allocations DPD, Minerals and Waste DPDs and the EGNP which was made on 2 November 2016. The appellant's statement of case overlooks the Small Scale Housing Allocations DPD which is a serious omission since this is part of the Council's progress in identifying sites for housing.
142. The emerging development plan includes the draft Mid Sussex District Local Plan 2014 - 2031 which is at an advanced stage. As the examination is underway, the weight to be attached to the plan is liable to change before this appeal is determined, particularly if the Inspector reaches an interim conclusion on housing numbers and strategy. The proposals are contrary to the MSDLP, the EGNP and the emerging Local Plan. It is within a Countryside Area of Development Constraint, as identified in EGNP Policy EG2. It also conflicts with EG3(a) and (b), relating to design, EG5 (housing) and EG11 (mitigating highway impact).
143. The former West Sussex Structure Plan and the South East Plan proposed a major mixed use development at a broad strategic location '*west and south-west of East Grinstead*'. Those proposals were abandoned and have rightly not been relied on at this Inquiry. The ability of East Grinstead to accommodate

further substantial development is now much diminished because of high landscape value and severe and increasing traffic problems in the town.

144. It is agreed that the Council does not have a five year housing land supply. In accordance with paragraph 49 of the Framework policies for the supply of housing are therefore out-of-date. However, they should still be given weight. MSDLP Policy C1 should have some weight because it is consistent with the Framework in terms of providing environmental protection. Policy EG1 also has weight in its local role.
145. Importantly, the EGNP has been made in the knowledge of the lack of a five year housing land supply and uncertainty as to the district-wide requirement. It provides the local solution to the present district-wide housing position as determined by the Town Council, the EGNP Examiner, the District Council and the residents of the town. It is a striking example of how a neighbourhood can respond to district-wide planning change and is an endorsement of the confidence that successive Secretaries of State have placed in neighbourhood planning. It is common ground that full weight should be given to the EGNP and that, if the proposal is contrary to the EGNP, planning permission should be refused<sup>71</sup>.

### **The issues**

146. The issues are:

- loss of countryside (MSDP Policies C1 and EG1, EGNP Policies EG2 and EG2a, paragraph 17 of the Framework)
- landscape and visual impact (EGNP Policy EG5(b), paragraph 109 of the Framework)
- effect on the setting of the listed Imberhorne Viaduct (EGNP Policy EG4, paragraphs 132 – 134 of the Framework, section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990)
- effect on the Bluebell Railway, a non-designated heritage asset (EGNP Policy EG4, paragraph 135 of the Framework)
- loss of best and most versatile agricultural land (Policy DP10 of the emerging Local Plan, paragraph 112 of the Framework)
- traffic (EGNP Policy EG5(c), EG11 and paragraphs 7 and 32 of the Framework)

147. Given the primacy of the EGNP, debate about the application of paragraph 14 of the Framework falls by the wayside. Nevertheless, some observations can be made. Since the historic environment policies in the Framework indicate that development should be restricted, the '*significantly and demonstrably*' test in paragraph 14 does not apply. It is common ground that harm to the setting of a listed building would occur and so the second limb must be applied and tests

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<sup>71</sup> Inspector's note - in answer to questions from Mr Turney, Mr Edwards agreed that full weight should be attached to the EGNP and in answer to questions from Mr Harwood he agreed that, if the Secretary of State finds the proposals to be in conflict with the EGNP, then planning permission should be refused.

elsewhere in the Framework must be considered. If it is found that the listed building harm is not sufficient to refuse permission, then the appellant seeks to apply the first limb. However, the weighted balance in favour of the scheme<sup>72</sup> would need to be applied against all of the harm including the policy and statutory presumptions against allowing harm to the setting of listed buildings<sup>73</sup>. It is not possible to apply simultaneously presumptions both in favour of and against development<sup>74</sup>. Sensibly the Framework does not do so.

148. The *Forest of Dean* judgement<sup>75</sup> determined that '*less than substantial harm*' to a designated heritage asset falls within footnote 9 of the Framework and thus requires the application of the second limb of paragraph 14. The judge went on to say that, having applied the second limb, the first limb ('*significantly and demonstrably outweigh*') is then applied. That was incorrect for the reasons given above.

149. There is a danger in overcomplicating the Framework which is intended to be a practical decision making tool. It is subordinate to the development plan as a matter of law. Moreover, it actively endorses the primacy of the development plan<sup>76</sup>. If the development plan is to be departed from because of other material considerations, then the approach to those factors is a holistic one, looking at the considerations overall but driven by the most potent matters. Where the Framework indicates that a development should be discouraged then those tests will drive the exercise. Examples include Green belt, designated heritage assets, major development in nationally designated landscapes and European Protected Sites. Where no such constraints apply and the development plan is '*absent, silent or relevant policies are out-of-date*' then the '*significantly and demonstrably outweigh*' limb of paragraph 14 will have primacy.

## Housing

150. The need for housing, and the benefit of providing it, is recognised. The issue in this case is whether Hill Place Farm is a suitable place to meet that need. Moreover, the weight to be given to the benefit is reduced by uncertainty about delivery. The issue is whether an easement in favour of the owners would allow upgrading of the cattle arch and public access through it which would be needed to give access to the SANGs. Resolution of that issue requires either a Court ruling or an agreement to be reached with the Bluebell Railway. The Bluebell Railway is opposed to the scheme. Even if planning permission is granted the scheme could be delayed, thereby reducing its contribution to the five year housing land supply, or it might not happen at all.

151. The objectively assessed need for housing in Mid Sussex is being considered as part of the Local Plan examination. That process will continue whilst this appeal

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<sup>72</sup> '*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits*'

<sup>73</sup> Paragraph 132 – 134 of the Framework and section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>74</sup> Green Belt policy is another example - on the appellant's approach the very special circumstances test would be applied because of the second limb of paragraph 14 and then very special circumstances would fall to be applied again under the first limb

<sup>75</sup> CD10/7 – *Forest of Dean Council v Secretary of State* [2016] EWHC 421 (Admin)

<sup>76</sup> Paragraphs 11, 12 and 196

is being determined. There is no point in the Secretary of State considering what the district-wide housing requirement should be in the context of this appeal. Any such exercise would be incomplete compared to what is before the Local Plan Inspector and would be overtaken by his conclusions.

### **Countryside**

152. The appeal site is within open countryside and a strategic gap. It is not allocated for development in any policy document nor is it identified for housing in a SHLAA. It is common ground that the scheme is contrary to MSDLP Policies C1 and EG1. As these are policies dealing with the principle of development it follows that the proposals are contrary to the MSDLP as a whole. It is also common ground that the appeal scheme is contrary to EGNP Policy EG2, which restricts development in the Countryside Areas of Development Constraint, and Policy EG2a which seeks to prevent the perception of openness being unacceptably eroded in the area between East Grinstead and Crawley Down. That is an important acceptance of the effect of this 200 unit urban scheme.
153. One of the core principles of the Framework is the need to recognise the intrinsic character and beauty of the countryside. These policies firmly resist and restrict development outside the town boundary. It therefore follows that the appellant's case has to rest on the housing criteria in EGNP Policy EG5.

### **Landscape and visual impact**

154. The proposals would have a significant adverse landscape and visual impact, including on the setting of the High Weald AONB. Protecting the setting of East Grinstead has been a consistent objective of the planning authorities<sup>77</sup>. Hill Place Farm has consistently been found to be amongst the least suitable sites for development. The HDA landscape capacity study (2007) looked at all of the sites on the western side of East Grinstead (outside the AONB) and other parcels around the town. In landscape terms it found them to be as good as or better than Hill Place Farm. The LUC report (2015) identified the site as of low landscape suitability with nil development yield. The Rule 6 party's landscape consultant has assessed the effect on the immediate landscape setting as a long term major/moderate adverse effect.
155. The appellant's landscape consultant has consistently under-scored the landscape value and sensitivity of the site and has misapplied the relationship with the settlement and with visual receptors. In particular, he has overlooked the importance of the listed viaduct and the critical change arising from it being brought back into use by the Bluebell Railway. The site is within the High Weald Character Area which is of high intrinsic landscape value and high sensitivity, as the HDA study accepted in 2007<sup>78</sup>. Informal fieldscapes, such as the appeal site, are typical of the High Weald. The appeal site is a valued landscape in the terms of paragraph 109 of the Framework. Such landscapes are to be defended, as the Minister's letter makes clear<sup>79</sup>.

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<sup>77</sup> CD7/1, paragraphs 12.7 (a) to (d) and Policy EG1; CD9/3, paragraph 3.2 and Policies EG2 and EG2a

<sup>78</sup> DP2/3, appendix BKL, page 3, paragraphs 2.5 and 2.6

<sup>79</sup> LPA2/3, appendix 4

156. Planning Practice Guidance states that the duty to conserve and enhance the natural beauty of AONBs is relevant when considering development proposals situated outside an AONB which might have an impact on its setting. The characteristics of the appeal site and the AONB are similar. The proposed scale of development would have a harmful impact on the setting of the AONB. There would be harm to views from East Grinstead, from open countryside to the south, from Turners Hill Road, from the western edge of the AONB and from residential properties on the south east side of Turners Hill Road.
157. East Grinstead is an urban area framed by countryside. Its rural surroundings can be seen from many points in the town. Many of those views would be lost as a result of the appeal scheme. The effect on views from the Bluebell Railway over the AONB would be particularly harmful. The Councils have all concluded that the development of this site would amount to a '*stand-alone*' scheme which would not represent a natural or incremental extension to the built up area. It would be physically divorced from the settlement by woodland and open pasture. The town currently has a strong landscape edge along the bottom of the valley which would be comprehensively breached. The proposals would not create a new natural boundary. Instead, they would set a precedent for the development of further land to the south west, which is held by the appellant under options<sup>80</sup>. In summary, the proposals would have the effect of plonking a large development on a prominent hillside outside the town.
158. This is not simply a question of an excessive scale or density - housing development on this site is unacceptable in principle. There would be significant constraints on delivering the landscape strategy shown. Even if it was achievable, it would not mitigate the visual impact. The landscaping of the proposed new urban area would be quite thin.
159. In conclusion, the appeal site should be regarded as a valued landscape by virtue of its relationship with the AONB, its position at a main entrance to the town, its contribution to the setting of the town, its landscape character and its scenic quality. It merits the '*protection and enhancement*' that paragraph 109 of the Framework provides. The benefits of housing delivery would not outweigh the landscape harm resulting from the appeal proposals.

### **The Imberhorne Viaduct**

160. The appeal scheme would have a harmful effect on the setting of a listed building, the Imberhorne Viaduct<sup>81</sup>. The expansion of the town of East Grinstead onto the adjoining farmland would cause a profound change to the viaduct's setting and lead to substantial harm to its significance as a designated heritage asset. This harm would include the diminished identity of the viaduct within the rolling landscape, the interruption to its function as a bridge between town and country, the erosion of its place-making role marking the point of arrival into East Grinstead and the eradication of key views of this magnificent structure.
161. The Bluebell Railway adds to the sensitivity of the viaduct. A great deal of time, money and community effort has been invested to achieve the extension of the Bluebell Railway back to its original starting point at East Grinstead. The viaduct

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<sup>80</sup> CD 2.4 - see the blue line on the site location plan

<sup>81</sup> DP1/1



is no longer disused, it is part of an active historic railway. Moreover, it is part of a tourist route of district-wide importance and the views from it are experienced by huge numbers of people.

162. The Rule 6 party's evidence on substantial harm was not challenged in cross-examination. There is no need for a heritage assessment to set out the five steps in Historic England's settings guidance in a formulaic way. The appellant's original heritage statement did not do so. Moreover, the original heritage statement found that there would be no harm to the setting of the viaduct. The appellant's heritage witness now accepts that view was wrong.
163. If the harm is found to be substantial the proposals would not accord with paragraph 132 of the Framework because there are no exceptional circumstances to justify them. Moreover, the public benefits of the scheme are not substantial in the terms of paragraph 133. Considerable weight is to be attached to any harm to the setting of a listed building, as confirmed in *Barnwell Manor*<sup>82</sup>. Even if the harm is found to be '*less than substantial*' it is not to be regarded as minor. The proposals would change the character of land in close proximity to the viaduct. The public benefits would essentially be the delivery of a large housing scheme. The creation of new public views of the viaduct would not be a justification for causing harm to its setting.

### **The Bluebell Railway**

164. The extension of the Bluebell Railway to East Grinstead is a vitally important factor in this appeal. The extension has been supported by the Secretary of State on appeal and then by MSDLP Policies EG23 and R14. The EGNP recognises the historic significance of the Bluebell Railway as a whole and states that '*The Town Council will seek to protect it*'<sup>83</sup>. The Bluebell Railway is more than simply part of the historic environment. It has a considerable role in tourism and makes an important contribution to the East Grinstead economy<sup>84</sup>.
165. Substantial community endeavours were needed to restore the historic route of the railway over the viaduct to East Grinstead. A cutting which had been used for landfill had to be emptied and the viaduct was restored. It is vital to protect the route and its setting in order to secure the long term future of the railway. The traditional setting of the route is valued and is an important part of its appeal. The experience is not simply travelling on a steam train but doing so in a setting which evokes the age of steam. The proposed housing development would harm the passenger experience, not just on the viaduct but also along the railway as it travels south. There would be a need to introduce security fencing, rather than the current livestock fencing, to keep people and pets off the railway. That would harm the setting and the passenger experience.
166. Views of the viaduct, and the trains crossing it, would be obstructed by the proposals. In addition, attractive views of trains from the footpath and bridge near Hill Place Farm would be harmed. The status of the Bluebell Railway as a non-designated heritage asset was not considered at all in the appellant's voluminous documentation. Harm to the significance of the non-designated

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<sup>82</sup> CD10/21, [2013] EWHC 473 (Admin)

<sup>83</sup> CD9/3, paragraph 4.20

<sup>84</sup> CD7/2-01, Policy DP17

heritage asset would be contrary to paragraph 135 of the Framework. Moreover, the reduced attractiveness of the railway would undermine the work of local volunteers and supporters. That would be harmful to the social dimension of sustainable development. It would also have an adverse economic consequence in relation to an important visitor attraction. Significant weight should be attached to the harm to this non-designated heritage asset and to its tourist and community value.

### **Loss of best and most versatile agricultural land**

167. The proposed housing and the SANGs would be mainly on grade 2 agricultural land which is defined as '*best and most versatile agricultural land*' in the Framework. Paragraph 112 states that the economic and other benefits of such land should be taken into account. The proposals would result in a loss of food production and agricultural economic output. The draft Local Plan identifies only 1.4% of the District's land as being grade 2 and seeks to protect land which is grade 3a and above<sup>85</sup>. This loss weighs against the scheme.

### **Traffic**

168. Traffic may go into the planning judgment in two ways. If the residual cumulative impact of development is severe then the scheme should be refused in accordance with paragraph 32 of the Framework. Harm below this threshold goes into the planning balance as an adverse impact. In the present case the residual cumulative impacts of the development are severe.

169. The starting point is that traffic congestion in East Grinstead, and the constraint this places on development in the town, has been consistently recognised by all of the local authorities involved<sup>86</sup>. The local experience has been one of severe congestion. The yellow box junctions along the A22 show the extent of regular disruptive queuing. The EGNP follows the approach set out in the Framework. Policy EG5(c) seeks to ensure that development will not cause a severe cumulative impact in terms of road safety and increased congestion. Policy EG11 states that '*Proposals which cause a severe cumulative impact in terms of road safety and increased congestion which cannot be ameliorated through appropriate mitigation will be refused*'. The cumulative approach requires consideration of the totality of the traffic<sup>87</sup>.

170. The Transport Assessment submitted with the application did not consider the A22 junctions. Hill Place Farm would contribute 60-70 vehicles per hour to each of those junctions at peak times<sup>88</sup>. WSCC and the appellant considered it was necessary for a substantial financial contribution to be made to improve some of those junctions. However, this solution was agreed without ascertaining what

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<sup>85</sup> CD7/2-01, page 46 and Policy DP10

<sup>86</sup> CD7/1, MSDLP paragraph 12.5; DP3/1, paragraph 4.10 quoting West Sussex Structure Plan para 257; DP3/1, paragraph 4.11 quoting 3 tiers meeting; DP3/1, paragraph 4.12; DP3/3, appendix MPG3; CD9.3, EGNP paragraph 3.3

<sup>87</sup> See Kidnappers Lane, Leckhampton appeal decision quoted at DP3/1, page 24 and in full at DP3/3, appendix MPG4, paragraphs 221, 223 and 238 of the Inspector's Report

<sup>88</sup> ID2, paragraphs 12-14 and tables 2 to 4. This traffic generation is well above the thresholds in the WSCC Guidance on Transport Assessment which expects assessments of all junctions where the hourly entry flows would increase by 30 vehicles (or 10 vehicles in congested junctions) (see CD11.6, paragraph 10.5.1)

the problem was or how effective the proposed measures would be. The A3 report did not deal with those points. By the time the Transport Assessment was prepared, the A3 survey data was already too old. Moreover, the A3 report considered lower levels of traffic growth which, in the main, had already taken place. It did not assess the effect of development at Hill Place Farm. The application therefore proceeded with no analysis of one of the principal constraints on development in East Grinstead.

171. The most extensive and comprehensive traffic surveying has been carried out by Jubb on behalf of Mr Peacock, who has put considerable resources into commissioning transport consultants to measure and assess the situation. A total of 14 days of surveying of the A22 junctions was undertaken, compared with the WSCC recommendation of 10 days. This work was spread over 19 months using a consistent survey methodology. The survey and modelling reports are compliant with Planning Policy Guidance, the WSCC recommendations for transport assessments and the Council's Validation Criteria for planning applications (June 2015). The Jubb work has been accepted into the evidence base at town, district and county levels and by the EGNP Examiner, who therefore accepted the methodology as robust.
172. By comparison, the dated A3 work was based on a one day survey. Vectos failed to consider the operation of the A22 junctions at all until their modelling in August 2016. They carried out only limited survey work and compounded the error by doing queue length surveys on the last day of the school year when many people would be preparing for holidays.
173. There is a dispute about methodology. Jubb used in-car surveys to ascertain queue lengths. Given the extent of the queues, enumerators at the junctions would not be able to see the end of the queue. Vectos acknowledges that happened on some occasions<sup>89</sup>. Moreover, queues have gaps in them as platoons of traffic move through junctions and vehicles are let out of side roads. This was a point made in the context of an appeal decision in Preston<sup>90</sup>. The back of the queue is where a vehicle is stopped by traffic trying to get through the junction. Some of the traffic in that queue might be moving at any given moment, but it is still queuing. An enumerator on the pavement would have difficulty in seeing the totality of the queue. The Vectos exercise has therefore under-recorded the queue lengths. This means that the results of their junction modelling will also be wrong because queue lengths are used to calibrate the model.
174. Jubb have collected more data than Vectos and their data is more reliable. The use of enumerators is flawed when queues are very long. The accuracy of Jubb's approach can be judged from the video footage provided and from the following:

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<sup>89</sup> Inspector's note – In answer to questions from Mr Harwood, Mr Dix accepted that there was a short period in which the enumerators were unable to see the end of the queue. In these instances the queue was recorded as 37 vehicles (see queue length data in appendix A of CD11/5)

<sup>90</sup> Whittingham Road, Preston (APP/N2345/A/12/216598), quoted in DP3/1, paragraph 4.23. The decision is in full at DP3/3, appendix MPG4, (see paragraph 17)

- longstanding local, governmental and professional recognition that traffic problems on the A22 are severe, including representations on this application and appeal
- Vectos' position that junctions are currently operating within design capacity is contrary to the A3 report and the consistent comments of public authorities about congestion on the A22 - this illustrates that their queue lengths are wrong
- the Jubb report has been used by the County, District and Town Councils and the EGNP Examiner, accepting that its methodology is sound
- the use of yellow box junctions along the A22
- that the queue lengths found by Vectos' surveyors often end just before a yellow box, suggesting that they missed the queue beyond the box
- the Google traffic data also validates the severe congestion found by Jubb<sup>91</sup>
- the experience of driving around East Grinstead.

175. The Jubb surveys show extreme levels of queuing, in some cases around 200 vehicles in length<sup>92</sup>. Delays are modelled at up to 16 minutes<sup>93</sup>. Current delays on the southern London Road arm of the Imberhorne junction are between 8 and 13 minutes in the peak hour. All arms are well over theoretical capacity<sup>94</sup>. Conditions on all three of the A22 junctions are already severe.

176. Vectos also underestimates the level of housing growth which is already committed. On their own figures, the housing growth which is expected to occur in East Grinstead to 2021 is double the TEMPRO forecasts. The Vectos figures assume only 15 units a year from EGNP allocations in the first five years, even though 130 units have just been approved from an allocation at Queens Walk. The Jubb figures are higher, but more realistic, with increases in traffic of 14.6% in the AM peak and 12.6% in the PM peak.

177. Jubb's modelling shows a substantial increase in queuing and delays resulting from Hill Place Farm and other development even if the A3DM improvements are made to the junctions. Even the lower Vectos figures confirm the long established view that there are severe problems on the A22. Vectos accept that, on their figures, the Hill Place Farm development would worsen traffic conditions on the A22 junctions. On the more realistic Jubb figures, the position gets even poorer.

178. The A3DM measures have already been carried out at the Imberhorne junction. Vectos accepts that the appeal scheme would take this junction over its design capacity<sup>95</sup>. Given that WSCC considers that conditions at this junction are already severe this must amount to a severe residual cumulative impact on any analysis. The effect of development traffic to the Imberhorne junction is not trivial, there would be 60-66 additional vehicles passing through the junction in

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<sup>91</sup> DP3/4

<sup>92</sup> DP3/1, tables 4.1 to 4.5

<sup>93</sup> DP3/1, table 4.6

<sup>94</sup> DP3/1, table 4.6

<sup>95</sup> APP1/1, paragraphs 4.66 and 4.68.

each peak hour. Paragraph 32 of the Framework does not permit an argument that the effect of a particular development would be small. It is concerned with cumulative impact, looking at all sources. On the more realistic Jubb figures, the impact would be even more severe.

179. The appellant seeks to appropriate the entire benefit of the remainder of the A3DM improvements to the appeal scheme. However, these improvements were not designed as mitigation for the appeal scheme. They were designed to accommodate previously planned housing which has already taken place. The A3DM improvements were designed to address November 2011 traffic congestion and forecast growth to keep the A22 junctions within capacity in 2021<sup>96</sup>. They were based on the committed development at April 2011, including planning permissions and development plan allocations<sup>97</sup>. The improvements could accommodate 765 additional housing units<sup>98</sup> leaving the network within its theoretical (but not practical) capacity at this level of development. The A3 report noted that the improvements would '*not offer any reserve capacity to accommodate future developments*'<sup>99</sup>. By April 2016, 698 dwellings had been built and there were over 400 commitments, already well over the A3 report ceiling of 765 dwellings.
180. In any event, the contribution provided for in the Agreement would not fully fund the A3DM improvements. There are 4 other schemes (totalling 227 dwellings) which, in total, would make a similar contribution to the appeal scheme. Those contributions must have been sought on the basis that they were necessary for those schemes. The appellant is therefore relying on future works funded by other developers for other schemes. In effect, the appellant is seeking to claim the benefit of everyone else's contributions for its own purposes.
181. Moreover, the funding will not be sufficient. WSCC refers to costs of £900,000 which are obviously taken from the A3 report. Those costs were based on recent projects and excluded professional fees and some statutory undertakers' costs<sup>100</sup>. The Rule 6 party's evidence identifies additional costs and points out that the £900,000 had not been indexed from when the A3 report was written<sup>101</sup>. WSCC has not responded to this point.
182. Finally, there is no assurance that the works would be carried out if the appeal scheme proceeds. The Agreement does not bind WSCC to carry out the A3DM works. Indeed, it has specifically declined to bind itself to do them. The notes provided indicate the intentions of officers<sup>102</sup>. That does not amount to a decision of the highway authority. There is no evidence of any decision by WSCC that the works will be carried out. It is notable that The Felbridge works have

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<sup>96</sup> CD8/21, paragraph 5.1 and tables 29 and 30 on pages 51 and 52

<sup>97</sup> CD8/21, pages 18 and 19

<sup>98</sup> CD8/21, page 58, paragraph 9

<sup>99</sup> CD8/21, paragraph 9.4.2

<sup>100</sup> See LPA7 and CD8/21, page 47

<sup>101</sup> DP3/4, paragraphs 2.34 to 2.37

<sup>102</sup> LPA7 and LPA13

not been programmed even though WSCC says it has enough funding to cover the costs<sup>103</sup>.

183. On the appellant's case, the A3DM works are required to allow the scheme to proceed. It follows that any planning permission should ensure that they are delivered. The conventional way of achieving that would be a negative condition requiring the works to be completed before any of the dwellings are occupied. Such a condition would be necessary, fairly and reasonably related to the development and reasonable in all other respects. It should be imposed if the Secretary of State considers that planning permission ought to be granted.
184. However, the Rule 6 party has shown that the appeal scheme would add to the severe congestion which is already experienced at the A22 junctions. This would amount to a severe residual cumulative impact contrary to paragraph 32 of the Framework and permission should be refused. This conclusion should be of little surprise, given that the constraint produced by the roads in the town is identified in the MSDLP and subsequent documents.

### **The access to the site**

185. The Transport Assessment indicates that the 85th percentile speed is approximately 46 mph. In reducing this speed by a wet weather factor, Vectos assumed that there had been no rain in the week that the automatic speed measurements were being made. In fact there was rain at the nearest weather monitoring station on four of the seven days. The access should be redesigned to a 50 mph design speed, which would require 2.4m by 160m visibility splays. The proposed access is inadequate.

### **Habitats and Suitable Alternative Natural Greenspace**

186. The Agreement requires the owners to establish that they can provide public access through the cattle arch before development commences. That is sufficient for planning purposes.

### **Conclusions**

187. The appeal scheme fails the criteria of EGNP Policy EG5. It fails criterion (a) because the harm to landscape, heritage and the highway network would be such that it could not be regarded as sustainable development. It fails criterion (b) because, in landscape terms, it is one of the least suitable sites for housing. This is shown in the evidence base for the emerging local plan and in the evidence before this Inquiry. It fails criterion (c) because it would lead to a severe residual cumulative impact on the highway network.
188. Any benefits said to arise from the provision of the housing are clearly outweighed by the detrimental impact the proposal would have on countryside, landscape and heritage assets. Additionally, the severe residual cumulative impact on the existing highway network is unacceptable and the scheme is incapable of remedying those impacts. In these circumstances the proposal is contrary to the development plan and is not sustainable development as defined

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<sup>103</sup> See LPA7 – the cost of the Felbridge works is £350,000; the contributions from the 4 schemes add up to £444,500

by the Framework. The appeal should be dismissed and planning permission should be refused.

## WRITTEN REPRESENTATIONS

189. **East Grinstead Town Council** is opposed to the appeal scheme which it regards as a stand-alone development, outside the built-up boundary of the town, on a site which has never been allocated for development<sup>104</sup>. Other objections raised include traffic impacts on the A22 and B2110 and harm to the setting of the listed viaduct. The Town Council considers that the proposals are contrary to EGNP Policies EG2, EG4, EG5 and EG11. The EGNP has passed its referendum, gaining overwhelming support with 92.6% voting in favour of the plan. The people of East Grinstead understand the need for planned housing growth but retaining the character of the town and the high visual quality of the surrounding countryside is a priority.
190. The EGNP identifies that highway provision has not kept pace with development and the growth in traffic. The road network is massively congested with the junctions already over capacity. The Jubb reports, based on 14 survey days, are far superior to the inadequate one day Vectos survey report. Severe cumulative impact conditions already exist and the appeal scheme would exacerbate this situation. The proposed highway contribution of £450,000 is not appropriate mitigation. The A3DM junction improvements were designed to accommodate a level of growth which has already been exceeded.
191. The site is prominently located within the Countryside Area of Development Constraint. Such areas should be protected to prevent the merging or coalescence of settlements. The steep topography of the site would magnify the visual impact of the new housing. Visitor numbers on the Bluebell Railway have increased significantly since the line was extended to East Grinstead in 2013. The heritage railway is a huge tourist attraction. The appeal scheme would cause severe harm to the setting and operation of the railway.
192. **The Bluebell Railway** supports all 4 of the Council's reasons for refusal. In 1985 the Secretary of State granted consent for the extension of the line to East Grinstead<sup>105</sup>. This project was finally realised in 2013 with the relaying of track across the viaduct, bringing this magnificent Victorian engineering structure back into its optimum viable use. The Bluebell Railway considers that the officer's report under-plays the impact on the setting of the listed viaduct. There would be a marked detrimental impact on the setting. Moreover, the appellant's heritage statement did not recognise that the railway is an important heritage asset (non-designated) in its own right.
193. Natural England's acceptance of the proposed SANGs was on the basis that there would be an appropriate legal mechanism to secure delivery. The SANGs proposals depend on public access being made available under the railway via the cattle arch. This route is in the ownership of the Bluebell Railway and no

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<sup>104</sup> The representations are at CD1/10-15. See also a further representation from Rex Whittaker (leader of the Town Council) dated 21 October 2016 on the case file

<sup>105</sup> The representations are at CD1/10-32. The appeal decision was APP/5405/A/80/00151 – the decision itself was not submitted

agreement has been reached for its use in this way<sup>106</sup>. It is accepted that the Agreement has now been drafted in a way which would enable planning permission to be granted without the Bluebell Railway being a party to it. Nevertheless, the Secretary of State is invited to consider whether planning permission should be withheld because of the uncertainty inherent in the SANGs provisions.

194. **The Campaign to Protect Rural England, Sussex Branch** (CPRE) is opposed to the proposals<sup>107</sup>. Its objections include impacts on the landscape and the setting of the listed viaduct which have been covered above. In addition, CPRE draws attention to the loss of around 20ha of best and most versatile agricultural land. It is sceptical about the effectiveness of the proposed SANGs in diverting additional recreational pressure away from the Ashdown Forest SPA.
195. **The East Grinstead Post Referendum Campaign** objects on various grounds which have already been covered above<sup>108</sup>. In addition, it considers that the grant of planning permission would not be compliant with the duty under s61 of the Conservation of Habitats and Species Regulations (the Habitats Regulations). This is because the application is said to rely on a draft Habitats Regulations Assessment prepared for the emerging Local Plan. This has yet to be tested and is disputed. Risks to the SPA from atmospheric pollution are not based on the correct figures for traffic growth. Moreover, the Council's screening opinion is based on SANGs criteria developed for the Thames Basin Heaths SPA. The SANGs proposals do not meet the bespoke Ashdown Forest SANGs guidelines produced for Wealden District Council. In order to comply with the Habitats Regulations an appropriate assessment is needed. None has been provided and the appeal should therefore be dismissed.
196. There were also written representations on the appeal from **local residents, Councillors and the East Grinstead Society**. In the main these referred to matters covered above. Additional matters raised by local residents included traffic conditions on Turners Hill Road in the vicinity of the site access, the previous use of the site for landfill, the lack of jobs in East Grinstead to support the new housing and concerns about pressure on doctors, dentists and school places. The written representations received by the Council in connection with the application are summarised in the officer's report<sup>109</sup>.

## CONDITIONS AND THE SECTION 106 AGREEMENT

197. A list of suggested conditions was agreed between the Council and the appellant<sup>110</sup>. These were discussed at the Inquiry, as a result of which there are some changes between the submitted list and the schedule at Annex D. Some

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<sup>106</sup> Inspector's note – the Bluebell Railway had previously argued that it should be a party to any s106 agreement. Having reviewed the draft Agreement, its solicitors confirmed that the drafting of clause 5 demonstrates recognition that the proposed use of the cattle arch has not been accepted by them. They do not now consider that it is necessary for the Bluebell Railway to be a party to the Agreement (ID4).

<sup>107</sup> The representation is at CD1/10-02

<sup>108</sup> The representation, which was received shortly before the Inquiry, is at ID3

<sup>109</sup> The officer's report is at CD3/2, the representations submitted to the Council are at CD1/2 and the representations submitted to the Planning Inspectorate are at CD1/10

<sup>110</sup> CD1/6, section 8



suggested conditions have been merged to avoid duplication and I have made some adjustments to detailed wording to reflect Planning Practice Guidance on the use of conditions. However, the substance of the conditions at Annex D reflects the discussion at the Inquiry.

198. Condition 1 enables the reserved matters to be submitted in phases, which is appropriate having regard to the scale of the site. Conditions 2 to 4 are standard conditions for outline permissions. The time limits have been reduced from the norm, reflecting the fact that the potential for an early contribution to housing supply has been given weight in the recommendation. Condition 5 requires the reserved matters to accord with the parameters plan. This is necessary because the assessment of landscape, heritage and ecological impacts has had regard to the parameters plan. Conditions 6 and 7 are needed to ensure that there is safe and suitable access to the site at the time of first occupation of dwellings and during the construction phase. Condition 8 requires the provision and maintenance of visibility splays in the interests of highway safety.
199. Condition 9 requires submission of a Construction Management Plan in the interests of highway safety, the safe operation of the Bluebell Railway and the living conditions of nearby residents. Condition 10 deals with potential contamination in the interests of managing risks of pollution. Conditions 11 and 12 require details of surface and foul drainage in the interests of managing risks of flooding and pollution. Condition 13 seeks details of site levels in the interests of the character and appearance of the area. Condition 14 requires submission of a Travel Plan to ensure that opportunities are taken for the use of sustainable modes of transport. Condition 15 requires details of the play area in the interests of the health and wellbeing of future occupiers. Condition 16 relates to noise insulation measures, in the interests of the living conditions of future occupiers.
200. Condition 17 is needed to protect the archaeological potential of the site. Condition 18 requires submission of an Ecological Management Plan in the interests of biodiversity during the construction phase and thereafter. Condition 19 relates to the implementation of the landscape proposals and any necessary replanting in the interests of the character and appearance of the area. Condition 20 relates to the details of access ways within the site in the interests of highway safety and the living conditions of future occupiers. Condition 21 requires details of parking for cars and cycles to ensure that proper provision is made for the transport needs of the development. Condition 22 requires details of the SANGs car park in the interests of the character and appearance of the area and to ensure that the SANGs would be attractive to visitors, thereby helping to divert recreational pressure from the SPA.
201. The Rule 6 party requested a Grampian style condition restricting occupation of the new houses until such time as the A3DM works have been completed. Although I am not recommending this condition, I have drafted condition 23 to assist the Secretary of State should he decide that such a condition is needed. I deal with the merits of this matter in my conclusions.

202. The Bluebell Railway suggested a number of conditions which were set out in an appendix to its representations on the planning application<sup>111</sup>. Some of these suggestions relate to matters already covered by other conditions and some simply provide information or set out asset protection requirements in the event of any direct impacts on railway property. Until the reserved matters are submitted it cannot be known whether there would be any works sufficiently close to the railway to be of concern. I have recommended an addition to condition 9 (Construction Management Plan) which would cover any matters relating to the safe operation of the railway during the construction phase.
203. Some conditions require matters to be approved before development commences. This is necessary for conditions 11, 12 and 13 because these conditions may affect the design of the scheme. It is necessary for conditions 7, 9, 10, 17 and 18 because these conditions relate to the construction phase.

### **The section 106 Agreement**

204. As noted above, the signed Agreement was submitted after the Inquiry, in a form which had been debated at the Inquiry. The Agreement would make provision for financial contributions to community buildings, sports facilities, primary healthcare, highways works (A22 junction improvements), libraries, local infrastructure, primary education, secondary and sixth form education and Ashdown Forest mitigation. In addition the Agreement contains provisions for the delivery of 30% of the dwellings as affordable housing, highway works in the vicinity of the site access, a potential speed limit reduction on Turners Hill Road, a development phasing plan and the delivery and arrangements for future management and maintenance of the SANGs. For the reasons given above, I consider that the obligations are compliant with the CIL regulations and I have taken them into account accordingly.
205. Two controversial matters arise from the Agreement. First, the Council and the appellant offer alternative wording dealing with the arrangements for long term management and maintenance of the SANGs land. Second, the Bluebell Railway now accepts that the drafting of clause 5, dealing with access to the SANGs via the cattle arch, would enable planning permission to be granted without it being a party to the agreement. However, the Bluebell Railway and the Rule 6 party draw attention to the uncertainty that they say is inherent in the approach taken in the Agreement. I comment on the merits of those arguments in my conclusions.

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<sup>111</sup> CD1/2-184

## **INSPECTOR'S CONCLUSIONS**

*The numbers in square brackets [n] refer back to earlier paragraphs in this report*

206. Taking account of the oral and written evidence, the Secretary of State's reasons for recovering the appeal and my observations on site, I consider that the main issues are:

- the supply and delivery of housing in Mid Sussex
- the effect of the proposals on the character and appearance of the area
- the effect of the proposals on the transport network
- the effect of the proposals on biodiversity, including any effects on designated nature conservation sites
- the effect of the proposals on the historic environment.

### **Policy context**

207. The development plan includes the saved policies of the Mid Sussex District Local Plan 2004 (MSDLP), the Small Scale Housing Allocations Development Plan Document (DPD) 2008 and the East Grinstead Neighbourhood Plan 2016 (EGNP). MSDLP Policy C1 seeks to protect the countryside. Outside the built-up area boundaries development is to be restricted to certain limited categories which are not applicable to this case. The appeal site lies outside the built-up area boundary to East Grinstead and is thus within the Countryside Area of Development Restraint defined by Policy C1. Policy EG1 states that development which would detract from the overall appearance and character of East Grinstead or its setting will not be permitted. [15, 16]

208. Policy G3 seeks to ensure that the infrastructure necessary to support the development can be provided, Policy C5 seeks to protect designated nature conservation sites and Policy H4 seeks to achieve a reasonable proportion of dwellings as affordable housing. Policy T4 seeks to ensure that there is safe and convenient access to development sites and that development does not cause an unacceptable impact on the local environment in terms of road safety and increased traffic. [17]

209. The EGNP was made on 2 November 2016. In the vicinity of the appeal site the built-up area boundary is in the same position as in the MSDLP. Those areas outside the boundary are defined as Countryside Areas of Development Constraint. Policy EG2 allows for limited small scale development in such areas. However, Policy EG2a states that permission will not normally be granted for development which results in the coalescence of East Grinstead with Crawley Down or Ashurst Wood, results in the perception of openness being unacceptably eroded or which contributes to ad hoc or isolated development of dwellings outside the built up area. [18]

210. Policy EG5 supports housing development on previously developed land. It states that other proposals for new housing development will be supported subject to compliance with criteria relating to sustainable development, environmental and visual impact, traffic impacts, design, housing mix,

mitigation of effects on Ashdown Forest and infrastructure. Policy EG3 promotes good design, Policy EG4 seeks to protect heritage assets and Policy EG7 deals with housing mix and density. Policy EG11 seeks to ensure that impacts of development on the highway network are appropriately mitigated. Policy EG16 seeks to ensure that residential development within 7km of the Ashdown Forest Special Protection Area (SPA) contributes to the enhancement of Suitable Alternative Natural Greenspaces (SANGs) and the Strategic Access Management and Monitoring (SAMM) Strategy. [19, 20]

211. The Council and the appellant agree that the Small Scale Housing Allocations DPD does not contain any policies of relevance to the appeal. Although the submission version of the Mid Sussex District Local Plan 2014-2031 (eLP) contains policies which are potentially relevant to the appeal, the plan is subject to a number of unresolved objections. The Council and the appellant agree that it has limited weight in the determination of this appeal and I share that view. [21, 22]

### **The supply and delivery of housing in Mid Sussex**

212. The MSDLP had a plan period which ran to 2006. The housing allocations contained within the plan were based on the former Structure Plan of 1993. At the time of the Inquiry the start of the examination of the eLP was imminent but, as noted above, at this stage only limited weight can be attached to the eLP. The former South East Plan (now largely revoked) set a housing requirement for Mid Sussex of 855 dwellings per annum (dpa). More recently, the eLP has proposed a requirement of 800dpa. On the basis of these requirements, the appellant calculates that there has been an undersupply of over 3,000 dwellings over the last 10 years. Allowing for the shortfall and a 20% buffer the appellant calculates that the requirement over the next 5 years should be at least 1,748dpa. [45, 56, 65]
213. The Council did not dispute that it is unable to demonstrate a 5 year supply of deliverable housing sites, as required by paragraph 47 of the National Planning Policy Framework (the Framework). It did not offer any detailed evidence on housing land supply matters. The appellant's written evidence sought to challenge the eLP requirement of 800dpa. However, those arguments were not pressed in oral evidence or in submissions. No doubt they will be considered further in the context of the eLP examination. [65, 131]
214. For the purposes of this appeal, I attach significant weight to a recent Secretary of State decision relating to Birchen Lane, Haywards Heath. In that case the Inspector reported, and the Secretary of State agreed, that the housing land supply in Mid Sussex is in the range 1.91 to 2.36 years. The Secretary of State also agreed with the Inspector's characterisation of this position as '*woeful*'. At the Inquiry the Council accepted that there has been no material change in circumstances since August 2016 when that decision was made. I therefore conclude that the housing land supply position now is unlikely to be materially different. [32, 56, 66, 144]
215. There is a pressing need for affordable housing in the district. The Council has identified a need for 474dpa, compared with average delivery over the last 12 years of 128dpa. There are currently 1,420 households on the housing register. The appeal scheme would deliver up to 60 affordable dwellings, with a mix of

- types and tenures. This would comply with MSDLP policy H4 and make a welcome contribution to meeting affordable housing needs in the district. [67]
216. There is no evidence that the site is subject to physical or infrastructure constraints which might prevent it from making a meaningful contribution to housing delivery within the next 5 years. Given the challenging housing land supply position, that seems to me to be an important factor weighing in favour of the appeal. The delivery of housing, including affordable housing, would bring significant social benefits. There would also be economic benefits arising from direct investment and employment during the construction phase and additional expenditure in the local economy generated by the new residents. [68]
217. The appellant suggested that the New Homes Bonus associated with the scheme should be counted amongst its benefits. However, there was no evidence before the Inquiry as to how any such receipts might be deployed. In particular, there was no evidence of any connection to the development or any way in which the development might be made more acceptable in planning terms. Mindful of Planning Practice Guidance in relation to local finance considerations, I have therefore attached very little weight to this factor. [68]
218. The Rule 6 party and the Bluebell Railway argued that the terms of the Agreement introduce an element of uncertainty as to the delivery of the scheme. If that were right, it could reduce the weight to be attached to the social and economic benefits of housing. The context for this argument is that, for reasons expanded on under the 3<sup>rd</sup> main issue, the delivery of the Suitable Alternative Natural Greenspaces (SANGs) access link under the Bluebell Railway via the cattle arch is an essential element of the scheme. The cattle arch is owned by the Bluebell Railway, which is not a party to the Agreement. The site owners have the benefit of an easement which they (and the appellant company) consider would enable them to make any necessary improvements to the access link and allow the general public to use it. The Bluebell Railway disputes that point. Moreover, it is opposed to the scheme. [150, 192, 193]
219. The issue is addressed in clause 5.1 of the Agreement in the following way. In addition to some technical points relating to the accuracy of the title plan, the clause provides that development could not commence until one of 3 things has happened:
- a Court declaration in favour of the appellant's position, or
  - acceptance by the owner of the cattle arch that the necessary rights are in place, or
  - the site owner has acquired the SANGs access link.
220. There was no evidence before the Inquiry as to the detail of the dispute between the appellant/site owners and the Bluebell Railway. In any event, that is a matter of private law and it would not be for me to express a view. Counsel for the appellant submitted that, if planning permission is granted, the matter would be pursued through the courts and that the appellant would not have embarked on a lengthy Inquiry if it did not have the necessary rights. My assessment of this issue is a pragmatic one. I accept that there is some uncertainty arising from clause 5.1. However, in my experience it is not unusual for developers to have to resolve a range of regulatory and private law matters

before development can proceed. I see no reason to think that this is such a significant stumbling block that the weight attached to the benefits of the scheme should be reduced. [89]

221. To conclude on the first main issue, the proposals would make a significant contribution to the delivery of housing in a district where the supply position is challenging. This would include a welcome contribution to affordable housing, in compliance with MSDLP Policy H4. I consider that very significant weight should be attached to the social and economic benefits of new housing. A further consequence of the housing land supply position is that, in accordance with paragraph 49 of the Framework, relevant policies for the supply of housing should not be regarded as up-to-date. I shall return to that point in my overall conclusions in relation to the development plan.

### **Effect on the character and appearance of the area**

#### *Landscape character and value*

222. The appeal site is in two parcels. Parcel A, where the houses and some of the SANGs land would be located, lies to the south east of the railway and is bounded by Turners Hill Road on its south east side. The land slopes down to the wooded valley of a stream, beyond which is the south western edge of the built-up area of East Grinstead. Parcel B lies to the north west of Parcel A, between the railway and an extensive area of woodland. The whole of Parcel B would be SANGs land. The site is not subject to any landscape designations but it adjoins the High Weald Area of Outstanding Natural Beauty (AONB) which is on the opposite side of Turners Hill Road. [12, 13, 14]
223. The High Weald AONB Management Plan notes that the landscape of the AONB is characterised by an incised and ridged landform of clays and sandstones with numerous gill streams. Typical features of the area include an abundance of ancient woodland, wooded shaws and small irregularly shaped fields. Although the appeal site is not within the AONB it is within the High Weald National Landscape Character Area. The relevant National Character Area Profile describes the landscape in similar terms, noting that this is an intimate and small scale landscape giving a sense of remoteness and tranquillity. It describes the High Weald as an essentially medieval landscape reflected in the patterns of settlement, fields and woodland. The Mid Sussex Landscape Character Assessment describes a wooded, confined rural landscape which is perceived as attractive, locally secluded and tranquil. [25]
224. There have been previous studies of the capacity of the landscape around East Grinstead to accommodate development. The *Mid Sussex Landscape Capacity Study* of 2007 found that the area which includes the appeal site had a medium/high capacity. The *Capacity of Mid Sussex District to Accommodate Development* report of 2014 revised the 2007 conclusions to take account of a 5 point scale preferred by the authors. This resulted in a conclusion of medium landscape capacity. In this assessment, all of the land to the south west of East Grinstead was rated as having a medium or low/medium capacity and all of the land to the south east was rated as low or low/medium. The *Mid Sussex District SHLAA: Review of Landscape and Visual Aspects of Site Suitability* of 2015

concluded that most of SHLAA site 562 (which includes the appeal site) has a low landscape suitability for development<sup>112</sup>. [71, 113, 154]

225. It should be noted that the 2015 study does not identify any land on the edge of East Grinstead with a high or medium/high capacity to accommodate development. That said, whilst I take account of the capacity studies, it must be remembered that they are necessarily broad-brush and look at areas considerably larger than the appeal site. The area referred to in the 2015 document is more closely aligned with the appeal site but it too included additional land. Importantly, it does not distinguish between Parcel A and Parcel B. In my view there are marked differences between the two parcels which would not have been picked up in the higher level studies. [25, 118]
226. There was discussion at the Inquiry as to whether the landscape should be regarded as a '*valued landscape*' in the terms of paragraph 109 of the Framework. It was agreed that there is no single definition of the term but all parties had regard to box 5.1 of the *Guidelines for Landscape and Visual Impact Assessment 3* (GLVIA3) which sets out some factors that can help in identifying valued landscapes. I have considered Parcel A and Parcel B in the light of those factors.
227. Although Parcel A is close to the AONB there is very limited inter-visibility with the designated area, for reasons I expand on below. The landscape has some features which are typical of the designated landscape in that it slopes down to a wooded valley which includes a small area of ancient woodland. On the other hand, it is subject to urban influences in that there are extensive views of East Grinstead on the opposite side of the valley. There are other buildings to the south east and south west and traffic can be seen on Turners Hill Road. Much of the site is quite open and could not be described as confined, secluded or tranquil. Moreover, from what I saw on site, the general condition and scenic quality of the land is no more than moderate. It could not be described as a good or important example of the High Weald landscape type. [71, 116, 117, 156]
228. Parcel A can be seen from recreational routes in that it is visible from the Bluebell Railway and from part of the High Weald Landscape Trail. However, the view from the train as it crosses the viaduct is fleeting. The High Weald Landscape Trail passes through East Grinstead and down West Hill, from where the site is visible. At this point users of the trail are in an urban environment, well within the town. Consequently, I do not consider that the appeal site can be said to have significant recreational value. I note that the site forms part of the landscape setting of East Grinstead which is recognised as an attractive feature of the settlement in the MSDLP and the EGNP. The presence of the viaduct also adds some visual interest. Nevertheless, my overall assessment is that this is a pleasant and attractive landscape which should be afforded moderate value in the planning process. It does not pass the threshold of '*valued*' as that term is used in the Framework. [71, 116, 155, 157, 159]
229. To my mind Parcel B is much more representative of the landscape of the High Weald. The enclosing topography and woodland, together with limited views of

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<sup>112</sup> The 2007 study was carried out by HDA, now the appellant's landscape consultants. The 2014 and 2015 reports were by LUC. See APP2/2, appendices 10, 11 and 12.

buildings, give it a sense of seclusion and tranquillity. There are extensive views of ancient woodland which, combined with steeply sloping valley sides and a wooded gill, create a level of scenic quality which makes it a good example of this landscape type. For that reason I consider that Parcel B should be regarded as a valued landscape.

*Effect of the proposals on landscape character*

230. Within Parcel A the proposals would result in a dramatic change in character from an open agricultural landscape to a built environment of houses and roads. Nevertheless, the proposals include extensive mitigation of landscape effects. The whole of Parcel B and a significant part of Parcel A would become SANGs. Importantly, the steepest valley slopes and the wooded valley bottom within Parcel A would be left undeveloped. Existing features of importance to landscape and biodiversity, such as ancient woodland and wet grassland, would be retained and the existing landscape structure would be strengthened with new planting. There would be additional planting around the edges of the site and new green spaces would be created within it. [73]
231. Those opposed to the appeal argue that this would be a 'stand-alone' scheme, prominently located in an elevated location, rather than an incremental addition to the town. It is right to point out that the stream and associated woodland has formed a boundary to the 20<sup>th</sup> century expansion of East Grinstead. Those features would be preserved and the scheme would in effect step across the valley, creating a new urban quarter at a similar elevation to much of central East Grinstead. I agree that this would not be an incremental change. Rather, it would be a significant extension of built development into the countryside. That said, East Grinstead is a town built on ridges within which the urban form is often broken up by wooded slopes. The appeal scheme would be a continuation of that character. [157]
232. The appellant's landscape witness concluded that there would be a moderate adverse effect on landscape character, reducing to a minor adverse effect after 10 years as new planting matures. The Council's witness assessed the impact as a major-moderate adverse effect at completion, reducing to moderate after 10 years. The Rule 6 party's witness considered that there would be a long term major/moderate adverse effect. These differing conclusions flow from different assessments of the landscape value of the baseline. For the reasons given above, I agree with the appellant that there is a clear distinction to be drawn between Parcel A and Parcel B. I also agree that, in respect of Parcel A, there would be a moderate adverse effect at the completion of development. Although visual effects would be softened over time by planting, the loss of rural landscape character would be permanent. [74, 119, 154]
233. Parcel B would be retained as SANGs. There would be some partial views of the new houses from some parts of Parcel B. However, the landscape character of Parcel B would be strengthened by the additional planting and landscape management measures associated with its use as SANGs. On balance, I do not think that there would be a significant impact on landscape character on the north west side of the railway.
234. As noted above, Parcel A adjoins the AONB. The Framework states that great weight should be given to conserving landscape and scenic beauty in such areas. It is therefore important to consider the effect of the proposed



development on the landscape of the AONB. There is very little inter-visibility between the AONB and the appeal site, mainly due to the effects of topography and vegetation. None of the landscape and visual assessments before the Inquiry identified viewpoints within the designated area. In the vicinity of the appeal site the edge of the AONB is characterised by dwellings along Turners Hill Road which are set in substantial and well vegetated plots. There would no doubt be views of the proposed houses from these dwellings, some of which are in the designated area. Even so, that would not amount to a material impact on the landscape of the AONB. [156]

235. There are panoramic middle-distance views of the AONB from the viaduct in which the appeal site can be seen in the foreground. However, the edge of East Grinstead is also in view and the greater part of the appeal scheme would be peripheral to the focus of such views. As seen from this elevated viewpoint the appeal proposals would have little impact on the ability to appreciate the designated landscape. In my view there would be no material impact on the landscape of the AONB. [75]

#### *Visual impacts*

236. Parcel A comprises a north east facing slope which is orientated towards the town. Consequently it is not widely visible from the rural landscape around East Grinstead. The viewpoints identified in the various visual assessments were either close to the site, such as those from Turners Hill Road or the public footpath to the south, or middle distance views from within East Grinstead. Other visual receptors include passengers on the Bluebell Railway and nearby residential occupiers. The Council criticised the appellant's assessment methodology, arguing that it departed from the GLVIA3 advice. In my view little turns on that debate. The viewpoints themselves, and the extent of visibility of the appeal site, were broadly agreed. I have taken account of the varying assessments of visual impact alongside my own observations on site. [75, 120, 121]
237. The greatest degree of visual impact would be experienced by occupiers of those houses closest to the site, such as Old Mill Cottage and The Coach House at Barredale Court. The current open views from these properties would be lost. The detail of the design, layout and landscaping of the new housing would be determined at reserved matters stage. This would provide an opportunity to ensure a satisfactory relationship between the new houses and existing dwellings. Views from the houses to the south east of Turners Hill Road would be filtered by existing and proposed trees and planting and, in some cases, restricted by changes of level. Only a minor impact would be experienced at these properties
238. The proposed development would be visible from Turners Hill Road in the vicinity of the proposed access. The scale of change would be large and quite noticeable in the short term because it would be necessary to remove hedgerows to provide visibility splays. In time the hedgerows could be replaced by new planting which would soften the effect. The visual receptors of these views would, in the main, be occupants of vehicles and pedestrians who would see the site only briefly. There would also be close range views from houses in Garden Wood Road, although these too would be softened by new planting in time. There would be a view of the southern edge of the scheme from the public

footpath which passes to the south of the site. I would characterise all of these as moderate visual impacts on completion of the scheme.

239. There would be views of the proposed houses from locations within East Grinstead such as Brooklands Way and Copyhold Road. These would be seen from an urban context, with the site being visible above and/or between buildings together with extensive tree cover both within the urban area and within the countryside. In general the visible part of the appeal scheme would form a small element in such views. The viewer's general sense of the sylvan character of East Grinstead and its surroundings would not be significantly diminished.
240. The new houses would be quite prominent in views from West Hill which, as noted above, forms part of the High Weald Landscape Trail. This is because the orientation of the street tends to focus the view on the appeal site. Even so, the character of these views is largely formed by the architecture of the houses on one side and the bank of overhanging trees on the other. Those are features which would not be affected by the appeal scheme. Passengers on the Bluebell Railway would see the site only briefly as the train crosses the viaduct. As noted above, whilst development on the appeal site would be in view, it would be peripheral to the focus of the view south eastwards along the valley.
241. In summary, I consider that the visual impacts would be localised. The most significant visual impacts would be experienced by the occupiers of those houses closest to the site. There would also be moderate impacts on views from Turners Hill Road, from houses in Garden Wood Road and the public footpath to the south of the site. I would characterise the other visual impacts described above as relatively minor.

#### *Conclusions on character and appearance*

242. Parcel A comprises part of an attractive landscape which should be afforded moderate value in the planning process, although it does not pass the threshold of 'valued' as that term is used in the Framework. The appeal scheme would represent a significant extension of built development into the countryside. As such it would inevitably lead to harm to the character and appearance of the area. I would characterise the harm to the landscape character of the site and immediate surroundings as a moderate adverse effect.
243. There would be significant visual effects on those houses closest to the site and moderate effects from some other viewpoints. Overall, the visual effects would be localised and would diminish over time as new planting within the scheme becomes established.
244. The extension of development into the countryside would be contrary to MSDLP Policy C1 and the adverse effect on the setting of East Grinstead would be contrary to Policy EG1. The proposals would be contrary to EGNP Policy EG2a in that they would reduce the perception of openness within an area of development constraint. However, the appeal is supported by a robust assessment of environmental and visual impacts and appropriate mitigation is integral to the scheme. The proposals would therefore accord with EGNP Policy EG5 insofar as that policy deals with landscape and visual matters.

## Effect on the transport network

245. The Council's second reason for refusal was withdrawn before the Inquiry. However, the Rule 6 party and others maintained objections on highways grounds and there was substantial evidence before the Inquiry on this matter. West Sussex County Council (WSCC) raised no objection to the proposals and is a party to the Agreement. WSCC was not represented at the Inquiry but provided written responses in answer to my questions and points raised by others. [5]
246. It was agreed by all parties at the Inquiry that the site is accessible by a variety of modes of transport with connections to the town centre, schools, bus stops and the railway station. It was also agreed that the proposed travel plan would provide suitable measures and initiatives to encourage sustainable travel patterns by future residents. I have no reason to disagree. [32, 33, 35]

### *The A22 junctions*

247. It was accepted by all parties at the Inquiry that the A22 London Road is subject to congestion and delays as it passes through East Grinstead. This is a matter which has been recognised by the planning authority and the highway authority. It is also referred to in the EGNP which states that:

*New highway provision and upgrading at East Grinstead has not kept pace with the rate of development and general traffic growth and the existing highway network is no longer able to cope with traffic demands. Until significant improvements are made further large scale growth will be extremely difficult to accommodate.*

248. The *East Grinstead Traffic Management Study – Stage 3 Final Report* was prepared by Atkins in May 2012 (the A3 report). The report assessed 5 key junctions on the A22. It proposed a set of improvements known as the 'Do Minimum Network Enhancement' which involved works at 3 junctions (referred to in this report as the A3DM works). Signal optimisation at London Road/Imberhorne Lane (one of the 3 junctions) has already taken place. It is proposed that the highway contribution provided for in the Agreement, together with funding from other schemes, would enable improvements at the Felbridge Junction (A22/A264) and at London Road/Lingfield Road where it is proposed to replace a roundabout with a signalised junction. [29, 30]
249. Junction modelling has been carried out by Vectos, on behalf of the appellant. Vectos applied a traffic growth factor to current traffic levels to generate a base scenario at 2021. The operation of the 3 junctions in the base scenario was then compared with the operation of the same junctions with the addition of the development traffic from the appeal scheme and the A3DM improvements. The Felbridge Junction was found to be close to its design capacity already. The modelling indicates that with the addition of the development traffic and the junction improvements the junction would operate better than it would in the 2021 base scenario. For example, in the AM peak hour the average delay on the London Road (south east) arm would be about 19 seconds/vehicle in the base scenario and about 13 seconds/vehicle in the development scenario. [78]
250. The modelling indicates that the works at London Road/Lingfield Road would generate greater improvements with figures of 72 seconds/vehicle in the base

scenario and 23 seconds/vehicle in the development scenario (AM peak, A22 east arm). No further improvements are in prospect at London Road/Imberhorne Lane. At this junction the modelling indicates that there would be an increase in delays from about 33 seconds/vehicle in the base scenario to 37 seconds/vehicle with the development traffic (AM peak, London Road north west arm). The increased delay on all arms would be around 3 to 5 seconds/vehicle. The conclusion of this study was that the A3DM works would result in improvements at two junctions. Although there would be a small increase in queues and delays at London Road/Imberhorne Lane this would not be significant and could not be regarded as a severe residual cumulative impact. This conclusion is agreed by WSCC and by the Council. It is also agreed by Surrey County Council, in whose area the Felbridge Junction lies. [78, 79]

251. The Rule 6 party argued that conditions at all 3 junctions are already severe. The reports prepared by Jubb noted queue lengths of up to 200 vehicles and modelled delays at up to 16 minutes. The net effect of the appeal scheme, together with other housing development and the A3DM improvements, would be that the queuing and delays would get worse. Moreover, it was argued that at London Road/Imberhorne Lane, the junction would be taken over its design capacity even on the Vectos figures. [175, 176, 177, 178]
252. The Rule 6 party criticised WSCC and the Council for accepting a transport assessment which did not include any assessment of the A22 junctions. However, whatever the Councils should or should not have done in the past, there was no dispute that by the time of the Inquiry there was sufficient information on which to make a decision<sup>113</sup>. The nub of the dispute related to survey methods and the reliability of data. The Rule 6 party emphasised that Jubb had undertaken 14 days of survey work compared with a single day by Vectos. Moreover, it was suggested that the Vectos survey day was unrepresentative because it was the last day of the school summer term. [170, 171, 172]
253. Whilst I note that Vectos only carried out manual counts on one day, automatic traffic counts, which had been carried out over a week, showed that the survey day chosen was typical. Moreover, when the manual turning counts undertaken by Jubb and Vectos are compared, there are not great differences in the total amount of traffic passing through the junctions. This gives me confidence that the Vectos survey day was not unrepresentative of general traffic conditions. [102]
254. The Rule 6 party also objected to the Vectos approach to general traffic growth on the network. Vectos used the Department for Transport's TEMPRO database to predict traffic growth arising from new housing and other factors. A sensitivity test was then undertaken, which involved doubling the TEMPRO derived growth factors. I consider that this was a robust and reasonable approach. [176]
255. I have observed traffic conditions along the A22 during the peak hour and viewed the video surveys produced by Jubb. I saw that traffic is brought to a halt at various points in addition to the 3 junctions. These include signal controlled pedestrian crossings and side roads where slow moving traffic on the

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<sup>113</sup> ID2, paragraph 5

main road stops to allow vehicles to turn in or out. Consequently there is not a single solid queue of traffic, rather a constantly changing pattern of moving and stationary traffic in which gaps open and close.

256. The Jubb methodology used moving survey vehicles to locate the back of the queue, which in many cases was at some distance from the junction in question. It seems to me unlikely that the surveyors would have known at that instant whether there were intermediate obstructions holding up the traffic between them and the junction. I appreciate that there were times when the Vectos surveyors could not see as far as the end of the queue. However, this happened on just a few occasions and it seems unlikely that it would have affected the outcome significantly. [102, 173]
257. The two methods give very different results. This is unsurprising given that, from what I saw, they are measuring different things. A Vectos queue comprises vehicles approaching the subject junction, held up only by the junction itself. A Jubb queue comprises vehicles approaching the subject junction via a congested stretch of highway which is likely to contain one or more intermediate obstructions at any given moment. Both methods have something useful to say about the way the network is operating. However, the Vectos approach appears to me to be preferable where (as in this case) the observed queue lengths are used to calibrate models which are then used to predict the performance of the junctions. This is because the Vectos method only looks at the queue directly attributable to the junction in question. For this reason I give greater weight to the junction modelling undertaken by Vectos. The fact that the Vectos method is widely used, and has been accepted by the highway authorities in this case, adds weight to this conclusion. [102]
258. Paragraph 32 of the Framework requires the decision maker to have regard to the '*residual cumulative impact*' on the transport network. The Rule 6 party suggested that the appellant's approach amounted to an inappropriate claim to the entire benefit of the A3DM works. This was said to be wrong because those works were designed to mitigate other housing developments (which have already taken place) and also because other schemes now in prospect would part fund the A3DM works. [179]
259. The A3DM works were proposed in 2012 as mitigation for development anticipated at that time. That development, and more, has since taken place. Against that background, I can understand why the Town Council and others feel it is wrong for those same improvements to be put forward now as mitigation for this appeal scheme. That said, the evidence before the Inquiry did not identify any other way that the A3DM works are likely to be delivered in the absence of the appeal scheme. The Vectos junction assessments at 2021 assessed the operation of the junctions with:
- general traffic growth on the network and no junction improvements, and
  - general traffic growth, plus the appeal scheme traffic with the A3DM improvements.
260. That approach seems to me to be consistent with paragraph 32. It assesses the residual impact (taking account of mitigation) in a cumulative way, taking account of general growth on the network. On that basis the modelling shows a degree of betterment at the Felbridge Junction and at London Road/Lingfield

Road. The Rule 6 party's transport evidence did not include an assessment on this basis. [77, 78, 177]

261. I have had regard to previous appeal decisions at Leckhampton and Preston which have been drawn to my attention. However, the conclusions reached in those decisions reflected findings on the current and future operation of the respective transport networks which were specific to the cases in question. [169, 173]
262. The Rule 6 party raised concerns about the adequacy of the funding and the lack of certainty of delivery of the junction improvements. I note that the anticipated cost of £900,000 appears to come from the A3 report of 2012. Nevertheless, WSCC has provided further written comments in response to my questions at the Inquiry. WSCC advises that the balance of the funding would come from 4 identified schemes. The contributions have either been paid already or the associated developments have commenced so there is confidence that the funds will be available. WSCC also comments that the cost estimates included a contingency sum and that the various obligations were index linked<sup>114</sup>. I note that the A3DM works would be within existing highway limits so no further land would be needed. Moreover, under the terms of the Agreement, the highway contribution would have to be repaid if it were not used to deliver the A3DM works. That provides a strong incentive for WSCC to undertake the works. [180, 181, 182]
263. Taking all of these points into account, I consider that the Agreement gives sufficient certainty that the improvement works would be delivered. I am not therefore recommending a Grampian condition, although I note that the Rule 6 party considers that one ought to be imposed. It would be open to the Secretary of State to impose such a condition if he considers it to be reasonable and necessary<sup>115</sup>. [183]
264. No further improvements are in prospect at London Road/Imberhorne Lane. The Vectos modelling indicates that, at 2021, the junction would be operating marginally over design capacity. Any additional traffic from the appeal scheme would therefore increase delays. However, it is necessary to take account of the scale of the effect. On the agreed traffic generation and distribution, the appeal scheme would add up to 66 vehicles passing through the junction in the peak hour (total for all arms). This would be a very small proportion of the total traffic flow through the junction. The Vectos modelling indicates additional traffic delays of around 3 to 5 seconds per vehicle. I accept the appellant's view that this would not amount to a severe residual cumulative impact. [78, 178]

#### *Other junctions*

265. The Rule 6 party and others also raised concerns about the Turners Hill junction and the Dukes Head roundabout. Vectos assessed the Turners Hill junction and found no material impact. The Dukes Head Roundabout was not assessed because the impact was considered to be minimal. In any event, the impacts in

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<sup>114</sup> LPA7

<sup>115</sup> See draft condition 23 in Annex D – not recommended by the Inspector but included to assist the Secretary of State in the event that he considers that such a condition is reasonable and necessary

these locations were not pressed at the Inquiry. On the evidence before me, I do not consider that effects at these junctions should carry significant weight in this decision.

#### *Safety of proposed site access*

266. The site access and associated visibility splays have been designed for a 40mph design speed, consistent with the current speed limit and the 85<sup>th</sup> percentile traffic survey data. The Rule 6 party suggested that a higher design speed should have been used because a wet weather factor ought not to have been applied to the survey data. It was argued that there had been rain during the survey period. In my view the weather data<sup>116</sup> submitted in support of this point is inconclusive. It relates to a weather station some 3km away and shows some rain on 3 of the 7 survey days with minimal rain on a 4<sup>th</sup> day. I note that the access design has been subject to independent road safety audit and has been accepted by the highway authority and I attach significant weight to these assessments. I conclude that the access would be satisfactory in terms of highway safety. [81, 185]

#### *Conclusions on effects on the transport network*

267. The appeal scheme would generate additional traffic on the A22 which is already subject to congestion as it passes through East Grinstead. However, the proposals include a highways contribution which, together with other contributions, would enable two key junctions to be improved. This would result in a degree of betterment for all users of the network. No improvements are proposed at a third junction. However, the amount of traffic generated by the appeal scheme would be very small in relation to the traffic passing through the junction and the resulting increase in delays would be minor.

268. The appeal site is in a reasonably accessible location in relation to the town centre, schools, bus stops and the railway station. The proposed travel plan would provide suitable measures and initiatives to encourage sustainable travel. My overall assessment is that there has been a robust assessment of transport impacts. The scheme has taken up the opportunities for sustainable transport modes, would provide a safe and suitable means of access, would fund improvements to limit impacts on the wider transport network and would not result in a severe residual cumulative impact. It would therefore accord with paragraph 32 of the Framework.

269. For the same reasons the proposals would accord with MSDLP Policy T4 and EGNP Policies EG5 and EG11, insofar as those policies relate to highways and transport.

### **Effects on biodiversity**

#### *Ashdown Forest*

270. The site is approximately 4.3km from Ashdown Forest, which is designated as a Special Protection Area (SPA) and as a Special Area of Conservation (SAC). The majority of the SPA is also designated as a Site of Special Scientific Interest (SSSI). The Secretary of State will be the competent authority for the purposes

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<sup>116</sup> DP9

of s61 of the Conservation of Habitats and Species Regulations (the Habitats regulations). [14]

271. The northern section of Parcel A and the whole of Parcel B would be allocated for around 14.7ha of SANGs land. The SANGs proposals include a visitor car park and a 2.5km circular walking route. Pedestrian access to Parcel B would be from Parcel A, via the existing cattle arch under the railway, and from the public footpath which skirts the southern edge of Parcel B. Areas of ancient woodland and the proposed SUDS features would be contained within the SANGs land. The application was supported by various reports, including an ecology report and a SANGs management strategy. The Agreement would provide for the delivery and future management of the SANGs. [23, 24]
272. The cattle arch is owned by the Bluebell Railway. I have discussed the operation of clause 5.1 of the Agreement above under the heading of housing delivery. For the purposes of this section it should be noted that the Bluebell Railway now accepts that it does not need to be a party to the Agreement. All parties at the Inquiry were satisfied that the Agreement would ensure that development could not take place until public access via the cattle arch had been secured. [186, 193]
273. The Council has withdrawn the 3<sup>rd</sup> reason for refusal which related to the SPA. I shall return to the differences between the Council and the appellant on the provisions of the Agreement relating to future management of the SANGs later in this report. The Council has prepared a Habitats Regulations Assessment Screening Report (HRA)<sup>117</sup>. The HRA identifies the interest features of the SPA/SAC and identifies potential impacts from additional recreational pressure and atmospheric pollution resulting from increased traffic on roads passing through Ashdown Forest.
274. The HRA assesses the suitability and capacity of the proposed SANGs against criteria developed by Natural England (NE). NE has commented that it has visited the proposed SANGs and is *'fully satisfied that it complies with the guidelines for SANG creation'* and that it is *'confident that it will provide an attractive alternative to Ashdown Forest for the residents of the new housing development'*.
275. I note that CPRE and the East Grinstead Post Referendum Campaign (EGPRC) are sceptical about the effectiveness of the SANGs in diverting recreational pressure from Ashdown Forest. In my view the SANGs would be perceived as an attractive natural environment with a variety of habitats. They would also feature a circular walk starting and finishing at a public car park. Mindful of the NE guidelines on SANGs, I am satisfied that the proposals would create an attractive alternative to visiting Ashdown Forest. I appreciate that the guidelines were originally written for the Thames Basin Heaths SPA but see no reason to think that the principles of what makes a SANG attractive to potential users would not apply to Ashdown Forest. Moreover, the Council has published its own guidance which appears to be based on the NE document<sup>118</sup>. [194, 195]

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<sup>117</sup> CD3/1

<sup>118</sup> Natural England's guidance is at CD13/1 and the Council's guidance is at CD13/3



276. The Council has concluded that the atmospheric pollution resulting from the housing allocations of the eLP would be below the threshold where significant effects are likely. EGPRC disputes this conclusion and argues that it has yet to be tested through examination of the eLP. I appreciate that the HRA draws on assessments carried out in connection with the eLP. Although the plan itself carries little weight at this stage, it does not follow that the evidence base should be disregarded. For the purposes of this appeal the Council has screened out effects on the SPA/SAC resulting from atmospheric pollution. NE is in agreement with that decision.

277. The HRA concludes that the appeal scheme is not likely to have a significant effect on the Ashdown Forest SPA/SAC, either alone or in combination, and that a full appropriate assessment is not required. This conclusion is supported by NE which has stated that:

*'Natural England considers that the proposal can be screened out from further stages of assessment because significant effects are unlikely to occur, either alone or in combination'.*

278. The HRA notes that the implementation, delivery, long term management arrangements and details of a contingency plan for management (should a management company cease to exist) would all need to be secured through a s106 agreement.

279. Having regard to all the evidence before the Inquiry, I consider that the proposals are unlikely to have a significant effect on the Ashdown Forest SPA, SAC or SSSI.

#### *Other effects on biodiversity*

280. Much of the appeal site, including most of the area where housing would be built, is of limited nature conservation importance. Most of those habitats which are of nature conservation interest would be included within the proposed SANGs. Protected species have been appropriately taken into account and mitigation measures have been identified in relation to bats, badgers, breeding birds, reptiles and invertebrates. The SANGs management strategy describes how the SANGs could be managed to maximise their value for wildlife. [26]

#### *Conclusions on biodiversity*

281. I conclude that the proposals would not have any significantly harmful effects on designated nature conservation sites or on biodiversity in general. The proposals would accord with MSDLP Policy C5 and with EGNP Policy EG16.

#### **Effect on the historic environment**

282. The heritage statement identifies two Grade II listed buildings which may be affected by the scheme, namely Hill Place Farmhouse and the Imberhorne Viaduct. In both cases there could be impacts on setting. There would be no direct impacts on either listed building. Hill Place Farmhouse is a medieval hall-house, now much altered, which was listed for its interior. Its former agricultural setting has been diminished by modern agricultural and industrial buildings. I consider that the setting of this listed building makes very little contribution to its significance as a designated heritage asset. Moreover, that setting would not

be materially altered by the appeal scheme. At the Inquiry no party suggested that there would be any harmful effect on Hill Place Farmhouse. I agree. [27]

### *The Imberhorne Viaduct*

283. Imberhorne Viaduct was built in 1880 for the London, Brighton and South Coast Railway. The listing description notes that it is an imposing and unaltered structure comprising 10 segmented arches with a maximum height of some 27m<sup>119</sup>. The heritage statement notes that the significance of the viaduct derives from its historic association with the Victorian railway, the technical innovation that it demonstrates and its strong architectural form. I agree with that assessment and would add that the importance of the viaduct to the growth of East Grinstead is also relevant. Its fine brickwork details, such as the corbelled refuges, also add to its significance and its special interest. [83]
284. The Framework defines setting as the surroundings in which a heritage asset is experienced. Planning Practice Guidance (the Guidance) advises that the contribution that setting makes to significance does not depend on there being public rights of access to experience the setting because that will vary over time. That advice is pertinent to this case because the opportunities to see the viaduct from the public realm are limited. It is readily visible from Garden Wood Road which passes through one of the arches. From these close views the impressive height of the structure can be appreciated. There are also partial views from Turners Wood Road. From here the extent of visibility will vary with the seasons due to the intervening trees but, even in winter, only a part of the structure can be seen. The most complete views of the viaduct can be obtained from within Parcel A and from residential properties such as the Coach House at Barredale Court.
285. I consider that the open nature of parcel A makes a positive contribution to the significance of the viaduct because it enables the structure to be seen and appreciated, albeit mainly in private views. The fact that some of the views are picturesque adds something more. The effect of the appeal scheme would be to block some of the views which are currently available, particularly from the southern part of Parcel A, the Coach House and Turners Hill Road. To this extent the ability to experience the viaduct would be reduced resulting in some harm to significance. [82, 160]
286. It must be borne in mind that setting (as defined in the Framework) is something which contributes to the significance of a heritage asset, it is not the same as significance. Important aspects of the significance of the viaduct including its physical fabric, its strong architectural form, its historic associations and the technical innovation that it demonstrates would be unaffected by the appeal scheme. Moreover, important aspects of its setting such as the views from Garden Wood Road and the northern part of Parcel A would also be unaffected. Given the imposing scale of the viaduct, I do not think that its visual identity or its place-making role would be significantly harmed. My assessment is that the impact on the overall significance of the heritage asset would be '*less than substantial*'. I would characterise the degree of harm as minor. [82, 160]

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<sup>119</sup> The list description refers to a height of 90 feet.

287. One way the viaduct is experienced is from the heritage railway itself. From the perspective of a railway passenger, it seems to me that the key feature of the experience is the panoramic nature of the views which result from the impressive height of the structure. As noted above, the appeal site can be seen in the foreground of these extensive views. However, the edge of East Grinstead is also in view and the greater part of the appeal scheme would be peripheral to the focus of such views. I do not consider that there would be any material impact on the ability to experience the heritage asset from this vantage point.
288. Nevertheless, there would be '*less than substantial*' harm resulting from the impacts on views from ground level described above. Paragraph 134 of the Framework requires this to be balanced against the public benefits of the proposals. The Guidance advises that public benefits include, but are not limited to, heritage benefits. Heritage benefits can include enhancing the contribution of setting to the significance of a heritage asset. In this case the appeal proposals would greatly enhance the ability to experience the viaduct from the SANGs within the northern part of Parcel A. In particular, there would be new public paths passing close to the foot of the viaduct and there would be excellent views of the viaduct as a whole from the proposed visitor car park and the open areas around it. [85]
289. To my mind that would be an important public benefit because many more people would be able to get good views of the viaduct and to see the trains passing over it. This benefit alone would be sufficient to outweigh the harm I have identified. When consideration is given to the social and economic benefits arising from the delivery of new housing that reinforces the conclusion that the public benefits of the scheme as a whole would outweigh the harm to the significance of the designated heritage asset. The test of paragraph 134 of the Framework would therefore be met.
290. That said, for the reasons given above, the appeal scheme would not preserve the setting of the listed viaduct. Mindful of the relevant statutory duty<sup>120</sup>, that is a matter of considerable importance and weight which must be taken fully into account in the overall planning balance.

#### *The Bluebell Railway*

291. The Bluebell Railway is recognised as a non-designated heritage asset in the EGNP which notes that the railway has historic significance for the growth of East Grinstead. I consider that engineering structures, such as bridges and tunnels, together with station buildings and the trains themselves all add to the significance of the asset. Being a linear feature, the setting of the railway is necessarily extensive. The setting of the Imberhorne Viaduct is a small part of the setting of the railway as a whole. For the reasons given above, it is my view that any impact on the setting of the viaduct (as seen from ground level) would be minor. [87, 192]
292. It seems to me that the experience of passengers is of particular importance when assessing the ability to experience a heritage railway. For the reasons given above, I do not think that there would be any material impact on the experience of passengers crossing the viaduct. I appreciate that some new

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<sup>120</sup> Planning (Listed Buildings and Conservation Areas) Act 1990, section 66

houses would be in view from a public footpath which crosses the railway to the south of the site. No doubt this bridge is a good vantage point for watching the trains. Even so, I see no reason to think that the experience would be significantly harmed by a glimpse of some housing. [165, 166]

293. The Bluebell Railway and the Rule 6 party raised some concerns about the need for security fencing which might appear out of keeping. No detailed evidence was put forward to support this suggestion and on my site visit I saw very little intrusive fencing along the railway line. Any fencing needed in the vicinity of the appeal site could be controlled at reserved matters stage as part of the landscaping. [165]
294. My overall assessment is that there would be a negligible impact on the significance of the Bluebell Railway. I appreciate that the extension of the railway to East Grinstead was a significant community achievement and that the railway is much valued locally as part of the history of East Grinstead and as an important visitor attraction. However, the suggestion that the appeal scheme would somehow diminish the attractiveness of the railway to future visitors was not supported by the evidence before the Inquiry. I see no reason why that should be the case. [161, 164, 165, 166, 191, 192]

#### *Conclusions on the historic environment*

295. There would be no harm to the setting or the significance of Hill Place Farmhouse. There would be negligible harm to the setting of the Bluebell Railway, a non-designated heritage asset. This is a matter which should not attract weight in the overall planning balance. However, there would be some harm to the setting of the Imberhorne Viaduct. The setting of the viaduct would not be preserved. This is a matter which must be fully taken into account in the overall planning balance, mindful of the statutory duty.
296. The proposals would accord with the Framework, insofar as it relates to the historic environment, because the public benefits would outweigh the harm to the significance of the viaduct. They would also accord with EGNP Policy EG4 because the proposals are supported by appropriately detailed assessments of heritage significance and the impact of the proposals on that significance.

#### **Other matters**

##### *Matters raised in representations*

297. The written representations raised matters which, in the main, have already been covered above. Other matters raised were concerns about a lack of employment in East Grinstead, pressure on local services such as health and education, traffic conditions on Turners Hill Road in the vicinity of the site access and the fact that the site has been used for landfill. [189 to 196]
298. East Grinstead is one of the larger settlements in Mid Sussex and the site is agreed to be a sustainable location for development. The Agreement would secure proportionate contributions to education, primary healthcare, libraries, sports facilities and community buildings. Traffic conditions in the vicinity of the site would have been taken into account by the highway authority and in the safety audit of the proposed site access. Any risks of pollution relating to the previous use of the site could be appropriately managed by way of a condition. [7, 32, 48, 196]

### *Alternative wording in the Agreement*

299. Clause 12(o) of the Agreement states that the Secretary of State shall determine whether clauses 5.5A and 5.6A (the Council's wording) or 5.5B and 5.6B (the appellant's wording) should take effect. The parties have placed this matter before the Secretary of State because they were not able to reach agreement before the end of the Inquiry. The nub of the dispute is how the lifetime costs of managing the SANGs would be met in the event that the owner opted to set up a management company and that company were subsequently to default on its obligations. The alternative wording is contained in the Agreement and the arguments for the parties are set out in their respective submissions and summarised above<sup>121</sup>. [97, 135 to 138]
300. The appellant does not dispute that the Council's wording would secure the continued management of the SANGs. The appellant's concern is that the Council's approach is disproportionate and unreasonable. The Council does not dispute that the appellant's approach would secure the continued management of the SANGs. Rather, its concern is that there would be an unreasonable risk to the public purse if the Council had to exercise its 'step-in' powers. It follows that either approach would ensure that the SANGs would continue to fulfil its purpose of mitigating potential impacts on the SPA/SAC.
301. Having reached that point, it may not be necessary for me to say more. The Secretary of State may consider this to be primarily a legal matter. I am not a lawyer and would not be qualified to comment on that. However, I offer the following comments in the event that the Secretary of State considers this to be a matter of planning merits.
302. It is not unusual for planning agreements relating to green infrastructure to be structured in a way which gives options. Typically, the owner will be able to elect either to retain the green infrastructure and put in place appropriate management arrangements or to transfer it to a public body together with a commuted sum for future maintenance. The Council and the appellant agree that should happen here. The difficulty with the Council's approach is that the owner would have to fund the full cost of lifetime maintenance at an early stage even if it elected to retain the SANGs land and associated management responsibility. That approach seems to me to be disproportionate.
303. In conclusion, I do not think that the outcome of the appeal is dependent on the resolution of this disagreement. That said, if the Secretary of State of State feels it is appropriate for me to make a recommendation, my recommendation would be that the appellant's wording is preferred.

### **Conclusions**

#### *Mid Sussex District Local Plan*

304. The extension of development into the countryside would be contrary to MSDLP Policy C1 and the adverse effect on the setting of East Grinstead would be contrary to Policy EG1. For the reasons given above, the proposals would accord with other relevant policies, namely H4 (affordable housing), T4 (transport) and C5 (nature conservation). The Agreement would make proportionate

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<sup>121</sup> LPA17, paragraphs 33 to 38 and APP12, paragraph 13

contributions to the infrastructure necessary to support the development, thereby complying with Policy G3. Nevertheless, although there would be compliance with some policies the conflict with Policies C1 and EG1 is of sufficient importance for the proposals to be contrary to the MSDLP as a whole.

305. Having regard to the housing land supply position in Mid Sussex, relevant policies for the supply of housing are not to be regarded as up-to-date by virtue of paragraph 49 of the Framework. Policy C1 is a countryside protection policy which I consider to be a relevant policy for the supply of housing. Policy EG1 seeks, amongst other matters, to prevent development which would detract from the setting of the town. The evidence on landscape capacity indicates that all of the land around East Grinstead (within the district) has either the same capacity to accommodate development as the appeal site or less capacity to accommodate development. It therefore appears to me that the effect of Policy EG1 is to impose a significant restriction on the supply of housing at East Grinstead. For the purposes of this appeal I find that policy EG1 is also a relevant policy for the supply of housing.
306. I consider that only limited weight should be attached to the conflict with Policies C1 and EG1 in view of the challenging housing land supply position in the district.

#### *East Grinstead Neighbourhood Plan*

307. EGNP Policy EG5 supports new housing on previously developed land and on surplus green infrastructure. Other proposals for new housing will only be supported if they comply with criteria (a) to (g). Criterion (a) is that the proposal contributes to sustainable development. The EGNP defines sustainable development as follows:

*Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The National Planning Policy Framework places a requirement on local planning authorities to positively seek opportunities to meet the development needs of their area and guide development to sustainable solutions.*

308. The appeal scheme would help to meet the needs of the present by providing much needed housing, including affordable housing. It would do so in a reasonably accessible location with access to the town centre and other facilities by a range of modes of transport. It would do so without any significant harm to the transport network, to biodiversity or to heritage assets. There would be some moderate harm to landscape character and some visual impacts but these would be localised. I have concluded that the appeal is supported by a robust assessment of environmental and visual impacts and that appropriate mitigation is integral to the scheme, such that it accords with criterion (b). There would also be some loss of best and most versatile agricultural land. Taking a balanced view, I conclude that the proposals would contribute to sustainable development as that term is used in the EGNP. They would therefore accord with criterion (a).
309. I have concluded that there has been a robust assessment of the impact on the highway network, that appropriate mitigation would be provided and that there would not be a severe residual cumulative impact. The proposals would therefore comply with criterion (c). I consider that the proposals comply with criterion (d) (design) as far as they are able to at this outline stage. Criterion

(e) requires a mix of tenure types, criterion (f) relates to SANGs and SAMMS contributions and criterion (g) relates to infrastructure. These would be complied with by virtue of the Agreement. The scheme is therefore in accordance with Policy EG5.

310. I have concluded that the proposals would accord with EGNP Policies EG4 (heritage assets), EG11 (highway network) and EG16 (SPA mitigation). On the basis of the available information there is no reason to think that Policies EG3 (design) and EG7 (housing mix) could not be complied with at reserved matters stage. I have found that the proposals would be contrary to EGNP Policy EG2a in that they would reduce the perception of openness within an area of development constraint. The EGNP is to be read as a whole. Given the overarching nature of Policy EG5, and the scheme's compliance with all of its criteria, I do not consider that the conflict with Policy EG2a is sufficient to bring the proposals into conflict with the EGNP taken as a whole. This finding is reinforced by the compliance of the scheme with the other relevant EGNP policies, leading to my conclusion that the proposals accord with the EGNP as a whole.

*The development plan as a whole*

311. The proposals accord with the EGNP but do not accord with the MSDLP because of conflict with Policies C1 and EG1. I give greater weight to the EGNP for two reasons:

- regardless of the position on housing land supply, the EGNP is considerably more recent than the MSDLP
- when the position on housing land supply is taken into account, I attach only limited weight to the conflict with MSDLP Policies C1 and EG1

312. I therefore conclude that the proposals should be regarded as being in accordance with the development plan as a whole.

*Other material considerations*

313. The proposals would make a significant contribution to the delivery of housing in a district where the supply position is challenging. This would include a welcome contribution to affordable housing. I consider that very significant weight should be attached to the social and economic benefits of new housing.

314. The extent of the SANGs would go beyond what would be needed purely to provide mitigation for the appeal scheme. It would be an attractive amenity for the general public in close proximity to the town. There would be a related heritage benefit in that there would be enhanced opportunities for the public to experience the listed viaduct and the heritage railway. These are further factors weighing in support of the appeal. [69, 85]

315. On the other hand the scheme would fail to preserve the setting of the listed viaduct. This is a matter of considerable importance and weight, notwithstanding my conclusion that the degree of harm would be relatively minor. There would also be a loss of around 20ha of best and most versatile agricultural land. [88, 167, 194]

316. My overall assessment is that the other material considerations weighing in favour of the appeal outweigh those weighing against. The other material conclusions therefore add weight to my finding on the development plan.

317. In view of my conclusion on the development plan it is not necessary for me to consider the balancing exercise set out under the second bullet point of the '*decision taking*' section of paragraph 14 of the Framework.

*Conclusion*

318. I have concluded that the proposals should be regarded as being in accordance with the development plan as a whole. I have had regard to other material considerations but these do not lead me to think that the appeal should be determined other than in accordance with the development plan. My recommendation will therefore be that the appeal should be allowed.

**RECOMMENDATION**

319. I recommend that the appeal be allowed and planning permission granted subject to the conditions set out in Annex D.

320. If the Secretary of State of State feels it is appropriate for me to make a recommendation on the alternative wording contained within clauses 5.5A, 5.5B, 5.6A and 5.6B of the Agreement, I recommend that the appellant's wording is preferred.

*David Prentis*

Inspector



321.

**Annex A**

**APPEARANCES**

FOR THE APPELLANT:

Sasha White	Queen's Counsel, instructed by Barton Willmore LLP
He called	
Brian Duckett	Hankinson Duckett Associates
BSc(Hons) BPhil CMLI	
Jo Evans	RPS CgMs
BSc(Hons) MRTPI IHBC	
Ian Dix	Vectos
BSc(Hons) MSc CMILT	
MCIHT	
Huw Edwards	Barton Willmore LLP
MSc MRTPI	

FOR THE LOCAL PLANNING AUTHORITY:

Richard Turney	of Counsel, instructed by the Head of Legal Services, Mid Sussex District Council
He called	
Rebecca Knight	LUC
DipLA MA CMLI	
Ian Ellis	Southern Planning Practice Ltd
BA MRTPI	

FOR DAVID PEACOCK, THE RULE 6 PARTY:

Richard Harwood	Queen's Counsel, instructed by Addleshaw Goddard
He called	
Mary Power	PowerHaus Consultancy
BSc MSc CHE	
MRICS MRTPI	
Bettina Kirkham	Kirkham Landscape Planning Ltd
DipTP BLD CMLI	
Matthew Grist	Jubb Consulting Engineers Ltd
BSc(Hons) PGDipUD	
CMILT MCIHT	

**Annex B****PROOFS OF EVIDENCE AND DOCUMENTS SUBMITTED AT THE INQUIRY**

	<i>Documents submitted by the appellant</i>
APP1/1	Proof of evidence – Ian Dix
APP1/2	Appendices to proof of evidence – Ian Dix
APP2/1	Proof of evidence – Brian Duckett
APP2/2	Appendices to proof of evidence – Brian Duckett
APP2/3	Plans and photographs – Brian Duckett
APP3/1	Proof of evidence – Huw Edwards
APP3/2	Appendices to proof of evidence – Huw Edwards
APP4	Appearances
APP5	Opening submissions
APP6	Extract from Planning Practice Guidance – the historic environment
APP7	Plan of Historic Landscape Characterisation
APP8	Draft section 106 Agreement
APP9	Chronology of transport documents
APP10	Appeal decision – Holmes Chapel (APP/R0660/W/15/3100555)
APP11	Closing submissions
APP12	Addendum to closing submissions
	<i>Documents submitted by the Council</i>
LPA1/1	Proof of evidence – Rebecca Knight
LPA1/2	Appendices to proof of evidence – Rebecca Knight
LPA2/1	Proof of evidence – Ian Ellis
LPA2/2	Summary proof of evidence - Ian Ellis
LPA2/3	Appendices to proof of evidence - Ian Ellis
LPA3	Opening submissions
LPA4	Historic landscape character types data
LPA5	Notification of the Inquiry
LPA6	Extract from GLVIA3

LPA7	Note from West Sussex County Council - A22 improvements
LPA8	CIL Compliance Statement - West Sussex County Council
LPA9	CIL Compliance Statement – Mid Sussex District Council
LPA10	Appeal decision – Ford Lane, Yapton (APP/C3810/A/14/2228260)
LPA11	Appeal decision – Longworth Lane, Bartestree (APP/W1850/W/15/3051153)
LPA12	Note from West Sussex County Council – education contributions
LPA13	Email from Ian Gledhill of 2 November 2016 – A22 improvements
LPA14	Email from Mike Prichard of 1 November 2016 – health contributions
LPA15	Bundle relating to Chequer Mead contribution
LPA16	Note on SANGs car park with suggested condition
LPA17	Closing submissions
	<i>Documents submitted by the Rule 6 party</i>
DP1/1	Proof of evidence - Mary Power
DP1/2	Summary proof of evidence - Mary Power
DP1/3	Appendices to Proof of evidence- Mary Power
DP1/4	Rebuttal proof of evidence- Mary Power
DP2/1	Proof of evidence – Bettina Kirkham
DP2/2	Summary proof of evidence – Bettina Kirkham
DP2/3	Appendices to proof of evidence – Bettina Kirkham
DP2/4	Rebuttal proof of evidence – Bettina Kirkham
DP3/1	Proof of evidence – Matthew Grist
DP3/2	Summary proof of evidence - Matthew Grist
DP3/3	Appendices to proof of evidence - Matthew Grist
DP3/4	Rebuttal proof of evidence - Matthew Grist
DP4	Opening submissions
DP5	A22 Junction Traffic Flow Comparisons at 2021
DP6	Schemes contributing to the A22 Do Minimum works
DP7	Schemes to be progressed if developer funding is secured (2009)
DP8	Section 106 Agreement - Summary of issues
DP9	Weather data for Crawley Down – July 2014

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DP10	Chronology of transport documents
DP11	Closing submissions
	<i>Other Inquiry documents</i>
ID1	Rail Estate letter of 25 October 2016 and attached representation
ID2	Statement of common ground - appellant and Rule 6 party
ID3	East Grinstead Post Referendum Campaign representation of 21 October 2016
ID4	Stevens and Bolton letter of 1 November 2016
ID5	Draft s106 Agreement as of 3 November 2016
ID6	Stevens and Bolton letter of 4 November 2016
ID7	Draft s106 Agreement at close of Inquiry
ID8	Section 106 Agreement dated 19 December 2016 (submitted after the close of the Inquiry)

## Annex C

### CORE DOCUMENTS

#### CD1 – Appeal Documents

CD1/1	Appeal submitted to the Planning Inspectorate, 15 January 2016 – excluding application documents at CD2
CD1/2	LPA Appeal Questionnaire, including supporting document, relevant development plan policies, neighbourhood responses and comments from statutory consultees
CD1/3	Appellant's Statement of Case, dated 14 January 2016
CD1/4	LPA's Statement of Case (20 April 2016)
CD1/5	Rule 6 Party Statement of Case, dated 05 April 2016, including Appendix A and Appendix B
CD1/6	Appellant/LPA Agreed Statement of Common Ground, October 2016
CD1/7	Statement of Common Ground with West Sussex County Council Highways, dated 23 June 2016
CD1/8	Second Statement of Common Ground with West Sussex County Council Highways, dated 21 September 2016
CD1/9	Letter from Mid Sussex District Council withdrawing Reason for Refusal 2 (Highways), dated 14 September 2016
CD1/10	Consultation Comments Received by PINS in respect of the Appeal
CD1/11	Statement of Common Ground With Surrey County Council Highways, dated 10 October 2016

#### CD2 – Planning Application Documents

	<b>Original Submission February 2015</b>	
CD2/1	Original Planning Application Form (02 February 2015)	
CD2/2	Covering Letter and Ownership Certificates (Barton Willmore, dated 02 February 2015)	
CD2/3	Covering Letter and Further Certificate B Notice to Bluebell Railway Line	
	<b>Application Drawings</b>	
CD2/4	Site Location Plan Dwg CSa/2365/108 Rev C	
CD2/5	Parameter Plan Dwg CSa 2365 107 Rev C	
CD2/6	Land Use Plan Dwg CSa 2365 106 Rev D	
CD2/7	Turners Hill Road: Development Access Pedestrian Refuge Island Dwg 141236/A/08 Rev C	
CD2/8	Landscape Proposals Plan Dwg 2136.14/09 Rev C	
CD2/9	Topographical Survey Dwg 258HP01	
	<b>Illustrative Drawings</b>	
CD2/10	Illustrative Masterplan Dwg CSa/2365/104 Rev E	
	<b>Supporting Documents</b>	
CD2/11	Design & Access Statement, February 2015 – Prepared by CSA	
CD2/12	Planning Statement, February 2015 – Prepared by Barton Willmore	
CD2/13	Transport Assessment, February 2015 – Prepared by Vectos	
CD2/14	Landscape and Visual Impact Assessment, November 2014 – Prepared by HDA	
CD2/15	SANG Management Strategy, December 2014 – Prepared by HDA	
CD2/16	Ecology Summary Report, December 2014 – Prepared by HDA	
CD2/17	Tree Survey Report and Arboricultural Impact Assessment, December 2014 – Prepared by HDA	
CD2/18	Agricultural Circumstances Report, December 2014 – Prepared by Kernon Countryside Consultants Ltd	
CD2/19	Desk Study and Walkover Report, 16 May 2014 – Prepared by Southern Testing Environmental & Geotechnical	
CD2/20	Ground Conditions Assessment, October 2014 – Prepared by Mayer Brown	
CD2/21	Flood Risk, Surface Water and Foul Drainage, December 2014 – Prepared by Mayer Brown	
CD2/22	Noise Assessment, December 2014 – Prepared by Acoustic Air	
CD2/23	Archaeological Desk Based Assessment, December 2014 – Prepared by CGMS	
CD2/24	Heritage Statement, December 2014 – Prepared by CGMS	
CD2/25	A Summary of the Community Consultation, February 2015 – Prepared by CGMS	
	<b>Documents/Plans Supplied Post Submission</b>	
CD2/26	Post Submission Report prepared by Vectos (06 May 2016)	
CD2/27	Planning Letter dated 08 May 2015 and supporting documents including:	
	CD2/27/a	Post-Submission Highways Response, April 2015 (prepared by Vectos)
	CD2/27/b	Response to Objections Raised to Outline Application Ref DM/15/0429, April 2015 (prepared by CGMS)
	CD2/27c	Car Parking Principles Plan, Dwg CSa/2365/112 Rev A
CD2/28	Highways Response Technical Note –DM15a/429 (Dated 4 June 2015)	

CD2/29	Highways Response Technical Note prepared by Vectos (19 June 2015)
CD2/30	Response to East Sussex County Council Landscape Consultation & covering email dated 10 July 2015
CD2/31	Illustrative SANG Landscape Character Plan Dwg 2136.14/11 & covering email dated 13 July 2015
<b>Correspondence with Mid Sussex District Council</b>	
CD2/32	Environmental Impact Assessment (EIA) Screening Report, July 2014 – Prepared by Barton Willmore
CD2/33	Mid Sussex District Council Screening Opinion Dated 08 August 2014
CD2/34	Letter to Mid Sussex District Council from Barton Willmore confirming Notice has been served on the Bluebell Railway Line, dated 11 March 2011 including copy of amended Application Form
CD2/35	17 August 2015 - E-mail from the Planning Case Officer to Lucy Wilford of Barton Willmore confirming the District Council's 5 Year Housing Land Supply Position
<b>Correspondence with other Consultees</b>	
CD2/36	Letter of May 2016 from Horsham and Mid Sussex Clinical Commissioning Group
CD2/37	West Sussex County Council Consultation Response (17 February 2015)
CD2/38	Environment Agency Consultation Response (11 March 2015)
CD2/39	District Council Drainage Engineer Consultation Response (20 February 2015)
CD2/40	Natural England Consultation Response (11 June 2015)

### CD3 – Mid Sussex District Council Reports, Committee Documents and Decision Notice

CD3/1	Habitat Regulations Assessment - Screening Report (01 July 2015)
CD3/2	Planning Officers Report to Planning Committee on 06 August 2015
CD3/3	06 August 2015 Planning Committee Supplementary Agenda
CD3/4	Minutes of 06 August 2015 Planning Committee
CD 3/5	Mid Sussex District Council Decision Notice (17 August 2015)

### CD4 – Acts, Circulars and Regulations

CD4/1	Written Ministerial Statement (WMS): Housing & Growth (06 September 2012)
CD4/2	Growth and Infrastructure Act (April 2013)
CD4/3	Community Infrastructure Levy Regulations 2010 (CIL) as Amended
CD4/4	Conservation of Habitats and Species Regulations 2010
CD4/5	Circular 11/95: The Use of Conditions in Planning Permissions – Annex A only (remainder cancelled)

### CD5 - National Planning Policies and Guidance

CD5/1	National Planning Policy Framework (27 March 2012)
CD5/2	National Planning Practice Guidance (06 March 2014) On line resource only

### CD6 - West Sussex District Council Planning Policies and Guidance

CD6/1	West Sussex Structure Plan 2005
CD6/2	West Sussex Transport Plan 2011-2026 (February 2011)

### CD7 - Mid Sussex District Council Local Planning Policies and Guidance

CD7/1	Extracts – Mid Sussex Local Plan 2004
CD7/2	Mid Sussex District Local Plan, Submission Version Incorporating Focussed Amendments and further proposed modifications, August 2016
CD7/3	Development and Infrastructure SPG (February 2006)
CD7/4	SoS Direction Letter listing 'saved' policies (26 September 2007)
CD7/5	Inspectors Response to MSDC Local Plan (15 September 2016)
CD7/6	Mid Sussex District Council's Response to the Inspector's Questions (29 September 2016)

### CD8 - Mid Sussex District Council Background/Evidence Base Documents and Examination Documents

CD8/1	Northern West Sussex Strategic Housing Market Assessment (SHMA, 2009)
CD8/2	Northern West Sussex Strategic Housing Market Assessment, Update (October 2012)
CD8/3	Strategic Housing Land Availability Assessment (SHLAA, 2013)

CD8/4	Strategic Housing Land Availability Assessment (SHLAA, 2015) and Review of Landscape and Visual Aspects of Site Suitability, January 2015
CD8/5	2014/2015 Annual Monitoring Report
CD8/6	Housing and Economic Development Needs Assessment (HEDNA), February 2015
CD8/7	Housing and Economic Development Needs Assessment Update (HEDNA), June 2015
CD8/8	MSDC Housing Completions Schedule April 2014-March 2015
CD8/9	MSDC Commitments Schedule April 2015
CD8/10	Settlement Sustainability Review – Addendum (July 2015)
CD8/11	A Housing Strategy for Mid Sussex
CD8/12	Mid Sussex Refreshed Housing Strategy 2012-2014
CD8/13	Homelessness Strategy 2016-2021
CD8/14	Affordable Housing Needs Model Update (October 2014)
CD8/15	Housing Implementation Plan August 2016
CD8/16	Draft Infrastructure Delivery Plan, June 2015
CD8/17	DfT Consultancy Advice- West Sussex County Council and Mid Sussex District Council, East Grinstead Strategic Development Transport Advice and Report Tasks 1 and 2
CD8/18	Mid Sussex Transport Study, Stage 1 Report, December 2012
CD8/19	Mid Sussex Transport Study, Stage 2 Report, September 2013
CD8/20	Junctions and Road Links Potentially Requiring Mitigation Being Assessed through Stage 2
CD8/21	Atkins Study

### CD9 – Neighbourhood Planning

CD9/1	East Grinstead Neighbourhood Plan (November 2015)
CD9/2	Independent Examiners Report for East Grinstead Neighbourhood Plan (17 August 2016)
CD9/3	East Grinstead Neighbourhood Plan (Referendum Version September 2016)

### CD10 – Relevant Appeal Decisions/Judgments

CD10/1	High Court Decision - Suffolk Coastal District Council vs Hopkins Homes Ltd and Richborough Estates Partnership LLP vs Cheshire East Borough Council and SoS CLG [2016] EWCA Civ 168, (Case No: C1/2015/0583 & C1/2015/0894) (17 March 2016)
CD10/2	High Court Decision - Renew Land
CD10/3	Judgement Dartford BC V SSCLG and Landhold Capital Limited [2014] EWHC 2636 (Admin) (24 June 2014)
CD10/4	Judgement - Gallagher Homes/Lioncourt Homes V Solihull Council: EWHC 1283 (Admin) (CO/17668/2013) (30 April 2014)
CD10/5	Wainhomes (South West) Holding Limited V SSCLG and Wiltshire Council [2013] EWHC 597 (Admin) (25 March 2013)
CD10/6	Jones V Mordue [2015] EWCA Civ 1243 (Case No: C1/2015/1067) (2015)
CD10/7	Forest of Dean Council V SoSCLG and Gladman Developments Limited [2016] EWHC 421 (Admin) (04 March 2016)
CD10/8	Hunston Properties v SoS and St Albans City & District Council [2013] EWHC 26789 (Admin) (12 December 2013)
CD10/9	Land at Razor's Farm, Basingstoke, Hampshire (APP/H1705/A/13/2205929) (22 September 2014)
CD10/10	Tonbridge and Malling Strategic Sites SoS Decision (APP/H2265/A/02/1094855 and APP/H2265/A/02/1105982 and APP/H2265/A/02/1095664 and APP/H2265/A/02/1095665 and APP/H2265/A/02/1095666) (August 2004)
CD10/11	Land at Gotham Road, East Leake, Nottinghamshire, SoS Decision (APP/P3040/A/07/2050213) (March 2008)
CD10/12	Land North of Low Lane, High Leven. Ingleby Barwick, SoS Decision (APP/H0738/A/13/219538) (September 2013)
CD10/13	Long Marston, Pebworth, SoS Decision (APP/H1840/A/13/2202364) (02 July 2014)
CD10/14	Land off Rilshaw Lane, Winsford, Cheshire, SoS Decision (APP/A0665/A/2229269) (15 October 2015)
CD10/15	Land at Sibford Road, Hook Norton, Oxfordshire, SoS Decision (APP/C3105/A/14/2226552) (07 December 2015)
CD10/16	Land North of Birchen Lane, Haywards Heath, SoS Decision (APP/D3830/W/15/3137838) (08 August 2016)
CD10/17	Greetham Garden Centre, Oakham Road, Greetham, Oakham (APP/A2470/A/14/2222210) (26 May 2015)
CD10/18	Salisbury Landscapes Ltd, Boughton Road, Moulton, Northampton (APP/Y2810/A/14/2225722) (18 June 2015)
CD10/19	Land adjacent to Cornerways, High Street, Twyning, Tewkesbury (APP/G1630/W/14/3001706) (13 July 2015)

CD10/20	Land at Roes Lane, Crich, Derbyshire (APP/M1005/A/14/2226553) (13 July 2015)
CD10/21	Barnwell Manor Judgement [2013] EWHC 473 (Admin)
CD10/22	Court of Appeal decision RE: Barnwell Manor Wind Energy Ltd. [2014] EWCA Civ 137 (Case No: C1/2013/0843) (18 February 2014)
CD10/23	Forge Field Sevenoaks Court of Appeal Judgement [2014] EWCA 1895 (Admin)
CD10/24	PUGH vs S of SLG EWHC 3 (Admin) (Case No: CO/3712/2014) (January 2015)
CD10/25	High Court decision - R on the Application of Hughes v South Lakeland District Council (Case No: CO/17269/2013)
CD10/26	Land at Pulley Lane, Newland Road and Primsland Way, Droitwich Spa (Appeal Ref: APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426) (02 July 2014)
CD10/27	Land at Station Road, Rainham

## CD11 – Highways

CD11/1	Jubb Report - East Grinstead and Surrounds November 2014 Survey and Review of Traffic Conditions Headline Summary Report V3 February 2015.
CD11/2	Jubb Report -East Grinstead and Surrounds November 2014 Survey and Review of Traffic Conditions Detailed and Consolidated Information and Findings January 2015.
CD11/3	Jubb Report - Supplementary Report to East Grinstead and Surrounds November 2014 Survey and Review of Traffic Conditions Headline Summary Report V3 A22 Junction 6 day Survey March 2015. <ul style="list-style-type: none"> <li>Section 1 - Headline Summary Report VM1 July 2015.</li> <li>Section 2 - Detailed and Consolidated Information and Findings Report.</li> </ul>
CD11/4	Jubb Report – East Grinstead and Surrounds 2016 Survey and Review of Traffic Conditions, September 2016. <ul style="list-style-type: none"> <li>Section 1 – Headline Summary Report</li> <li>Section 2 Detailed and Consolidated Information and Findings</li> </ul>
CD11/5	Vectos Report - Modelling of A22 Key Junctions, August 2016
CD11/6	WSCC Transport Assessment Methodology (June 2007)
CD11/7	MSDC Validation Criteria for Planning Applications Local Requirements (June 2015)

## CD12

*Not used*

## CD13 – Ecology

CD13/1	Natural England Guidance on SANG Creation
CD13/2	Ashdown Forest Visitor Survey Data Analysis. Natural England, 21 <sup>st</sup> September 2010.
CD13/3	Suitable Alternative Natural Greenspace (SANG) Guidance. Mid Sussex District Council, September 2012
CD13/4	Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) Strategic Access Management and Monitoring (SAMM) – Interim Mitigation Strategy – 22 August 2013
CD13/5	Ancient Woodland and Veteran Trees, Protecting them from Development, Natural England Standing Advice

## CD14 – Heritage

CD14/1	Planning (Listed Building & Conservation Areas) Act 1990 (Extracts)
CD14/2	Historic Environment Good Practice Advice in Planning: Note 1: The Historic Environment in Local Plans (March 2015)
CD14/3	Historic England Good Practice Advice in Planning Note 2 - Managing Significance in Decision-Taking in the Historic Environment (March 2015)
CD14/4	Historic England Good Practice Advice in Planning Note 3 – The Setting of Heritage Assets (March 2015)
CD14/5	Seeing the History in the View (Historic England, May 2011)
CD14/6	Historic England – Conservation Principles Policies and Guidance (2008)
CD14/7	Historic England - Understanding Place: Character and context in local planning (2015)
CD14/8	Designation Listing Selection Guide : Transport Buildings, Historic England, 2011
CD14/9	Designation Listing Selection Guide : Domestic 1: Vernacular Houses, Historic England, 2011



## **CD15 – Miscellaneous**

CD15/1	Home Truths 2015/16: South East
CD15/2	Home Truths 2014/15: South East
CD15/3	Fixing the Foundations: Creating a More Prosperous Nation (July 2015)
CD15/4	DCLG: Housing the Next Generation Speech (January 2013)
CD15/5	The Economic Footprint of the UK House Building – South East (September 2015)

## **Annex D**

### **SCHEDULE OF CONDITIONS**

- 1) No development shall take place until a plan showing the phasing of the development has been submitted to and approved in writing by the local planning authority. The use of the term 'phase' in these conditions refers to the phases shown on the approved phasing plan. Development shall be carried out in accordance with the approved phasing plan.
- 2) Details of the appearance, landscaping, layout and scale (hereinafter called the "reserved matters") for any phase of development shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 2 years from the date of this permission.
- 4) The development hereby permitted in any phase must be begun before the expiration of 1 year from the date of approval of the last of the reserved matters for that phase.
- 5) The submission of reserved matters applications pursuant to the development hereby approved shall demonstrate compliance with approved parameter plan CSa 2365 107 Rev C.
- 6) No part of the development shall be occupied until such time as the vehicular access has been constructed in accordance with the arrangements shown on drawing 141236/A/08/ Rev C.
- 7) No development shall take place until temporary arrangements for access for construction traffic have been provided in accordance with details which have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No part of the development shall be occupied until visibility splays of 2.4 metres by 120 metres have been provided at the proposed site vehicular access onto the B2110 Turners Hill Road in accordance with details which have been submitted to and approved in writing by the local planning authority. The splays shall thereafter be permanently maintained and kept free from all obstructions over a height of 0.6 metres above adjoining carriageway level.
- 9) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:
  - a) hours of working
  - b) construction traffic routing and signage
  - c) location of site offices
  - d) location of plant and materials storage

- e) the area within the site reserved for the loading, unloading and turning of vehicles delivering plant and materials
- f) the area reserved within the site for parking for site staff and operatives
- g) wheel washing facilities
- h) scheme to minimise impacts on air quality
- i) measures to ensure the safe operation of the Bluebell Railway

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

10) 1. Site Characterisation

No development shall take place until an investigation and risk assessment has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site which has been submitted to and approved in writing by the local planning authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be produced. The report of the findings shall include:

- a) a survey of the extent, scale and nature of contamination
- b) an assessment of the potential risks to
  - human health
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes
  - adjoining land
  - ground waters and surface waters
  - ecological systems
  - archaeological sites and ancient monuments
- c) an appraisal of remedial options, and proposal of the preferred option(s)

This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*. No development shall take place until the report of the findings has been submitted to and approved in writing by the local planning authority.

2. Submission of Remediation Scheme

In the event contamination is found, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be prepared. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. No development shall take place until the remediation scheme has been submitted to and approved in writing by the local planning authority.

### 3. Implementation of Approved Remediation Scheme

The remediation scheme shall be carried out as approved. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be produced. No development shall take place until the verification report has been submitted to and approved in writing by the local planning authority.

### 4. Reporting of Unexpected Contamination

In the event that contamination is found when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken in accordance with the requirements of part 1 of this condition and where remediation is necessary a remediation scheme shall be prepared in accordance with the requirements of part 2 of this condition.

Following completion of the measures identified in the approved remediation scheme a verification report shall be prepared. No further development shall take place in the affected part of the site until the verification report has been submitted to and approved in writing by the local planning authority.

- 11) No development shall take place within any phase until details of the surface water drainage and means of disposal for that phase have been submitted to and approved in writing by the local planning authority. No building within that phase shall be occupied until the drainage works have been carried out in accordance with the approved details. The details shall include a timetable for implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and/or any other arrangements to secure the operation of the scheme throughout its lifetime. Thereafter, the drainage works shall be managed and maintained in accordance with the approved details for the lifetime of the development.
- 12) No development shall take place within any phase until details of the foul drainage for that phase have been submitted to and approved in writing by the local planning authority. No dwelling within that phase shall be occupied until the drainage works have been carried out in accordance with the approved details.
- 13) No development shall take place within any phase until details of existing and proposed site levels for that phase have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 14) Prior to the commencement of construction of any dwelling a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall be generally in accordance with the framework contained in the Transport Assessment prepared by Vectos

- (February 2014). Development shall be carried out in accordance with the approved Travel Plan.
- 15) Prior to the commencement of construction of any dwelling details of the play area shall be submitted to and approved in writing by local planning authority. The details shall include the layout, drainage, equipment, landscaping, fencing, timetable for construction and future management of the areas to be provided. Development shall be carried out in accordance with the approved details.
  - 16) Prior to the commencement of construction of any dwelling details of noise mitigation measures shall be submitted to and approved in writing by the local planning authority. The measures shall be generally in accordance with the recommendations of the Noise Assessment prepared by Acoustic Air Ltd (December 2014). No dwelling shall be occupied until the relevant noise mitigation measures have been implemented in accordance with the approved details.
  - 17) No development shall take place until the applicants, or their agents or successors in title, have secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation and timetable which has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved programme of works.
  - 18) No development shall take place until an Ecological Management Plan has been submitted to and approved in writing by the local planning authority. The Ecological Management Plan shall be generally in accordance with the proposals in the Ecological Summary Report prepared by HDA (December 2014). It shall contain measures to avoid, mitigate and compensate for any impacts on wildlife during the construction period, details of biodiversity enhancements to be incorporated within the development (including provision for their future management) and a lighting strategy including measures to minimise light pollution of wildlife habitats. Development shall be carried out in accordance with the approved Ecological Management Plan and shall thereafter be permanently retained as such.
  - 19) Hard and soft landscape works shall be carried out in accordance with the details approved pursuant to condition 2. The works for any phase shall be carried out prior to the occupation of any building within that phase or in accordance with the programme agreed with the local planning authority. 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 unless the local planning authority gives written consent to any variation.
  - 20) No dwelling shall be occupied until the internal access roads and footways serving that dwelling have been designed, laid out and constructed in accordance with details which have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 21) No dwelling shall be occupied until the car and cycle parking associated with that dwelling have been provided in accordance with details which have been submitted to and approved in writing by the local planning

authority. The areas of land so provided shall thereafter be kept permanently available for their approved use.

- 22) No dwelling shall be occupied until details of the SANG car park have been submitted to and approved in writing by the local planning authority. The details shall be generally in accordance with the illustrative SANG Landscape Character Plan 2136.14/11 prepared by HDA. The car park shall be implemented as approved and made available for use by the public prior to the occupation of any dwelling and shall thereafter be kept permanently available for this purpose.

*Additional condition suggested by the Rule 6 party (not recommended by the Inspector)*

- 23) No dwelling hereby permitted shall be occupied until improvement works to the Felbridge Junction (A22/A264) and the London Road/Lingfield Road Junction (A22/Lingfield Road) have been carried out in accordance with the 'Do Minimum Network Optimisation' option described in the East Grinstead Traffic Management Study – Stage 3 Final Report (Atkins, 3 May 2012).



# Ministry of Housing, Communities & Local Government

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## **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 for permission 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**

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: 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 Inspector's report of the inquiry or hearing within 6 weeks of the day after 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.