



Ministry of Housing,  
Communities &  
Local Government

Joseph Carr  
David Lock Associates Ltd  
50 North Thirteenth Street  
Central Milton Keynes  
MK9 3BP

Our ref: APP/P1425/W/15/3119171  
Your ref:

16 February 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY DLA DELIVERY LTD  
LAND AT MITCHELSWOOD FARM, ALLINGTON ROAD, NEWICK, EAST SUSSEX BN8  
4NH  
APPLICATION REF: LW/14/0703**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Felgate BA(Hons) MA MRTPI, who held a public local inquiry on the basis of a written format which closed on 10 August 2020 into your client's appeal against the decision of Lewes District Council to refuse your client's application for outline planning permission for up to 50 residential dwellings (including affordable housing), open space and landscaping, new vehicular and pedestrian accesses, and car parking, in accordance with application Ref. LW/14/0703, dated 9 September 2014.
2. In May 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.
3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 23 November 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 4 August 2017. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 23 November 2016 decision letter.

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

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

Ministry of Housing, Communities & Local Government    Email: PCC@communities.gov.uk  
Andrew Lynch, Decision Officer  
Planning Casework Unit  
3rd Floor Fry Building  
2 Marsham Street  
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## **Procedural matters**

6. As set out in IR2.9, the Secretary of State has considered the scheme on the basis of the amendments made at the first inquiry. He agrees with the Inspector for the reasons set out in IR2.11 and Inquiry Document PINS-12 that the inclusion of an element of self-build or custom-build housing in the proposed development was admissible, and that no additional consultation was necessary. The Secretary of State does not therefore consider that these issues raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

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

7. The Secretary of State has considered the post-inquiry exchange of correspondence mentioned at IR2.5. On 19 January 2021, the Housing Delivery Test: 2020 measurement was published. The measurement for Lewes DC changed from 93% (action plan) to 100% (no action needed). The Secretary of State is satisfied that neither of these issues affect his decision, and no other new issues have been raised which warrant further investigation or necessitate additional referrals back to parties.

## **Policy and statutory considerations**

8. 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.
9. In this case the development plan consists of the Lewes District Local Plan (LLP) Part 1: Joint Core Strategy (adopted May 2016), Part 2: Site Allocations & Development Management Policies (adopted February 2020) and the Policies Map, together with the Newick Neighbourhood Plan (made July 2015). The Secretary of State considers that relevant development plan policies include those set out at IR3.3-3.14.
10. 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'), as well as the East Sussex County Landscape Assessment (2016), and the National Character Area 121 Low Weald (2013).

## **Main issues**

### *Location of housing*

11. For the reasons given in IR9.3-9.20, the Secretary of State agrees with the Inspector that in terms of policies relating to the location of new housing, the appeal proposal would involve a clear and direct conflict with LLP2 Policy DM1 (IR9.8). He further finds that, while there are no specific conflicts with NNP policies in terms of housing location policies, the lack of positive accord with the NNP's general aims and strategy (IR9.19 and IR11.2) carries limited weight against the scheme. He agrees for the reasons set out in IR11.3 that Policy DM1 should carry moderate weight.

### *Effects on the character and appearance of the landscape*

12. For the reasons given in IR9.21-9.28, the Secretary of State agrees with the Inspector that the landscape of this part of the Low Weald is one of relatively high quality, justifying

some degree of protection (IR9.24), that the landscape in the vicinity of the appeal site possesses some local significance in terms of its value (IR9.26), and that the existing landscape around the appeal site is one of relatively high quality, and of some local value to the district (IR9.28).

13. With regard to the appeal site itself, the Secretary of State agrees with the Inspector for the reasons given in IR9.29-9.37 that while northern part of the site plays only a limited role in the local landscape, and as such, its value to the setting of the village is equally limited (IR9.29), in all other respects, the appeal site, and in particular its central and southern sections, forms an integral part of the attractive and high-quality Low Weald landscape, and that as such, these parts of the site seem highly sensitive to built development (IR9.37).
14. For the reasons given in IR9.38-9.45, the Secretary of State agrees with the Inspector that the development's effect would be to cause substantial visual harm to the character and appearance of the landscape and village setting. He attaches substantial weight to this harm (IR9.85). He also finds that the proposal would be in conflict with national policy in the Framework (NPPF 170) in terms failing to recognise the intrinsic character and beauty of the countryside, and in the loss of woodland. He considers this should attract moderate weight.
15. With regard to the other matters relating to landscape and visual impact, the Secretary of State agrees with the Inspector for the reasons given in IR9.46-9.58 that they do not change or add anything of significance to his conclusions with regard to the present appeal proposal in terms of its effects on the character and appearance of the landscape and village setting (IR9.52). He agrees with the Inspector that the proposed development would fail to conserve or enhance the District's natural environment or its distinctive landscape qualities, and that it would fail to respect the landscape's character, or to blend well with the local built environment (IR9.53-54). He further agrees in IR9.58 that the proposed development would have a seriously damaging impact on the character and appearance of the local landscape, resulting in conflict with Policies CP10(1) and EN1.

### *Housing*

16. For the reasons given in IR9.59-9.80, the Secretary of State agrees with the Inspector that the Council has been unable to show a 5-year supply of deliverable sites, and that this triggers the tilted balance under NPPF paragraph 11(d) (IR9.80). In reaching his conclusions on housing, the Secretary of State has taken into account that the District's housing policies leave a sizeable part of the OAN unmet, and that it would provide opportunities for self or custom-build housing (IR9.81-9.84, IR9.88-9.91 and IR11.4).
17. The Secretary of State has also taken into account the Inspector's assessment of the need for and provision of affordable housing at IR9.85-9.87 and IR11.6. However, as the Inspector notes in IR9.86, none of the circumstances set out in IR9.85 is particularly unusual, and the amount of affordable housing proposed is what would be expected from any other development of the same size; i.e. it is no more than required by policy. He agrees that in the light of the genuine need for affordable housing, the provision of 20 affordable units is a benefit of the scheme, and considers that overall the housing benefits of the appeal scheme command significant weight.

### *Effects on Ashdown Forest*

18. The Secretary of State notes that the August 2020 Unilateral Undertaking precludes any residential development within the part of the site that falls within the 7km ZOI (IR9.93). For the reasons given in IR9.92-9.117, the Secretary of State agrees with the Inspector that the proposed development, either alone or in combination with any other plans or projects, would not be likely to have any significant effect on the Ashdown Forest SPA or SAC, or on the conservation objectives for either of those areas or their qualifying features and species. The Secretary of State therefore concludes that in this respect the scheme would not conflict with any development plan policies, and that none of the offered contributions to SANG or SAMM are necessary (IR9.116-117).

### *Other matters*

19. The Secretary of State agrees with the Inspector for the reasons given in IR9.118-9.120 that the economic benefits of the scheme attract limited weight (IR9.118), the play area attracts modest weight in favour (IR9.119) and the proposed open space little weight (9.120). He further agrees for the reasons set out in IR9.121-126, that there is no basis on which the possibility of a biodiversity gain can be given weight (IR9.121), that the appeal site is not unsustainable in terms of its accessibility to everyday services and facilities (IR9.122), and that there is no substantiated evidence to support objection on the basis of pressures on schools, health facilities and other local services (IR9.123), highway safety and traffic (IR9.124). He considers that external lighting or construction traffic could be controlled by condition (IR9.126).

### **Planning conditions**

20. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.13, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 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 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

### **Planning obligations**

21. The Secretary of State has had regard to the Inspector's analysis at IR2.14-2.20, IR9.91 and IR9.119-120, the Section 106 agreement dated 11 August 2020, the Unilateral Undertaking dated 16 August 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended. The Secretary of State agrees with the Inspector's conclusion for the reasons given in IR2.16 that, with the exception of the contributions to suitable alternative natural greenspace (SANG), strategic access management and monitoring (SAMM), the agreement and undertaking comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the agreement and undertaking overcome his reasons for dismissing this appeal and refusing planning permission.

22. For the reasons set out in IR2.17, and given his findings in paragraph 18 of this letter, the Secretary of State has found that none of the offered contributions to SANG or SAMM are necessary. He has therefore not taken them into account in reaching his conclusions.

## **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 Policies DM1, CP10(1), and EN1 of the development plan, and is not in accordance with the development plan overall. 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. As the Secretary of State has concluded that the authority is unable to demonstrate a five year housing land supply, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
25. The proposed development would have a seriously damaging impact on the character and appearance of the local landscape, and there would be substantial visual harm to the character and appearance of the landscape and village setting. This harm carries substantial weight. The conflict with national policy in the Framework (NPPF 170) in terms of failing to recognise the intrinsic character and beauty of the countryside, and in the loss of woodland carries moderate weight, and the lack of positive accordance with the NNP's general aims and strategy carries limited weight against the scheme.
26. The housing benefits of the scheme carry significant weight, the economic benefits attract limited weight, and the play area attracts modest weight, and the proposed open space little weight.
27. The Secretary of State considers that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole. Overall, he considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.
28. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

## **Formal decision**

29. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for up to 50 residential dwellings (including affordable housing), open space and landscaping, new vehicular and pedestrian accesses, and car parking, in accordance with application Ref. LW/14/0703, dated 9 September 2014.

## **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. A copy of this letter has been sent to Lewes District Council and to Mr Patrick Cumberlege and Baroness Julia Cumberlege, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Andrew Lynch

**Andrew Lynch**

*This decision was made by the Secretary of State and signed on his behalf*



The Planning Inspectorate

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# Report to the Secretary of State

by **John Felgate** BA(Hons) MA MRTPI  
an Inspector appointed by the Secretary of State

Date 17<sup>th</sup> November 2020

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TOWN & COUNTRY PLANNING ACT 1990

LEWES DISTRICT COUNCIL

APPEAL BY DLA DELIVERY LIMITED

PROPOSED DEVELOPMENT AT

MITCHELSWOOD FARM, ALLINGTON ROAD, NEWICK

Inquiry conducted by written submissions, 1 May – 10 August 2020

Land at Mitchelswood Farm, Allington Road, Newick, Sussex BN8 4NH

File Ref(s): APP/P1425/W/15/3119171

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## ABBREVIATIONS USED IN THIS REPORT

AA	Appropriate Assessment
AH	Affordable housing
AHNA	Affordable Housing Needs Assessment
AONB	Area of Outstanding Natural Beauty
CIL	Community Infrastructure Levy
CP	Core Policy
DC	Draft Condition
DLA	DLA Delivery Ltd
ESCC	East Sussex County Council
ESCLA	East Sussex County Landscape Assessment
FQ	Further Question
GLVIA 3	Guidelines for Landscape and Visual Assessment, 3 <sup>rd</sup> Edition
HRA	Habitats Regulations Assessment
HDT	Housing Delivery Test
HLS	Housing Land Supply
IQ	Inspector's Question
JCS	Joint Core Strategy
LDC	Lewes District Council
LEAP	Local Equipped Area of Play
LLCS	Lewes Landscape Capacity Study
LPP1	Lewes Local Plan Part 1
LPP2	Lewes Local Plan part 2
NCA	National Character Area
NE	Natural England
NNP	Newick Neighbourhood Plan
NNPCA	Newick Neighbourhood Plan Character Assessment
NPC	Newick Parish Council
NPPF	National Planning Policy Framework
NVS	Newick Village Society
OAN	Objectively assessed need
PINS	The Planning Inspectorate
PPG	Planning Practice Guidance
RC	Recommended Condition
RR	Refusal Reason
RSC	Rural Service Centre
SAC	Special Area for Conservation
SAMM	Strategic access management and monitoring
SANG	Suitable alternative natural greenspace
SCG	Statement of Common Ground
SDNP	South Downs National Park
SHELAA	Strategic Housing and Economic Land Availability Assessment
SHLAA	Strategic Housing Land Availability Assessment
SoS	Secretary of State (for Housing, Communities and Local Government)
SP	Spatial Policy
SPA	Special Protection Area
SPD	Supplementary Planning Document
TBH	Thames Basin Heaths
TPO	Tree Preservation Order
WMS	Written Ministerial Statement
ZoI	Zone of influence
ZSV	Zone of Significant Visibility

## **PREFIXES USED IN DOCUMENT NUMBERING**

### SECOND (RE-OPENED INQUIRY) DOCUMENTS (held by the Planning Inspectorate in electronic form only)

PINS	The Planning Inspectorate	82
APP	The appellants	82
COU	The Council	83
RUL	The Rule 6 Party	83
OIP	Other Interested Parties and Organisations	83
GEN	General inquiry documents	84
RD	Redetermination Core Documents	84

### FIRST INQUIRY DOCUMENTS (held by the Planning Inspectorate in hard copy only)

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**File Ref: APP/P1425/W/15/3119171**

**Land at Mitchelswood Farm, Allington Road, Newick, East Sussex BN8 4NH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by DLA Delivery Ltd against the decision of Lewes District Council.
- The application Ref LW/14/0703, dated 9 September 2014, was refused by notice dated 10 February 2015.
- The development proposed comprises up to 50 residential dwellings (including affordable housing), open space and landscaping, new vehicular and pedestrian accesses, and car parking.
- This report supersedes that issued on 5 August 2016. The Secretary of State's decision dated 23 November 2016 was quashed by order of the High Court.

**Summary of Recommendation:** That the appeal be dismissed.

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## 1. **Appeal Background**

### ***Summary of chronology to date***

- 1.1. The original inquiry into this appeal ('the first inquiry') was held in February 2016. The appeal was at that time proceeding as a transferred decision. Following the close of that inquiry, in May 2016, the Secretary of State (SoS) directed that the appeal be recovered for his own determination. The reason for recovery was that the appeal involved more than 10 dwellings, in an area where a neighbourhood plan had been made.
- 1.2. The Inspector, Matthew Birkinshaw BA(Hons) MSC MRTPI, submitted his report in August 2016, recommending that the appeal be allowed and planning permission be granted subject to conditions<sup>1</sup>. The SoS agreed, and issued a decision to that effect in November 2016<sup>2</sup>.
- 1.3. The SoS's decision was challenged by Baroness Julia Cumberlege of Newick and Mr Patrick Cumberlege. In August 2017 the decision was quashed by order of the High Court<sup>3</sup>. That judgement was in turn challenged by the appellants, DLA Delivery Ltd (DLA), but the High Court's judgement was upheld by the Court of Appeal in June 2018<sup>4</sup>. The appeal decision was remitted to the SoS for redetermination.
- 1.4. The SoS then invited further representations. Following receipt of those representations, the SoS carried out a draft Habitats Regulations Assessment in March 2019, and conducted further consultation on this. In October 2019 the SoS directed that the inquiry was to be re-opened.

### ***The first Inspector's report and SoS's decision***

- 1.5. In his report, dated 5 August 2016, Inspector Birkinshaw found the appeal site's countryside location to be in conflict with saved Policy CT1 of the Lewes District Local Plan of 2003, which was in force at that time. However, despite a small surplus in the 5-year housing land supply, he found this policy to be excessively restrictive in relation to the District's identified housing needs.

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<sup>1</sup> RD 2.6: the Inspector's report on the first inquiry, 5 Aug 2016

<sup>2</sup> RD 2.6: the SoS's original appeal decision, 23 Nov 2016

<sup>3</sup> RD 2.7: High Court judgement, 4 Aug 2017, quashing the original decision

<sup>4</sup> RD 2.8: Court of Appeal judgement, 8 June 2018, upholding the quashing

Policy CT1 was therefore held to be inconsistent with national policies, and out of date. As such, it carried reduced weight.

- 1.6. No conflict was found with any other policies. Subject to appropriate landscaping and design, the Inspector saw no significant harm to the village setting or landscape character. The site was found to be accessible to local services, on foot or by bus. In addition, based on the evidence before him, the site was agreed to be outside the zone of influence of any internationally protected habitats, and the development was unlikely to have any significant effects in that regard.
- 1.7. Overall, the conflict with Policy CT1 was held not to significantly or demonstrably outweigh the scheme's social and economic benefits. On this basis, the Inspector recommended approval.
- 1.8. In his original decision, dated 23 November 2016, the SoS agreed with the Inspector's reasoning, and accepted the recommendation.

### ***The legal challenge and judgements***

- 1.9. The challenge in the High Court was brought on two grounds. The first was that, in finding Policy CT1 to be out of date, the SoS had failed to take account of his own earlier decision in relation to an appeal at Broyle Gate Farm, Ringmer<sup>5</sup>, in the same local authority area, and that his finding in this case was inconsistent with that decision. The Ringmer decision was a material consideration, and had the SoS had regard to it, his decision on the present appeal might have been different.
- 1.10. The second ground was that part of the appeal site lay within the 7km zone of influence (ZoI) of the Ashdown Forest Special Protection Area (SPA) and Special Area for Conservation (SAC), a site designated at European level, and protected in UK national legislation by the Conservation of Habitats and Species Regulations 2010<sup>6</sup> (the Habitats Regulations). The Inspector's finding, and the SoS's acceptance, that the site lay outside this ZoI was an error of fact. The permission contained no condition preventing development within the relevant part of the site. The decision was therefore in breach of Regulation 68(3) of the Habitats Regulations.
- 1.11. The SoS consented to judgement on both grounds. The case was defended by DLA, but unsuccessfully, resulting in the appeal decision being quashed on 4 August 2017<sup>7</sup>.
- 1.12. In the Court of Appeal, both of the grounds for the lower Court's judgement were upheld on 8 June 2018<sup>8</sup>. The permission therefore remained quashed.
- 1.13. In redetermining the appeal, the quashed decision has no legal effect. However that decision, and the first Inspector's report, may still be material considerations, the weight to be attached to them being a matter for the SoS.

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<sup>5</sup> APP-1, Appx 6: APP/P1425/W/15/3133436, Broyle Gate Farm, Ringmer

<sup>6</sup> Since superseded by the Conservation of Habitats and Species Regulations 2017 (as amended)

<sup>7</sup> RD 2.7: High Court judgement, 4 Aug 2017

<sup>8</sup> RD 2.8: Court of Appeal judgement, 8 June 2018

### **Further consultation**

- 1.14. Following the quashing of the original decision, the SoS wrote on 28 June 2018 to DLA, Lewes District Council (LDC) and other interested persons, under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, inviting representations as to any changes of circumstances. The letter also sought views as to whether the inquiry should be re-opened.
- 1.15. On 9 January 2019, after considering the responses, the SoS wrote to all the relevant parties, giving notice that he considered that the inquiry did not need to be re-opened, and that he would proceed to redetermine the appeal.
- 1.16. On 23 January, following receipt of representations raising further new information, the SoS wrote to relevant parties, allowing a further four-week period for additional submissions.

### **SoS's Draft Habitat Regulations Assessment, 2019**

- 1.17. In response to the submissions received, the SoS carried out a draft Habitats Regulations Assessment (HRA)<sup>9</sup>. The Assessment included a Part 1 Screening followed by a Part 2 Appropriate Assessment. On 13 March 2019, the SoS consulted Natural England (NE) on the draft HRA, and NE responded in a letter dated 2 April 2019<sup>10</sup>.
- 1.18. On 7 May 2019, the SoS wrote to the appeal parties and other interested persons, inviting any comments on the draft HRA, and on NE's response. On 29 May 2019, copies of the responses to the 7 May letter were circulated to all relevant parties, and further comments on these were accepted.

### **Regulation 19 Direction**

- 1.19. On 24 October 2019, the SoS issued a Direction under Regulation 19 that the inquiry was to be re-opened. The letter noted a number of material changes in circumstances since the original inquiry, including:
  - The release of Housing Delivery Test (HDT) results for Lewes District, and a legal challenge to those figures by LDC;
  - Changes to relevant policies in the emerging draft local plan;
  - A judgement in the High Court relating to the Council's Core Strategy and development affecting Ashdown Forest;
  - The SoS's draft HRA, and the responses to it;
  - Changes to national planning policies, a Written Ministerial Statement (WMS) on Housing and Planning, and the Government's response to technical consultation on planning guidance.
- 1.20. These matters were confirmed in a letter issued by the Planning Inspectorate (PINS) on 31 October 2019. In addition, this letter made it clear that the re-opened inquiry would not be restricted to the above matters. The letter also stated that the Inspector and SoS would consider any relevant evidence submitted previously, unless expressly superseded.

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<sup>9</sup> RD 2.9: SoS's draft HRA, March 2019

<sup>10</sup> RD 8.4: NE's letter dated 2 April 2019

## **Rule 6 Party**

- 1.21. Rule 6 Party status was granted to Mr Patrick Cumberlege and Baroness Julia Cumberlege on 7 November 2019.

## **2. The Re-opened Inquiry: Procedural and Preliminary Matters**

### ***Inquiry format and procedure***

- 2.1. The re-opened inquiry was scheduled to begin on 21 April 2020. However, in the light of the restrictions brought in to combat the Covid-19 pandemic, a physical 'face to face' event could not be held at that time. Furthermore, at this time, arrangements for the holding of 'virtual' inquiries had not yet been established.
- 2.2. As a result, with the agreement and co-operation of the three main parties, the inquiry proceeded on the basis of a written format<sup>11</sup>. The format included an exchange of proofs of evidence, followed by a series of written Inspector's Questions (IQs), addressed to all of the main parties. Alongside their answers to these, the parties were also permitted to submit further evidence as necessary, in the form of rebuttal proofs. These were followed by a small number of Further Questions (FQs) from the Inspector, with subsequent replies from the main parties, and then written closing submissions<sup>12</sup>.
- 2.3. Other interested persons were initially consulted in the usual way, prior to the scheduled date for the inquiry's re-opening. Thirteen representations, including two from Newick Parish Council (NPC), were received, between 15 November 2019 - 1 April 2020<sup>13</sup>. Interested parties were reconsulted on 9 June 2020, including an explanation of the change of inquiry format, and the reasons for this<sup>14</sup>. At that time, the main parties' proofs, rebuttals and answers to IQs were made available on the Council's website, and a further period was provided for comments or submissions in response to these. A total of 45 further responses were received at that stage, including a further one from NPC and three from other local organisations<sup>15</sup>. As a result of this procedure, I am satisfied that all of those who, in normal circumstances, would have wished to attend the inquiry in person, have had a full opportunity to follow the case and to express their views.
- 2.4. I undertook an unaccompanied visit to the site on 14 May 2020, and a further visit, accompanied by representatives of the three main parties, on 30 July 2020. On my visits I was able to take in all of the identified views from the surrounding roads and public footpaths. I also saw the main village facilities, together with all the various other sites in Newick which have been referred to in the evidence.
- 2.5. The re-opened inquiry was closed in writing on 10 August 2020. Immediately after this, a further brief exchange of correspondence followed, which is appended to this report for information<sup>16</sup>.

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<sup>11</sup> PINS-3, 4, 5 and 6: PINS emails re inquiry format

<sup>12</sup> PINS 7-11 and 13: IQs and FQs

<sup>13</sup> OIP-1, 2 and 8: responses to public consultation, November 2019 – April 2020

<sup>14</sup> COU-19: Notification to interested parties re further consultation

<sup>15</sup> OIP-3, 4, 5, 6 and 9: responses to further public consultation, June 2020

<sup>16</sup> COU-26, COU-27, and APP-34: post-inquiry emails dated 10 and 11 August 2020



- 2.6. Overall I am satisfied that, in the circumstances that prevailed, the format adopted was necessary and proportionate in the interests of expediency and good administration, and also that the procedure was fair to all parties.

### ***The appeal site and proposed development***

- 2.7. The appeal site lies to the southwest of Newick. The village has a good range of facilities, as shown on the Village Services Plan<sup>17</sup>. The site has a frontage of about 170m to Allington Road, which is mainly residential in nature. Public Footpath Newick 4a crosses the appeal site diagonally, before continuing eastwards as Footpath 4b. Footpath Newick 8 runs along the western boundary, and Newick 7 runs a short distance to the south east<sup>18</sup>. Within the site there are 102 individual trees, plus a further 12 tree groups, of varying sizes. For ease of reference, these are identified on the plan and schedule in the Arboricultural Report<sup>19</sup>. Ten of the trees are subject to a Tree Preservation Order (TPO)<sup>20</sup>. Immediately to the south is the Alder Lake Farm equestrian centre, with a large indoor sand school. To the west is a small private residential cul-de-sac, Oxbottom Close. Photographic views of the appeal site, taken in 2016 and 2020, are included in the landscape evidence<sup>21</sup>.
- 2.8. As originally submitted, the application included up to 63 dwellings, on a site of 2.72 ha, as shown on Plan ZMG734-001<sup>22</sup>. The northern part of the site comprises an open grass paddock alongside Allington Road. The central section comprises a belt of woodland including the site's main tree groups. The small south-eastern 'tongue' is overgrown scrubland. The south-western part of the site, as defined at that time, included Mitchelswood Farmhouse, with its driveway, gardens, stables, manège, and indoor swimming pool<sup>23</sup>. At the date when the Council made its decision on the application, the boundaries remained as shown on this original plan.
- 2.9. In February 2016, at the first inquiry, the proposed scheme, and the related plans, were amended to exclude the house and driveway, plus most of the garden, and part of the stables and outbuildings, as shown on the revised Plan ZMG734-024<sup>24</sup>. The description was also amended, reducing the number of proposed dwellings to a maximum of 50. These changes were accepted by the Inspector<sup>25</sup>, and the SoS did not disagree. I have considered the appeal on this basis.
- 2.10. The appeal seeks outline permission, with all detailed matters reserved. The outline proposal is supported by an Illustrative Layout, drawing ZMG734/022<sup>26</sup>. Although access is a reserved matter, it is agreed that if permission were granted, then an access as shown on that plan, comprising a priority junction sited centrally along the Allington Road frontage, would be the preferred solution<sup>27</sup>. All the other details shown are indicative.

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<sup>17</sup> APP-22 and ID-17: Newick village services plan

<sup>18</sup> FI-4: Mr Gibbs' proof to the first inquiry, Fig DJA 4 (footpaths)

<sup>19</sup> CD 1.5 (Appendices B and C): Arboricultural Impact Assessment, tree schedule and constraints plan

<sup>20</sup> Council's original Questionnaire bundle (TPO plan)

<sup>21</sup> APP-12: site photographs, 2016 and 2020

<sup>22</sup> CD 1.1: the original Location Plan, showing site boundaries before amendment in 2016

<sup>23</sup> The division of the site between these constituent parts is shown diagrammatically on Fig PRV 2, within COU-7

<sup>24</sup> ID-4 (i) and RD 1.1: Revised Location Plan, showing new site boundaries as amended in February 2016.

<sup>25</sup> RD 2.6: First inquiry Inspector's report (paras 5-7)

<sup>26</sup> ID-4 (ii) and RD 1.2: 'Illustrative Layout Excluding Farmhouse'

<sup>27</sup> PINS-2: Inspector's post-conference call note and directions (para 3.2)



2.11. In correspondence prior to the re-opened inquiry, the appellants indicated their wish to include an element of self-build or custom-build housing in the proposed development. This was later clarified as five individual serviced plots. In response, the Council questioned whether this would amount to an amendment of the scheme<sup>28</sup>. The Rule 6 party expressed the view that such an amendment should not be accepted<sup>29</sup>. The appellants sought guidance as to whether further advertisement or consultation regarding this element would be needed<sup>30</sup>. In a note issued by PINS on 18 June, I advised that in my view this minor amendment was admissible, and that no additional consultation was necessary<sup>31</sup>. My reasons are set out within the note. I remain satisfied that the introduction of this element of self/custom-build housing has not caused any prejudice or unfairness to any party.

### ***The Council's reasons for refusal***

2.12. The Council's refusal notice in February 2015 cited two refusal reasons (RRs). RR1 relates to conflict with relevant policies for the location of housing, and also the effects on the local landscape. RR2 related to the lack of Section 106 obligations, with regard to education, rights of way, recreation, recycling, school transport and affordable housing.

2.13. Since then, the Council has adopted a Charging Schedule for the Community Infrastructure Levy (CIL), and some of these matters are now covered by that regime. In addition, the appellants have now entered into both an agreement and an undertaking under Section 106, which are discussed further below. In so far as they relate to the matters raised in RR2, the Council has confirmed that it is satisfied with these arrangements<sup>32</sup>. RR2 is therefore no longer an issue between the parties and was not pursued at the re-opened inquiry.

### ***Planning obligations***

2.14. The Section 106 agreement is made jointly with LDC and East Sussex County Council (ESCC), and is dated 11 August 2020<sup>33</sup>. The agreement provides for:

- a financial contribution to kerbside recycling facilities;
- affordable housing (40% of the proposed dwellings);
- highway works, comprising: bus stop relocation and enhancements; footway widening on the A272 and Allington Road; a crossing point on the A272; and surfacing works to public footpath No. 4a within the site;
- and the implementation of a travel plan.

2.15. The unilateral undertaking, dated 16 August 2020<sup>34</sup>, provides for:

- two areas of the site to be left as open space (the north-eastern corner, and the residual area of land to the south and west of the Farmhouse);
- the provision of five self-build or custom-build plots, in accordance with a scheme to be agreed;

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<sup>28</sup> COU-3: email 6 April 2020, including query re inclusion of self-build

<sup>29</sup> RUL-4: Rule 6 responses to IQs, paras 3.1 – 3.4

<sup>30</sup> APP-24: email dated 4 June 2020, re self-build

<sup>31</sup> PINS-12: Inspector's note re inclusion of self-build

<sup>32</sup> COU-20: Council's responses to Further Questions (see FO's 19 and 20)

<sup>33</sup> APP-33: the S.106 agreement

<sup>34</sup> APP-35: the undertaking

- contributions to suitable alternative natural greenspace (SANG) and strategic access management and monitoring (SAMM);
  - and an on-site play area, to be transferred either to the Council or to a management company, subject to terms set out in the deed.
- 2.16. The justification for each of the obligations in the agreement, and for the play area in the undertaking, is set out by the Council in a Compliance Statement<sup>35</sup>. Based on the evidence before me, I am satisfied that these obligations meet the requirements of Regulation 122 of the CIL Regulations 2010.
- 2.17. In the case of the SANG and SAMM contributions, the undertaking provides for two alternatives, either a 'full' or 'reduced' contribution to each. In both cases, the provision is contingent on the decision-maker positively confirming that one or other of these alternatives is necessary<sup>36</sup>. The Council's justification is again contained in the Compliance Statement. I consider the need for these particular obligations later in this report.
- 2.18. The remaining provisions, relating to self/custom-build housing, and the open space land, are also discussed elsewhere in this report. With regard to the open space, although the Council's closing submissions queried the drafting of this provision, the wording has since been amended in the final, executed version, and the Council has confirmed that this covenant is now acceptable<sup>37</sup>.
- 2.19. Prior to the present agreement and undertaking, the appellants had entered into an earlier agreement in February 2016, and an undertaking in April 2018. The new agreement contains a provision declaring that those earlier obligations are now superseded<sup>38</sup>.
- 2.20. During the course of the inquiry, the ownership of part of the appeal site was transferred to new beneficiaries<sup>39</sup>. In an exchange of emails received after the close of the inquiry, the Council expressed a concern as to whether any additional interests had been created<sup>40</sup>. The appellants confirmed that this was not the case<sup>41</sup>. Whilst no further evidence has been provided, I have no reason to doubt the position as stated.

### ***Additional plans***

- 2.21. During the course of the inquiry, I requested two additional plans clarifying the relationship between the amended site boundaries, the existing trees, and the Illustrative Layout. This additional information was needed in order to be able to assist in identifying the positions of the new boundaries on the ground, and also to properly assess the effects of the development. In response, the appellants submitted a revised Tree Constraints Plan (TCP01 Rev B), and Tree Protection Plan (TPP01 Rev A)<sup>42</sup>, received on 5 June 2020. These plans formed part of the information that was made available for public consultation.

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<sup>35</sup> COU-21: S.106 compliance statement

<sup>36</sup> APP-35: S.106 undertaking, ss. 7.1.1 and 7.1.2 (clauses re SANG/SAMM contributions)

<sup>37</sup> COU-26: Council's email, 10 August 2020

<sup>38</sup> APP-33: S.106 Agreement, s. 7.10 (previous obligations superseded)

<sup>39</sup> APP-18: Briefing note on S.106 progress and transfer of ownership

<sup>40</sup> COU-26: Council's email 10 August 2020

<sup>41</sup> APP-34: DLA email 11 August 2020

<sup>42</sup> APP-14 and APP-15: Tree Constraints Plan (TCP01 Rev B), and Tree Protection Plan (TPP01 Rev A)

### **3. Relevant Planning Policies**

#### ***The Development Plan***

##### *The Policies Map*

- 3.1. The Newick Inset of the Policies Map<sup>43</sup> shows the 'Planning Boundary', which is also referred to by some as the settlement boundary or village envelope. The appeal site lies about 50m outside this boundary, in the area designated as countryside.
- 3.2. The Inset Map also shows the boundary of the 7km Zol around Ashdown Forest, which crosses the appeal site's north-eastern corner, and the Reedens Meadow SANG, just to the north.

##### *Lewes District Local Plan Part 1: Joint Core Strategy (adopted May 2016)*<sup>44</sup>

- 3.3. Part 1 of the Lewes Local Plan (LPP1), (also sometimes referred as the Joint Core Strategy, or JCS), is a strategic plan prepared jointly by LDC and the South Downs National Park (SDNP) Authority, covering the whole of Lewes District, including that part which lies within the National Park. The LPP1 was adopted shortly after the first inquiry into the present appeal, and was taken into account in the Inspector's report, and in the now quashed SoS decision.
- 3.4. In Table 2, Newick is identified as a Rural Service Centre (RSC). These are effectively the second tier in the settlement hierarchy, after the District Centres. The RSCs are described as sustainable locations, with services and facilities to meet many day-to-day needs, including a frequent public transport service and some local employment.
- 3.5. Spatial Policy 1 (SP1) defines the District's overall housing requirement for the period 2010-30, and SP2 sets out the distribution. In the latter, Newick's share of the total is 100 dwellings, over and above existing commitments. The sites are to be identified through future plans, including neighbourhood plans.
- 3.6. Core Policy CP10(1) seeks to conserve and enhance the District's natural environment, including its landscape and habitats. Locally distinctive landscape qualities and characteristics are to be maintained and enhanced.
- 3.7. In addition, Core Policy CP10(3) requires that European designated sites, and their integrity, are given 'the highest priority'. Residential development within 7km of Ashdown Forest will be required to contribute to SANGs and SAMM.

##### *Lewes District Local Plan Part 2: Site Allocations & Development Management Policies (adopted February 2020)*<sup>45</sup>

- 3.8. Part 2 of the Local Plan (LLP2) provides more detailed policies to complement LLP1. The Part 2 plan post-dates the original decision on the present appeal, and supersedes the saved policies of the 2003 Local Plan, including Policy CT1 which was central to the quashing of that decision.

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<sup>43</sup> RD-3.3: Policies Map

<sup>44</sup> RD-3.1: Local Plan Part 1

<sup>45</sup> RD-3.2: Local Plan Part 2

- 3.9. LLP2 relates only to that part of Lewes District which lies outside of the SDNP area. The housing requirement has therefore been disaggregated, by agreement with the SDNP Authority<sup>46</sup>, to relate only to this part of the District. Site allocations are included for those settlements without a neighbourhood plan. On this basis, the LLP2 makes no allocations in Newick.
- 3.10. Policy DM1 states that outside planning boundaries, the countryside's distinctive character and quality will be protected. Development in such areas is only to be permitted where consistent with other specific policies, or where the need for a countryside location is demonstrated.
- 3.11. With regard to Ashdown Forest, Policies DM1 and DM24 cross-refer to the provisions of LPP1 Policy 10(3), relating to development in the 7km zone. Policy DM24 states that the requirement can be fulfilled through a contribution to management and monitoring at the Newick SANG. Paragraph 4.74 of the supporting text refers to contributions to both SANGs and SAMM.

*The Newick Neighbourhood Plan (made July 2015)*<sup>47</sup>

- 3.12. The Newick Neighbourhood Plan (NNP) pre-dates the first inquiry, and was taken into account at that time.
- 3.13. Policy EN1 requires new developments to respect the character of the local landscape and to blend well with the built environment.
- 3.14. Policies HO2, HO3, HO4 and HO5 allocate sites for a combined total of 100 new dwellings (net of demolitions on sites HO2 and HO4). The appeal site is not within any of these allocations.

#### ***National Policy and Guidance***

- 3.15. The National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are material considerations, to which I have had regard where relevant. Since the first inquiry in 2016, both have undergone some changes, including revisions to the NPPF in July 2018 and February 2019, and updates to various sections of the PPG during this time.

#### **4. Agreed Matters**

- 4.1. Two Statements of Common Ground (SCGs) were agreed for the first inquiry. Of these, the Housing SCG<sup>48</sup> is now out of date, and of no relevance. In the 'general' SCG<sup>49</sup>, although some of the information remains correct, a good deal has been overtaken, and the document as a whole is therefore no longer to be relied on. Nevertheless, it remains the case that matters relating to highways and site access, accessibility, flood risk, and archaeology, amongst others, are not in dispute.

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<sup>46</sup> APP-3, Appx NEF 22: Duty to Cooperate Statement, LDC and SDNPA, 2018

<sup>47</sup> CD-6.1: Neighbourhood Plan

<sup>48</sup> ID-16: First inquiry SCG - housing

<sup>49</sup> CD-2.4: First inquiry SCG - general

- 4.2. For the re-opened inquiry, two new SCGs have been agreed. In the general SCG<sup>50</sup> (which includes the Rule 6 Party, as well as the Council and the appellants), it is agreed that the appeal proposal conflicts with LPP2 Policy DM1, but the weight to be afforded to that conflict is disputed. Other matters of dispute include the effects on landscape character, and on the Ashdown Forest SPA and SAC, and whether there is a 5-year supply of housing land.
- 4.3. The second SCG, between the Council and appellants only, concerns matters relating to the Habitats Regulations<sup>51</sup>. It is agreed that an Appropriate Assessment, under the Regulations, is required. The identified areas of dispute relate to mitigation.
- 4.4. A list of draft conditions has been agreed between the Council and the appellants<sup>52</sup>. The need for these, and any amendments to their wording, is considered later in this report.

## **5. The Case for the Appellants**

### ***Planning policy***

- 5.1. The appellants' case with regard to policy matters is set out primarily in the proof of Mr Nicholas Freer<sup>53</sup>, and also in the appellants' answers to Set 5 of the IQs<sup>54</sup>, and further amplified and clarified in the closing submissions of Mr Christopher Young QC<sup>55</sup>.
- 5.2. It is accepted that the proposed development would conflict with Policy DM1 of LLP2, because of its location outside the planning boundary. However, it is argued that DM1, despite being only recently adopted, is inconsistent with national policy, due to being over-protective and over-restrictive. When applied in combination with the current tightly-drawn boundaries, the policy is seen as preventing a balanced consideration of development proposals, and frustrating the provision of housing in sustainable locations. Consequently, irrespective of the housing land supply situation, Policy DM1 should carry reduced weight. In the event that the 5-year supply is found to be deficient, then this policy should be given no weight at all<sup>56</sup>.
- 5.3. With regard to Policies CP10(1) of LLP1, and EN1 of the NNP, the appellants submit that the appeal proposal is capable of complying with both of these policies. Neither policy should be seen as precluding development. Rather, they seek to secure high quality developments with appropriate design, layout and landscaping. The appeal scheme could achieve these aims at the detailed stage, by incorporating substantial new planting, biodiversity gains, and other sustainable design features, thereby respecting its setting and contributing positively to the natural environment<sup>57</sup>. Both CP10 and EN1 were in place at the time of the first Inspector's report and SoS' decision, and no conflict was

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<sup>50</sup> RD-2.4: Re-opened inquiry SCG - general

<sup>51</sup> RD-2.5: Re-opened inquiry SCG – Habitats Regs

<sup>52</sup> GEN-3: agreed draft conditions

<sup>53</sup> APP-2: Mr Freer's proof (Section 7)

<sup>54</sup> APP-21: the appellants' answers to IQs, Set 5

<sup>55</sup> APP-32: Mr Young's closing submissions (pages 6-20)

<sup>56</sup> APP-2, paras 7.99 - 104; APP-21, responses to IQs P2, P4, P5; and APP-32, paras 33, 36, 40 (case re Policy DM1)

<sup>57</sup> APP-2, para 7.125; and APP-21, responses to IQs P9-11; and APP-32, paras 28-29 (re policies CP10(1) and EN1)

identified with either one. Although that decision is now quashed, no fault was found in respect of these matters.

- 5.4. If either CP10(1) or EN1 were interpreted or applied so as to give blanket protection to the countryside, then in the appellants' view they would be inconsistent with the NPPF, particularly paragraph 170. If that interpretation were accepted, then they should be given limited or no weight, depending on the housing supply position. But nevertheless, the appellants contend that applying CP10 or EN1 in that way would be at odds with what these policies are designed to achieve<sup>58</sup>.
- 5.5. With regard to the NNP more generally, although the appeal site is not allocated for development, the appellants contend that this does not amount to a conflict, because the plan contains no policies limiting the overall amount of housing, either within the village boundary or outside it. In this respect the situation in Newick is not the same as that in '*Crane*<sup>59</sup>, because in that case the plan had already allocated more than the minimum requirement, and also had a policy that allowed for windfalls. It is acknowledged that some residents may be against any further development, but that is not what the plan itself actually says. And in any event, there is also evidence of some local support for the appeal scheme. In the first inquiry, the Inspector and SoS both agreed there was no conflict with the NNP<sup>60</sup>, and the appellants see no reason to depart from that conclusion now<sup>61</sup>.
- 5.6. Furthermore, in the event of any conflict with the NNP now being found, the appellants contend that the weight given to that conflict should be reduced, because the process through which the housing sites were selected was flawed. Although DLA's legal challenge to the NNP was dismissed, the judgement acknowledged that there had been shortcomings, and supported the view that this was a matter that could be taken into account in a subsequent planning appeal<sup>62</sup>.
- 5.7. In relation to the Development Plan as a whole, the appellants say that the appeal proposal is generally in accordance. Apart from the conflict with Policy DM1, there is no direct conflict with any other policy. The development would contribute to the aims of LLP1's strategic policies for housing and affordable housing, including Policies SP1 and CP1. The scheme also complies, or is capable of complying with all relevant development management policies<sup>63</sup>.
- 5.8. For the purposes of NPPF paragraph 11(d), the most important policy for determining the application is Policy DM1. Policies CP10(1) and EN1, read and applied correctly, are not amongst those most important, but they would become so, if interpreted as being restrictive of development<sup>64</sup>.

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<sup>58</sup> APP-21, responses to IQs P8-11, and P13; and APP-32, paras 30-32, and 37 (case re policies CP10(1) and EN1)

<sup>59</sup> APP-23: Crane v SoS and Harborough DC: [2015] EWHC 425 (Admin)

<sup>60</sup> RD 2.6: Quashed decision, paras 11 and 13, first Inspector para 171 (re NNP)

<sup>61</sup> APP-2, paras 7.131 – 136; and APP-21, replies to IQs P15, P16; and APP-32, paras 19-21, and 55-87 (re NNP)

<sup>62</sup> APP-2, paras 7.139 – 151; and APP-21, response to IQ P16 (case re NNP process)

<sup>63</sup> APP-21, response to IQ P18; and APP-32, paras 38-39 (case re DP as a whole)

<sup>64</sup> APP-21, response to IQs P3, P9 and P13; and APP-32, para 253 (case on 'most important' policies)



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## ***Landscape and visual impact***

- 5.9. The appellants' case with regard to landscape matters is set out primarily in the landscape proof of Mr Paul Gibbs (from the first inquiry)<sup>65</sup>, and also in the planning proof of Mr Freer for this inquiry<sup>66</sup>, plus the appellants' answers to IQs Set 1<sup>67</sup>, and the additional points made in Mr Young's closing submissions<sup>68</sup>.
- 5.10. After the first inquiry, neither the Inspector nor the SoS found any objection to the scheme on grounds relating to landscape or visual impact<sup>69</sup>. The appellants emphasise that those findings still carry weight. Since then there have been no significant changes relevant to the landscape issues. The comparative photographs show only seasonal differences<sup>70</sup>. It is argued that there is no basis for reaching a different conclusion now.
- 5.11. In the appellants' view, the Council's position has been inconsistent and confused<sup>71</sup>. In RR1, the alleged harm was to landscape character, but now the Council's case relates more to visual impact<sup>72</sup>. To a large extent, their case focuses on details which are illustrative. The Officer's report acknowledged that a refusal based on matters of layout would be unreasonable<sup>73</sup>. The Tree and Landscape Officer's consultation response at that stage seemed to envisage that any harm could be addressed through conditions<sup>74</sup>.
- 5.12. The appeal site is not subject to any landscape designation, and is not a 'valued landscape' in terms of NPPF paragraph 170. At national level, the site falls into the NE's Low Weald national character area (NCA)<sup>75</sup>, and is typical of that character type, but this does not indicate any particular landscape sensitivity or value. In the East Sussex County Landscape Assessment (ESCLA), it lies within the Upper Ouse Valley character area, although close to the edge of the Western Low Weald area<sup>76</sup>. But the site does not form part of the main core of either of these areas, and again its inclusion in either one or the other is not indicative of value. In a local context, the District includes part of the High Weald Area of Outstanding Natural Beauty (AONB), and by definition, the appeal site is less valued than that area<sup>77</sup>.
- 5.13. It is argued that the site itself plays a limited and localised role in the local landscape. Public viewpoints are few and are restricted by the topography and existing vegetation, resulting in a relatively small Zone of Significant Visibility (ZSV)<sup>78</sup>. Externally, the only significant views are from Footpath 7, as it skirts the adjacent field to the south-east (Viewpoints 11 and 12)<sup>79</sup>. From this

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<sup>65</sup> FI-4: Mr Gibbs' proof

<sup>66</sup> APP-2: Mr Freer's proof, paras 7.114 – 7.129

<sup>67</sup> APP-11: the appellants' answers to IQs, Set 1

<sup>68</sup> APP-32: Mr Young's closing submissions (pages 49-54)

<sup>69</sup> RD 2.6: First Inspector's report (para 190), and quashed decision (para 16)

<sup>70</sup> APP-12: comparative photographs, DJA18 - 48; and APP-11: response to IQ L1

<sup>71</sup> FI-4: paras 6.6 – 6.13, and 6.17; and APP-2: paras 7.114 – 7.129 (app comments re Council's landscape case)

<sup>72</sup> APP-32: Closings, para 216

<sup>73</sup> CD 1.12: Case Officer's report, Feb 2015 (11<sup>th</sup> page, 5<sup>th</sup> para)

<sup>74</sup> CD 1.19: Tree/Landscape Officer consultation response, 6 Oct 2014

<sup>75</sup> RD 8.12: National Character Areas, NCA 121 Low Weald, NE 2013

<sup>76</sup> RD 8.13 and 8.14: East Sussex County Landscape Assessment (ESCLA), 2016

<sup>77</sup> FI-4, paras 4.3 – 4.7, and 6.19; and APP-11, replies to IQs L2-L5; and APP-32, paras 218, and 226-227 (case re landscape value)

<sup>78</sup> FI-4, Appx DJA 5, showing 'Zone of Significant Visibility'; and APP-11, response to IQ L19

<sup>79</sup> FI-4, Appxs DJA5 (Viewpoints plan), and DJA6 -16 (photographs); and APP-12: updated photographs DJA18 - 48

direction, inward views are heavily filtered by the trees in the southern part of the site; and the site is seen in the context of other nearby development, especially the sand school building. In closer views, from the site frontage or from Footpaths 4a and 8, the site is seen as part of the urban fringe, with the northern part of the site surrounded by existing housing on three sides<sup>80</sup>.

- 5.14. In the appellants' view, the trees within the appeal site mostly have only limited value. The large mixed woodland in the central area of the site is described as primarily an ornamental plantation, with many of the trees within it being unsuitable species, or of low quality or poor condition. Although the largest group, G5, is assessed as Category B2, this is based mainly on the group's collective visual contribution, and does not reflect the trees' individual merits<sup>81</sup>. Whilst the woodland plays some role in the local landscape, it is argued that the trees in the southern part of the site are equally or more important in separating the site from the wider countryside<sup>82</sup>.
- 5.15. In the Lewes Landscape Capacity Study (LLCS) in 2012, most of the appeal site was in Area C02 (Rear of Allington Road), which was classified as of 'ordinary' quality, 'low' value, and 'medium' capacity. Land to the south of Allington Road was identified in landscape terms as a preferred area for development, and as one of those with the greatest scope for change<sup>83</sup>.
- 5.16. In the Strategic Housing Land Availability Assessment (SHLAA) for 2014, the appeal site was assessed as Sites NW03 and NW16, these being the site's northern and southern sections respectively<sup>84</sup>. Both parts were found to be 'suitable, available, achievable and deliverable'. In the case of NW16, the assessment concluded that the existing woodland need not be retained, as long as a 15m landscape buffer was provided. The comments on both sites make it clear that, in finding the site suitable, landscape impacts had been considered<sup>85</sup>. The same conclusions were reached in the updated SHLAA of 2015<sup>86</sup>, and the Strategic Housing and Economic Land Availability Assessment (SHELAA) of 2018<sup>87</sup>.
- 5.17. The Illustrative Layout<sup>88</sup> and updated Tree Protection Plan<sup>89</sup> show one way in which approximately 50 dwellings could be accommodated on the site. The layout shown would require the removal of the central woodland, but would allow the retention of a number of other trees, including most of those in Categories A and B, and those along the southern boundary. The layout also shows that it would be possible to incorporate a new 15m-wide woodland buffer in this southern part of the site. This new buffer area could effectively replace the area of woodland lost, and could include semi-mature specimens to

<sup>80</sup> FI-4, paras 5.3-5.7, 6.10 and 6.18

<sup>81</sup> CD 1.5: Arboricultural report, sections 5.6 and 5.7

<sup>82</sup> FI-4, para 5.2; and APP-11, responses to IQs L12-L15 (case re on-site trees and woodland)

<sup>83</sup> CD 3.7: Landscape Capacity Study, para 3.2.5, and p 43 Newick map (Appx D), and p59 Assessment Table (Appx E); and APP-2, para 7.115; and APP-11, responses to IQs L6 – L8; and APP-32, paras 229-230

<sup>84</sup> CD 9.2: 2014 SHLAA, site tables (pages 79, 82); and CD 9.3: SHLAA map

<sup>85</sup> FI-4, paras 6.3-6.5; and APP-2, paras 7.40-42; and APP-11, response to IQ L11

<sup>86</sup> CD 9.5: 2015 SHLAA, site tables (pages 98, 102); and CD 9.6: SHLAA map

<sup>87</sup> APP-13: 2018 SHELAA, site tables (pages 90, 95)

<sup>88</sup> RD 1.2: Illustrative Layout plan ZMG734/022

<sup>89</sup> APP-15: updated Tree Protection Plan 8853 TPP01 Rev A



give immediate impact. If native species were used, there would also be an ecological benefit<sup>90</sup>.

- 5.18. The submitted photo montages<sup>91</sup> show the effect of the development, and the proposed new buffer planting, on views from the southeast (Viewpoint 11). In the appellants' view, the new planting would adequately soften the development. Only small areas of roof would be seen, and these only within the early years. The wooded skyline would be maintained, the development would be integrated with its surroundings, and the loss of the existing woodland would not be unduly noticeable. The impact would be very localised, in terms of the views from the two nearest footpaths. The resulting views would be consistent with the landscape's existing character<sup>92</sup>. The photomontages have been prepared in accordance with guidance applicable at the time. The amended version corrects an error relating to one tree<sup>93</sup>.
- 5.19. If necessary, elements of the illustrative scheme which may affect the development's impact on the landscape, including design, landscaping and tree retention, could be secured by condition<sup>94</sup>.

### ***Five-year housing land supply***

- 5.20. The appellants' case on the 5-year housing land supply (HLS) is contained mainly in Section 11 of Mr Freer's proof<sup>95</sup>, plus his Appendices Nos NEF 33 and NEF 34<sup>96</sup>, together with the responses to IQs Set 2, and to the FQs<sup>97</sup>, and closing submissions<sup>98</sup>.
- 5.21. Looking back to the first inquiry, when Inspector Birkinshaw wrote his report, the LLP1 examination report had just been published, and the Examining Inspector, Nigel Payne, had found that there was a 5-year supply at that time. Mr Birkinshaw was able to rely on Inspector Payne's conclusions, because the examination was then still very recent. But now, that is no longer the case, and thus the LLP1 report cannot now be relied on in this respect.
- 5.22. Since then, there has also been the examination and adoption of LLP2, in which another inspector, Michael Fox, again found a 5-year supply. But as LLP2 was examined under the NPPF's transitional provisions, Mr Fox's report does not take into account those elements of national policy that were updated in the July 2018 and February 2019 revisions. The Plan was also founded on an evidence base which has since been superseded. In any event, it is argued that the adoption of LLP2 does not preclude a reassessment, based on the evidence before this inquiry.
- 5.23. In this context, the appellants draw particular attention to the changes made in 2018 and 2019 to the NPPF's definition of 'deliverable'<sup>99</sup>. For all sites other than those with full planning permission, or minor development, these changes

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<sup>90</sup> FI-4, para 6.15; [and](#) APP-32, para 220

<sup>91</sup> ID-18: photomontage DJA 17; [and](#) revised version included with closing submissions (attached to APP-32)

<sup>92</sup> FI-4, paras 6.11, 6.14-15, and 6.20-21; [and](#) APP-11, responses to IQs L17, L18 and L20; [and](#) APP-32, para 224

<sup>93</sup> APP-32, para 223; [and](#) APP-34, email 11 Aug 2020 re corrected photomontage

<sup>94</sup> FI-4, para 6.22; [and](#) APP-32, paras 221 and 233 (scope for landscape conditions)

<sup>95</sup> APP-2: Mr Freer's proof (Section 11 re HLS)

<sup>96</sup> APP-3, Mr Freer's Appendices: NEF33 (summary table), [and](#) NEF34 (detailed site-by-site comments)

<sup>97</sup> APP-16: appellants' responses to IQs Set 2 (HLS); [and](#) APP-30, responses to FQs

<sup>98</sup> APP-32: Mr Young's closing submissions, pages 23-33 (re HLS)

<sup>99</sup> NPPF Glossary

impose a more rigorous test than previously, and place the burden of proof on the authority<sup>100</sup>.

- 5.24. For the purposes of the present inquiry, the appellants broadly accept most of the parameters set out in the Council's 5-year HLS Position Statement<sup>101</sup>, including the base date of 1 April 2019, the 5% buffer, the completions to 2019, the policy-based annual requirement, and the windfall allowance.
- 5.25. The appellants do however challenge the Council's continued use of the 'Liverpool method', which allows the accumulated shortfall in housing delivery to be made up over the whole of the remaining Local Plan period. This approach is seen as contrary to current PPG advice<sup>102</sup>, and at odds with the aim of boosting housing supply. The original decision to adopt the Liverpool method, in LLP1, was taken under an earlier version of the PPG, and also prior to the disaggregation of the requirement figures between the more constrained SDNP area and the remainder of the District. With the benefit since then of four years' experience of the effects on housing delivery, the appellants suggest there are now good grounds for switching to the more usual 'Sedgefield' approach. On this basis, the overall requirement for the 5-year period should be set at 2,123 units<sup>103</sup>.
- 5.26. In addition, the appellants contest what they see as the Council's approach to the use of new and updated information, relating to events since the Position Statement's base date. In their view, such information should be used only for the purpose of testing the robustness of the judgements made at the time of the assessment, and not to introduce new sites, or to enable the re-working of the assessment as a whole<sup>104</sup>.
- 5.27. Out of the sites listed in the Position Statement, four are disputed on the grounds that there is neither a planning permission nor a relevant live application: Springfield Industrial Estate, Woods Fruit Farm, Valley Road 1&2, and Reprodux House. Five others are contested on the basis that permissions have lapsed, or negotiations on a current application have stalled: Elm Court, Newhaven Marina, South of Valley Road, land adjacent to 4 Strawlands, and adjacent to Neaves House. In all these nine cases, the appellants argue that these sites fail to meet the definition of deliverable and should be deleted, totalling 265 units<sup>105</sup>.
- 5.28. A further four sites are disputed as to the numbers of units within their respective trajectories. These sites are the former Parker Pens site, Newlands Primary School, Harbour Heights, and The Nuggets. The appellants' suggested reductions in the dwelling yields on these four sites total a further 282 units<sup>106</sup>.

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<sup>100</sup> APP-2, paras 11.10 – 11.12, 11.37 - 11.42;; and APP-32, para 112 (re 'deliverability' definition)

<sup>101</sup> RD 7.5: 5-Year Housing Land Supply Position at 1 April 2019

<sup>102</sup> PPG: ID 3-044-20180913

<sup>103</sup> APP-2, paras 11.57 – 11.69; and APP-16, responses to IQs HL2-4; and APP-30, replies to FQs-HL2; and APP-32, paras 99-104 (case re Liverpool/Sedgefield)

<sup>104</sup> APP-16, response to IQ HL6; and APP-30, response to FQs – HL6 and HL39; and APP-32, paras 105-110 (case re updating)

<sup>105</sup> APP-2, paras 11.83 – 11.86; and APP-3: NEF 33/34; and APP-16, responses to IQs HL12-15, HL20, HL24-32, HL37-38; and APP-30, responses to FQs; and APP-32, paras 119-121 (individual sites – deliverability)

<sup>106</sup> APP-2, paras 11.87-11.88; and APP-3: NEF 33/34; and APP-16, responses to IQs HL7-11, HL16-19, HL21-23, HL33-36; and APP-30, responses to FQs (individual sites - trajectories)

- 5.29. In total, the appellants submit that 547 units should be discounted, reducing the deliverable supply to 1,411 units. Against the appellants' Sedgefield-based requirement figure of 2,123 units, this equates to a supply of 3.32 years<sup>107</sup>.
- 5.30. In addition, it is argued that a further adjustment to the supply should be made, to take account of the effects of Covid-19. Construction was halted on many sites, the housing market was weakened, and there will be an impact on the rate of completions in the period that follows. A deduction equal to 50% of forecast completions in the year 2020/21 would be justified. This approach is supported by an Inspector's appeal decision at Nine Mile Ride, in Finchampstead, Berks<sup>108</sup>. Such an adjustment would reduce the supply figure by a further 148 units. This is not taken into account in the foregoing figures, and would further reduce the supply, to less than the 3.32 years previously calculated<sup>109</sup>.
- 5.31. In May 2021, LLP1 will be five years old, and the Standard Method will become applicable. If that method were applied now, on the appellants' calculations, it would reduce the HLS to a maximum of 2.5 years, or less if Sedgefield is used<sup>110</sup>. It is submitted that this demonstrates the urgency of addressing the shortfall.
- 5.32. It is argued that the appeal site could make a contribution to housing supply within the present 5-year period. The area is one of strong market demand for all types of housing. The site has no impediments to early development. The subdivision and reconfiguration of the site, due to the severance of the Farmhouse, is not expected to present any difficulties for implementation. The construction programme would be around two years and the development could be completed in 3 – 4 years from the grant of outline permission<sup>111</sup>.

### **Overall housing needs**

- 5.33. In the appellants' submission, the unmet need for housing in the area goes beyond that which is demonstrated by the lack of a 5-year supply. The case advanced on these matters is again contained in Mr Freer's proof<sup>112</sup>, and in the responses to IQs Set 2 and the FQs<sup>113</sup>, and Mr Young's closing submissions<sup>114</sup>.
- 5.34. The appellants draw attention to Government policies which seek to boost housing supply, facilitate early delivery, and as far as possible to meet housing needs. As well as in the NPPF, these policies have been set out in 'Fixing Our Broken Housing Market'<sup>115</sup> and in the Conservative Party's 2020 Manifesto<sup>116</sup>. The same message was re-emphasised in the Prime Minister's speech on 30 June 2020. In the appellants' view, the prospects of achieving these aims in Lewes District are undermined by inadequate provision in local plans.

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<sup>107</sup> APP-2, paras 11.89 – 11.91 and table 2 (adjusted overall HLS calculation)

<sup>108</sup> APP-17: Finchampstead appeal

<sup>109</sup> APP-16, response to IQ HL6; and APP-30, response to FQs – HL3; and APP-32, paras 124-127 (effects of Covid)

<sup>110</sup> APP-2, paras 11.92 – 11.101; and APP-16 and APP-30, responses to IQs/FQs HL40 (re Standard Method)

<sup>111</sup> APP-16: responses to IQs HL 44-48 (re appeal site delivery timescale)

<sup>112</sup> APP-2, Section 7 and paras 11.1 – 11.30

<sup>113</sup> APP-16: responses to IQs HL1-4 and HL 41-43; and APP-30: responses to FQs on the same

<sup>114</sup> APP-32: Mr Young's closing submissions, paras 11, 40-42, 49, 52-54, 63-64, 88-98, 245-251

<sup>115</sup> RD 6.4: Fixing Our Broken Housing Market, 2017

<sup>116</sup> RD 8.8: Conservative Manifesto

- 5.35. The overall housing requirement figure set by Policy SP1 of LLP1 seeks to provide only 6,900 dwellings, against an objectively assessed need (OAN) of 9,200 -10,400 dwellings. Inspector Payne, in his examination report, found the full OAN to be at the top end of this range. This means that, even if the target figure of 6,900 is met in full, up to 3,500 local households will be denied housing in the District over the plan period. In addition, the restriction on housing will hold back the local economy. Mr Payne described the level of provision as *"approximately equivalent to zero employment growth"*<sup>117</sup>.
- 5.36. The reasons given for adopting this reduced figure were because of perceived environmental constraints, the biggest of which was the SDNP<sup>118</sup>. But now that the National Park has its own local plan, and the figures have been disaggregated, that particular constraint is no longer relevant. Other constraints, such as road capacity, flood risk, and coastal erosion, were never fully substantiated, and may now be less significant than previously thought. When LLP2 was prepared, there was an opportunity to revisit the overall level of provision, but that opportunity was not taken.
- 5.37. With regard to how the requirement should be met, LLP1 addressed this in Policy SP2, by making strategic allocations for 1,728 units, and setting out a broad distribution for a further 1,895 new units<sup>119</sup>. But even when added to the completions, commitments, and allowances for windfall and exceptions, these totalled only 6,926 units. In total therefore, the housing provisions made in LLP1 exceeded the overall requirement figure by only 26 units, giving little or no flexibility, despite the fact that the target was supposed to be a minimum. Moreover, the provisions in SP2 included a 'floating' element of 200 units which was simply allocated to *"locations to be determined"*, and therefore was not specifically provided for at all. Inspector Payne acknowledged that the supply provided for in LLP1 was very tight, but concluded, on balance, that there was more to be gained by allowing the plan to be adopted, as this would enable the Council to get on with LLP2<sup>120</sup>.
- 5.38. Similar criticisms are made of LLP2. The disaggregated requirement figure of 5,494 dwellings, for the non-SDNP part of the District, is derived directly from the LLP1 requirement, and thus incorporates the same degree of under-provision against OAN. Taking account of commitments and expected neighbourhood plans, the residual requirement for LLP2 is then calculated as 127 units. Against this very small target, the plan makes new allocations for only 132 units<sup>121</sup>. Again, the appellants point out that the requirement figures are all intended to be minima. The provision made in LLP2 therefore not only fails to offer any flexibility, but also makes no attempt to rectify the in-built shortfall against the underlying need. In his examination report, Inspector Fox acknowledged that some of the other sites put forward by objectors were potentially realistic options, but made it clear that he saw no scope for any increase in housing numbers, given LLP2's status as a subsidiary plan<sup>122</sup>.

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<sup>117</sup> COU-10, Appx NS 2: LLP1 Report, paras 22 and 28

<sup>118</sup> COU-10, Appx NS 2: LLP1 Report, paras 25 and 39

<sup>119</sup> RD 3.1: LLP1, Policy SP2

<sup>120</sup> COU-10, Appx NS 2: LLP1 Report, paras 41-43

<sup>121</sup> RD 3.2: LLP2, pages 12-15 (disaggregated housing requirement and provisions)

<sup>122</sup> RD 5.1: LLP2 Report, paras 12, 13, 23 and 31

- 5.39. All told, the appellants calculate that the total provision made, or expected to be made, through LLP1, LLP2, windfalls, exception sites and NPs, exceeds the minimum requirement for the whole plan period by only 22 units<sup>123</sup>. And moreover, this includes 440 units which are yet to be allocated in future neighbourhood plans, the outcome of which is as yet unknown. Given that the plan period still has almost 10 years to run, this is seen as compounding the error made when the initial requirement figure was set so far below OAN.
- 5.40. Turning to actual housing delivery, even against a requirement figure that the appellants see as artificially low, completions have failed to keep pace. Based on the disaggregated requirement, dwelling completions since the start of the local plan period fell short of the requirement for seven successive years, from 2010/11 to 2016/17. Although there were small surpluses in the next two years, there has been an overall cumulative shortfall of 601 units<sup>124</sup>. The estimated 2019/20 figure of 222 units would further exacerbate this deficit. The District's Housing Delivery Test (HDT) results for 2018 and 2019 were 86% and 93%, respectively<sup>125</sup>. As these figures are less than 100%, they serve to confirm that the gap between housing needs and delivery is widening. On this basis, the appellants contend that the current policies in LLP1 and LLP2 will continue to fail to deliver the housing that is needed, over the whole of the period to 2030<sup>126</sup>.
- 5.41. This shortfall is unlikely to be made up in any of the adjoining authorities. The SDNP has adopted a housing requirement that is less than its OAN figure, and is failing to meet that requirement. Wealden, Mid Sussex, and Brighton and Hove Districts all seem likely to under-provide. LDC has entered into arrangements with some of the other neighbouring districts, to explore joint solutions, but there is no sign that any of these are likely to bear fruit. In the appellants' submission, the situation in Lewes, of failure to meet housing needs, is replicated across much of East and West Sussex<sup>127</sup>.
- 5.42. The appellants submit that, irrespective of the 5-year supply situation, the unmet general housing need, in Lewes and the surrounding districts, is a material consideration adding weight in favour of the appeal proposal.

### ***Affordable housing***

- 5.43. The case advanced by the appellants with regard to affordable housing (AH) is contained in the proof and appendices of Mr James Stacey<sup>128</sup>, and his rebuttal proof<sup>129</sup>, and in the appellants' responses to IQs Set 4<sup>130</sup>, and the closing submissions<sup>131</sup>.
- 5.44. The appellants argue that there is a national crisis in AH, evidenced by numerous national studies, policy documents and Ministerial Statements over

<sup>123</sup> APP-32: Mr Young's closing submissions, para 93

<sup>124</sup> APP-2: Mr Freer's proof, paras 11.54 – 11.56 (re completions)

<sup>125</sup> COU-10, Appx NS3: 2018 HDT result; and RD 7.9: 2019 HDT result

<sup>126</sup> APP-2: Mr Freer's proof, para 7.92

<sup>127</sup> APP-2, paras 7.29 – 7.31, 7.76 – 7.78, 11.15 – 11.23; and APP-16, responses to IQ HL43; and APP-32, paras 58, 90 and 92 (re neighbouring authorities)

<sup>128</sup> APP-4 and APP-5: Mr Stacey's main proof and appendices

<sup>129</sup> APP-25: Mr Stacey's rebuttal

<sup>130</sup> APP-20: appellants' responses to IQs Set4, affordable housing

<sup>131</sup> APP-32: Mr Young's closing submissions, pages 33-40



the last decade<sup>132</sup>. This situation is also reflected in NPPF paragraph 61, which requires provision to be made for all the types and tenures of housing needed for different groups. At local level, the need to boost AH significantly is recognised in LDC's Corporate Plan, and the East Sussex Sustainable Community Strategy, and in the policies and text of LLP1, LLP2, the NNP, and the Council's Affordable Housing SPD<sup>133</sup>.

- 5.45. The most recent quantitative study for Lewes District is the Affordable Housing Needs Assessment (the AHNA) undertaken in 2014<sup>134</sup>. The AHNA estimated that, over the period 2013-18, the need for AH in the District would increase by 389 dpa. The annual need for AH therefore exceeds the District's total annual housing provision, under Policy SP1, for all tenures. Although the AHNA is now out-of-date, it remains the only measure of local AH needs available. The fact that no further assessment has been carried out since 2014 is seen as indicative of the Council's failure to give the issue an appropriate degree of priority<sup>135</sup>.
- 5.46. In comparison, only 220 new affordable dwellings were built in the District between 2013 and 2019. When right-to-buy sales are taken into account, the net increase in the AH stock over that period was only 148 units. By the appellants' reckoning, this suggests that since 2013, the backlog of unmet need in the AH sector will have increased by around 1,793 units. Despite the Local Plan target of 40%, the actual rate of AH delivery achieved in recent years has only been around 10% of all new housing completions. Whichever percentage is achieved in the remainder of the plan period, the gap between AH need and supply is likely to widen<sup>136</sup>.
- 5.47. Across the District, there were 1,030 households on the Council's Housing Register, as at March 2020. This figure has increased by 19% in the last 12 months. Although the numbers on the register have declined since 2012, that is considered likely to be partly due to changes in criteria, restricting eligibility to those in priority need; and also partly because of the lack of stock available. In any event, the Register is likely to under-represent the level of true need<sup>137</sup>.
- 5.48. As regards Newick itself, although the Council suggests there are only six households on the Register, that figure has not been evidenced. But even so, this shows that the AH already provided in Newick has not fully satisfied the village's own local needs. There is no certainty that any other AH will be delivered in the village within the plan period. In any event, the Register also has 50 further households from parishes adjoining Newick. If the appeal scheme goes ahead, the 20 AH units would be available to qualifying households from anywhere in the District<sup>138</sup>.
- 5.49. The rising need for AH is also evidenced by the worsening affordability gap in other housing sectors locally. In both the owner-occupied and private rented markets, housing costs have exceeded the growth in earnings over several

<sup>132</sup> APP-4, Chapters 3 and 4; and APP-20, response to IQ AH2; and APP-32, paras 134-136 (national need)

<sup>133</sup> APP-4, Chapter 5; and APP-20, response to IQ AH2 (local AH policies)

<sup>134</sup> CD 9.9: the AHNA, 2014

<sup>135</sup> APP-4, Chapter 6; and APP-20, responses to IQs AH4 and 5; and APP-32, paras 142-143 (re the AHNA)

<sup>136</sup> APP-4, Chap 7; and APP-32, paras 145-149 (AH supply)

<sup>137</sup> APP-4, Chap 8; and APP-20, resp to IQ AH7; and APP-32, paras 11 (i-j), 148 and 155-159 (re Housing Register)

<sup>138</sup> APP-20, responses to IQs AH7, AH9; and APP-25, paras 3.1 – 3.15; and APP-32, paras 150-152 (AH in Newick)

years. House sale prices in Newick are above the average for Lewes District, and more than twice the average for the UK as a whole. Private rents in the District are significantly above the corresponding figures for either the South-East region or England<sup>139</sup>.

- 5.50. Attention is drawn to various appeal decisions in which particular weight was given to the provision of AH, including two SoS decisions. In the present case, the appellants contend that this weight should be very substantial<sup>140</sup>.

### ***Self-build and custom-build housing***

- 5.51. The appellants also advance evidence regarding the need for, and benefits of, the proposed element of self- or custom-built housing, amounting to five serviced plots. This is contained in the proof, appendices and rebuttal proof of Mr Andrew Moger<sup>141</sup>, and the responses to IQs Set 3<sup>142</sup>, and in closing submissions<sup>143</sup>.
- 5.52. Legislation enacted in recent years<sup>144</sup> has introduced new duties on local authorities, to keep a Self-Build Register and grant enough suitable planning permissions to meet the identified local demand for self- and custom- build housing. The aims include widening housing choice, boosting supply, and supporting the local and national economy. The Government's continued support for these measures has been emphasised in a variety of subsequent statements and publications<sup>145</sup>. In the NPPF, paragraph 61 requires authorities to include self/custom-build in their assessments of housing needs, and to ensure that this is reflected in their planning policies.
- 5.53. Since the LDC Register was established, in April 2016, 236 individuals and 3 associations have joined it. The LDC Register has no local connection test, so the statutory duty applies to all registrants<sup>146</sup>. To comply with the legislation, permissions should have been granted for 38 self or custom-build plots before 30 October 2019, and further permissions are needed for a further 82 plots by 30 October 2020<sup>147</sup>. Plots for the remainder of the current Register entries will need to be permitted, in yearly tranches, up to October 2023.
- 5.54. Even on the Council's own figures, the appellants submit that the total number of plots granted up to January 2020 was no more than 53 plots (46 and 7 in base periods 1 and 2 respectively). This leaves a requirement for a further 67 within the period to 30 October 2020. However, on the appellants' analysis, the Council's figures overstate the position to a considerable degree, because in all but two cases, the permissions in question are not restricted to self- or custom-building, by means of conditions or obligations, and nor have the applicants applied for the relevant CIL exemption. In addition, in some cases, the permissions claimed by the Council are said by the appellants to have been

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<sup>139</sup> APP-4, Chapter 8; and APP-20, response to IQ AH8; and APP-32, paras 154 and 160-161 (re affordability)

<sup>140</sup> APP-5: Mr Stacey's Appendices 29-37 (appeal decisions)

<sup>141</sup> APP-6 and APP-7: Mr Moger's main proof and appendix; and APP-26: Mr Moger's rebuttal

<sup>142</sup> APP-19: responses to IQs Set 3

<sup>143</sup> APP-32: Mr Young's closing submissions, pages 40-46

<sup>144</sup> The Self-Build and Custom Housebuilding Act 2015; and S.10 of the Housing and Planning Act 2016; and the Self-Build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016

<sup>145</sup> APP-6: Mr Moger's proof, Chapters 2 and 3; and Mr Young's closing, paras 173-176

<sup>146</sup> APP-19, responses to IQs SB4 and SB7 (re LDC Register)

<sup>147</sup> APP-6, paras 4.21 – 4.27 and Table 4.2; and APP-32, paras 177-182 (re self-build demand)

granted outside of the relevant period. Some others are agreed to be double-counted<sup>148</sup>.

- 5.55. In any event, at the present rate, it is argued that the Council will fail to meet its duty to ensure sufficient self/custom-build permissions for the numbers already on the Register, either in October 2020, or any of the succeeding years up to October 2023. Moreover, given the lack of any existing local plan policies or other strategies to remedy this situation, the same pattern is likely to continue beyond that date<sup>149</sup>.
- 5.56. Out of the 239 entries in the District-wide Register, 111 either included Newick as their preferred location, or expressed some level of interest in the village. In the appellants' view, Newick is an attractive and highly suitable location for self-build and custom-build development<sup>150</sup>.
- 5.57. In addition to the Register itself, there is further evidence of the demand for this type of housing in the area, from other, secondary sources. Based on information gained from the Buildstore Plot Search database, and from national research published by Ipsos Mori, the appellants estimate that the true level of latent demand could be up to around 1,700 plots. The use of secondary sources of this nature is encouraged by the PPG<sup>151</sup>.
- 5.58. Attention is drawn to a number of other appeal decisions involving self/custom-built housing. These include the SoS's decision on a development including 20 self-build plots at Lydney, Gloucs, in which the inspector gave weight to the scheme's role in adding to the mix and choice of housing in the town, and the SoS did not disagree. Also included is an SoS decision on an appeal at Winsford, Cheshire, where the SoS agreed that the social benefits of the 10% self-build element attracted substantial weight<sup>152</sup>. The appellants argue for the same weighting to be applied in this case.

### ***Ashdown Forest***

- 5.59. The appellants' case with regard to the effects on the Ashdown Forest SPA and SAC is contained principally in the proof and appendices of Mr Alistair Baxter<sup>153</sup>, and his supplementary bundle entitled 'References Cited in Evidence'<sup>154</sup>. Mr Baxter's evidence is also accompanied by a Shadow HRA<sup>155</sup> (which supersedes the earlier version included as his Appendix AB7). Further evidence and arguments are contained in Chapter 10 of Mr Freer's proof, and in Mr Young's closing submissions<sup>156</sup>.
- 5.60. In the development plan, the policies relating to mitigation for the impacts of development around Ashdown Forest are CP10(3), DM1 and DM24. The appellants submit that all of these relate only to development within the ZoI, up to 7km from the SPA/SAC boundary. The latter two policies are only

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<sup>148</sup> APP-6, paras 4.28 - 4.37; and APP-19, responses to IQs SB 8-10; and APP-26, paras 2.1 – 2.45; and APP-32, paras 183-186, 190-191, and 198 (re supply)

<sup>149</sup> APP-6, paras 4.38 – 4.48; and APP-26, paras 2.46 – 2.50; and APP-32, paras 187-188 and 196 (re strategy)

<sup>150</sup> APP-26, paras 2.53 – 2.60; APP-32, paras 192-193 (re self-build demand in Newick)

<sup>151</sup> APP-6, paras 4.6 – 4.18; and APP-32, paras 194-195 (re latent demand)

<sup>152</sup> APP-7, Appxs AM13: APP/P1615/A/14/2218921, and AM17: APP/A0665/W/14/2212671; and APP-6, Chap 5

<sup>153</sup> APP-8 and APP-9: Mr Baxter's proof and 'Plans and Appendices'

<sup>154</sup> APP-10: Mr Baxter's supplementary references

<sup>155</sup> APP-27: Mr Baxter's Shadow HRA

<sup>156</sup> APP-2: Mr Freer's proof, Chap. 10; and APP-32, Mr Young's closing, pages 46-49 (case re habitats)



recently adopted, as part of LLP2. All three are up to date, and there is no evidence that the Council has any intention of amending or replacing them. The 7km is measured as-the-crow-flies, and road distances will be longer<sup>157</sup>. There is no policy requiring mitigation for any development outside the defined Zol area. In the present appeal, no development can take place within the Zol, as a result of the specific exclusions provided in the Undertaking.

- 5.61. The adequacy of the 7km Zol was considered in the HRA carried out on behalf of LDC in August 2018, for the purposes of LLP2 and the District's various NPs. That HRA was focussed on the issue of recreational pressure on Ashdown Forest, resulting from residential development. The assessment took account of the in-combination effects of LLP2 and the NPs, together with other plans and policies in the other districts around the Forest. The HRA found that the 7km distance was sufficient to capture the in-combination effects of all relevant new housing. It was concluded that LLP2, including the Zol, would not give rise to any adverse effect on the Forest's integrity<sup>158</sup>.
- 5.62. The Zol was also looked at by Inspector Fox in his examination of LLP2. In his report, he recommended some minor changes to the introductory text and to Policy DM24, but none affecting the extent of the 7Km zone or the way that it should be applied. His report states that he was satisfied that the relevant LLP2 policies relating to biodiversity and habitats accorded with national policy, and that the plan as a whole would have no adverse effect on the Ashdown Forest<sup>159</sup>.
- 5.63. The 7km Zol also takes into account the Ashdown Forest authorities' joint SCG on Recreational Impacts, agreed between the six relevant District Councils, including LDC, and NE, in January 2019. The joint SCG forms the basis for a SAMMS Partnership between the relevant authorities, in order to work together on a strategic approach to mitigation, and to jointly define the zone within which contributions to such mitigation will be required. The authorities agree that the aim is to set the size of the zone to reflect the distance at which the frequency of visits can be seen to drop. The document states that a 7km zone is currently operated by all the authorities, and that based on current evidence it is agreed that this remains the most appropriate distance<sup>160</sup>.
- 5.64. The appellants also draw attention to the various visitor surveys of Ashdown Forest which have been used by LDC, and by the SAMMS Partnership authorities and NE, to inform the joint SCG and current development plan policies. The impacts of recreational pressure on the Forest's two Annex 1 ground-nesting bird species, the Dartford Warbler and the Nightjar, were looked at in NE's 2010 data analysis report, based on surveys carried out in 2008/09. The study found no evidence of any effects on either their distribution, or on breeding success. Accordingly, whilst this was followed by the introduction of the Zol policy, it was made clear that the policy was seen purely as a precautionary measure<sup>161</sup>. It follows from this, in the appellants' view, that seeking mitigation for other development, outside the 7km zone,

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<sup>157</sup> APP-2, paras 10.3, 10.8-10.9 (pp 68-69) and 10.6 (p72); and APP-8, paras 4.8.17-18; and APP-32, para 207 (re Zol policies)

<sup>158</sup> RD 5.3: HRA for LLP2, paras 3.36, 6.1; and APP-8, paras 4.62, 4.8.8 and 4.8.13; and APP-2, para 10.6 (p68)

<sup>159</sup> RD 5.1: LLP2 Inspector's Report, paras 24-26 and 77-79; and APP-8, para 4.8.19; and APP-32, para 208

<sup>160</sup> RD 8.1: Inter-Authority SCG for Ashdown Forest, para 12 (a) – (d); and APP-2, paras 10.4 – 10.5

<sup>161</sup> RD 5.7: 2010 Visitor Survey Data Analysis, paras 8.1, 8.12-14

would in effect be adding a further layer of precaution on top of that which is already built into the policy itself<sup>162</sup>.

- 5.65. In NE's December 2016 survey, it was found that the propensity of residents to visit the Forest for recreation was directly related to distance. Around 81% of visitors came from within 7 km of the SPA/SAC boundary, and beyond that distance, numbers declined rapidly. Only about 2.5% of all visitors came from Lewes District, and only a quarter of these were classed as frequent visitors. Out of all frequent visitors, only 1% were from Lewes District<sup>163</sup>.
- 5.66. It is acknowledged that there are some similarities between Ashdown Forest and the Thames Basin Heaths (TBH) SPA, where mitigation is required for some developments outside the main ZoI. But in that case, the ZoI itself is only 5km. Outside that area, mitigation is only required for developments of over 50 dwellings, and then only in the additional zone between 5km to 7km. At Ashdown Forest, the 7km ZoI already captures a higher percentage of visits than at TBH<sup>164</sup>.
- 5.67. Since the first inquiry, the Reedens Meadow SANG, at Newick, has been laid out and brought into use as public open space. The SANG extends to 11.8ha and is only 70m from the appeal site. In the appellants view, this close proximity makes it likely that residents of the proposed development would make use of the new SANG, in preference to a 7km journey to Ashdown Forest, thus reducing the number of recreational trips to the SPA and SAC. The SANG's capacity has been assessed as up to 572 dwellings<sup>165</sup>, and so far only about 100 of these have been committed on other sites<sup>166</sup>.
- 5.68. It is understood that the SANG's acquisition and setting up costs were borne by the development on NNP allocation site HO2, land north of Cricketfield. An LDC officer's report in October 2016<sup>167</sup> stated that funding for up to 50 years' worth of maintenance costs would be realisable through developments provided for in the NNP and LLP2. Policy DM24 allows for S.106 contributions to be sought for this specific purpose, from sites within the ZoI. For the longer term, the report states that if necessary, further provision can be made through CIL. In the light of these existing arrangements, the appellants maintain there is no clear need, as well as no policy basis, for any SANG contribution from the appeal scheme<sup>168</sup>.
- 5.69. With regard to the SoS's draft HRA of March 2019<sup>169</sup>, the appellants take no issue with the conclusion that Reedens Meadow provides sufficient mitigation, without the need for a SANG contribution. However, it is argued that the draft HRA falls into error in failing to state any clear conclusion as to the appeal scheme's effects on the SPA and SAC, and therefore why any consideration of mitigation is necessary at all. It is also contended that the draft HRA gives undue weight to comparing the proposed development with the amount of other new housing planned in Newick. In the appellants' view this approach

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<sup>162</sup> APP-8, para 4.8.5; and APP-32, para 212 (re precautionary basis)

<sup>163</sup> RD 5.8: 2016 Visitor Survey; and APP-8, paras 4.6.1 and 4.8.13

<sup>164</sup> APP-8, paras 4.7.9, 4.8.7 and 4.8.15; and APP-32, para 211 (re comparison with TBH)

<sup>165</sup> GEN-2: SCG on Habitats Regulations Assessment

<sup>166</sup> APP-2, para 10.13 (p70), and !0.12 – 10.13 (p74); and APP-8, paras 4.93-4 (re Newick SANG)

<sup>167</sup> APP-10, item 'Footnote 17': report dated 25 Oct 2016 re SANG land transfer

<sup>168</sup> APP-8, paras 4.1.16-17; and APP-2, paras 10.14-15 (p74); and APP-32, para 213 (re Newick SANG funding)

<sup>169</sup> RD 2.9: SoS's draft HRA

greatly overstates the development's impact; it would be more relevant for the comparison to be based on the 7km zone as a whole, and to relate to the overall population rather than just the amount of planned development<sup>170</sup>.

- 5.70. In the appellants' own Shadow HRA, Mr Baxter accepts that at the Screening stage, a significant effect cannot be ruled out, and therefore an Appropriate Assessment is necessary. At the second stage of the assessment, Mr Baxter reviews the operation of the 7km Zol and finds that the policy itself provides certainty that no adverse effects on the SPA's integrity will arise. As such, mitigation is unlikely to be necessary for any development beyond that zone. He then goes on to calculate that the proposed development would be likely to generate around 1.7 visits to Ashdown Forest per 16-hour day (0.1 per hour), representing an increase of 0.028%, or one additional visit for every 3,500 existing visits. This is considered to be so low as to give rise to no realistic potential for any adverse effects, either on its own or in combination with any other development. It is further argued by the appellants that no party has at any stage carried out any assessment that demonstrates that any mitigation is required or justified<sup>171</sup>.
- 5.71. Notwithstanding these submissions, if the SoS concludes that mitigation is necessary, the appellants contend that the 'full' SANG and SAMM contributions provided for in the Undertaking are excessive. This is because the frequency of visits to the SPA and SAC has been shown to reduce with distance, and therefore the impact arising from a development outside the Zol could not justify the same rate of contribution as one within it. In the appellants' view, the Undertaking's alternative 'reduced' contributions should be preferred<sup>172</sup>. The proposed reduced SANG contribution is set at 25% of the full rate, based on an approach applied by NE to some developments around TBH (albeit in that case within the 5-7km band)<sup>173</sup>. A contribution at this level is also supported by calculations set out in Mr Baxter's proof and an accompanying technical note<sup>174</sup>. The reduced SAMM contribution is based on separating out the monitoring elements from the access and management, and again borrows from an approach previously utilised at TBH<sup>175</sup>.
- 5.72. In any event, whatever conclusion is reached regarding the development's effect on the protected habitat, any impact can be fully mitigated by either the reduced or the full contributions<sup>176</sup>.

### ***The planning balance***

- 5.73. In the appellants' submission, the tilted balance applies, under NPPF paragraph 11(d), because all of the most important policies for determining the appeal are out-of-date and inconsistent with national policy. If the 5-year land supply is found to be lacking, then that further reinforces this position.

<sup>170</sup> APP-8, paras 4.7.3, 4.7.7 and 4.7.10; and APP-32, para 209 (re SoS draft HRA)

<sup>171</sup> APP-27: Shadow HRA, paras 5.1.11, 6.6.8, 6.8.6 - 6.8.8, 6.9.4 and 7.1.3; and APP-8, paras 4.8.1-20; and APP-32, paras 210, 215 and 236 (re Shadow HRA)

<sup>172</sup> APP-35: Undertaking, sections 1 and 7 (SANG/SAMM contributions)

<sup>173</sup> APP-9, Appx AB 16: NE correspondence re contributions

<sup>174</sup> APP-9, Appx AB 17: Technical Note on calculation of visitor rate

<sup>175</sup> APP-8, paras 4.9.7 – 4.9.21; and APP-2, paras 10.16 – 10.17 (re reduced contributions)

<sup>176</sup> APP-32, para 237

- 5.74. No areas or assets of particular importance provide a clear reason for refusal, because any harm to Ashdown Forest can be mitigated. Sub-paragraph (i) therefore does not apply.
- 5.75. Argued in favour of the development are the benefits of providing market, affordable, and self-build housing, in a sustainable location; and in an area where the OAN has not been met for many years, and where local policies will continue to have that effect throughout the present plan period. These considerations should be given very substantial weight.
- 5.76. Also counting in favour are the creation of new public open space, and the opportunity to achieve net gains to on-site wildlife and biodiversity, through conditions. The development would also support village services and help to keep the local community strong and vibrant.
- 5.77. It is not accepted that any harm to the landscape or visual amenity would be significant. No other harm of any kind is accepted.
- 5.78. It is therefore argued that the harm cannot significantly or demonstrably outweigh the identified benefits. On this basis, the favourable tilted balance outweighs the conflict with the development plan<sup>177</sup>.

## **6. The Case for the Council**

### ***Planning policy***

- 6.1. The Council's case on planning policy matters is contained in the proof and appendices of Mr Kevin Goodwin<sup>178</sup>, and in the Council's answers to IQs Set5<sup>179</sup>, and in the closing submissions of Mr Robert Williams<sup>180</sup>.
- 6.2. Policy DM1 of LLP2 and the associated planning boundaries divides the District between the towns and villages, where new development is acceptable in principle, and the countryside where it is not. As such, the Council sees Policy DM1 as central to the appeal. The appeal site lies outside the Newick planning boundary, and the proposed development would therefore involve a fundamental conflict with DM1<sup>181</sup>.
- 6.3. The Council also considers that the development would conflict with Policy CP10(1) of LLP1, and Policy EN1 of the NNP, due to the impact of the proposed scheme on the character and appearance of the landscape and visual amenity<sup>182</sup>.
- 6.4. In addition the Council sees a conflict with LLP1 Policies SP1 and SP2. Together, these policies determine how much housing should be built in the District, and how it should be distributed. Policy SP2 in particular provides for the required number of dwellings to be accommodated, in a plan-led way. Sufficient sites for these have now been allocated, through the LLP1 and 2,

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<sup>177</sup> APP-2, Chapter 12; and APP-32, pages 54-59 (re overall balance)

<sup>178</sup> COU-4 and COU-5: Mr Goodwin's proof and appendices – re planning policy

<sup>179</sup> COU-16: Council's responses to IQs Set 5 (policy)

<sup>180</sup> COU-25: Mr Williams' closing submissions, pages 1-7 and 20-24

<sup>181</sup> COU-4, paras 5.26-28; and COU-16, response to IQ P6; and COU-25, paras 21-24 (re DM1)

<sup>182</sup> COU-16, responses to IQs P8, P9, P11 and P13; and COU-25, paras 72-75 (re CP10 and EN1)

and through NPs. The development now proposed is therefore not needed to fulfil the approved spatial strategy<sup>183</sup>.

- 6.5. With particular regard to Newick, Policy SP2 provides for 100 dwellings, but the sites for these have now been identified in the NNP. The appeal site is unallocated, and the scheme would exceed the village's planned level of growth by 50%. The site was put forward during the consultation stages, but was rejected after being opposed by local residents. The proposed development is therefore seen as conflicting with the NNP's vision for Newick<sup>184</sup>.
- 6.6. Having regard to the above, the Council considers the appeal proposal to be in conflict with the Development Plan as a whole<sup>185</sup>.
- 6.7. LLP2 is less than a year old, having been recently examined and found consistent with all relevant national policies. LLP1 and the NNP are slightly older, but their age alone does not make them out of date. The Council contends that the relevant policies remain fully aligned with the current NPPF, and particularly with the aim of recognising the countryside's intrinsic character and beauty. All three plans are therefore seen as up to date and for this reason should be afforded full weight<sup>186</sup>.
- 6.8. Even if the SoS were to disagree as to whether any of the relevant policies are up-to-date, due to the HLS or for any other reason, the Council argues that such policies remain capable of carrying weight. In this case, it is argued that the most important policies for determining the appeal should be given significant weight<sup>187</sup>.

### ***Landscape and visual impact***

- 6.9. The Council's evidence on landscape, townscape and visual impact is set out principally in the proof of Mr Philip Russell-Vick, and his accompanying appendices and Figures<sup>188</sup>. These supersede the evidence given at the first inquiry by Mr Daniel Wynn<sup>189</sup>. Further information and submissions are contained in the Council's replies to IQs Set 1 and to the FQs<sup>190</sup>, and in Mr Williams' closing submissions<sup>191</sup>.
- 6.10. Whilst the Council accepts that the appeal site is not a 'valued landscape' in terms of NPPF paragraph 170, it is argued that this does not mean that it has no value. At national level, the whole of the Newick area lies within the Low Weald NCA<sup>192</sup> which, although not subject to any special designation, is highly valued in a county and district context. This is highlighted in the supporting text to Policy CP10<sup>193</sup>, which describes the Low Weald as having its own special

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<sup>183</sup> COU-4, paras 5.9-14; and COU-25, paras 9-20 (re SP1 and SP2)

<sup>184</sup> COU-4, paras 5.15, 5.20-22 and 5.42-50; and COU-16, response to IQ P16 (re NNP)

<sup>185</sup> COU-4, para 5.80; and COU-16, response to IQ P18; and COU-25, paras 86-93 (re DP as a whole)

<sup>186</sup> COU-4, paras 5.31-35 and 5.92; and COU-16, responses to IQs P5, P10 and P13; and COU-25, para 6b (re up-to-dateness and consistency of policies)

<sup>187</sup> COU-16, response to IQ P4 (re weight if out-of-date)

<sup>188</sup> COU-6: Mr Russell-Vick's proof and appendices; and COU-7: Mr Russell-Vick's Figures

<sup>189</sup> FI-12: first inquiry evidence of Mr Wynn (now superseded)

<sup>190</sup> COU-11 and COU-23: Council's replies to IQs Set 1 and to FQs on landscape

<sup>191</sup> COU-25: Mr Williams closing submissions, pages 7 - 21

<sup>192</sup> RD 8.12: NCA 121 Low Weald

<sup>193</sup> RD 3.1: LLP1, para 7.92 (re Low Weald)



character, with a patchwork of small fields, hedgerows woodlands and shaws, forming an enclosed and intimate landscape. It was also recognised by Inspector Payne, in his report on LLP1<sup>194</sup>, who cited the Low Weald landscape as an important constraint on the District's housing capacity<sup>195</sup>.

- 6.11. At County level the ESCLA subdivides the area between the Western Low Weald and the Upper Ouse Valley character sub-areas<sup>196</sup>, and in the Council's view the boundary between these runs through the appeal site, not to the south of it. In this context the dividing line drawn on the ESCLA maps should be treated as indicative rather than definitive. When looked at on the ground, it is submitted that there is a clear division running through the site, based on established landscape features and topography. On this basis, the site's northern paddock relates to the Upper Ouse Valley, but the remainder is more typical of the Western Low Weald and in landscape terms forms part of that area. In addition, although the ESCLA suggests that the Upper Ouse Valley falls outside the Low Weald NCA, that is inconsistent with the NCA itself; in this instance, it is argued that the latter should carry more weight<sup>197</sup>.
- 6.12. Seen in this context, it is argued that the various parts of the appeal site each have their own distinct character and role in the local landscape. The northern paddock is largely domesticated, and is viewed alongside existing development. Being visually contained by the central woodland within the site, this northern area is separated from the wider countryside. The woodland itself, although partly ornamental, also includes indigenous woodland species which fit well with the landscape context. The woodland is seen by the Council as providing a strong visual break and a notable local landscape feature in its own right. The southern part of the site, including the south-eastern 'tongue', is steeply sloping with a scattering of oaks and other trees, naturalistic vegetation, and a sense of remoteness and tranquillity. As such, this southern area is seen as having a distinctive rural character which relates strongly to the undulating pasture land to the south, and reflects the characteristics of the Low Weald. As well as the woodland, the division between the northern and southern parts of the site is also accentuated by the hedge bank and ditch that runs alongside part of Footpath 4a/b, continuing eastwards beyond the site<sup>198</sup>.
- 6.13. Although the 2012 LLCS capacity report<sup>199</sup> saw some scope for development to the south of Allington Road, in the Council's view it is unclear as to whether this was meant to include any part of the present appeal site, and to what extent. The site was split between Areas C02 and B03, with the dividing line running east-west through the site. In drawing this line, it appears that some reliance was placed on hedgerows providing visual barriers, and the change of slope as a natural defensible boundary. These elements are seen as going some way to supporting the Council's present assessment, that the different parts of the site vary as to their sensitivity. Area C02 is assessed as having some capacity, and potential for landscape mitigation, but this does not necessarily apply to the whole of that area. No such potential is suggested in

<sup>194</sup> COU-10, Appx NS 2: LLP1 report, para 31 (re Low Weald)

<sup>195</sup> COU-6, paras 3.8, 4.2 and 6.15; and COU-25, para 158 (re Low Weald and NCA)

<sup>196</sup> RD 8.13 and RD 8.14: the ESCLA

<sup>197</sup> COU-6, paras 4.3 – 4.9 and 6.13 – 6.15; and COU-7, Fig PRV 1; and COU-11, replies to IQs L2 and L5; and COU-25, paras 28-37 (re ESCLA areas)

<sup>198</sup> COU-6, paras 4.17 - 4.23 and 6.2; and COU-11, response to IQ L16; and COU-25, paras 26 - 27

<sup>199</sup> CD 3.7: the LLCS

B03. In any event, there are inconsistencies between the maps, the text and the Tables, which cast doubt on what was intended<sup>200</sup>.

- 6.14. The Council also finds some further support for its assessment of the appeal site in the NNP Character Assessment report (the NNPCA)<sup>201</sup>, said to date from 2013. Although not undertaken in accordance with any recognised landscape methodology, the study does divide the appeal site between two different areas, Areas 22 and 27, with the division running roughly along the northern edge of the central woodland, and then along the hedge bank and ditch to the east. In the Council's view this acknowledges the important role of these features, and the differences in character between the northern and southern parts of the site<sup>202</sup>.
- 6.15. Although the SHLAAs and SHELAA<sup>203</sup> carried out by the Council between 2014 and 2018 identified the appeal site as 'suitable' for development<sup>204</sup>, those assessments were looking only at the principle, rather than any particular scheme. In relation to Area NW16, the assessments all stated that the woodland should preferably be retained. This was a recognition of its role in defining the settlement edge. For both NW16 and NW03, the assessments highlighted the site's role in providing a rural setting to the village, and that this would need further consideration in any proposals<sup>205</sup>.
- 6.16. The Council argues that development as now proposed would result in the site's character being completely changed. Based on the illustrative plans, the proposed development would cover most of the site. It would extend past the natural boundary of the central woodland and hedge bank, and into the more sensitive and exposed southern area, including the south eastern tongue. The site's attractive landscape qualities, particularly the tranquillity and remoteness of the southern part, would be lost. The northern paddock would lose its sense of containment<sup>206</sup>.
- 6.17. Based on the updated plans<sup>207</sup> provided in response to the Inspector's questions, the Council contends that almost all of the existing woodland would need to be removed, including the whole of Groups G5, G7, G8 and G10, part of G6, and all of the 20 or so individual trees in between these groups, which contribute to the woodland belt as a whole. This would not only lose the woodland itself as a feature, and with it the site's wooded character and skyline, but would also open up the central part of the site to inward views, and thus lose the visual break between the village and the countryside<sup>208</sup>. Those trees that remained would become more vulnerable to wind damage. Although there might be some scope for new planting on the southern boundary, this would not appear to allow for the full 15m width suggested. This is also the lowest part of the site, and this would reduce the effectiveness of new planting. In any event the trees in this southern area would come

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<sup>200</sup> COU-6, paras 4.10-14; and COU-11, responses to IQs L6-8; and COU-25, paras 38-40 (re LLCS)

<sup>201</sup> ID-20: the NNPCA

<sup>202</sup> COU-6, paras 4.15-16; and COU-25, para 41 (re NNPCA)

<sup>203</sup> Strategic Housing Land Availability Assessment/ Strategic Housing and Employment Land Availability Assessment

<sup>204</sup> CDs 9.2, 9.3, 9.5 and 9.6: the 2014 and 2015 SHLAAs; and APP-13: the 2018 SHELAA

<sup>205</sup> COU-11, responses to IQs L9 – L11 (re SHLAAs)

<sup>206</sup> COU-6, paras 5.2 and 6.2 – 6.4; and COU-25, paras 51-60 (re landscape impact)

<sup>207</sup> APP-14 and APP-15: updated Tree Constraints and Tree Protection plans

<sup>208</sup> COU-7, Appxs PRV4 – PRV7: annotated photo views showing effects of tree removal

under pressure from the new occupiers, to open up views of the countryside<sup>209</sup>.

- 6.18. In the Council's assessment, the development would be prominent in external views, from Public Footpaths Newick 4, 7 and 8, to the east and south of the site, including Mr Gibbs' viewpoints Nos 10 – 14 and 17 - 19<sup>210</sup>. From many of these points, it is argued that the development would break the skyline, and dominate the tranquil rural valley to the south. Although from some of these viewpoints, existing houses may be visible in the same view, those are either isolated dwellings or very low density. By contrast, the appeal scheme would be of a higher density and more urban in character. As such, it would be at odds with the rural surroundings. There would also be a suburbanising effect on views from Allington Road, and from the section of Footpath 4a that crosses the site itself<sup>211</sup>.
- 6.19. The photomontage which was produced by the appellants at the first inquiry<sup>212</sup> is considered by the Council to be inaccurate, with regard to the number of trees that could be retained, their positions relative to the new dwellings, and the height of any new planting. The montage is also not considered to have been produced in accordance with current guidance<sup>213</sup>. The new version produced with the appellants' closing submissions<sup>214</sup> was too late to be properly considered, and is not seen as overcoming all the concerns raised<sup>215</sup>.
- 6.20. Applying the Landscape Institute's methodology<sup>216</sup>, with regard firstly to landscape character, Mr Russell-Vick assesses the appeal site's northern paddock to be of 'moderate' susceptibility and 'low' sensitivity to change, but the remainder of the site is considered 'susceptible' and 'highly' sensitive. Across the site as a whole, the magnitude of change is considered 'substantial adverse', and the resulting significance of the effect is judged 'major adverse'<sup>217</sup>.
- 6.21. Turning to visual impacts, the users of the public footpaths through and around the site are seen as 'highly' sensitive. The magnitude of change to views from the south east, in particular at viewpoints 11 and 12, is classed as 'substantial adverse', reducing to 'moderate adverse' over a period of 15 years. The resulting significance of the effect at these viewpoints is judged to be 'major, reducing to 'moderate-major'. From Footpath 4a, within the site, the magnitude would be 'very substantial adverse', and the effect would be of 'major-plus' significance. Further adverse visual impacts, albeit of a lesser scale, would also be experienced in the views from Allington Road, and from the southerly viewpoints 18 and 19<sup>218</sup>.
- 6.22. Taking into account all of the above, the Council contends that the development would fail to maintain the distinctive qualities and characteristics

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<sup>209</sup> APP-06, Chapters 5 and 6; and COU-23, replies to FQs, Nos 1 and 3; and COU-25, para 71 (re effects on site)

<sup>210</sup> FI-4, Appx DJA 5 (viewpoints location plan), and DJA 6 -16 (photographs); and APP-12, updated photographs

<sup>211</sup> COU-6, paras 6.2-6.3 and 6.7-6.12; and COU-11, replies to IQ L20 (effects on inward views)

<sup>212</sup> ID-18: photomontage produced at first inquiry (revised version for 50-unit scheme)

<sup>213</sup> COU-6, para 6.3 (6<sup>th</sup> bullet); and COU-23, replies to FQs 4 and 6; and COU-25, paras 62-65 (re original montage)

<sup>214</sup> Amended photomontage (attached to APP-32)

<sup>215</sup> COU-26 and 27: post-inquiry emails dated 10 and 11 Aug 2020 (re amended montage)

<sup>216</sup> Guidelines for Landscape and Visual Assessment, 3<sup>rd</sup> Edition (GLVIA 3)

<sup>217</sup> COU-6, paras 6.13 – 6.28; and COU-25, paras 44 – 60 (assessment of landscape character effects)

<sup>218</sup> COU-6, paras 6.5 – 6.12; and COU-25, para 67 (assessment of visual impact effects)



of the local landscape, or to respect its character, as required by the relevant provisions of Policies DM1, CP10(1) and EN1<sup>219</sup>.

- 6.23. With regard to the treatment of landscape matters in the report of Inspector Birkinshaw, the Council submits that the Inspector on that occasion fell into error on certain points. Firstly, for the reasons already set out, the Council considers that Mr Birkinshaw was wrong to find that the appeal site lay wholly within the ESCLA's Upper Ouse Valley character area, and not on the border between that and the Low Weald. This led him to overlook the fact that Inspector Payne saw the Low Weald as an important landscape. Secondly, he appears to have thought that the site was fully contained in the LLCS's Area C02, rather than partly in B03. This led the Inspector to believe, wrongly in the Council's view, that the whole of the appeal site had been identified as a preferred area. Thirdly, the Inspector attached weight to the original photomontage, which has since been amended because of inaccuracies. In addition, the present inquiry now has the benefit of Mr Russell-Vick's evidence, and also the appellants' updated Tree Constraints and Tree Protection plans, none of which were available to Mr Birkinshaw. For these reasons, the Council suggests that on landscape matters, the SoS has sufficient new evidence to enable him to depart from the conclusions that were reached in the original, quashed appeal decision<sup>220</sup>.

### ***Five-year housing land supply***

- 6.24. The Council's case on the 5-year supply is contained in the proof and appendices of Ms Natalie Sharp<sup>221</sup>, and in the answers to IQs Set 2 and the FQs<sup>222</sup>, and in Mr Williams' closing submissions<sup>223</sup>.
- 6.25. The most recent Five-Year HLS Position Statement published by the Council is that for April 2019<sup>224</sup>. The Position Statement covers the non-SDNP part of Lewes District, and looks ahead to the period 2019-24. Normally, the 2020 version would have been available, but this year the process was delayed due to the pandemic<sup>225</sup>. The Statement shows the overall requirement for the period to be 1,750 units, with a deliverable supply of 1,958 units, equating to 5.59 years. This position is referred to by the Council as Scenario 1.
- 6.26. In addition, the Council has also prepared 5-year supply calculations for two alternative scenarios. Scenario 2 takes account of new information or changes of circumstances since 2019, but only where these lead to a site that was previously counted as deliverable now being undeliverable. Scenario 3 also takes into account any such changes and updated information, including where this results in new sites being added to the supply. In both Scenarios 2 and 3, the relevant 5-year period remains 2019-24. The Council considers that these calculations demonstrate at least a 5-year supply in all three scenarios<sup>226</sup>.

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<sup>219</sup> COU-6, paras 6.34 – 6.40; and COU-25, paras 72 – 77 (re landscape policies)

<sup>220</sup> RD 2.4: First Inspector's report, paras 173-190; COU-25, paras 43, 66, 71 and 158 (disagreements/new evidence)

<sup>221</sup> COU-9 and COU-10: N Sharp proof and appendices

<sup>222</sup> COU-12, responses to IQs Set 2: and COU-22: responses to FQs on housing

<sup>223</sup> COU-25: Mr Williams' closing, pages 24 - 42

<sup>224</sup> RD 7.5: 2019 HLS Position Statement

<sup>225</sup> COU-3: email dated 6 April 2020 – re 2020 figures delay

<sup>226</sup> COU-9, para 1.10, Tables 1 and 5, and paras 3.17, 3.41, 3.47-9, 3.53, 3.63-4, and 3.67-71.; and COU-10, Appx NS7 (re Scenarios 2 and 3)

- 6.27. Of these, the Council contends that the preferred approach should be Scenario 3, because this ensures that the most up-to-date evidence is taken into account, in accordance with advice in the PPG<sup>227</sup>. Based on Scenario 3, the Council submits that the deliverable supply for the period 2019-24 is now 5.82 years<sup>228</sup>.
- 6.28. The Liverpool method of making good the past shortfall in housing delivery was accepted by Inspector Payne for LLP1, and was re-endorsed by Inspector Fox in his Examination report for LLP2. The Sedgefield approach was found not to be practical or realistic, and the trajectory was already front-loaded. A specific local justification therefore existed for using Liverpool in this case. The same justification is considered still to apply. The PPG<sup>229</sup> makes it clear that this is a matter to be resolved at the plan-making stage<sup>230</sup>.
- 6.29. In assessing deliverability, the Council submits that it has correctly applied the NPPF's updated definition and relevant case law. Although the *St Modwen*<sup>231</sup> judgement pre-dates the present version of the NPPF, it is argued that it remains relevant to the interpretation of 'realistic prospect'. In the Council's view, that is a lower threshold than either certainty or probability. Furthermore, the same test should apply to the number of units that can be achieved. The *East Bergholt*<sup>232</sup> case confirms that whether or not there is such a prospect, is a matter of planning judgement. The *East Northants*<sup>233</sup> consent order confirms that the examples in the NPPF are not a closed list<sup>234</sup>.
- 6.30. To help in forecasting future building rates on sites within the 5-year supply, the Council has carried out its own research into the rates achieved on a range of sites in the District, over the period 2006-16. On the larger sites, of over 100 units, the average annual rate was 62 dwellings per annum. Medium sized sites of 51-100 units averaged 35 dpa, and on the smaller sites, the rates were around 15-28 dpa. The highest rate achieved on any individual site was 68 dpa. In most cases, the rates assumed in the 2019 Position Statement are within these ranges, according to the size of the site<sup>235</sup>.
- 6.31. The Council considers that its assumptions throughout are conservative. The programmes suggested by developers and site promoters have been individually adjusted to avoid over-optimism. In some cases, this has led to sites being omitted altogether, even though they have full planning permission. In the case of the small sites with permission, a 25% non-implementation discount has been applied<sup>236</sup>.
- 6.32. It is not accepted that any across-the-board adjustment should be made for Covid-19. Attention is drawn to a very recent appeal decision in May 2020, at Bells Piece, Farnham<sup>237</sup>, in which the SoS rejected a similar proposition, noting

<sup>227</sup> PPG: ID 68-004-20190722 (using up-to-date evidence)

<sup>228</sup> COU-12, replies to IQs HL6 and 39; and COU-25, paras 94 and 121 – 134 (re updating and alternative Scenarios)

<sup>229</sup> PPG: ID 68-031-20190722 (re Liverpool method)

<sup>230</sup> COU-9, paras 3.22 – 3.28; and COU-12, replies to IQs HL2 - HL4; and COU-25, paras 6c and 135 (re Liverpool)

<sup>231</sup> *St Modwen Developments v SoS*: [2017] EWCA Civ 1643

<sup>232</sup> *East Bergholt PC v Babergh DC* [2019] EWCA Civ 220

<sup>233</sup> COU-22, Appx A: Consent Order, *East Northants v SoS*, 12 May 2020

<sup>234</sup> COU-9, paras 3.2 – 3.18; and COU-22, response to FQs – 16; and COU-25, paras 108 – 120 (re 'deliverability')

<sup>235</sup> COU-9, para 3.36 and Table 4; and COU-10, Appx NS4: Table of building rates

<sup>236</sup> COU-9, paras 3.37 – 3.62; and COU-10, Appx NS1: Site Schedule and commentary; and COU-25, para 106 (re delivery assumptions)

<sup>237</sup> APP/R3650/W/18/3211033 - Bells Piece, Farnham (Waverley BC)

the absence of specific evidence about the impacts on deliverability at particular sites. There is equally no such evidence in the present case<sup>238</sup>.

- 6.33. It is also not agreed that the Standard Method has any relevance to the present appeal. The LLP1 is less than five years old, and the Standard Method therefore cannot be applied until May 2021. Even after that time, it may still not apply, depending on whether by then the Council has reviewed its strategic policies and determined whether they need to be updated. In any event, the appellants' alternative calculation on this basis does not take account of the disaggregation of SDNP from the rest of the District<sup>239</sup>.
- 6.34. The Springfield Industrial site is allocated in a made NP, and is in the hands of a social housing provider. Pre-application discussions have been held. Although the previous planning permission lapsed, the fact that it was granted shows that technical issues can be resolved. The site at Woods Fruit Farm is also an NP allocation, and in the hands of an experienced local developer. Whilst the application made in 2018 was refused, an appeal has been lodged. The officers' recommendation should count in its favour. A further application is now under consideration. There are no objections on technical grounds. The 'Valley Road 1&2' site is Council-owned, and to be developed by the Council's own housebuilding company, Aspiration Homes. The site is within the planning boundary, and there are no known objections to development. Reprodex House has a live application, with a resolution to grant permission. The issue which delayed completion of a S.106 agreement is now believed to have been resolved. Although none of these sites has planning permission, all are seen by the Council as having a realistic prospect of producing completed dwellings within the relevant period, and are therefore deliverable<sup>240</sup>.
- 6.35. Although the 2018 reserved matters approval for the Elm Court site has now lapsed, the Council sees this as only relevant to Scenarios 2 and 3. Detailed issues relating to surface water are thought to be capable of being resolved. The site is previously developed, vacant land, and no reason is seen as to why another permission would not be granted<sup>241</sup>. Newhaven Marina is an allocated site, with a current application under consideration. The phasing plan allows existing users to remain on site and to relocate within the development. The site was found developable by the LLP2 Inspector. Similar circumstances apply again to the land to the South of Valley Road, and to the site at Strawlands, and to Neaves House. All three of these sites are allocated for housing, and all have live applications. Neaves House has a resolution to grant, and decisions on the other two are expected soon. All of these five sites are regarded as deliverable, based on a realistic prospect of delivering completions within the 5-year period<sup>242</sup>.
- 6.36. At the Parker Pens site, all pre-commencement conditions have been discharged, and construction works have started. The trajectory does not depend on any completions until 2021/22, and thereafter the expected rate of

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<sup>238</sup> COU-25, paras 136 – 138 (re Covid-19 impact)

<sup>239</sup> COU-12, responses to IQ HL40 (re Standard Method)

<sup>240</sup> COU-10, Appx NS1; and COU-12, responses to IQs HL12-13, HL20, HL28-29 and HL37-38; and COU-22, response to FQs – 16; and COU-25, para 116(b) (re Springfield, Woods Fruit, Valley 1/2 and Reprodex)

<sup>241</sup> COU-9, para 3.67 (re Elm Court and Harbour Heights)

<sup>242</sup> COU-10, Appx NS1; and COU-12, responses to IQs HL 14-15, HL24-27 and HL30-32; and COU-22, response to FQs - 16 (re: Elm Court, Marina, S. of Valley Rd, Strawlands and Neaves Ho)

50 dpa is within the range achieved by other sites of a similar size in the area. On the Newlands School site, the Council has recently resolved to approve two applications. Although some demolition is needed, most of the buildings involved are pre-fabricated, and none is thought to contain asbestos. Only 10 completions are needed before 2022/23, and then in the next two years the average of 70 dpa is achievable based on the rates recorded at similar sites. The Harbour Heights site is allocated for development, and applications have been submitted, albeit that both post-date the April 2019 base date. The appellants have accepted that completions will be achieved, and the only remaining dispute is about numbers. The Council regards their updated estimate of 75 within the last two years of the period as realistic. The site at The Nuggets has a resolution to grant permission and a developer in place. The appellants have accepted that the site is deliverable, and given that the site is only for 22 units, the Council's trajectory allows adequate time for all of these to be completed within the relevant period. The numbers of completions required on these four sites are therefore seen as realistic and deliverable<sup>243</sup>.

- 6.37. With regard to the appeal proposal, the Council considers that the earliest completion of the development would be likely to be in 2025/26. The maximum realistic contribution within the 5-year period to 2024 would be about 15 dwellings<sup>244</sup>.

### ***Overall housing need***

- 6.38. The Council's response to the appellants' case on overall housing need is contained in the replies to IQs Set 2, and in Mr Williams' final submissions<sup>245</sup>.
- 6.39. The Council does not dispute that the housing requirement set by LLP1 does not match the level of the OAN that was found at the time of the Examination. However, it is argued that this should carry little weight. National policy does not require the OAN to be met in every case, but rather that the process of setting the requirement should be informed by it. In LLP1, the housing requirement has been arrived at by striking a considered balance between housing needs and the environmental and other constraints that act to limit what can realistically be achieved. The way in which this balance has been struck is made clear in the plan itself, and was subject to detailed scrutiny through the Examination process, as set out in Inspector Payne's report<sup>246</sup>.
- 6.40. It is also accepted that there is currently little likelihood of any neighbouring authorities being in a position to help in meeting the unmet portion of LDC's housing need. But this too was taken into account in setting the LDC requirement figure, and in the LLP1 Examination<sup>247</sup>.
- 6.41. The Council points out that the level of housing need is not static. The OAN figure that was calculated for the purposes of LLP1 was based on household projections dating from 2008 and 2011. The updated projections published

<sup>243</sup> COU-10, Appx NS1; and COU-12, responses to IQs HL 7-11, HL 16-19, HL21-23 and HL 33-36; and COU-22, responses to FQs – 16; and COU-25, para 116(a) and (c); (re: Parkers, Newlands, Harbour Hts and The Nuggets)

<sup>244</sup> COU-22, response to FQs- 15 (timescale for appeal site development)

<sup>245</sup> COU-12, responses to IQs HL41 - HL43; and COU-25, paras 6a and 154 – 158 (case re overall housing need)

<sup>246</sup> COU-12, response to IQ HL41; and COU-25, paras 6a and 155 (re unmet need)

<sup>247</sup> COU-12, response to IQ HL43 (re neighbouring authorities)

since that time have all suggested a reduction in local housing demand. The HDT results also show an improving position from year to year<sup>248</sup>.

- 6.42. It is argued that setting the level of housing is a central part of the plan-making process, and is therefore fundamental to the principle of a plan-led system. That is seen as the proper way of dealing with the issue. Attempting to re-open the issue through individual appeals is directly contrary to this principle, and likely to undermine public confidence in planning<sup>249</sup>.

### **Affordable housing**

- 6.43. The Council's response to the appellants' case on affordable housing is contained in the proofs of Mr Goodwin and Ms Sharp<sup>250</sup>, and in the responses to IQs Set 4, and in Mr Williams' closing submissions<sup>251</sup>.
- 6.44. The Council accepts that the availability of AH is a problem, but this is considered to reflect the wider problems of the housing market and affordability, across the South East region and elsewhere in the country. Within its Local Plan, the Council has adopted Policy CP1 of LLP1, which sets the AH target at 40%, for all except the smallest developments. This requirement is also set out the Council's AH Supplementary Planning Document (SPD)<sup>252</sup>. In Policy DM2 of LLP2, the Council has also adopted a rural exceptions policy, which allows for AH outside planning boundaries. These policies are seen as an up-to-date and effective response to the issue, in line with relevant national policies and current practice in other authorities<sup>253</sup>.
- 6.45. In the ten years since 2010, new affordable homes have been delivered on 40 sites in the non-SDNP part of the District, totalling 318 units. That period includes several years when the affordable housing requirement, under the 2003 Local Plan policy, was only 25%. Since Policy CP1 came into force, 75% of housing developments have met or exceeded the 40% requirement. When planning permissions not yet implemented are taken into account, the total number of affordable homes permitted in the period is 940 units. The Council sees this as a good track record of securing affordable housing delivery, and a demonstration of the robustness of its policies<sup>254</sup>.
- 6.46. The Council states that it has plans to directly develop a pipeline of 38 further affordable units, on Council-owned sites, through Aspiration Homes. And in addition, the Council is aware of further proposals, by other registered providers, for a further 20 affordable units on rural exception sites. All of these are over and above the sites that already have planning permission<sup>255</sup>.
- 6.47. With regard to Newick, 26 affordable homes have been delivered since 2010, including 12 on the NNP allocation site HO2. A further 40 affordable units are expected from sites HO3 and HO4. The Council anticipates that these will

<sup>248</sup> COU-12, response to IQ HL42; and COU-25, para 156 (HDT and household projections)

<sup>249</sup> COU-12, response to IQ HL41; and COU-25, paras 6a and 155 (re plan-led system)

<sup>250</sup> COU-4: Mr Goodwin's proof, paras 5.69-71; and COU-9: Ms Sharp's proof, paras 4.9-17 (overall case re AH)

<sup>251</sup> COU-14, responses to IQs Set 4; and COU-25: Mr Williams' closing, paras 159-160 (overall case re AH)

<sup>252</sup> RD 3.5: Affordable Housing SPD

<sup>253</sup> COU-4, para 5.69-70; and COU-9, paras 4.9-10; and COU-14, response to IQ AH3 (re AH policies)

<sup>254</sup> COU-9, paras 4.11-12; and COU-10, Appx NS 6; and COU-14, response to IQ AH6 (re AH delivery)

<sup>255</sup> COU-9, paras 4.13, 4.14 and 4.16 (re AH future expectations)



more than meet the village's own needs, and the surplus will be available to meet needs arising elsewhere in the District<sup>256</sup>.

- 6.48. In recent years, the housing waiting list across the District as a whole has shown a downward trend. The most recent list has only six applicants expressing a preference for Newick<sup>257</sup>.
- 6.49. The Council acknowledges that the current policies and provisions will not enable the District's affordable housing needs to be met in full. But it is argued that there is no national policy, in the NPPF or elsewhere, that requires or expects that to be achieved in any area. Case law is cited to this effect<sup>258</sup>. In his examination report on LLP1, Inspector Payne took account of the District's full need for affordable housing, but he accepted that meeting that need fully would be impractical and unrealistic<sup>259</sup>. Like other housing policies, setting the requirement for affordable housing involves striking a balance with other policy aims and objectives. In Lewes District, the relevant policies have been examined and found satisfactory<sup>260</sup>.
- 6.50. In addition, the Council points out that the full level of AH need identified in the 2014 AHNA was for the whole district, including the part that is within the SDNP. Following the disaggregation of SDNP from the rest of the District, that figure is no longer relevant. The Council intends to review the level of overall need as part of the work to be carried out for the next review of LLP1<sup>261</sup>.
- 6.51. In the Council's view, the affordability data presented by the appellants does not show a worsening position in Lewes District compared to other areas. Rather, the figures show a mixed picture, with Lewes performing worse on some measures and better on others. The steepness of the apparent sudden rise in house prices in Newick suggests an anomaly in the data, possibly exacerbated by a relatively small size of sample<sup>262</sup>.
- 6.52. Overall, the Council accepts that the provision of affordable housing weighs in favour of the development. But the proposed 20 units are only what is required by Policy CP1. The Council suggests that the weight given to the benefit of the AH should be no more than moderate<sup>263</sup>.

### ***Self-build housing***

- 6.53. The Council's response on the matter of self- or custom-build housing is contained in their Rebuttal Note<sup>264</sup>, and in the answers to IQs Set 3<sup>265</sup>, and in Mr Williams' closing submissions<sup>266</sup>.
- 6.54. The Council considers the provision of five self/custom-build plots a limited benefit, carrying limited weight<sup>267</sup>.

<sup>256</sup> COU-9, paras 4.15, 4.16; and COU-25, para 160e (re AH in Newick)

<sup>257</sup> COU-14, responses to IQs AH7 and AH9 (re waiting lists)

<sup>258</sup> COU-15: *Kings Lynn v SoS & ELM Park Holdings*, [2015]EWHC 2464 (Admin)

<sup>259</sup> COU-10, Appx NS2: LLP1 Examination report, paras 22-24

<sup>260</sup> COU-14, responses to IQs AH2 and AH4; and COU-25, para 160b/c (re full AH need)

<sup>261</sup> COU-14, responses to IQs AH4 and AH7 (re AHNA)

<sup>262</sup> COU-14, response to IQ AH8; and COU-25, para 160d (re affordability)

<sup>263</sup> COU-4, para 5.71; and COU-25, paras 159-160a (AH benefit and weight)

<sup>264</sup> COU-18: Rebuttal note on self-build housing

<sup>265</sup> COU-13: responses to IQs Set 3

<sup>266</sup> COU-25: Mr Williams' closing, pages 50 - 51

<sup>267</sup> COU-13, response to IQ SB3; and COU-25, para 161 (re limited benefit/weight)



- 6.55. It is submitted that more than sufficient suitable permissions were granted by 31 October 2019 to meet the Council's duty in respect of base period 1. At the time of submitting evidence for this inquiry, permissions had been granted for 15 plots counting towards base period 2. The period for compliance in respect of period 2 still had some months to go. The Council therefore contends that it has not failed to meet the duty in respect of either of these periods<sup>268</sup>.
- 6.56. It is argued that S.2A(8) of the 2015 Act<sup>269</sup> allows permissions to be counted where they have been granted within the relevant base period, as well as in the three subsequent years. The provisions of the 2016 Regulations<sup>270</sup> are not considered relevant to this particular point, but in any event the Regulations are subordinate to the primary legislation<sup>271</sup>.
- 6.57. With regard to what types of permissions may be counted towards the requirement, the Council points to S.2A(6)(c) of the 2015 Act which defines a suitable permission as one that 'could' include self-build and custom housebuilding. As such, there is no requirement for a condition or obligation. It is accepted that one of the permissions on the Council's initial list was double-counted, but this has now been deleted. Subject to this one correction, it is considered that all of the permissions on the list fall within the terms of the Act<sup>272</sup>.
- 6.58. In addition, the Council states that all of the permissions in question are supported by a self-build CIL exemption form, albeit that these are not held on the planning register. An application for such an exemption is seen as a good indicator of the applicant's intention, particularly as the submission of a false application is an offence<sup>273</sup>.
- 6.59. The Council does not agree that the Self-Build Register understates the level of demand. At least one third of the registrants have confirmed that they were already signed up to one or more registers with other authorities. There is no limit on duplicate or multiple registrations, so others may also have done so subsequently. There is no residential qualification for entry onto the register, and some applicants may have little or no local connection. Although some have indicated Newick as an area of search, in most cases this is one location among many. The 10-mile radius covered by the appellants' search of the Plot Search database is very extensive, and covers a number of local authority areas. None of these entries can be shown to be specific to Lewes District<sup>274</sup>.
- 6.60. A detailed assessment of demand will be undertaken as part of the next Local Plan review. At that stage, the Council will also consider the possible need for new policies, to increase the future supply of suitable sites<sup>275</sup>.

### **Ashdown Forest**

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<sup>268</sup> COU-18, paras 25-32 and Appx A (Schedule); and COU-13, replies to IQ SB8 and SB9; and COU-25, para 162 (re self-build sites supply)

<sup>269</sup> The Self-Build and Custom Housebuilding Act 2015

<sup>270</sup> The Self-Build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016

<sup>271</sup> COU-18, paras 9-11; and COU-13, reply to IQs SB; and COU-25, paras 163-164 (re relevant period)

<sup>272</sup> COU-18, paras 13-14, 17-19 and 24; and COU-13, response to IQ SB8 (re suitability)

<sup>273</sup> COU-18, paras 6 and 20-23; and COU-13, responses to IQs SB8 and SB10 (re CIL exemption)

<sup>274</sup> COU-18, paras 33-34; and COU-13, responses to IQ SB5 and SB7 (re demand)

<sup>275</sup> COU-13, response to IQ SB5 (re future review)

- 6.61. The Council's case on the need for mitigation of any impact on protected habitat is contained in the main and rebuttal proofs of Ms Tondra Thom<sup>276</sup>, and in the S.106 Compliance Statement<sup>277</sup>, and in Mr Williams' closing submissions<sup>278</sup>.
- 6.62. If contributions to SANG and SAMM were secured at the 'full' level provided for in the Undertaking, the Council accepts that the proposed development's potential impact on the Ashdown Forest would be adequately mitigated. However, if contributions were only secured at the alternative 'reduced' level, or not at all, then it is argued that the decision-maker would not be able to be certain as to the absence of any impact<sup>279</sup>.
- 6.63. The Council contends that the principle of requiring mitigation for developments beyond the ZoI, on a case-by-case basis, is supported by the 2018 HRA<sup>280</sup>, relating to LLP2 and the NPs, which refers to development "within or close to" 7km. Similar wording can be found in the SAMM Partnership's joint SCG<sup>281</sup>. On the Council's website, there is a note attached to Policy CP10, to say that larger developments will be assessed with regard to the Habitats Regulations if they are close to the 7km boundary<sup>282</sup>.
- 6.64. Although no current development plan policies state that mitigation may be required outside the ZoI, neither do they preclude such a requirement. The Council expects that relevant policies such as CP10(3), DM1, and DM24 will be updated to make this clear, when LLP1 is reviewed. The only reason that this change was not included in LLP2 was that it was outside the scope of a subsidiary plan. Other authorities covering parts of Ashdown Forest have more flexible policies, and LDC will aim to follow their approach. The lack of a specific policy requirement for mitigation outside the 7km zone does not relieve the decision-maker of their duty under the Habitats Regulations, and should not be seen as a barrier to the discharge of that duty<sup>283</sup>.
- 6.65. Although built development within the site's north-eastern corner is now precluded by the Undertaking, the Council points out that that land is still included within the appeal site, and therefore the site is still partly within the ZoI. The remainder of the appeal site is directly adjacent to the 7km boundary. Access is still proposed in the same position as it was when the whole site was to be developed. The proposed houses would form part of Newick, and their impact would be likely to be identical to any other similarly-sized site at the village<sup>284</sup>.
- 6.66. The appellants' figure of a 0.028% increase in visits to the Forest is seen as flawed, because the calculation looks at the proposed development in isolation. That approach would produce the same result for any development of the same size. The Regulations require that impacts be viewed in combination

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<sup>276</sup> COU-8 and COU-17: Ms Thom's main proof and rebuttal

<sup>277</sup> COU-21: S.106 Compliance Statement

<sup>278</sup> COU-25: Mr Williams' closing, pages 52 -54

<sup>279</sup> COU-25, paras 180, 183 and 184 (adequacy of mitigation)

<sup>280</sup> RD 5.3: the 2018 HRA, para 4.5

<sup>281</sup> RD 8.1: Ashdown Forest Joint SCG, paras 11 and 12e

<sup>282</sup> COU-8, paras 4.3 and 4.5, and Footnote 2; and COU-17, paras 2.1 – 2.2 (re mitigation beyond 7km)

<sup>283</sup> COU-8, paras 4.7 – 4.10, 5.3 and 6.2; and COU-17, paras 3.1 – 3.3 (re lack of adopted policy)

<sup>284</sup> COU-8, para 5.2; and COU-17, para 4.3 (re proximity to ZoI)

with other plans and policies. In this case, that means in combination with other sites within or close to the ZoI<sup>285</sup>.

- 6.67. Consequently, it cannot be ruled out that the proposed development would have a likely significant adverse effect on Ashdown Forest, and this is agreed in the SCG<sup>286</sup>. Having regard to the *Waddenzee* judgement<sup>287</sup>, it follows in the Council's view that the scheme cannot be approved without securing full and effective mitigation. The only accepted form of mitigation available is through contributions to both SANG and SAMM. The level of contribution per dwelling to SAMM is set out in the Tariff Guidance<sup>288</sup> which is jointly agreed with three other partner Authorities. The SANG contribution level is based on an interim agreement between the Council and NE<sup>289</sup>. Contributions below those levels, or an absence of either, would not provide the necessary certainty that adverse impacts could be ruled out<sup>290</sup>.
- 6.68. With regard to the SANG contribution, the amount has been calculated with regard to the expected maintenance costs of the Reedens Meadow SANG, over an 80-100 year period. The Council has secured part of the necessary funding, as well as the initial acquisition and setting-up costs, from site HO2, and expects to obtain further tranches from the other NNP sites and windfall developments in the Newick area. However, at the rate that the Council has currently set, 'capped' at £5,000 per dwelling, these developments will fund the scheduled maintenance regime for only 43 years. If enough new housing were to be built at Newick to utilise the SANG's full capacity, the tariff could be reduced to £2,000, but that is not possible based on the level of development currently planned for. The current capped tariff is therefore considered a pragmatic and reasonable level of contribution<sup>291</sup>.
- 6.69. The Reedens Meadow SANG will only provide the necessary level of mitigation if it is properly maintained. Given the appeal site's proximity to the SANG, it is very likely that residents would use it. If the SANG contribution were reduced or waived, there would be less likelihood that the Council could continue to provide the appropriate level of maintenance. There would then be uncertainty as to whether the SANG could continue to provide adequate mitigation throughout the life of the development. In any event, there is no policy basis for any form of reduced contribution or nil contribution<sup>292</sup>.
- 6.70. Natural England, in its letter dated 2 April 2019<sup>293</sup>, supported seeking financial contributions to both SANG and SAMM. The Council agrees and considers that great weight should be attached to NE's opinion on these matters<sup>294</sup>.

### ***The planning balance***

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<sup>285</sup> COU-17, paras 4.4 – 4.5 and 6.3 (re % increase in usage)

<sup>286</sup> GEN-2: SCG (Habitats), para 4.1

<sup>287</sup> ECJ Case No C-127/02 (*Waddenzee*, referenced in COU-25, para 179)

<sup>288</sup> RD 8.2: SAMM Tariff Guidance, Dec 2105

<sup>289</sup> COU-21: Compliance Statement, 2<sup>nd</sup> page, footnote 1

<sup>290</sup> COU-8, paras 4.3, 4.6, 5.6 - 5.8 and 5.13; and COU-17, paras 6.1 - 6.3; and COU-25, paras 176 - 179 (re need for mitigation)

<sup>291</sup> COU-8, paras 5.17 – 5.18, and 5.22; and COU-17, paras 5.1 – 5.8 (SANG contribution level)

<sup>292</sup> COU-8, paras 5.14 – 5.22; and COU-17, paras 5.1 and 5.9 (re reduced/nil contribution)

<sup>293</sup> RD 8.4: NE letter, 2 April 2019

<sup>294</sup> COU-8, paras 3.4 and 6.3 (re NE)

- 6.71. In the final balance, the Council considers that the development would involve an extensive and fundamental breach of development plan policies, including DM1, CP10 and EN1. There would also be substantial harm to landscape character and visual amenity, and harm to the community's confidence in the plan-led system.
- 6.72. On the Council's evidence, there is a 5-year HLS. All of the relevant policies are recently adopted and consistent with the NPPF. On this basis, the NPPF's tilted balance does not apply.
- 6.73. On the positive side of the balance, the provision of new housing, including the affordable and self-build units, are acknowledged as benefits. However, in view of the HLS position, these are considered to attract only moderate weight. It is accepted that there would also be some economic benefits, in terms of jobs and investment, but these are not seen as material<sup>295</sup>.
- 6.74. All other benefits arising from the various obligations are seen as merely policy-compliant, and therefore neutral. It is accepted that the potential adverse effects on the Ashdown Forest SPA and SAC can be mitigated.
- 6.75. Applying the normal 'flat' balance<sup>296</sup>, the Council considers that the scheme's benefits are clearly outweighed by the combined harms identified<sup>297</sup>.
- 6.76. In the event that there is found to be less than a 5-year supply, the Council argues that significant weight should still be afforded to the relevant policies, because in other respects they are up-to-date. Consequently, even if the tilted balance were applied, the Council considers that the benefits would still be outweighed, significantly and demonstrably<sup>298</sup>.

## **7. The Case for the Rule 6 Party**

- 7.1. The Rule 6 Party's case is contained mainly in the proof of evidence of Mr Mark Best<sup>299</sup>, and also in the Appeal Statement and appendices dated December 2019<sup>300</sup>, the replies to IQs Sets 1-5<sup>301</sup>, and the closing submissions by Ms Heather Sargent<sup>302</sup>.

### ***Policy***

- 7.2. In general, the Rule 6 party supports the case on planning policy advanced by the Council. The most important policies are seen as DM1, CP10 and EN1. All of these are regarded as up-to-date and consistent with the NPPF, and should be given full weight. DM1 in particular is considered to justify being given weight even if there were found not to be a 5-year land supply. The development is seen as in conflict with the development plan as a whole<sup>303</sup>.

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<sup>295</sup> COU-4, paras 5.81 – 5.85 (re benefits)

<sup>296</sup> under S.38(6) of the Planning and Compulsory Purchase Act 2004 Act

<sup>297</sup> COU-4, para 5.78; and COU-25, paras 187, 188 and 190

<sup>298</sup> COU-25, para 189

<sup>299</sup> RUL-2: Mr Best's proof

<sup>300</sup> RUL-1: R6 appeal statement and appendices

<sup>301</sup> RUL-4: R6 responses to IQs, Sets 1-5

<sup>302</sup> RUL-6: Ms Sargent's closing submissions

<sup>303</sup> RUL-2, paras 5.2, 5.6, 5.11 and 8.2-8.6; and RUL-4, reply to P5; and RUL-6, paras 32-34 and 39-40 (re policies)

- 7.3. Particular emphasis is put on the NNP, and its importance to the local community. The appeal site is not allocated or identified for development. This is seen as putting the scheme in conflict with the NP's locational strategy, and with the community's aspirations. It is argued that a decision contrary to these aspects of the NNP would damage the community's confidence in neighbourhood planning, and in the planning system as a whole. The situation in Newick is regarded as directly comparable to that in *'Crane'*<sup>304</sup>, in that despite the lack of specific policies, the plan gives no support to development on unallocated sites. In this context, the *'Langmead'* case<sup>305</sup> is also cited, and attention is drawn to NPPF paragraph 12, to the effect that development contrary to an up-to-date NP should not normally be permitted<sup>306</sup>.

### **Landscape**

- 7.4. Although not presenting expert evidence on landscape and visual impact, the Rule 6 Party supports the Council's case on these matters. In particular, attention is drawn to what is seen as the loose, spacious and more sporadic nature of the existing development on Newick's south-western fringe. In contrast, the appeal proposal as presented in the illustrative plans is regarded as excessively intensive, regimented and urban in character. In this respect, parallels are drawn with two other nearby appeal decisions<sup>307</sup>, which were both dismissed on grounds which included the character and appearance of the village edge and countryside<sup>308</sup>.
- 7.5. It is submitted that in redetermining the present appeal, the SoS is not bound by the view that he took on the landscape and visual issues in his original, now quashed decision. In this context, it is suggested that even the appellants' own landscape evidence appears to acknowledge a degree of harm, albeit localised<sup>309</sup>.

### **Housing matters**

- 7.6. The case advanced by the Rule 6 party on housing matters largely echoes that brought by the Council. In addition it is noted that two of the sites allocated in the NNP, HO2 and HO5 have now been completed, and HO4 has reached the planning application stage. These together with the one remaining site, HO3, are seen as meeting Newick's own needs, including the need for affordable housing. If any further sites are needed in the future, other opportunities are likely to be found which would serve the village better than the appeal site<sup>310</sup>.
- 7.7. In the event that the 5-year supply were found to be in deficit, this should not automatically override all other considerations. The weight should take into account the degree of the shortfall, the steps being taken to rectify it, the length of time involved, and the appeal site's potential contribution. With regard to the last of these, it is argued that no completions would be likely to

<sup>304</sup> RUL-1, Appx B: *Crane v SoS and Harborough DC*, [2015] EWHC 425 (Admin)

<sup>305</sup> RUL-1, Appx C: *Keith Langmead v SoS and Arun DC*, [2017] EWHC 788 (Admin)

<sup>306</sup> RUL-1, paras 3.2 - 3.10, 5.10 and 6.6 - 6.17; and RUL-2, paras 6.19 - 6.21 and 8.15 - 8.18; and RUL-4, replies to IQs P15 and P16; and RUL-6, paras 20 - 31 (re neighbourhood planning)

<sup>307</sup> RD 8.7: APP/P1425/W/19/3234681, 104 Allington Road, Newick; and RD 8.19: APP/P1425/W/19/3237569: 45 Allington Road, Newick

<sup>308</sup> RUL-2, paras 8.7 - 8.13; and RUL-6, para 11.3 (re other Newick appeals)

<sup>309</sup> RUL-2, paras 8.19 - 8.21; and RUL-6, paras 7 - 11.2 (re SoS original decision)

<sup>310</sup> RUL-1, paras 6.4, 6.7; and RUL-2, paras 8.26 - 8.29 and 9.2; and RUL-4, reply to IQ AH9; and RUL-6, paras 45 - 51 (re housing)

be achieved at the site for at least three and a half years, but this period could be longer. Potential sources of delay are seen in the need to negotiate the sale of the land to a house-builder, the likelihood of changes to the scheme after that stage, and the need for a separate permission for the self-build plots, in order to benefit from CIL relief<sup>311</sup>.

### **Other matters**

- 7.8. It is argued that the appeal site is distant from Newick's main facilities and poorly located in terms of being able to support a sense of community with the village. It is contended that this site is not the right place to meet village needs, and that this prevents the scheme from being seen as sustainable development. The benefits in terms of housing provision would not outweigh the conflict with the development plan and the resultant loss trust in community-led planning<sup>312</sup>.
- 7.9. In most other matters, the Rule 6 Party's submissions are generally aligned with those of the Council.

## **8. The Cases for the Other Interested Parties**

### *Newick Parish Council*

- 8.1. Three further representations have been received from Newick Parish Council (NPC) during the present inquiry<sup>313</sup>, in addition to those submitted at earlier stages of the appeal process<sup>314</sup>. NPC emphasises the role of the NNP, the amount of work that went into it, and the Plan's importance to the local community. The Mitchelswood site was fully considered through the NNP consultation and appraisal stages, and was ranked as both the least sustainable, and also the least popular. Having regard to localism and the plan-led system, it is argued that the community's wishes should be respected.
- 8.2. NPC's view is that sufficient housing has already been provided in Newick, through the NNP and other developments. Affordable housing has been provided, at Alexander Mead and Mantell Close (HO2), and NPC has been involved in helping to secure this provision, over several years. If self-build plots are needed, they can be included in the remaining two allocated sites which are yet to be built.
- 8.3. If and when any more housing sites are needed, those that were ranked higher in the NNP process should be chosen before the appeal site. But the bus services to neighbouring towns are infrequent, and the roads are too dangerous for cycling. This makes Newick a poor choice for more housing.
- 8.4. The appeal site is seen as too remote from most of the village's main facilities, with the distances to these having been under-stated. This would result in future occupiers using their cars for everyday needs, adding to the pressure on parking at the village centre, and adding to congestion in Allington Road.

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<sup>311</sup> RUL-2, paras 6.4, 8.30; and RUL-4, response to IQ 44; and RUL-6, paras (re HLS and development timescale)

<sup>312</sup> RUL-1, para 2.6; and RUL-2, para 9.3; and RUL-6, paras 52 – 54 (re location and planning balance)

<sup>313</sup> OIP-1, OIP-2 and OIP-3: letters from Newick PC

<sup>314</sup> Inspector's note: all submissions to the first inquiry, including those by NPC and all other interested parties, are assumed to have been taken into account in Mr Burkinshaw's report



- 8.5. Development at the appeal site would eliminate the last remaining green gap between Newick and North Chailey, causing the two settlements to merge. The site is said to be part of an area of established character, and this would be spoilt. The public footpaths, which provide an important link to the countryside, would lose their rural ambience and tranquillity. During the last few years, the lack of human presence on the site has allowed wildlife to flourish, and development would destroy the grassland, woodland and scrub that provide their habitat.
- 8.6. The appeals relating to sites at Ringmer, Wivelsfield, and 45 and 104 Allington Road were all dismissed<sup>315</sup>. It is argued that the decision on the present appeal should be consistent with these.

*Other local organisations*

- 8.7. The Newick Village Society (NVS)<sup>316</sup> supports the principle of plan-led development. Over the years there has generally been a consistent approach, by LDC and Inspectors, in resisting unplanned development outside the village boundaries, except where justified as rural exceptions. In the present appeal, the SoS's original decision, albeit now quashed, departed from this principle and undermined local people's confidence in the system. NVS now sees the village as under threat, not just from the appeal scheme, but also from other proposed developments. All together, these would amount to a further 110 dwellings, on top of the 100 planned through the NNP. The impact of increasing Newick's housing allocation was looked at when LLP1 was prepared, and was rejected, for reasons including the village's character and setting, community cohesion, and sustainable travel patterns. NVS considers that these remain valid. The development now proposed would cause coalescence with North Chailey, enlarge the village excessively, and intrude into the surrounding countryside.
- 8.8. CPRE Sussex<sup>317</sup> considers that new housing in Lewes District should be focussed on the coastal towns, closer to local sources of employment. If housing is provided in villages such as Newick, it should be affordable, and mainly for local needs and the elderly. Market housing in this type of location is seen as likely to be taken up by commuters, thus adding to traffic emissions and energy usage, as well as restricting opportunities for local families. The pursuit of the present scheme is seen as an attempt to circumvent or subvert the system.
- 8.9. The Sussex Ramblers<sup>318</sup> state that the local footpath network is popular and well-used, and its value has become more important as a result of the lockdown. In the illustrative layout, part of Footpath 4a would effectively be extinguished and replaced by a hard surfaced footway alongside the main estate road. Footpath 8 would be abutted by rear gardens, and this would be likely to adversely affect its rural character, with the householders wanting to erect close-boarded fencing along their boundaries.

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<sup>315</sup> APP-1, Appx 6 (Broyle Gate Farm, Ringmer); and COU-10, Appx NS 5 (Ditchling Rd, Wivelsfield); and RD 8.7 (104 Allington Road, Newick); and RD 8.19 (45 Allington Road, Newick)

<sup>316</sup> OIP-4: Newick Village Society submission, June 2020

<sup>317</sup> OIP-5: CPRE Sussex letter, June 2020

<sup>318</sup> OIP-6: Sussex Ramblers' letter, June 2020

### *Other objectors*

- 8.10. 50 individual letters<sup>319</sup> were received from local residents and others objecting to the development (in addition to those that were before Inspector Birkinshaw at the first inquiry). Of these, 10 were received during the initial public consultation period, up to 1 April 2020. The remainder were received during the further consultation in June 2020, at which time the proofs and submissions of the main parties were available to view.
- 8.11. A significant number of these letters make reference to the NNP, and express the view that the proposed scheme would conflict with that plan, due to the site not having been chosen through the NP consultation process. The view is also frequently expressed that Newick does not need any more housing over and above the NNP provisions, and that any such additional housing should be for affordable needs only.
- 8.12. Matters relating to impacts on the countryside, landscape, trees, public footpaths, and on the gap between Newick and North Chailey are raised in several cases. So too is the issue of the distance of the site from various local facilities. These matters are already covered, in varying detail, in earlier sections of this report, and are not repeated here.
- 8.13. In addition, the following additional matters are raised in one or more letters:
- traffic generation and effects on road safety
  - safety of children walking to school in Allington Road
  - the capacity of schools, doctors and other local services
  - availability of car parking for local facilities
  - scale of the development in relation to the size of the village
  - lack of local employment
  - effects on wildlife
  - light pollution and effect on night sky
  - construction traffic

### *Representations in support*

- 8.14. Three supporting representations were received<sup>320</sup>. The grounds argued are that Newick needs new homes, and that the appeal site adjoins existing development. In this latter respect, the appeal site is considered to be a better choice than Woods Fruit Farm (HO4), which is isolated and intrusive in the countryside.

### *Natural England*

- 8.15. In a letter dated 22 May 2020<sup>321</sup>, which is said to supersede NE's previous advice, the agency states that, in the case of significant developments in close proximity to the 7km ZoI, they support a case-by-case approach. In this case, at the screening stage, it is considered that a significant in-combination effect on the SPA cannot be ruled out.

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<sup>319</sup> OIP-8: letters received January – April 2020; and OIP-9: letters received June 2020

<sup>320</sup> S Lightfoot, 31 March 2020 (incl in OIP-8); C Goddard and P Furzer, both 10 June 2020 (incl in OIP-9)

<sup>321</sup> OIP-7: NE letter, 22 May 2020

8.16. At the Appropriate Assessment stage, it is considered that the proposal would involve a significant increase in housing in Newick, and therefore the Policy CP10(3) approach of contributions to SANG and SAMM should apply. In the absence of full contributions, it is considered that the effectiveness of the approach would be undermined, and the viability of the Reedens Meadow SANG would be put in doubt.

## 9. **Inspector's Conclusions**<sup>322</sup>

### ***Main considerations***

9.1. In the light of the foregoing summaries of the parties' cases, I find that the main considerations in this appeal are now as follows:

- whether the proposed development would accord or conflict with the relevant development plan policies for the location of housing;
- the effects of the development on the character and appearance of the local landscape;
- whether there is a 5-year supply of land for housing;
- the general need for housing in the area, including affordable housing and self/custom build housing;
- the effects of the development on the Ashdown Forest SPA and SAC, and any consequent requirement for mitigation; and
- any other benefits or harm arising from the scheme.

9.2. This section of my report addresses these considerations in turn.

### ***Accordance with policies for the location of housing***

#### *The previous inquiry*

9.3. In the first inquiry, the main relevant policy was Policy CT1 of the 2003 Local Plan [1.5]. Inspector Birkinshaw's conclusion with regard to that policy was accepted by the SoS [1.7, 1.8], but subsequently this was one of the matters that led to the 2016 decision being quashed [1.9, 1.11, 1.12]. However, with Policy CT1 having been superseded since then [3.8], there is now no need to have any further regard to this element of the original decision, or to the Inspector's reasoning on that matter.

#### *Policy DM1*

9.4. In the present inquiry, the most relevant policy relating to location is Policy DM1 of LLP2, which generally presumes against development outside the settlement planning boundaries, except in very tightly defined circumstances [3.1, 3.10]. It is not in dispute that the appeal site lies outside those boundaries, and thus within the countryside. It is also generally agreed that neither of the two types of exceptions allowed by Policy DM1 applies in this case. It is therefore common ground that, as a matter of principle, any

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<sup>322</sup> In the following sections, the numbers in square brackets [ ] refer back to earlier paragraphs of this report

housing development on the appeal site would be in conflict with this policy [4.2]. There is also no disagreement that DM1 is one of the most important policies in the appeal [5.2, 5.8, 6.2, 7.2]. I can see no reason to disagree with the consensus view on all these matters.

- 9.5. I have considered carefully the appellants' contention that Policy DM1 is inconsistent with national policies on development in the countryside [5.2]. However, the wording of DM1 makes it clear that the restriction that it imposes is directed to the aim of protecting the countryside's distinctive character and quality. In my view, this aim is one that properly reflects, and flows directly from, the advice in NPPF paragraph 170, which requires policies to contribute to the natural and local environment, by recognising the countryside's intrinsic character and beauty [6.7].
- 9.6. In any event, LLP2 is a relatively recently examined and adopted plan [3.8]. In his Examination report, Inspector Fox did not identify any inconsistency with national policies, and found the Plan as a whole to be sound. Policy DM1 and its related planning boundaries were specifically considered, having regard to the need to accommodate sufficient windfall development, and in that context, they were found not to be overly restrictive<sup>323</sup>. Whilst the LLP2 Examination took place under the 2012 version of the NPPF [5.22], which has since been revised and updated, the relevant provisions relating to the countryside have not changed significantly. The Examining Inspector's findings on these matters therefore reinforce my own view regarding Policy DM1, based on the reasoning stated above.
- 9.7. The fact that LLP2 is recently adopted does not prevent relevant policies from being deemed out of date if there is found to be a shortfall in the housing supply, and I will come to that issue later in my report. But in all other respects, I find no reason to consider DM1 either inconsistent with national policy, or out of date in any other way.
- 9.8. For the reasons already stated, the appeal proposal would involve a clear and direct conflict with this adopted policy.

#### *Policies CP10(1) and EN1*

- 9.9. Policies CP10(1) of LLP1 and EN1 of the NNP are designed, amongst other things, to protect the character and quality of the landscape [3.6, 3.13]. To my mind, it is clear that this will include consideration of the suitability of the site itself, as well as the quality of the proposed development. However, unlike Policy DM1, neither CP10(1) nor EN1 involves any in-principle restriction on development in the countryside. To this extent, I agree with the appellants that these are not primarily intended as locational policies, nor do they form part of the local plan's spatial strategy, and as such, they are not directly relevant to the issue of whether the appeal site is acceptable in these terms [5.3, 5.4].
- 9.10. I therefore find no in-principle conflict with either Policy CP10(1) or Policy EN1. I will return to consider whether the appeal proposal accords or conflicts with

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<sup>323</sup> RD 5.1: LLP2 report, paras 113 - 118

these policies in landscape terms, as part of my assessment of the scheme's effects on the area's character and appearance.

*Policies SP1 and SP2*

- 9.11. With regard to LLP1 Policies SP1 and SP2, I note the Council's view that there is conflict, because the development is not needed to fulfil the District's housing requirements or spatial strategy [6.4, 6.5]. However, irrespective of whether sufficient sites are currently deliverable, the housing targets in Policies SP1 and SP2, both for the District as a whole and for Newick, are expressed as minima. Exceeding those numbers would therefore not involve any breach.
- 9.12. The reference in policy SP2 to sites being allocated through future development plans seems to me primarily a statement of intent on the Council's part, rather than a prohibition on sites being identified in any other way. As one of the RSC villages, Newick is a sustainable location in the context of the District [3.4], and there is no evidence that any local services would be over-stretched as a consequence of the proposed development.
- 9.13. I therefore find no conflict with either of Policies SP1 or SP2.

*The Newick Neighbourhood Plan*

- 9.14. Apart from Policy EN1, on which my comments are set out above [9.9, 9.10], and on which I will come to a view in the context of the landscape issues, there are no other policies in the NNP which have a direct bearing on the appeal. None of the plan's policies places an overall limit on the number of houses that can be built, and none contains any specific restriction against development on unallocated sites, either within or outside of the planning boundary [5.5]. These seem to me to be matters of fact rather than judgement.
- 9.15. In these respects, I find myself in broad agreement with the conclusion drawn by Inspector Birkinshaw, who found that in relation to NNP policies, the appeal proposal was not unacceptable in principle<sup>324</sup>. I also note that in the original, quashed appeal decision, the SoS concurred that there was no conflict with the NNP<sup>325</sup>. This element of the decision was not challenged.
- 9.16. I fully accept that there is nothing in the NNP that gives any positive support to the proposed development [6.5, 7.3]. In the quashed decision, the SoS did give some weight to the fact that the site was not allocated in the NNP for development<sup>326</sup>. In this context it is also relevant to have regard to the value that the NPPF places on neighbourhood planning, and on the engagement of local communities, as a means of realising their aspirations. However, none of these matters changes the fact that the only actual policy in the NNP that bears on the appeal proposal is Policy EN1, and compliance with that policy is dependent on the scheme's landscape impact.
- 9.17. It may well be true that one of the hopes or intentions behind the NNP was that it should serve as a defence against any development proposals on

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<sup>324</sup> RD 2.6: Inspector's report, para 171

<sup>325</sup> RD 2.6: SoS's decision, para32

<sup>326</sup> RD 2.6: SoS's decision, para32

unallocated sites [6.5, 7.3, 8.1]. But if so, that intention is implied rather than explicit. It is difficult to see how these matters can carry significant weight, when not supported by any specific written content in the plan itself.

- 9.18. The circumstances do bear some resemblance to those in the *Crane* case, where the Court upheld the SoS's decision in giving very substantial negative weight to the conflict that he found with the Neighbourhood Plan as a whole, despite the lack of any specific policy [5.5, 7.3]. However, it is salient in my view that in that case, although the SoS found conflict with the Core Strategy's landscape policies, there was no mention of any general restraint policy for the countryside<sup>327</sup>. In the present case, there is such a policy, in the shape of Policy DM1 of LLP2, and for the reasons that I have already covered, a clear conflict with that policy has already been established [9.4 – 9.8]. In these circumstances, any lack of accord with the NNP, due to the site not being allocated, adds little or nothing to the weight of this established conflict.
- 9.19. To conclude on the NNP, I find no conflict with any NNP policy. The lack of any positive support from the NNP is a material consideration, but one which is not of equal weight to a conflict with policy. In the circumstances of this case, I give this consideration limited weight.

*Conclusion on accord with housing location policies*

- 9.20. I conclude that, in terms of policies relating to the location of new housing, the appeal proposal is in conflict with LLP2 Policy DM1. There would also be a lack of positive accord with the NNP, but this attracts limited weight.

***Effects on the character and appearance of the landscape***

- 9.21. Inspector Birkinshaw, in his report on the first inquiry, concluded that the proposal would respect, and in no way materially harm, the landscape character of the area<sup>328</sup>. In this respect, as in all others, his report is a material consideration which remains before the SoS for consideration.
- 9.22. In the present inquiry, some of the evidence before me is new [5.9, 6.9]. I also have the benefit of having the parties' comments on Mr Birkinshaw's report [5.10, 6.23, 7.5]. In any event, as the Inspector now appointed to advise the SoS on the redetermination, it is my duty to form my own conclusions, based on the evidence before me, and using my own professional judgement.

*The quality of the receiving landscape*

- 9.23. There is no dispute between the parties that, in terms of the national-level landscape character areas defined by NE, the appeal site falls clearly within the Low Weald NCA [5.12, 6.10]. Although not subject to any formal landscape designation, the Low Weald is nevertheless described in the text of LLP1 as a landscape which possesses a special character, and which in general terms is highly valued [6.10]. It was also identified in Inspector Payne's examination report as a significant constraint on housing development [6.10]. Consequently, whilst it does not rank as highly as National Parks or AONBs,

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<sup>327</sup> RUL-1: Mr Best's proof, Appx B – para 35

<sup>328</sup> RD 2.6: First Inspector's report, para 190



the Low Weald does have a degree of recognition in its District context, as a landscape of some local significance.

- 9.24. This assessment is also borne out by my own observations. During my visits, I was able to view that part of the Low Weald area that embraces Newick village and its immediate surroundings. I found the local landscape to the south and southwest of the village to be highly attractive, with an undulating topography, an intricate pattern of irregular-shaped fields, hedgerows and small woodlands, and a tranquil, rural character. These attributes would be readily appreciated by users of the local public footpaths. I therefore see no reason to disagree with the Council that the landscape of this part of the Low Weald is one of relatively high quality, justifying some degree of protection.
- 9.25. Turning to the county-level classification in the ESCLA, there is some disagreement as to whether at that level the site falls fully within the Upper Ouse Valley LCA, or straddles the boundary of the Western Low Weald LCA [5.12, 6.11]. In my view the latter interpretation is the more realistic, given the scale of the mapping. But the point is somewhat academic, since both of these LCAs fall within the Low Weald at NCA level, and form an integral part of part of that area. In so far as this involves any conflict between the ESCLA and the NCA, then it seems to me that the greater weight must attach to the latter, because of NE's status as the government's statutory advisor on the natural environment [6.11]. I therefore find nothing in the ESCLA that changes my view that the appeal site lies within the Low Weald area.
- 9.26. With regard to NPPF paragraph 170(a), the parties have agreed that this part of the Low Weald should not be considered a 'valued landscape' for the purposes of that paragraph [5.12, 6.10]. This judgement seems to be based mainly on the fact that it is not formally designated. But still, the Council makes a valid point in my view, in that simply not being 'valued' does not imply that the landscape is valueless [6.10]. For the reasons that I have already identified [9.23, 9.24], I consider the landscape in the vicinity of the appeal site to possess some local significance in terms of its value. As such therefore, it is a valuable feature of the local environment. Nothing in paragraph 170, or elsewhere in national policy, prevents a decision-maker from giving weight to the effects on the landscape, irrespective of whether the landscape in question is regarded as 'valued'.
- 9.27. I have no reason to doubt the evidence of the Sussex Ramblers, that the public rights of way to the south of Newick are popular and well-used [8.9]. Indeed, on my unaccompanied visit in May 2020 in particular, I noted a number of other persons making use of Footpaths Nos 4/4a, 7 and 8. The existence of these paths, and the opportunities that they provide for the enjoyment of the countryside, reinforces my view as to the weight that should be given to the quality of the local landscape.
- 9.28. In the light of these matters, I find that the existing landscape around the appeal site is one of relatively high quality, and of some local value to the district. Significant weight therefore attaches to the development's effects on this landscape resource.

*The landscape value and sensitivity of the appeal site*

- 9.29. Within the appeal site itself, the northern paddock is little more than a flat, rectangular, grassed enclosure, framed by development on three sides [5.13,

**6.12]**. In none of these respects does this part of the site seem to me to reflect the characteristics of the Low Weald landscape. Indeed, in many ways this paddock area appears more closely related to the village than to the surrounding countryside, due to its containment by the woodland within the appeal site<sup>329</sup>. Although the adjoining properties at Oxbottom Close are technically within the parish of North Chailey **[8.5, 8.7]**, visually that development is better related to Newick, so that any role that the paddock might play as a gap between these settlements is somewhat notional. Consequently, in my view, this northern part of the site plays only a limited role in the local landscape, and as such, its value to the setting of the village is equally limited **[6.20]**.

- 9.30. However, the remaining parts of the site are quite different from this. The site's central woodland covers about a third of the site, and embraces Groups G5, G6, G7 and G10, together with individual trees T30 – T53<sup>330</sup>. Although the latter are described in the arboricultural report<sup>331</sup> as scattered trees, their appearance is as part of a continuous woodland belt, running across the whole of the central part of the site. The species mix includes a sizeable number of native species **[6.12]**, including English Oak, Ash, Lime, Silver Birch, Sycamore, and Field Maple, together with some others including Red Oak and Corsican Pine<sup>332</sup>. For the most part, the trees, as recorded in the 2014 report, range between 12m – 18m in height, with trunks typically of 200 – 450mm in diameter. Most were classed as early-mature or semi-mature, and it is therefore likely that these will have increased in size since the survey date.
- 9.31. Although a handful of the trees in the woodland are noted as being damaged or unsound **[5.14]**, the physiological condition of most is rated good or average<sup>333</sup>. Whilst the woodland is said to have originated as a planted feature, the arrangement is informal and naturalistic, and in many respects its appearance is indistinguishable from any of the natural woodlands seen in the area<sup>334</sup>. The woodland is clearly seen as a backdrop to the inward views from Allington Road and Footpaths 4, 7 and 8<sup>335</sup>. To my mind, the woodland is a pleasant feature, and one that integrates well with its landscape context. Individually, it may be fair to say that none of the trees has any special value, but the same could be said of almost any other woodland; their value is not individual but collective.
- 9.32. To my mind, this central woodland area is not only the most dominant landscape feature of the appeal site itself, but it is also an important feature of the surrounding area as a whole. It gives a sense of enclosure to the paddock area. It separates the village from the countryside beyond. It contains the inward and outward views. Furthermore, although the woodland's ecological and botanical value is said to be low, it is acknowledged to support nesting birds and other wildlife<sup>336</sup>; and indeed it would be somewhat unusual if such a woodland did not play some role as part of a local habitat chain or network,

<sup>329</sup> APP-12, Appxs DJA18 – 29: site photographs, northern paddock

<sup>330</sup> APP-14: the updated Tree Constraints plan

<sup>331</sup> CD 1.5: the Arboricultural Impact Assessment, Sept 2014

<sup>332</sup> CD 1.5, Appx B: Tree schedule

<sup>333</sup> CD 1.5, Appx B: Tree schedule

<sup>334</sup> APP-12, Appxs DJA28 – 31: internal photo views of central woodland

<sup>335</sup> APP-12, Appxs DJA19, 20, 22-25, 35-38 and 44-45: external photo views showing woodland as backdrop

<sup>336</sup> CD 1.8: Ecological Appraisal, Sept 2014, paras 4.5.5 and 6.2

linking with the other woodlands, tree belts and hedgerows in the area [8.5, 8.13]. Overall, it is difficult to see how the existing woodland area on the site could be seen as anything other than a valuable landscape feature and environmental asset.

- 9.33. Beyond the woodland lies the southern section of the appeal site, including the 'tongue' area. For the most part, this is an area of unmanaged, overgrown, former grassland. This part of the site is separated from Newick by the central woodland, which gives it an air of remoteness [6.12], and also by the hedge bank, which continues eastwards along Footpath 4b, and by the change of slope [6.11]. The steepness of the outward-facing slope in this southern area creates a strong visual relationship with the open fields to the south. Although this part of the site contains some large trees, the effectiveness of these in terms of screening or enclosure [5.14] is somewhat lessened by the effect of the slope<sup>337</sup>.
- 9.34. These central and southern sections of the site reflect many of the key characteristics of the Low Weald area, with its gently undulating landscape and pattern of hedgerows, small woodlands and scattering of traditional English Oaks and other indigenous trees. To my mind, this affinity to the area's dominant landscape type reinforces the site's sensitivity and vulnerability to change [6.20].
- 9.35. Although the zone of visibility is limited in extent [5.13], the southern and central parts of the site are seen clearly from Footpaths 4b, 7 and 8<sup>338</sup>. In the photographic evidence, the views from these directions are represented by Viewpoints 10-12, 14 and 17-19<sup>339</sup>, but in practice the views available are not limited to only these particular points. From all the available viewpoints to the south, east and southeast, the appeal site appears on the skyline.
- 9.36. All of the views from Footpaths 4b, 7 and 8 are seen in a context that is predominantly rural and undeveloped. Although the sand school is visible [5.13], the rural nature and purpose of that building are immediately apparent. The few glimpses of existing residential properties are distant, isolated and heavily filtered. The presence of the main built-up area of Newick village is not perceptible. None of these features detracts from the unspoilt nature of the rural scene [6.12].
- 9.37. To summarise therefore, in my judgement the only part of the appeal site with any visual connection to the built-up area is the northern paddock. In all other respects, the appeal site, and in particular its central and southern sections, forms an integral part of the attractive and high-quality Low Weald landscape. As such, these parts of the site seem to me to be highly sensitive to built development.

#### *Impact of the proposed development*

- 9.38. Whilst the layout shown on Plan ZMG734/022<sup>340</sup> is only illustrative, nevertheless there is no plan before the inquiry that shows any other way in

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<sup>337</sup> APP-12, Appxs DJA32-34: internal/external photo views of southern area

<sup>338</sup> FI-4, Appx DJA 4: Footpaths map

<sup>339</sup> FI-4, Appxs DJA 5: viewpoints; and APP-12, Appxs DJA 33-38, 40-41, 44-46 (photograph views from footpaths)

<sup>340</sup> RD 1.2: Illustrative Layout, February 2016

which the proposed development of 50 units could be accommodated on the site, within its current boundaries [2.9, 2.10]. As such, I have given the illustrative plan some weight, although also having regard to the possible scope for other alternatives or variations, and conditions [5.19].

- 9.39. Based on this illustrative plan, a development of 50 dwellings would be likely to fill most of the site, extending beyond the northern paddock, into the area that is currently woodland, and beyond this into the southern section, including the south-eastern tongue [6.16]. Although the plan shows some areas without built development, these include the land which is excluded by the undertaking<sup>341</sup> [2.15], and the blue-edged land which is outside the application site<sup>342</sup>. There is no evidence to suggest that 50 residential units could be provided on the site without extending into the central or southern parts of the site, or with a materially lesser land-take than that illustrated.
- 9.40. Within the central section, it is not disputed that almost all of the existing woodland would have to be cleared [5.17]. Based on the updated Tree Constraints and Tree Protection plans<sup>343</sup>, these would be likely to include the main woodland group G5 in its entirety, the subsidiary groups G7 and G10, a small part of group G6, and all of the large cluster of 20 or so trees which currently fill the space between these groups [6.17]. All that would remain in this part of the site would be the remainder of group G6 which, although containing a few good trees, represents only a very small proportion of this woodland area as a whole. For the reasons that I have already identified [9.30 – 9.32], the woodland is in my view a notable feature of the local landscape. Its wholesale removal as now proposed would detract significantly from the character of that landscape.
- 9.41. Within the southern part of the site, where the trees are more scattered, it appears that the majority could be retained, and additional new planting introduced, to create a continuous landscape buffer along this boundary [5.17]. Whilst I note the Council's reservations, I see no reason why some planting could not be achieved in this area, and protected against subsequent damage or removal if necessary [6.17]. However, based on the plans before me, the area likely to be available for such new planting would be considerably less extensive than that of the existing woodland which would be removed. It would also be many years before any new planting would contribute to the landscape and local environment to anything like the same degree. I am therefore not persuaded that new planting in the southern area could adequately compensate for the loss of the central woodland.
- 9.42. In views from Allington Road, or from Footpath 4a, the introduction of housing development on the northern paddock would, to my mind, not look out of place. But in the absence of the central woodland, the development in that part of the site would lack any strong containing feature. With development extending beyond that area, the view from this direction would be of built development stretching away from the village, over the edge of the slope, and out into the countryside.

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<sup>341</sup> APP-35: the Undertaking, dated 16 August 2020

<sup>342</sup> RD 1.1: application boundary plan, as revised February 2016

<sup>343</sup> APP-14 and APP-15: Tree Constraints and Tree Protection plans

- 9.43. Seen from the south and southeast, from viewpoints on Footpaths 4b, 7 and 8, the new housing in the southern and central areas of the site would be highly prominent, due to the site's elevated position on the skyline, the outward-facing slope of the land, and the loss of much of the existing tree cover [6.18]. I have had regard to the submitted photo-montages, including the amended version<sup>344</sup>, and the parties' comments on these. I accept that, over the course of time, new planting on the southern boundary would be likely to have a softening effect [5.18, 6.19]. But based on all the evidence, and my own observations on site, it seems to me that any new buildings on this part of the site would be likely to appear stark and exposed for some years after construction, and would remain visible for a period exceeding 15 years. There is no evidence that a time would come when that ceased to be the case altogether. Indeed any such evidence would necessarily be a matter of speculation.
- 9.44. Whilst I agree that in many cases it may not be necessary or desirable for development to be completely hidden, the present appeal is only concerned with this particular site, which occupies a sensitive location, on the edge of a valley, within a high quality landscape. Again based on the available evidence, the proposed houses would be likely to be relatively closely-spaced, and several would be in view together [6.18, 7.4]. Additional items such as lighting columns, aerials, satellite dishes and vehicles would also be likely to be seen. The urban nature of the development would be evident. In this location, the visible presence of a development of this nature would be incongruous and intrusive.
- 9.45. Overall therefore, I consider that the development's effect would be to cause substantial visual harm to the character and appearance of the landscape and village setting [6.20, 6.21].

*Other matters relating to landscape and visual impact*

- 9.46. In the LLCS, it was considered that the area C02, 'rear of Allington Road' had low landscape value and medium capacity for development, with opportunities for mitigation [5.15]. The accompanying map appears to include at least the northern part of the appeal site in that area. On the other hand, the southern part of the site appears to be excluded [6.13]. In any event, the diagrammatic nature of the map suggests that the boundary shown is not intended to be definitive. Furthermore, whilst the text refers to 'south of Allington Road' as a preferred area for development, it is not clear whether this is meant to relate to area C02, because in the Schedule, this name is also given to area B03, which is a different area. This may well be simply an error, but it leaves room for doubt.
- 9.47. On the evidence available, it seems likely that the preferred area was intended to include at least the appeal site's northern paddock. But apart from the diagrammatic map, there is nothing else to suggest that it included the central woodland. To my mind, if that were the case, it would have been such an unusual suggestion that one would have expected to see some explanatory comment, either in the text or the schedule. With regard to the appeal site's southern section, the evidence suggests that this was intended to fall within

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<sup>344</sup> ID-18: photomontage submitted at 2016 inquiry; and amended version attached to APP-32, closing submissions



area B03, which was rated highly for landscape quality, and low for development capacity.

- 9.48. The LLCS therefore does not support the development of the whole site as now proposed. But in any event, the study is now some 8 years old, and seems to have only ever been intended to be used as part of the evidence base for the LLP1 examination, which has long since been completed. The LLCS was clearly not intended as a policy document, and has no policy status. As such, the weight that attaches to it is strictly limited.
- 9.49. Turning to the various SHLAAs and the SHELAA [5.16, 6.15], whilst both parts of the appeal site, areas NW03 and NW16, are assessed as 'suitable' for housing, the documents do not appear to define what is meant by suitability, nor to what extent this was intended to imply acceptability in landscape terms. For both of these particular areas, the comments in the schedule suggest that the authors' judgement was coloured to some degree by the LLCS, but for the reasons already stated [9.46 – 9.48], I consider that the latter should be treated with some caution. In any event, all three of these studies make it clear that any development should preferably retain the existing woodland. The possibility of removing it was contemplated only as a less favoured alternative. As far as I am aware, the present illustrative scheme was not put before the authors. In any event, none of these SHLAA or SHELAA documents represent development plan policy. The weight that can be attributed to them is limited accordingly.
- 9.50. With regard to the NNPCA [6.14], I agree that that report gives no support to any development on either area 22 or 27. But in any event, like the LLCS, the NNPCA is again of considerable age, and has long since served its purpose of informing the NNP process. And whilst I have no reason to doubt that it faithfully reflects the views of those involved in preparing the NNP, the weight that it now carries is somewhat undermined by the lack of any recognised methodology, and the apparent lack of professional rigour. I have therefore placed no reliance on the NNPCA.
- 9.51. In the appeals relating to 104 and 45 Allington Road [7.4, 8.6], the housing developments proposed were found to have harmful impacts on the area's character and appearance. But although those sites were nearby, they were clearly different from the present appeal site, and the appeals were determined on their own merits. Nothing in either of these decisions has any direct bearing on the present appeal.
- 9.52. Whilst I have had due regard to all of these matters, none either changes or adds anything of significance to the conclusions that I have formed with regard to the present appeal proposal, in terms of its effects on the character and appearance of the landscape and village setting.

#### *Relationship to relevant landscape policies*

- 9.53. In the light of the above considerations, I find that the proposed development would fail to conserve or enhance the District's natural environment, or its distinctive landscape qualities, as required by LLP1 Policy CP10(1) [6.22].



- 9.54. For the same reasons, I also find that it would fail to respect the landscape's character, or to blend well with the local built environment, as sought by NNP Policy EN1.
- 9.55. Other than with regard to the HLS position, there is no evidence to suggest that either of these policies is out of date or inconsistent with the NPPF.

*Differences from first Inspector's findings on landscape matters*

- 9.56. My findings and conclusions on these matters relating to landscape and visual impact differ from those of Inspector Birkinshaw. On one particular point, the difference between us relates to a matter of fact, in that Mr Birkinshaw considered that the site did not fall within the Low Weald<sup>345</sup>, whereas I have found that it does, based on the NCA. All other differences between us are ones of opinion or interpretation.
- 9.57. In arriving at my findings, as indicated earlier, I have had the benefit of new evidence which was not available to the first inquiry. In particular, this includes the evidence of Mr Russell-Vick, which highlights some matters to a greater degree than previously, including the differences in character between the various parts of the site, the landscape value of the woodland, and the effects on views from the southeast. I have also had the benefit of the appellants' correction to the photomontage. In all cases, the conclusions that I have drawn from the evidence are my own.

*Conclusion on effects on character and appearance*

- 9.58. I conclude that the proposed development would have a seriously damaging impact on the character and appearance of the local landscape, resulting in conflict with Policies CP10(1) and EN1.

***Five-year housing land supply***

*Housing requirement*

- 9.59. There is no dispute that the relevant five-year period is 1 April 2019 to 31 March 2024. There is also no disagreement as to the buffer or the windfall allowance. Based on the 2019 Position Statement, the housing requirement for this period is 1,750 units [5.24, 6.25].
- 9.60. The Council's claimed supply of 1,958 units, or 5.59 years, would mean a surplus of 208 units.

*Inclusion of updated information*

- 9.61. To ensure consistency of approach, it seems to me that the assessment should be based on the 2019 Position Statement as far as possible. Where the position has changed, or updated information is available that sheds new light on the assumptions about sites that are already included in the assessment, then I see no reason why that information should not be taken into account. However, this cannot in my view extend to the introduction of new sites that were not included in the 2019 supply [5.26, 6.26, 6.27].

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<sup>345</sup> RD 2.6: First Inspector's report, para 179

- 9.62. I appreciate that where new sites have come forward since April 2019, they may be capable of contributing to housing delivery within the period under consideration, to March 2024. But that possibility is taken into account by way of the windfall allowance. In any event, the better way to deal with new sites in my view is by including them in the next 5-year assessment, based on the position at 1 April 2020 or some subsequent date.
- 9.63. I have therefore confined my consideration primarily to the Council's 'Scenario 1', whilst also having regard for the latest available information about the disputed sites, as contained in the evidence from both sides.

*Disputed sites*

- 9.64. With regard to the Reprodex House site [5.27, 6.34], although the site benefits from a resolution to grant outline permission, subject to the necessary legal agreement, that resolution appears to date from April 2017. As at the close of the present inquiry, the negotiations had not been completed and no permission had been granted. The Council remains optimistic for a resolution in the near future, but no foundation for that view is evident. The scheme is said to involve mixed uses and the demolition of a large warehouse, which suggests some degree of complexity. No housebuilder appears to be involved at this stage. Given the length of the delay that has already occurred, the evidence before me does not provide any apparent basis for confidence that the development will be able to proceed in its present form. There is therefore not the clear evidence that the NPPF requires of any realistic prospect of housing completions within the relevant period. I therefore consider that the site cannot currently be counted as deliverable, and for the purposes of this appeal, these 80 units should be discounted.
- 9.65. The Newhaven Marina site [5.27, 6.35] has a live planning application which, at the time of the inquiry remained under consideration. The principle of development has been established through allocations in the 2003 Local Plan and LLP2, and through an earlier planning permission in the mid-2000's. Clearly though, a great deal of time has passed since then. A local developer is now said to be involved, but the site is evidently not an easy one. From the evidence before me, the current scheme is for a mix of uses that includes a hotel, offices and retail as well as marina facilities and 259 apartments. There are existing uses on the site which are to be accommodated and relocated. In view of the coastal location, there are also a range of technical and environmental issues. Overall it seems to me that the prospects for achieving any housing on this site, within the 5-year period, currently rest on being able to deliver a more than usually complex scheme, within a relatively short timescale, on a site with a history of failure. In this context, the evidence before me does not amount to clear evidence that this prospect is realistic. I therefore again find that the site cannot be considered deliverable, and that the 75 units that are included in the Council's 5-year supply should be discounted.
- 9.66. The Woods Fruit Farm site [5.27, 6.34] is allocated for 38 dwellings in the NNP, and is in the hands of an experienced local housebuilder. A scheme is currently being pursued through the planning process, with one application subject to appeal, and a duplicate under consideration by the Council. There

are said to be no technical objections. However, these current proposals are for a substantially larger development than that proposed in the NPP, on greenfield land that extends well beyond the allocated land. There appears to be no current proposal that corresponds to the 38 dwellings that the Council relies on in its 5-year supply statement. It is possible that the appeal may be allowed, but no reliance can be placed on that possibility. Alternatively it is possible that a further application may be made which accords more closely with the NNP allocation. But that is a matter of conjecture. As things stand, there is no evidence of progress on any scheme that is supported by current policies. In the absence of such a scheme, or a planning permission, there is no clear evidence of a realistic prospect that any dwellings will be delivered within the relevant period. These 38 units should therefore be discounted.

- 9.67. With regard to the Springfield Industrial Estate [5.27, 6.34], although the site has previously had an outline permission for residential development, that permission expired over 18 months ago. It is also over a year since pre-application discussions were held regarding a new scheme. In the light of this apparent lack of progress, the fact that the site is allocated in a neighbourhood plan, and is in the hands of an experienced social housing developer, is not sufficient to demonstrate a realistic prospect that completions will be achieved within the 5 years. The site therefore cannot be counted as deliverable. This results in the loss of a further 30 units.
- 9.68. The Harbour Heights site [5.28, 6.36] has been allocated for development since the 2003 Local Plan. A hybrid application was submitted in May 2019, following extensive site assessment work. However, the application was subsequently withdrawn, and no further application appears to have been received. The withdrawn scheme was for a mixed-use development including 431 residential units. Relocation of existing uses will be needed. The Position Statement anticipates 125 units within the 5-year period, but the Council accepts that this should now be reduced to 75. Based on the evidence presented, the scheme appears to be large and complex, and the site is another that has failed to deliver over many years. Although some progress has been made, this does not amount to clear evidence that any units will be delivered within the relevant period. Nevertheless, in the present appeal, the appellants have sought only a reduction of the figure to 35 units, rather than the deletion of the site altogether. In the circumstances, I see no basis for assuming any figure other than this. For the purposes of my calculations therefore, I propose to reduce the expected delivery for this site to 35 units, resulting in the loss of a further 90 units compared to the Position Statement.
- 9.69. The Nuggets site [5.28, 6.36] had a resolution to grant in June 2019, for 22 units, but negotiations appear to have stalled. There is as yet no planning permission, and no sign that one will be forthcoming in the near future. Given the stage reached, there is a reasonable prospect that these issues can be resolved in due course, but based on the evidence available, this seems most likely to be towards the end of the 5-year period. I agree with the appellants that it would be unrealistic to expect more than about one year's completions within that time, amounting to 10 units. This is a reduction of 12 units from the Council's figure.

- 9.70. Of the remaining disputed sites [5.27, 6.34, 6.35], most are relatively small. Given my findings on the sites discussed above, it is not necessary for me to examine these smaller sites in any great detail. Neaves House has a long-standing resolution in its favour, since April 2019. But the allocation is for affordable housing only, whereas the present scheme is for a mix of tenures. There is no evidence that this scheme has a realistic prospect that that any housing will be delivered. I have therefore discounted the site, with the loss of these 6 units. The land at South of Valley Road has been allocated since 2003, and an application has been undetermined since March 2019. The problem appears to relate to the ownership of the land required for access, and there is no clear evidence that this is likely to be resolved in the near future. These 9 units are therefore discounted. The Strawlands site is allocated, but an outline application has remained undetermined since April 2019. No developer appears to be involved. There is no clear evidence of deliverability, and I have discounted these 12 further units. The Valley Road 1&2 site is not allocated, and as yet no application of any kind appears to have been made. There is no evidence to support its inclusion in the supply, and I have discounted the site, with the loss of 6 units. At Elm Court, the Council appears to have accepted that the site is no longer deliverable, and I agree. This results in the loss of a further 9 units. In total, the deletion of these five small sites reduces the supply by 42 units.
- 9.71. The Parker Pens and Newlands School sites [5.28, 6.36], for 145 and 150 units, both have full permission, and there is no clear evidence that they will not be delivered. The lead times and build rates for these sites appear realistic. I therefore make no adjustments in respect of these two sites.
- 9.72. Overall, the net result from these considerations is a deduction of 367 units from the Council's supply figure. This reduces the deliverable supply to 1,591 units, or 4.5 years.

#### *Liverpool or Sedgefield*

- 9.73. The PPG makes it clear that the question of how a past shortfall should be made up is to be dealt with in the plan-making process. In the present case, the Liverpool method was accepted by the Inspectors at the LLP1 and LLP2 examinations, and I see no exceptional need for this to be revisited for the purposes of this appeal [5.25,6.28]. In any event, this would not change my finding, that the Council has not demonstrated a 5-year supply.

#### *Covid-19 impact*

- 9.74. I appreciate that in the early days of the lockdown period, construction was halted on many sites, and transactions were slowed or paused. Subsequently, construction has resumed, and the housing market has recovered to some extent, but prospects for the immediate future are uncertain. However, there is no evidence before me to suggest that any sites that were previously deliverable have become undeliverable. Nor is there any site-specific evidence as to the effects on delivery rates on particular sites. In this respect the situation in the present appeal appears similar to that in the Farnham case, where the SoS declined to make any across-the-board adjustment [5.30, 6.32].

- 9.75. In any event, a general adjustment would not change the position with regard to my finding on the 5-year supply, as set out above. I therefore propose to make no such adjustment in this case.

*Scenarios 2 and 3*

- 9.76. For the reasons already explained [9.61 – 9.63], I consider the most appropriate method of assessing the 5-year supply for the purposes of this appeal to be based on the Council's Scenario 1 [6.25]. However, in the light of my findings on the disputed sites, there would still not be a 5-year supply, on the basis of either Scenario 2 or Scenario 3 [6.26, 6.27]. It is therefore unnecessary for me to explore these alternative approaches any further.

*Timing of housing delivery at the appeal site*

- 9.77. Although the appeal site is said to have no physical or other impediments to early development, there are reasonable grounds for doubt in that regard [5.32, 6.37, 7.7]. The changes made to the site's boundaries in 2016 have left it awkwardly-shaped, and difficult to develop efficiently. It is not known whether the land deleted from the site at that time might eventually become available for development again. The exclusion of the appeal site's two corner areas, through the undertaking, appears as something of a temporary expedient. There is nothing to stop further alternatives to this arrangement from being explored in any future application. The reasons for the exclusion of the 'blue land' from the present application are unknown, but there is nothing to suggest that that land would not be potentially available to assist in delivery of a more comprehensive scheme.
- 9.78. From a developer's or landowner's perspective therefore, as well as from a planning point of view, a permission based on the present appeal proposal would potentially fail to make the best or most economic use of the land. Consequently, in the event of this appeal being allowed, it seems to me quite probable that some efforts would first be made to resolve these outstanding issues, potentially involving further land assembly negotiations as well as further planning applications, rather than proceeding to the earliest possible commencement.
- 9.79. For these reasons, I consider there is a degree of uncertainty as to whether the development now proposed would be likely to contribute to the housing supply within the period of the present 5-year supply calculation, or to what extent. But equally, there is no clear evidence that it could not. In any event, the site would be able to contribute in the medium or longer term.

*Conclusions on the 5-year supply*

- 9.80. I conclude that the Council has been unable to show a 5-year supply of deliverable sites. As a result, the potential benefits of providing 50 dwellings through the appeal scheme command significant weight. Although there is uncertainty as to the timing of implementation, to my mind this does not significantly reduce the weight that attaches to the potential delivery of housing on the site, given the proven need. In any event, the lack of a 5-year supply triggers the tilted balance under NPPF paragraph 11(d).

***Other matters relating to housing***

### *Unmet general housing needs*

- 9.81. It is undisputed that the housing requirement figure set by Policy SP1 of LLP1 is significantly less than the District's full OAN [5.35, 6.39]. It is also difficult to disagree that the allocations and provisions made in LLP1, LLP2, and in the District's NPs, are geared towards just meeting that minimum requirement, rather than getting any closer to the OAN [5.37 – 5.39]. The evidence shows that actual housing delivery since 2010 has fallen well short of what would be needed to satisfy the Policy SP1 requirement, even at the level set by LLP1 [5.40]. It is common ground that these shortfalls in provision, against either the OAN or the local plan figure, are unlikely to be made up in any neighbouring authority areas [5.41, 6.40].
- 9.82. In the light of this evidence, I agree with the appellants that the unmet need for housing in Lewes District, over and above the provisions made in the development plan, is an additional material consideration in favour of the appeal.
- 9.83. On the other hand, as the Council points out, the process for setting the housing requirement, and for deciding how much land should be allocated to meet it, is through the development plan. That process provides for housing needs to be balanced against all the other relevant policy aims and other planning considerations [6.42]. In so far as LLP1 and LLP2 are concerned, the plan-making process has been carried out and completed. Although some neighbourhood plans are still in preparation, there is no reason to think that they will not come through to fill the last remaining gaps. These are the principles of the plan-led system, and if that system fails to produce the desired outcome, or if its aims become out of date, then changes can be made in a subsequent plan review.
- 9.84. These counter-arguments have considerable force. Consequently, although the unmet general housing need is a material consideration, I agree with the Council, that in the present case this carries limited weight.

### *Affordable housing*

- 9.85. Despite the Council's track record in providing and securing AH, including in Newick, there is general agreement that ensuring a continuing supply of AH remains an urgent priority [5.44, 6.44]. It is not disputed that the District has a substantial waiting list [5.47, 6.48]. Furthermore, on the evidence presented, I accept that housing costs are increasing faster than incomes [5.49, 6.51]. And even though the level of need has not been quantified separately from the SDNP area, there seems little doubt that the numbers of new affordable homes provided over recent years is unlikely to have kept pace with the numbers of households in need [5.45-46, 5.48, 6.45-47, 6.50, 7.6, 8.2, 8.8].
- 9.86. None of these circumstances is particularly unusual, and I see no reason to doubt the underlying point, that any additional AH that can be secured in the District would go some way towards meeting a genuine need. The need for AH is therefore a material consideration, to which I attach some weight.
- 9.87. In the appeal scheme, through the provisions of the S.106 agreement, 20 of the proposed dwellings would be affordable [2.14]. The same level of provision would be expected from any other development of the same size,



but this does not diminish the benefit, because the appeal scheme is proposed as an addition to the other developments in the area, not an alternative. The benefit conferred by the affordable homes would exceed that of the open market housing, and so I give these 20 units substantial weight.

### *Self/custom build housing*

- 9.88. There is no dispute as to the fact that authorities are under a legal duty to grant sufficient suitable permissions for self- and custom-build housing, to meet the need identified through the local registers. Nor is there any disagreement as to the numbers of entries in the register for Lewes District, or that Newick is a popular location for such development [5.52, 5.53, 5.56].
- 9.89. On the balance of the evidence, it seems to me that the Council has provided a reasonable justification for its interpretation of what qualifies as a suitable permission, and of the dates within which such permissions may be counted. On this basis, there is no evidence that the Council failed in its duties in respect of Base Period 1. At the close of the present inquiry, there was still a significant outstanding requirement in respect of Base Period 2, but the relevant period for compliance had not reached its end [5.53–5.55, 6.55–6.58].
- 9.90. Nevertheless, the provision of opportunities for self/custom-build housing is an important policy aim at national level, and there is nothing to suggest that the numbers on the local register should be treated as anything other than a minimum. Secondary sources such as the Plot Search database may have their limitations, but even so, they may shed at least some further light on the potential scale of demand, including persons not yet on the statutory register. In this case there is some evidence to suggest a latent demand greater than that shown by the register [5.57, 6.59]. The desirability of providing further opportunities for this type of housing is therefore a material consideration, to which some weight is due.
- 9.91. In the present appeal, the provision of five self/custom-build plots is secured by the undertaking [2.15]. The inclusion of those plots is a potential benefit of the scheme, and in my view the weight due to that benefit is not lessened by the fact that similar provisions could also be sought and included within other local developments [7.6, 8.2]. However, given that I have already concluded that significant weight attaches to the benefit of providing new housing, the additional benefit of the self-build element is modest.

### ***Effects on Ashdown Forest***

#### *Background in respect of the development's effects on the Forest*

- 9.92. In the 2017-18 judicial review relating to the present appeal, one of the reasons that the Courts found the SoS's original decision to be flawed was because the north-eastern corner of the site fell within the 7km ZoI around Ashdown Forest, and the possible effects on the SPA and SAC had not been considered in the light of the Habitat Regulations [1.10-1.12]. Those judgements were made in the context of the scheme as it then stood, in which nothing prevented development on that part of the site that was within the ZoI area.

- 9.93. Since then, the appellants and relevant land owners have entered into firstly the April 2018 Undertaking<sup>346</sup>, and subsequently the August 2020 version<sup>347</sup>, which supersedes that earlier one [2.15, 2.19]. With regard to the north-eastern area, both Undertakings have had the effect of precluding any residential development within the part of the site that falls within the 7km ZoI<sup>348</sup>. The effectiveness and enforceability of this obligation is not in dispute. In this respect therefore, the scheme that is before the inquiry now is materially different from that which was considered at the first inquiry and was the subject of the judicial review.
- 9.94. In addition, the 2020 Undertaking includes alternative provisions for mitigation through contributions to SANG and SAMM, at either 'full' or 'reduced' rates<sup>349</sup> [2.15, 2.17]. These provisions are conditional on confirmation by the decision-maker that they are considered to be required. No equivalent provisions were before the first inquiry, nor were they contained in the April 2018 undertaking.
- 9.95. A Draft HRA<sup>350</sup> of the appeal scheme was carried out by the SoS in March 2019 [1.17]. At the screening stage of that Draft HRA, it was considered that the possibility of a significant in-combination effect on the SPA or SAC could not be ruled out. The Draft HRA therefore proceeded to the Appropriate Assessment (AA) stage. However, on completion of that stage, the conclusion reached was that the prior existence of the Reedens Meadow SANG was sufficient to rule out any adverse effect on the integrity of the protected areas, even in the absence of any financial contribution<sup>351</sup>.
- 9.96. In addition, the evidence before the present inquiry includes the appellants' own Shadow HRA<sup>352</sup>, which is dated June 2020 [5.59, 5.70]. At the screening stage, the Shadow HRA again considered that a significant effect could not be ruled out. At the AA stage however, it was concluded that the development, either in isolation or in combination, would result in no adverse effects on the SPA's integrity<sup>353</sup>.

#### *Ashdown Forest's qualifying features and conservation objectives*

- 9.97. The Ashdown Forest SAC is designated for its habitats of Northern Atlantic wet and European dry heaths. The corresponding SPA is designated because it supports breeding populations of the Dartford Warbler and Nightjar, which are Annex 1 species. Both are part of the Natura 2000 network. Their combined area amounts to over 3,200 ha. The conservation objectives for both areas relate principally to the maintenance or restoration of the extent and distribution of their respective habitats, species and qualifying features<sup>354</sup>.

#### *Habitats Regulations context*

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<sup>346</sup> RD 2.10: the April 2018 Undertaking (superseded)

<sup>347</sup> APP-35: the August 2020 Undertaking

<sup>348</sup> Section 5.1 of both Undertakings

<sup>349</sup> APP-35, Section 7.1 and 7.2 of the 2020 Undertaking

<sup>350</sup> RD 2.9: SoS' s Draft HRA

<sup>351</sup> RD 2.9, Part 1, para 17; and Part 2, paras 16 and 18

<sup>352</sup> APP-27: Appellants' Shadow HRA

<sup>353</sup> APP-27, paras 5.1.10-5.1.11, 6.9.4 and 7.1.3

<sup>354</sup> APP-27, paras 4.1.2 - 4.1.4, and 4.2.1 - 4.2.2 (qualifying features and conservation objectives)

- 9.98. The Habitats Regulations require that where a plan or project is likely to have a significant effect on a European designated site, either alone or in combination with other plans or projects, the competent authority must carry out an Appropriate Assessment (AA) before granting consent. The AA must consider the implications of the plan or project for the European site's conservation objectives, and must include consultation with the appropriate nature conservation body, which in this case is Natural England (NE).

*Development plan context*

- 9.99. Policy CP10(3) of LLP1 requires that developments resulting in new dwellings within 7km of the SPA or SAC should contribute to SANG and SAMM, in order to mitigate the potential recreational impact on the Forest [3.7]. The relevant provisions in Policies DM1 and DM24 of LLP2 are identical [3.11]. The boundary of the 7km zone is marked on the Policies Map [3.2].
- 9.100. However, given the provisions of the Undertaking, in excluding any development on the part of the appeal site that falls within the ZoI, none of these policies applies to the appeal proposal. There is no equivalent or relevant policy relating to development outside the ZoI.

*Assessment of the appeal proposals' effects on the Forest*

- 9.101. The appeal site is not located within the SPA or SAC, and no development or other works are proposed within these areas. No direct impacts on the protected areas are suggested by any party. The potential impact identified by the Council and NE relates to the possible recreational pressure from future occupiers. In particular these concerns relate to the possible effects on the Dartford Warbler and Nightjar, as ground-nesting species [6.62-6.70, 8.15-8.16].
- 9.102. The only quantified evidence as to the likely level of usage of the Forest by occupiers of the appeal site is that in the appellants' Shadow HRA [5.70]. Based on the data from the visitor surveys carried out by NE and the relevant local authorities, the appellants' calculations suggest that the proposed development would generate around 1.7 visits per day, or less than a 0.03% increase. The mathematics of these calculations have not been challenged. To my mind the results of this exercise do not support any suggestion that the impact caused by the proposed development would be significant.
- 9.103. To put this increase into context, it seems to me that it is helpful to consider it alongside the evidence as to the impacts that have been identified from the Forest's existing level of recreational use. The only such evidence that is before the inquiry is again that presented by the appellants, which relates to NE's 2010 data analysis [5.64]. That report studied the impacts of recreational pressures on the qualifying species Dartford Warbler and Nightjar. Despite some evidence of disturbance, no actual adverse effects were found in terms of the density or distribution within the Forest of either species. Contrary to the appellants' contention, the effects on breeding success were not directly studied, but nonetheless, it seems likely that any existing impacts in this respect would have manifested themselves to some degree in the distribution. Although this research was undertaken some time ago, its continuing validity has not been questioned.

- 9.104. The various visitor surveys, that provide the basis for the above evidence, all pre-date the opening of the Reedens Meadow SANG in 2017-18, the purpose of which is to provide an alternative to Ashdown Forest and reduce the pressures on it, both from new development and from the existing resident population. On my visit, I saw that the SANG is a well-landscaped, naturalistic, and attractive open space, and at that particular time it appeared to be well-used. I see no reason to doubt that it will fulfil its purpose. If that is so, then the number of daily visits to Ashdown Forest from the appeal proposal would be likely to reduce further. There is a large degree of common ground in the submissions made on this point [5.67, 6.69]. These matters in my view provide some reassurance that the evidence and calculations summarised above are likely to be reasonably robust. But none of that evidence relies on the future impact of Reedens Meadow, and neither have I done so, in forming my conclusions on this matter.
- 9.105. Based on the evidence available, the existing recreational usage of Ashdown Forest appears not to have had any significant identifiable adverse effects on the qualifying bird species. The development now proposed is estimated to increase that level of use by only a negligible amount. Having regard to this objective evidence, it seems to me that there is no reasonable scientific basis on which the development could be considered to have any likely significant effect on the integrity of the SPA or the SAC, or their conservation objectives.

*In-combination effects*

- 9.106. The Regulations require the development's effects to be considered in combination with other plans or projects. The Council suggests that this should include other developments within or close to the Zol [6.66]. However, the allocations in LLP2 or NPs, including those in Newick, have already been taken into account in the 2018 Local Plan HRA [5.61]. The conclusions of that assessment could not realistically be affected by the present proposal, given its negligible individual impact.
- 9.107. No other relevant developments within or close to the Zol have been identified. There is no evidence that any other schemes are in any way related to the present appeal or linked to its outcome.
- 9.108. I conclude that in this case there are no other relevant plans or projects with which the appeal proposal needs to be assessed on an in-combination basis. My conclusion remains as above, that the proposed development would not have any likely significant effect on the protected areas.

*Other matters raised in relation to Ashdown Forest*

- 9.109. I appreciate that the development would be only just outside the 7km Zol, and in practical terms the impact of development in such a location might differ only slightly from a similar site just inside the zone [6.65]. However, 7km is the threshold set by development plan policies [9.99, 9.100]. This distance was based on survey evidence and was accepted through the LLP2 examination, and is supported by the Local Plan HRA and the Partnership Authorities' SCG [5.61 - 5.66].
- 9.110. It is true that the application site boundary still includes a small portion of land within the Zol [6.65]. However, the relevant policies are clearly expressed to apply only where new dwellings are proposed inside that zone.

In the present case the Undertaking prevents any residential development on that part of the site [9.93].

- 9.111. I note the arguments for a case-by-case approach, favoured by both the Council and NE [6.63, 6.64, 8.15]. However, that approach it is not the one taken in the relevant development plan policies for this District.
- 9.112. As discussed above, there is little doubt that future occupiers at the appeal site would be likely to make use of the Reedens Meadow SANG [6.68, 6.69]. But that does not mean that the development would be reliant on the SANG. For the reasons already explained, I have found no evidence of a significant impact on the SPA or SAC, with or without Reedens Meadow [9.104]. The need for additional funding, to secure the SANG's future maintenance in perpetuity, is noted, but that is a separate matter. In the absence of any evidence of a significant impact, the need for such funding does not justify requiring a contribution from the development now proposed.

#### *Mitigation*

- 9.113. Alternative 'full' or 'reduced' SANG and SAMM contributions are provided for in the 2020 Undertaking [2.17, 9.94]. It is not disputed by any party that the development's potential impact on the SPA and SAC could, if necessary, be fully mitigated by the 'full' contributions [5.72, 6.62, 8.16]. However, the need for any contributions, at either the 'full' or 'reduced' levels, is contested by the appellants [5.70, 5.71].
- 9.114. Given the site's location outside the 7km ZoI, there is no basis in this case for any SANG or SAMM contributions in development plan policy. But in any event, in the light of the matters discussed above, I can see no evidence that the development now proposed would have any significant impact on the protected habitats or their qualifying features. No mitigation is therefore needed or justified on these grounds.
- 9.115. It follows in my view that, if planning permission were to be granted, none of the SANG and SAMM contributions in the Undertaking should be required.

#### *Conclusion regarding the effects on Ashdown Forest*

- 9.116. For the reasons set out above, I conclude that the proposed development, either alone or in combination with any other plans or projects, would not be likely to have any significant effect on the Ashdown Forest SPA or SAC, or on the conservation objectives for either of those areas or their qualifying features and species. In this respect therefore, the scheme would not conflict with any development plan policies.
- 9.117. In the light of this conclusion, none of the offered contributions to SANG or SAMM are necessary.

#### ***Other benefits and harm arising from the scheme***

##### *Economic benefits*

- 9.118. The scheme's potential beneficial impact, in terms of employment and investment is recognised by the Council [6.73], and the additional household

expenditure was acknowledged in the first Inspector's report<sup>355</sup> [5.76]. However, there is no other evidence before the inquiry on these matters. In the absence of any such further detail, I can give these matters only limited weight.

#### *Open space and children's play*

9.119. The provision of a play area is secured through the undertaking [2.15]. The play area is required to be laid out as a Local Equipped Area of Play (LEAP), in accordance with a specification to be approved by the Council, and the undertaking includes further provisions for its future management and maintenance. Although required to meet the needs generated by the development itself, the play area would also be available to the general public and would thus provide some benefit. However, in the absence of any evidence of an existing need for additional play facilities in the area, this benefit carries only modest weight.

9.120. The undertaking also designates two areas of the site as open space [2.15, 2.18, 5.76]. However, these obligations appear to be directed mainly at reducing the potential objections on habitats and visual impact grounds, rather than at providing usable open space. In the undertaking, the only requirement for these areas is that they be left free from residential development, and there is no obligation or commitment for them to be laid out, landscaped, or made publicly available. Whilst it might be possible to address these matters through conditions, the amount of open space that could be secured in that way would be dependent on policy requirements, and there is no evidence that these would justify the amount suggested in the undertaking. In any event, no relevant conditions have been proposed. In the circumstances, it seems to me that the proposed open space, other than the play area, would provide only a limited public benefit, and thus carries little weight.

#### *Biodiversity*

9.121. The possible enhancement measures recommended in the ecological report include the creation of a new pond, wetland features, wildflower grassland, native tree and shrub planting, and the provision of deadwood piles for invertebrates<sup>356</sup>. However, the report dates from before the changes to the site boundaries in 2016. Although an update was carried out in April 2020<sup>357</sup>, there is no evidence as to how all of these recommended features could still be accommodated. In any event, the benefits of any such measures would, to some degree, be offset by the loss of the existing woodland and other established vegetation. No explanation is provided as to why this is considered to result in a net gain to biodiversity [5.76]. The evidence of a net benefit therefore rests on an assertion that has not been substantiated, and without any further details, it is far from clear that any such net benefit would be achieved, as sought by NPPF paragraph 174. In the circumstances, I find no basis on which the possibility of a biodiversity gain can be given weight.

#### *Other matters raised by interested persons*

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<sup>355</sup> RD 2.6: First Inspector's report, para 230 (re economic benefits)

<sup>356</sup> CD 1.8: Ecological Appraisal report, paras 6.9.1 – 6.9.13

<sup>357</sup> APP-9, Appx AB5: Ecological Addendum, April 2020



- 9.122. As a designated Rural Service Centre (RSC), Newick is rated as one of the more sustainable villages in the District for housing development. Although the appeal site is on the opposite side of Newick from the main village centre and local shops [7.8, 8.4, 8.7, 8.8, 8.13], the village is not large, and the site is still within reasonable proximity of most facilities [5.75]. It is also within a few metres of the primary school in Allington Road. The level of public transport available [8.3] seems broadly commensurate with what can be expected in an RSC. I therefore do not consider the location of the appeal site to be unsustainable in terms of its accessibility to everyday services and facilities.
- 9.123. Whilst I appreciate the concern of local people regarding the pressures on schools, health facilities and other local services [8.7, 8.13], there is no substantiated evidence that any of these would be overloaded as a consequence of the development now proposed. Businesses such as local shops and pubs would stand to benefit from increased trade. I accept that it is likely that some house purchasers might commute for work [8.8], but there is no obvious reason to expect that this would adversely affect community cohesion. Even if that were so, it seems equally likely that this would be compensated for by benefits to the village's vitality.
- 9.124. The concerns raised regarding traffic, congestion and parking are noted [8.3, 8.4, 8.13]. In particular, those relating to highway safety are matters to be taken very seriously. However, the Highway Authority has evidently considered all these matters fully and has been satisfied. In the absence of any substantiated evidence to the contrary, I have no reason to disagree.
- 9.125. I agree that Footpath 4a would become urbanised, and would lose its present rural character and ambience, due to becoming hard surfaced, lit and passing through the centre of the development [8.5, 8.9]. Footpaths 7 and 8 would also suffer some adverse effects, in terms of the impacts on off-site views. These impacts are taken account of in my earlier conclusions regarding the development's effects on the area's character and appearance.
- 9.126. External lighting and construction traffic [8.13] are understandable concerns, but both could be controlled by condition, and thus do not give valid grounds for objection.

## **10. Conditions**

- 10.1. A list of 20 draft conditions (DCs)<sup>358</sup> has been agreed between the Council and the appellants. I have considered these in the light of the evidence, and with particular regard to the advice in NPPF paragraphs 54 – 56. My list of recommended conditions (RCs), that I consider should be imposed if permission is granted, is appended to this report at Annex 2.
- 10.2. With regard to DCs 1 – 17, I am satisfied that in substance these conditions are necessary and reasonable, and meet the other tests set out in the NPPF. I have edited these, in the interests of clarity, consistency, and avoiding over-prescription. In some cases I have amalgamated two or more of the DCs, resulting in a reduction in the overall number of RCs. In all cases where

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<sup>358</sup> GEN-3: parties' list of draft conditions

the RCs are designed to take effect prior to the commencement of development, this aspect of the condition has been agreed in writing by the appellants<sup>359</sup>.

- 10.3. RCs 1 – 3 reflect the standard requirements as to reserved matters and timescales for submission and commencement.
- 10.4. RCs 4 and 11 relating to access and estate roads are needed for reasons of highway safety and to ensure a good residential environment for future occupiers.
- 10.5. RCs 5 and 6 relating to surface and foul drainage are necessary to avoid any risks of flooding or pollution, and to ensure a good residential environment.
- 10.6. RC 7 relating to ecology is necessary in the interests of maintaining biodiversity. In this context however, I draw attention again to my reservations expressed earlier, that in the evidence before me it has not been demonstrated that a net gain would be achieved by the measures so far proposed [9.121].
- 10.7. RC 8 regarding site levels is needed to ensure a degree of control over the development's visual and landscape impacts. However, it should be noted that in my opinion the condition would not overcome the unacceptable harm that I consider the development would cause in this respect [9.58].
- 10.8. RCs 9 and 10, requiring a Construction Method Statement and limiting the hours of work, are needed to protect the living conditions of nearby residents, and the local environment, during construction.
- 10.9. RC 12 regarding archaeology is needed to protect any potential which may exist for any significant remains. However, the suggestion in DC 15, to restrict the occupation of any dwellings until after the completion of the post-investigation assessment, is excessively onerous, and in my RC12 this element is omitted.
- 10.10. RC 13 relating to contamination is necessary to protect construction workers and future occupiers against risks to human health.
- 10.11. RC 14 regarding lighting is needed to protect the safety of future occupiers, and to limit adverse impacts on wildlife.
- 10.12. With regard to DCs 18 and 19, relating to the Travel Plan and play area, it is agreed that these would duplicate provisions already secured by obligations in the legal agreement and undertaking<sup>360</sup>. DC20 relates to the provision of utility services to the proposed self/custom-build plots. However, the Undertaking already requires the approval of a scheme for these plots, and there seems no reason why their servicing could not be covered adequately through that means. None of these conditions are therefore needed.
- 10.13. No other conditions were suggested by any party during the inquiry, and I am not aware of any others that would be justified.

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<sup>359</sup> APP-28: appellants' email of 24 June 2020

<sup>360</sup> COU-24: Council's email 8 July 2020; and APP-31, appellants' email 9 July 2020

## **11. Planning Balance and Related Matters**

### ***The planning balance***

- 11.1. In the light of all the above matters, the most important development plan policies in determining this appeal are Policy DM1 of LLP2, Policy CP10(1) of LLP1, and Policy EN1 of the NNP. Of these, in the case of Policy DM1, the proposed development would clearly be in conflict by virtue of the site's location in the countryside [9.4, 9.8, 9.20]. In relation to Policies CP10(1) and EN1, there would be further conflict, due to the harm that the scheme would cause to the character and appearance of the landscape and village setting [9.45, 9.53-54, 9.58]. There are no development plan policies that support housing development on the site. The appeal proposal therefore fails to accord with the development plan as a whole.
- 11.2. In addition, the lack of accord with the NNP's general aims and strategy, and the resulting effect on the community's confidence in neighbourhood planning, is a material consideration counting against the development, albeit carrying limited weight [9.19].
- 11.3. On the other hand, the Council has been unable to show a 5-year supply of housing land [9.72, 9.80]. As a result, the NPPF requires that the most important policies for determining the appeal are deemed to be out of date. But this does not mean those policies should be disapplied altogether. In the present case, having regard to their degree of consistency with national policies [9.5-9.7, 9.9, 9.55], it seems to me that Policy DM1 should carry moderate weight, and Policies CP10(1) and EN1 should continue to have substantial weight.
- 11.4. In addition, the District's housing policies leave a sizeable part of the OAN unmet, and there are resulting needs for more housing in both the general and affordable sectors, which are unlikely to be fully satisfied within the constraints of the current development plan [9.81 - 9.86]. The appeal scheme would help to redress these shortfalls, albeit most likely not in the short term [9.79]. It would also provide opportunities for self or custom-build housing, a play area, some further open space, and unquantified economic benefits [9.91, 9.118 - 9.120].
- 11.5. In relation to Ashdown Forest, I have found that no likely significant effects would arise [9.116]. But in any event, it is agreed that any adverse impacts could be fully mitigated by triggering the relevant planning obligations [9.113, 9.117]. This issue therefore weighs neutrally.
- 11.6. In view of the lack of a 5-year supply, the 'tilted balance' provisions of NPPF paragraph 11(d) are engaged. In this context, the development's primary benefit would be the provision of 50 new dwellings, of which the open-market units carry significant weight, with a modest uplift for the self-build element, and the affordable housing has substantial weight [9.80, 9.87, 9.91]. In addition the economic effects, play area and open space count as benefits but these carry, respectively, limited, modest and little weight [9.118 - 9.120]. On the other side of the balance, there would be the harm to the local landscape, which I have found to be serious and substantial [9.45, 9.58], plus the effects on public confidence in the neighbourhood plan system, which adds some further limited weight [9.19].

- 11.7. On this basis, my judgement is that the adverse impacts that I have identified significantly and demonstrably outweigh the sum total of the benefits, when assessed against the policies of the NPPF taken as a whole. In this case therefore, the NPPF's presumption in favour of sustainable development does not weigh in favour of the appeal.
- 11.8. Having regard to all of the material considerations identified, I find that the conflict with the development plan is not outweighed. I therefore conclude that permission should be refused.
- 11.9. My formal recommendation, which appears at the end of this report, reflects this conclusion.

### ***Alternative decision scenarios***

- 11.10. In the event that the SoS disagrees with my conclusion regarding the harm to the local landscape, and consequent conflict with Policies CP10(1) and EN1 [9.58, 11.1], then in my view the effect would be such that the planning balance [11.6 – 11.8] would favour granting planning permission.
- 11.11. If the SoS were to consider that greater weight should be given to the benefits of the proposed housing [11.3, 11.4, 11.6], then that could potentially change the outcome of the balance, depending on the precise extent of the additional weight given.
- 11.12. In either of these scenarios, my recommendation would then be to allow the appeal and grant permission, subject to the Recommended Conditions, and subject to consideration under the Habitat Regulations.
- 11.13. With regard to the Habitat Regulations, in the event that the SoS were minded to grant permission, it would be necessary to consider what further action to take in terms of any HRA [9.98]. In this scenario, it would be open to the SoS to update and finalise the draft HRA carried out in March 2019 [1.17-1.18, 9.95], or to conduct an entirely new assessment, or to conclude that no formal HRA was necessary. In view of the conclusions in this report regarding the development's likely effects [9.105, 9.116, 11.5], my recommendation in this scenario would be in favour of the third of these options, that no formal HRA is necessary. However, in the event that the SoS decides that an HRA should be carried out, a suggested draft is set out at Annex 3 to this report. In any event, if an HRA is carried out, NE should be reconsulted, and permission should only be granted if the assessment concludes that the development would have no likely significant effect on the SPA or SAC.
- 11.14. In any scenario where HRA is carried out, or where the SoS is minded to grant permission, it will be necessary to consider the alternative 'full' or 'reduced' SANG and SAMM provisions in the Undertaking [2.15, 2.17, 9.94]. For the reasons explained elsewhere in this report, my recommendation in any of these scenarios is that none of these contributions are required [9.115, 9.117, 11.5]. If the SoS were to reach a different view on this matter, it will be necessary, in view of the terms of the obligation, for the decision to specifically confirm that contributions are required, and to specify which ones, and why they are considered to meet the tests in Regulation 122 of the CIL Regulations.

11.15. Notwithstanding these alternative scenarios, for the avoidance of doubt, my own conclusions on the appeal remain as set out in the preceding section of this report.

## **12. Overall Conclusion and Recommendations**

### ***Overall conclusion***

12.1. For the reasons set out in this report, I conclude that the appeal proposal's conflict with the development plan is not outweighed by the combined weight of all the other material considerations, and that planning permission should therefore be refused.

### ***Formal recommendations***

12.2. I recommend that the appeal be dismissed and planning permission REFUSED.

12.3. If the above recommendation be not accepted, I would then recommend:

- i) that any permission be subject to the conditions set out in Annex 1;
- ii) that no contributions to SANG or SAMM be required;
- iii) and that the SoS satisfy himself that any permission would comply with the Habitats Regulations.

*J Felgate*

INSPECTOR

## **ANNEX 1: MAIN CONTRIBUTORS IN RELATION TO THE SECOND INQUIRY**

### **MAIN PARTIES**

#### FOR THE LOCAL PLANNING AUTHORITY:

Robert Williams, of Counsel

He called:

Kevin Goodwin

BA MRTPI

Philip Russell-Vick

DipLA CMLI

Tondra Thom

MSc MRTPI

Natalie Sharp

BA(Hons) MA MRTPI

KG Creative Consultancy

Enplan

Parker Dann

Senior Planning Policy Officer

#### FOR THE APPELLANT:

Christopher Young, QC

He called:

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BA(Hons) DipTP MRTPI

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Alistair Baxter

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Paul Gibbs

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David Lock Associates

Tetlow King Planning

Tetlow King Planning

Aspect Ecology

David Jarvis Associates

#### FOR THE RULE 6 PARTY:

Heather Sargent, of Counsel

She called:

Mark Best BSc(Hons)

MSc MRTPI

Parker Dann

### **OTHER RESPONDENTS**

Emma Reece

Trevor Burgess

John Kay

Malcolm McDonnell

Rebecca Pearson

Rich Allum

Sarnia Armitage

Philip Beck

Denise Carter

Newick Parish Council

Newick Village Society

CPRE Sussex

The Ramblers

Natural England



Nigel Collard  
Sara Ellis  
Françoise Esson  
Pat Furzer  
Chris Goddard  
Nigel and Sara Gurlay  
Richard and Lucinda Gribbin  
Mrs R G E Hallett  
Brian and Claire Harris  
Pamela and John Hart  
Jeanette James  
David and Roz Kemper  
Claudette Latchford  
Seona Lightfoot  
Gary Marshall  
A E Mayes  
Mary Mayes  
Mary Molloy  
Aveline Moore  
Malcom and Suzy Moxon  
Lawrence and Jan Mudford  
Elizabeth Mumford and William Robertson  
Margaret and Robin Parris  
Patricia Pringle  
Emma Pickett  
Ian Reekie  
John Samson  
Felix Schade  
John Short  
Malcolm Smith  
Rebecca Speight  
Peter Thurman  
Monica Todd  
Tony Turk  
Wendy Turner  
Rosemary and Charles Viggor  
Peter and Jean Vincent  
Tim and Glenna Watson  
Mr & Mrs A W Welfare  
Pauline and Leslie Willcox  
Courtney Williams  
Marilyn Williscroft  
Liane Wrigg

## **ANNEX 2: RECOMMENDED CONDITIONS (IF PLANNING PERMISSION IS GRANTED)**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place. Thereafter, the development shall be carried out in accordance with the details thus approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The access details to be submitted for approval pursuant to Condition 1 shall include a main site access in the position shown on the illustrative plan No. ZMG734/022. The access shall be laid out and constructed in accordance with the details thus approved, prior to the first occupation of any of the dwellings hereby permitted.
- 5) (i) No development shall take place until a surface water drainage scheme for the site has been submitted to the local planning authority and approved in writing. The surface water drainage scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context. The scheme should demonstrate that the surface water run-off generated up to and including the 100 year critical rain storm, plus an allowance for climate change, will not exceed the site's existing run-off rate. The scheme shall also include:
  - details of measures for minimising the risk of deterioration in water quality of receiving watercourses and waterbodies downstream (for both the construction and operational phases of development); and
  - details of how the scheme shall be maintained and managed after completion and for the lifetime of the development.(ii) No dwelling shall be occupied until the surface water drainage scheme has been implemented in accordance with the details thus approved. Thereafter the scheme shall be managed and maintained as approved.
- 6) No development shall take place until a scheme for the disposal of foul sewage from the site has been submitted to the local planning authority and approved in writing. No dwelling shall be occupied until the foul sewage scheme has been implemented in accordance with the details thus approved.
- 7) No development shall take place until a scheme of ecological enhancements and mitigation measures has been submitted to the local planning authority and approved in writing. The scheme shall be based on up-to-date and comprehensive survey data, and shall demonstrate that net gains in biodiversity will be achieved. The scheme shall also include a timetable for its implementation, and details of all necessary on-going management. Thereafter, the scheme shall be implemented and managed in accordance with these approved details.
- 8) No development shall take place until details of the proposed finished ground and floor levels have been submitted to the local planning authority and approved in writing. The details to be submitted shall include the relationship to existing ground levels. The development shall thereafter be carried out in accordance with these approved details.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to the local planning authority and approved in writing. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- the number, frequency and type of vehicles to be used during construction;
  - methods of access and routeing of vehicles, including those of site operatives;
  - parking of vehicles of site operatives and visitors;
  - loading and unloading of plant and materials;
  - storage of plant and materials used in the construction;
  - the erection and maintenance of security hoardings, including any decorative displays and facilities for public viewing;
  - wheel washing facilities and any necessary temporary Traffic Regulation Orders;
  - lighting during construction;
  - details of public notification prior to and during construction works; and
  - measures to safeguard public rights of way, and any temporary diversions, during construction.
- 10) No demolition or construction works in connection with the development shall take place outside the hours of 08:00 - 18:00 on Mondays to Fridays, or 08:30 - 13:00 hours on Saturdays. No works shall be carried out on Sundays or Bank Holidays.
- 11) (i) No development shall take place until details of the proposed estate roads have been submitted to the local planning authority and approved in writing. The details to be submitted shall include levels, sections, construction details, highway drainage, and an implementation programme. The estate roads shall thereafter be constructed in accordance with these approved details.
- (ii) The details to be submitted pursuant to Condition 11 shall also include the results of a California Bearing Ratio (CBR) survey, taken along the lines of the proposed estate roads. None of the estate roads shall be constructed until the relevant CBR test results for that section of road have been approved in writing by the local planning authority.
- (iii) No construction work on any of the dwellings hereby permitted shall commence until the estate roads serving that dwelling have been completed to base course level, together with provision of the relevant surface water, sewerage and service infrastructure, in accordance with the details approved under Conditions 5, 6 and 11(i).
- 12) No development shall take place until a scheme of archaeological works has been submitted to the local planning authority and approved in writing. The scheme shall include a programme of on-site investigations, and post-investigation assessment. The post-investigation stage shall include analysis, publication and dissemination of results and archive deposition. The archaeological scheme shall be implemented in accordance with the details thus approved.
- 13) (i) If, during development, contamination is found to be present at the site then no further development shall be carried out until a remediation strategy has been submitted to the local planning authority and approved in writing. The remediation strategy shall be based on site investigations, and provide full details of the measures required and how and when they are to be undertaken.
- (ii) If, pursuant to Condition 13(i) above, a remediation strategy is required and approved, no further dwellings shall be occupied until a verification report has been submitted to the local planning authority and approved in writing. The verification report shall confirm the completion of the required works in accordance with the remediation strategy, and their effectiveness. The verification report shall also include a long-term monitoring and maintenance plan for pollutant linkages, contingency actions, and arrangements for reporting to the local planning authority. The monitoring and maintenance plan shall thereafter be implemented as approved.

- 14) No development shall take place until a scheme of external lighting has been submitted to the local planning authority and approved in writing. The scheme shall include details of all street lighting and any other illumination of public areas, a programme for implementation, and maintenance arrangements. The external lighting shall be installed and maintained in accordance with these approved details.

END OF SCHEDULE

## **ANNEX 3: INFORMATION TO INFORM THE SECRETARY OF STATE'S HABITATS REGULATIONS ASSESSMENT (IF REQUIRED)**

### **MITCHELSWOOD FARM, ALLINGTON ROAD, NEWICK, EAST SUSSEX BN8 4NH**

**Proposed development comprising up to 50 residential dwellings (including affordable housing), open space, and landscaping, new vehicular and pedestrian accesses, and car parking.**

#### **Introduction**

- 1 Article 6 of the Habitats Directive, which has been transposed into UK law through the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017, requires that where a plan or project is likely to result in a significant effect on a European site either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site in view of the site's conservation objectives.

#### **Project Location**

- 2 The appeal site lies to the southwest of Newick village. The northern part of the site is a horse paddock, the central section is woodland, and the remainder is mainly scrubland. To the north, north-east and north-west is residential development, and on its other boundaries, the site is surrounded by equestrian uses and agricultural land. The site has a frontage of about 170m to Allington Road. Public Footpath Newick 4a crosses the appeal site, and Newick 8 runs just outside the western boundary.
- 3 The site lies approximately 7km to the south-west of Ashdown Forest, which is designated as a Special Protection Area (SPA) and a Special Area of Conservation (SAC).
- 4 The SAC is designated for its habitats of Northern Atlantic wet and European dry heaths. The SPA is designated because it supports breeding populations of the Dartford Warbler and Nightjar, which are Annex 1 species. Both are part of the Natura 2000 network. Their combined area amounts to over 3,200 ha. The conservation objectives for both areas relate principally to the maintenance or restoration of the extent and distribution of their respective habitats, species and qualifying features

#### **HRA Implications Of The Project**

- 5 Occupiers living at the proposed development would have the opportunity to visit the SPA and SAC for the purposes of dog-walking and general recreation. Such visits would have the potential to cause disturbance to ground-nesting bird species, including the Dartford Warbler and Nightjar, and their habitats, through interference by people and pet animals.

#### **Part 1 - Assessment Of Likely Significant Effects**

- 6 The appeal site is not located within the SPA or SAC, and no development or other works are proposed within these areas. No direct impacts on the protected areas would occur. The potential impact identified relates only to the possible recreational pressure from future occupiers.
- 7 The impacts of existing recreational pressures on the Dartford Warbler and Nightjar were studied in Natural England's report 'Visitor Survey Data Analysis', published in 2010. No adverse effects were found, in terms of the density or distribution within the Forest of either species.

- 8 Based on the data from the visitor surveys carried out by Natural England and the relevant local authorities covering Ashdown Forest, it is calculated that the proposed development would generate around 1.7 visits per day. This would be less than a 0.03% increase compared to the existing situation.
- 9 The visitor surveys that provide the basis for the above evidence also pre-date the opening of the Reedens Meadow SANG in 2017-18. The SANG is a well-landscaped, naturalistic, and attractive public open space. The SANG's purpose is to provide an alternative to Ashdown Forest and reduce the pressures on it. As such, its likely effect will be to further reduce the number of recreational visits to the Forest by occupiers of the proposed development, compared to those projected on the basis of the earlier data.
- 10 Based on the evidence available, the existing recreational usage of Ashdown Forest appears not to have had any significant identifiable adverse effects on the qualifying bird species. The development now proposed is estimated to increase that level of use by only a negligible amount. Having regard to the evidence, there is no reasonable scientific basis on which the development could be considered to have any likely significant effect on the integrity of the SPA or the SAC, or their conservation objectives.
- 11 No other plans or projects have been identified that would be relevant to an in-combination assessment. The other sites proposed for housing in the Lewes Local Plan, and Neighbourhood Plans in the District, have already been taken into account in the Local Plan HRA carried out by the District Council in 2018. Given the negligible impact indicated by the above evidence, the proposed development would not affect the conclusions of that assessment.
- 12 The views expressed by Natural England in its letter of 22 May 2020 have been given great weight. However, it is not considered that a case-by-case policy approach is justified, as this would not accord with Policy CP10(3) of the adopted Lewes Local Plan Part 1. Nor is it considered, in the light of all the evidence now available, that the percentage increase compared to other planned developments at Newick, is relevant.
- 13 In the light of the above, it is concluded that it is beyond reasonable scientific doubt that the proposed development would have no likely significant effect on the Ashdown Forest SPA or SAC, or on the conservation objectives for either of those areas or their qualifying features and species.

#### **HRA Conclusions**

- 14 For the reasons set out above, it is concluded that the proposed development, whether alone or in combination with any other plans or projects, would not be likely to have any significant effect on any European protected site.

*Note: The above represents the Inspector's assessment of the evidence presented to him, but does not represent a definitive Appropriate Assessment, as this is a matter for the SoS to undertake, as the competent authority.*



## **ANNEX 4: DOCUMENTS**

### **THE SECOND (RE-OPENED) INQUIRY, 2020** (DOCUMENTS HELD ELECTRONICALLY)

#### **THE PLANNING INSPECTORATE**

- PINS-1 Inspector's case management conference call agenda and observations, 23 February 2020
- PINS-2 Inspector's post-conference note and directions, 27 February 2020
- PINS-3 Note to parties dated 3 April 2020, proposing written inquiry procedure
- PINS-4 Note to parties dated 16 April 2020, confirming procedure
- PINS-5 Email dated 11 May 2020, re proposed detailed procedure and timetable
- PINS-6 Email dated 13 May 2020, re revised timetable
- PINS-7 Inspector's Questions (Set 1): Landscape, Townscape and Visual Impact, 20 May 2020
- PINS-8 Inspector's Questions (Set 2): Housing Land Supply, 22 May 2020
- PINS-9 Inspector's Questions (Set 3): Self-Build and Custom-Build Housing, 22 May 2020
- PINS-10 Inspector's Questions (Set 4): Affordable Housing, 23 May 2020
- PINS-11 Inspector's Questions (Set 5): Planning Policy and planning Balance, 24 May 2020
- PINS-12 Note re self-build housing - 18 June 2020
- PINS-13 Inspector's review of progress and Further Questions, 22 June 2020
- PINS-14 Case Officer's email confirming close of inquiry, 10 August 2020

#### **THE APPELLANTS**

- APP-1 Statement of Case, and Appendices, dated 21 November 2019
- APP-2 Nicholas Freer (Planning and Housing): Proof dated 1 May 2020
- APP-3 Nicholas Freer: Appendices NEF1-34
- APP-4 James Stacey (Affordable Housing): proof received 1 May 2020
- APP-5 James Stacey: Appendices JS1-37
- APP-6 Andrew Moger (Self-Build Housing): Proof received 1 May 2020
- APP-7 Andrew Moger: Appendices AM1-19
- APP-8 Alistair Baxter (Ecology): proof received 1 May 2020
- APP-9 Alistair Baxter: plans and appendices
- APP-10 A Baxter: supplementary appendix - references cited in footnotes, received 15 May 2020
- APP-11 Response to Inspector's Questions (Set 1), received 5 June 2020
- APP-12 Comparative photographs 2016 and 2020 (DJA18-48), accompanying response to IQ Set 1
- APP-13 SHELAA Sept 2018 - Appendices (accompanies response to IQs Set 1, L9)
- APP-14 Revised Tree Constraints Plan (TCP01 Rev B), received 5 June 2020
- APP-15 Revised Tree Protection Plan (TPP01 Rev A), received 5 June 2020
- APP-16 Response to Inspector's Questions (Set 2), received 5 June 2020
- APP-17 Appeal APP/X0360/W/19/3238048: Finchampstead, (accompanies responses to IQs Set 2)
- APP-18 Briefing note on progress of S.106 agreement and undertaking, 5 June 2020
- APP-19 Response to Inspector's Questions (Set 3), received 5 June 2020
- APP-20 Response to Inspector's Questions (Set 4), received 5 June 2020
- APP-21 Response to Inspector's Questions (Set 5), received 5 June 2020
- APP-22 Newick village services plan (accompanying response to IQs Set 5)
- APP-23 Crane v SoS and Harborough DC: [2015] EWHC 425 (*Admin*) (with response to Set 5)
- APP-24 Email dated 4 June 2020, re self-build housing
- APP-25 James Stacey: Rebuttal proof and Appendices JSr1-2, received 5 June 2020
- APP-26 Andrew Moger: Rebuttal proof received 24 June 2020
- APP-27 A Baxter: amended version of Appendix AB7 (Shadow HRA), received 24 June 2020
- APP-28 Letter 24 June 2020, with attachments, including correspondence with Natural England

- APP-29 Response to third party representations, 24 June 2020
- APP-30 Response to Inspector's Further Questions on Housing Supply, 1 July 2020
- APP-31 Email dated 9 July 2020, re conditions, and agreeing to proceed to closing submissions
- APP-32 Closing submissions by Christopher Young QC (and revised photomontage), 10 Aug 2020
- APP-33 Section 106 agreement, executed on 11 August 2020
- APP-34 Email dated 11 August 2020, re closing submissions, photomontage, S.106 etc
- APP-35 Unilateral undertaking, executed 16 August 2020

#### **THE COUNCIL**

- COU-1 Statement of Case, and attachments, dated 21 November 2019
- COU-2 Updated Statement of Case, received 19 February 2020
- COU-3 Email dated 6 April 2020, comments on procedure and inclusion of self-build housing
- COU-4 Kevin Goodwin (Planning): Proof received 1 May 2020
- COU-5 Kevin Goodwin: Appendices A-E
- COU-6 Philip Russell-Vick (Landscape): Proof and Appendices A-H, received 1 May 2020
- COU-7 Philip Russell-Vick: Figures, PRV1-7
- COU-8 Tondra Thom (Habitats): Proof received 1 May 2020
- COU-9 Natalie Sharp (Housing Supply): Proof received 1 May 2020
- COU-10 Natalie Sharp: Appendices NS1 - 7
- COU-11 Responses to Inspector's questions Set 1, received 5 June 2020
- COU-12 Responses to Inspector's questions Set 2, received 5 June 2020
- COU-13 Responses to Inspector's questions Set 3, received 5 June 2020
- COU-14 Responses to Inspector's questions Set 4, received 5 June 2020
- COU-15 Kings Lynn v SoS & ELM Park Holdings (accompanying response to Set 4)
- COU-16 Responses to Inspector's questions Set 5, received 5 June 2020
- COU-17 Tondra Thom: Rebuttal re HRA, received 5 June 2020
- COU-18 Rebuttal statement re Self-Build Housing (with Appendix A), received 5 June 2020
- COU-19 Letter to interested parties, 9 June 2020: re procedure and further public consultation
- COU-20 Response to Further Questions on S.106 obligations, received 24 June 2020
- COU-21 S.106 Compliance Statement, received 24 June 2020
- COU-22 Response to Inspector's Further Questions on Housing Supply, received 1 July 2020
- COU-23 Response to Further Questions on Landscape, received 6 July 2020
- COU-24 Email dated 8 July 2020, re conditions, and agreeing to proceed to closing submissions
- COU-25 Closing submissions by Robert Williams (of Counsel), 6 August 2020
- COU-26 Email dated 10 August 2020, re appellants' closing submissions, photomontage, S.106 etc
- COU-27 Email dated 11 August 2020, re closing submissions and photomontage

#### **RULE 6 PARTY**

- RUL-1 Statement of Case and Appendices received 6 December 2019
- RUL-2 Proof of Mark Best, 1 May 2020
- RUL-3 Email dated 26 May 2020, from Patrick Cumberlege
- RUL-4 Responses to Inspector's Questions (Sets 1-5), 5 June 2020
- RUL-5 Email dated 2 July 2020, agreeing to proceed to closing submissions
- RUL-6 Closing submissions by Heather Sargent (of Counsel), 5 August 2020

#### **OTHER INTERESTED PARTIES AND ORGANISATIONS**

##### *Newick Parish Council*

- OIP-1 Letter dated 15 November 2019, and attached documents
- OIP-2 Letter dated 3 February 2020, and attachments
- OIP-3 Undated letter received 16 June 2020, and attachments

#### *Local Organisations*

- OIP-4 Newick Village Society – submission received 12 June 2020
- OIP-5 CPRE Sussex – letter dated 19 June 2020
- OIP-6 The Ramblers – letter dated 16 June 2020

#### *Natural England*

- OIP-7 Letter dated 22 May 2020

#### *Local residents and other interested persons*

- OIP-8 11 representations received between 22 January – 1 April 2020
- OIP-9 42 representations received in response to further consultation, 10 – 22 June 2020

#### **GENERAL**

- GEN-1 Statement of Common Ground, signed 5 June 2020 (by the Appellants and Council), and 24 June 2020 (by the Rule 6 party)
- GEN-2 Statement of Common Ground on Habitats Regulations Assessment, signed 1 May 2020 (by the Appellants and Council)
- GEN-3 Agreed list of draft conditions, received 24 June 2020

#### **CORE DOCUMENTS (RE-OPENED INQUIRY)**

##### *Application Documents*

- RD 1.1 Revised Application Boundary Plan – ZMG734 - 024
- RD 1.2 Revised Illustrative Masterplan – ZMG734 – 022

##### *Appeal and Relevant Redetermination Documents*

- RD 2.1 Redetermination Statement of Case on Behalf of the Appellant
- RD 2.2 Redetermination Statement of Case on Behalf of the Council
- RD 2.3 Redetermination Statement of Case on Behalf of the Rule 6 Party
- RD 2.4 Redetermination Statement of Common Ground
- RD 2.5 Statement of Common Ground: Habitats Regulations
- RD 2.6 The quashed appeal decision – Secretary of State's Letter and Inspector's Report APP/P1425/W/15/3119171 (Land at Mitchelswood Farm, Allington Road, Newick)
- RD 2.7 High Court Judgement: Baroness and Patrick Cumberlege vs SoS and DLA Delivery, [2017] EWHC 2057 (Admin)
- RD 2.8 Court of Appeal: DLA Delivery vs Baroness and Patrick Cumberlege and SoS, [2018] EWCA Civ 1305
- RD 2.9 SoS's draft Habitats Regulations Assessment, March 2019

##### *Lewes District Local Plan*

- RD 3.1 Lewes District Local Plan Part 1: Joint Core Strategy (May 2016 )
- RD 3.2 Lewes District Local Plan Part 2: Site Allocations and Development Management Policies (February 2020)
- RD 3.3 Lewes District Local Plan: Policies Map - Newick Inset
- RD 3.4 Saved Policies of the Lewes District Local Plan (2003)
- RD 3.5 Affordable Housing SPD (July 2018)

##### *Appellants' response to Lewes District Local Plan Part 2 Consultations*

- RD 4.1 DLA Representations on Lewes District Local Plan Part 2 – 25<sup>th</sup> January 2018
- RD 4.2 DLA Representations on Lewes District Local Plan Part 2 – 31<sup>st</sup> October 2018
- RD 4.3 DLA Representations on Lewes District Local Plan Part 2 – 14<sup>th</sup> August 2019

##### *Lewes District Local Plan Part 2: Examination Documents*

- RD 5.1 Lewes LP Part 2: Inspectors Report (Dec 2019)
- RD 5.2 Lewes LP Part 2: Main Modifications
- RD 5.3 Lewes LP Part 2 & Neighbourhood Plans: Habitats Regulations Assessment (August 2018)

- RD 5.4 Strategic Housing Land Availability Assessment (SHELAA), September 2018
- RD 5.5 SHELAA Map 9 – Newick and North Chailey, August 2018
- RD 5.6 Lewes LP Part 2 Examination: Council's response to Inspector's questions ID6 and ID7 (LDC/022 - Appendix 1)
- RD 5.7 Ashdown Forest visitor survey, Sept 2010
- RD 5.8 Ashdown Forest visitor survey, Dec 2016

*Central Government*

- RD 6.1 The National Planning Policy Framework (2019)
- [RD 6.2] [not used]
- RD 6.3 The National Planning Policy Framework (2012)
- RD 6.4 'Fixing Our Broken Housing Market', DCLG (2017)

*Housing Land Availability, Need, Supply and Housing Background Papers*

- RD 7.1 LDC Housing Land Supply Position Statement: 1 April 2016
- RD 7.2 LDC Housing Land Supply Position Statement: 1 April 2017
- RD 7.3 LDC Housing Land Supply Position Statement: 1 April 2018
- RD 7.4 LDC Housing Land Supply Position Statement: 1 October 2018
- RD 7.5 LDC Housing Land Supply Position Statement: 1 April 2019
- RD 7.6 LDC Authority Monitoring Report 2016-2017
- RD 7.7 LDC Authority Monitoring Report 2017-2018
- RD 7.8 LDC Authority Monitoring Report 2018-2019
- RD 7.9 Housing Delivery Test (extract), 2019

*Other Relevant Documents*

- RD 8.1 Ashdown Forest Recreation Impacts: SCG between 6 local authorities and Natural England (Dec 2018 / Jan 2019)
- RD 8.2 Ashdown Forest: SAMMS Tariff Guidance, Dec 2015
- RD 8.3 Newick SANG Management Plan
- RD 8.4 Natural England letter 2 April 2019: response to SoS draft Habitats Assessment
- RD 8.5 LDC letter 24 May 2019: response to SoS draft Habitats Assessment
- RD 8.6 Ashdown Forest Legal Agreement – between 6 local authorities and the Forest Conservators, 19 March 2020
- RD 8.7 Appeal Decision APP/P1425/W/19/3234681: 104 Allington Road, Newick
- RD 8.8 Conservative Party Manifesto, December 2019
- RD 8.9 LDC Corporate Plan, 2020-2024
- RD 8.10 'Pride of Place – A Sustainable Community Strategy for East Sussex', February 2008
- RD 8.11 Housing Allocations Policy: Lewes and Eastbourne Councils, June 2018
- RD 8.12 National Character Area 121: Low Weald
- RD 8.13 East Sussex County Landscape Assessment 2016: Area 3 Upper Ouse Valley
- RD 8.14 East Sussex County Landscape Assessment 2016: Area 4 Western Low Weald
- RD 8.15 Proof of evidence of Paul Gibbs to first Mitchelswood inquiry, 2016
- [RD 8.16] [not used]
- RD 8.17 Visual Representation of Development Proposals: Landscape Institute Technical Guidance Note 06/19, September 2019
- RD 8.18 Proof of Evidence of Daniel Wynn to first Mitchelswood inquiry, 2016
- RD 8.19 Appeal Decision APP/P1425/W/19/3237569: 45 Allington Road, Newick
- RD 8.20 Keith Langmead Ltd v SoS & Arun: [2017] EWHC 788 (Admin)  
[SEE Appendix C to R6 Party Statement of Case]
- RD 8.21 Davison v Elmbridge Borough Council: [2019] EWHC 1409 (Admin)  
[SEE Appendix E to R6 Party Statement of Case]

**THE FIRST INQUIRY, 2016** (DOCUMENTS HELD IN HARD COPY)

**FIRST INQUIRY PROOFS**

*Appellants' proofs*

- FI-1 Nicholas Freer (Planning): proof
- FI-2 Nicholas Freer: summary proof
- FI-3 Nicholas Freer: appendices NEF 1-63 (3 volumes)
- FI-4 Paul Gibbs (Landscape): proof, with Figs DJA 1-17
- FI-5 Paul Gibbs: summary proof
- FI-6 Stephen Hinsley (Affordable Housing): proof
- FI-7 Stephen Hinsley: appendices SH 1-11 (2 volumes)

*Council's proofs*

- FI-8 Sarah Sheath (Planning): proof, with appendices 1-10
- FI-9 Sarah Sheath: rebuttal proof
- FI-10 Natalie Carpenter (Housing Supply): proof, with appendices 1-10
- FI-11 Natalie Carpenter: rebuttal proof
- FI-12 Daniel Wynn (Landscape): proof, with appendices 1-3

**INQUIRY DOCUMENTS (FIRST INQUIRY)**

- ID-1 Opening submissions – Appellants (Feb 2016)
- ID-2 Opening submissions – Council (Feb 2016)
- ID-3 Bernard Wheatcroft Ltd v SoS, Oct 1980
- ID-4 Amended Plans: (i) Location Plan No. ZMG734-024, and (ii) Illustrative Layout No. ZMG734/022
- ID-5 Statement by Mrs R Bailey, local resident
- ID-6 Bus timetable for services 31 and 121
- ID-7 Statement by Mr J Lucas, local resident
- ID-8 SoS v S Gloucs Council and AZ: [2106] EWCA Civ 74
- ID-9 Newick Neighbourhood Plan: 'Opinions Collected', June 2013
- ID-10 Appeal ref APP/Y3940/A/14/2222641: Corsham
- ID-11 Appeal ref APP/L3815/W/14/3000690: Bracklesham
- [ID-12] [Draft S.106 agreement – missing from file]
- ID-13 SoS appeal decision ref APP/H2835/A/14/2221102: Earls Barton
- ID-14 Letters from DLA to M Bower and O Ormond, re S.106 agreement – 8 Feb 2016
- ID-15 Lewes Joint Core Strategy Examination: Inspector's Issues and Questions, Dec 2015
- ID-16 Statement of Common Ground (Housing Land), 10 Feb 2016
- ID-17 Newick services plan, Revision B
- ID-18 Indicative photomontage - amended for 50-unit scheme (Revised Appendix DJA 17)
- ID-19 Freedom of Information request re housing, Jan 2016
- ID-20 Newick Neighbourhood Plan: Character Assessment report
- ID-21 PPG extract
- ID-22 SoS appeal decision ref APP/D3830/A/12/2189451: Sayers Common
- ID-23 Statement by Mr T Turk, for Newick Village Society
- ID-24 Statement by Mr M Smith, local resident
- ID-25 Emails between DLA and Walker Morris LLP, acting for the Mortgage Business PLC
- ID-26 Agreed draft conditions, 2016
- ID-27 Land registry details for Reedens Meadow site
- ID-28 Executed S.106 agreement, dated 12 February 2016 (and proof of Power of Attorney)
- ID-29 LDC withdrawal of Refusal Reason 2, 12 Feb 2016

- ID-30 Closing submissions – Council (Feb 2016)
- ID-31 Closing submissions – Appellants (Feb 2016)

**POST-INQUIRY DOCUMENTS (AS LISTED IN ORIGINAL INSPECTOR'S REPORT)**

- PID-1 Appellants' comments on updated PPG re neighbourhood planning, 1 March 2016
- PID-2 Council's comments on updated PPG re neighbourhood planning, 2 March 2016
- PID-3 Inspector's report on Local Plan Part 1 Examination, 22 March 2016
- [PID-4] [Local Plan Part 1: Main Modifications – missing from file]
- PID-5 Council's comments on Local Plan Examination report, 8 April 2016
- PID-6 Appellants' comments on Local Plan Examination report, 18 April 2016

**CORE DOCUMENTS (FIRST INQUIRY)**

*Application Documents*

- CD 1.1 Site Location Plan ZMG734-001
- CD 1.2 Application Cover Letter
- CD 1.3 Illustrative Master Plan ZMG734-016
- CD 1.4 Alternative Illustrative Layout ZMG734-017
- CD 1.5 Arboricultural Report
- CD 1.6 Design and Access Statement
- CD 1.7 Planning Statement
- CD 1.8 Ecological Appraisal
- CD 1.9 Flood Risk Assessment
- CD 1.10 Transport Statement
- CD 1.11 Travel Plan Statement
- CD 1.12 Officers' Report, February 2015
- CD 1.13 Refusal Notice, February 2015
- CD 1.14 Consultation response - Natural England September 2014
- CD 1.15 Consultation response - Environmental Health, September 2014
- CD 1.16 Consultation response - Newick Parish Council, October 2014
- CD 1.17 Consultation response - LDC Planning Policy, October 2014
- CD 1.18 Consultation response - Southern Water, September 2014
- CD 1.19 Consultation response - Trees and Landscape Officer, October 2014
- CD 1.20 Consultation response - Housing Policy and Development, November 2014
- CD 1.21 Consultation response - Highways, January 2015
- CD 1.22 Consultation response - Sussex Police, September 2014
- CD 1.23 Consultation response - Archaeology, November 2014
- CD 1.24 Draft Section 106 Agreement

*Appeal Documents*

- CD 2.1 Planning Appeal Form
- CD 2.2 Statement of Case on Behalf of the Appellant: DLA Delivery (June 2015)
- CD 2.3 Statement of Case on Behalf of the Defendant: Lewes District Council (June 2015)
- CD 2.4 Statement of Common Ground (Oct/Nov 2015)
- CD 2.5 Site Notice Advertising Public Inquiry (Feb 2016)

*Emerging Lewes District Local Plan*

- CD 3.1 Lewes District LP Part 1: Joint Core Strategy – Proposed Submission, January 2013
- CD 3.2 Lewes District LP Part 1: Joint Core Strategy – Focussed Amendments, May 2014,
- CD 3.3 Lewes District LP Part 2: Site Allocations and DM Policies: Issues and Options Paper 1: Introduction, November 2013



- CD 3.4 Lewes District LP Part 2: Site Allocations and DM Policies: Issues and Options Paper 2: Housing, November 2013
- CD 3.5 Lewes District LP Part 2: Site Allocations and DM Policies: Issues and Options Paper 2 Appendices, November 2013
- CD 3.6 Lewes District LP Part 2: Site Allocations and DM Policies: Issues and Options Paper 5: Development Management Policies, Nov 2013
- CD 3.7 Lewes and South Downs Landscape Capacity Study, September 2012
- CD 3.8 Lewes and South Downs Rural Settlement Study (Version 2), January 2013
- CD 3.9 Lewes District Local Plan Part 2: Addendum to Sustainability Appraisal, August 2015
- CD 3.10 Lewes District Local Plan Part 1: Proposed Modifications Schedule 1, September 2014
- CD 3.11 Lewes District Local Plan Part 1: Proposed Modifications Schedule 2, January 2015
- CD 3.12 Lewes District Local Plan Part 1: Proposed Main Modifications Schedule 3, July 2015
- CD 3.13 Lewes District Local Plan Part 1: Proposed Modifications Schedule 4, July 2015
- CD 3.14 Lewes District Local Plan Part 1: Submission Document August 2015
- CD 3.15 Lewes and South Downs Draft Infrastructure Delivery Plan, July 2015
- CD 3.16 Lewes District Council and South Downs NP Local Plan Part: Update on Duty to Cooperate Compliance Statement, October 2015

*Appellants' response to Lewes District Local Plan Consultations*

- CD 4.1 Representations to Main Modifications Draft Joint Core Strategy, October 2015

*Lewes District Local Plan Examination Documents*

- CD 5.1 Inspector's Interim Findings Letter, 10 February 2015
- CD 5.2 LDC Letter to the Examining Inspector, 5 October 2015

*Newick Neighbourhood Plan*

- CD 6.1 Newick Neighbourhood Plan - Adopted Version, July 2015
- CD 6.2 Newick Neighbourhood Plan - Decision Statement, Lewes District Council, January 2015
- CD 6.3 Newick Neighbourhood Plan - Examiner's Report, December 2014
- CD 6.4 Newick Neighbourhood Plan - Examination version, August 2014
- CD 6.5 Report on Sustainability Appraisal and Development Site Selection, February 2014
- CD 6.6 Newick Neighbourhood Plan - Basic Conditions Statement
- CD 6.7 Newick Neighbourhood Plan - Consultation Statement
- CD 6.8 Witness Statement of E Sheath, in response to Neighbourhood Plan legal challenge

*Appellants' response to Newick Neighbourhood Plan Consultations*

- CD 7.1 Representation on Draft Neighbourhood Plan, May 2014
- CD 7.2 Regulation 16 representation, 13 October 2014
- CD 7.3 Counsel's Opinion submitted with Regulation 16 representation, October 2014

*Adopted Lewes District Local Plan*

- CD 8.1 LDC Assessment of Saved Local Plan Policies against the NPPF
- CD 8.2 Lewes District LP 2003 - Chapter 4, Environmental Principles
- CD 8.3 Lewes District LP 2003 - Chapter 7, Coast and Countryside Environment
- CD 8.4 Lewes District LP 2003 - Chapter 10, Transport and Communications
- CD 8.5 Lewes District LP 2003 Proposals Map - Newick

*Housing Land Availability, Need, Supply and Housing Background Papers*

- CD 9.1 Strategic Housing Land Availability Assessment (SHLAA), June 2014
- CD 9.2 Strategic Housing Land Availability Assessment - Appendices, June 2014
- CD 9.3 SHLAA Map of North Chailey and Newick - 2014
- CD 9.4 Strategic Housing and Economic Land Availability Assessment (SHELAA), October 2015
- CD 9.5 SHELAA – Appendices, October 2015

- CD 9.6 SHELAA Map of North Chailey and Newick - 2015
- CD 9.7 Housing Development Needs Study for Sussex Coast HMA, April 2014 (GL Hearn)
- CD 9.8 Updated Demographic Projections for Sussex Coast HMA Authorities, August 2013
- CD 9.9 LDC Affordable Housing Needs Assessment, January 2014
- CD 9.10 Lewes District Assessment of the Local Need for Housing, April 2011 (N Lichfield Ptnrs)
- CD 9.11 Housing Market Assessment of Lewes 2008, DTZ
- CD 9.12 LDC Authority Monitoring Report 2012
- CD 9.13 LDC Authority Monitoring Report 2013
- CD 9.14 LDC Authority Monitoring Report 2014
- CD 9.15 LDC Housing Supply – April 2013
- CD 9.16 LDC Housing Supply – August 2013
- CD 9.17 LDC Housing Supply – October 2013
- CD 9.18 LDC Housing Supply – January 2014
- CD 9.19 LDC Housing Supply – April 2014
- CD 9.20 LDC Housing Supply – October 2014
- CD 9.21 LDC Housing Supply – April 2015
- CD 9.22 Housing Trajectory and Housing Supply (as at 1 October 2015), LDC January 2016
- CD 9.23 Background Paper – identifying a housing target, September 2011
- CD 9.24 Background Paper – identifying a housing target, January 2013
- CD 9.25 Background Paper - Justification for the Housing Strategy, May 2014
- CD 9.26 Policy Constraints Report, March 2014
- CD 9.27 Spatial Strategy Background Paper, August 2015

#### *National Planning Documents*

- CD 10.1 The National Planning Policy Framework (2012)
- CD 10.2 Ministerial Statement – Planning for Growth, March 2011
- CD 10.3 PPG extract
- CD 10.4 Technical Guidance to the National Planning Policy Framework (DCLG, 2012)
- CD 10.5 'Housing and Growth' Ministerial Statement, 6 September 2012
- CD 10.6 'Housing the Next Generation' - Speech by Nick Boles MP, 10 January 2013
- CD 10.7 'Laying the Foundations: Housing Strategy for England', November 2011
- CD 10.8 Queens Speech 4 June 2014
- CD 10.9 Chancellor of the Exchequer's Mansion House Speech 12 June 2014
- CD 10.10 Living Working Countryside (the 'Taylor Review'), July 2008
- CD 10.11 Plan for Growth - HM Treasury, March 2011
- CD 10.12 National Infrastructure Plan - HM Treasury, December 2013
- CD 10.13 Chancellor of the Exchequer's Budget Statement, March 2014

#### *Other Relevant Documents*

- CD 11.1 Cricketfield Smallholding (Ref LW/14/0924) - Officer's Report, May 2015
- CD 11.2 Cricketfield Smallholding - Decision Notice, November 2015
- CD 11.3 Cricketfield Smallholding - Natural England consultation response, January 2015
- CD 11.4 Ashdown Forest 7km zone maps – Lewes, Wealden and Mid Sussex Districts
- CD 11.5 JCS Habitat Regulations Assessment - Addendum, March 2014
- CD 11.6 JCS Habitat Regulations Assessment - Background Paper, March 2014
- CD 11.7 Ashdown Forest SAMMS Tariff Guidance, December 2015
- CD 11.8 CIL Charging Schedule – LDC, October 2015
- CD 11.9 Kerbside Recycling Facilities SPG, January 2004
- CD 11.10 East Sussex Landscape Character Assessment 2010 (extracts)



# 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.