



Department for  
Communities and  
Local Government

Mr Paul Collins  
Phoenix Planning Consultancy  
Forum House  
Stirling Road  
Chichester  
PO19 7DN

Our Refs: APP/L3815/A/14/2223343

10 March 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY CROWNHALL ESTATES LTD: LAND SOUTH OF LOXWOOD FARM PLACE,  
HIGH STREET, LOXWOOD, BILLINGSHURST, WEST SUSSEX RH14 0RF  
APPLICATION REF: LX/13/03809/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Terry G Phillimore MA MCD MRTPI, who held an inquiry between 8 and 10 September 2015 into your client's appeal against a refusal to grant outline planning permission by Chichester District Council ('the Council') for 25 residential dwellings to comprise 14 private residential dwellings and 11 affordable residential dwellings, associated private amenity space and parking, in accordance with application reference LX/13/03809/OUT, dated 3 December 2013.
2. On 5 November 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 78 of the Town and Country Planning Act 1990, because the appeal involved a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority or where a neighbourhood plan has been made.

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

3. The Inspector recommends that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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

4. The Secretary of State wrote to you on 10 November 2015 having become aware that the Loxwood Neighbourhood Plan 2013-2029 (NP) had been subjected to two separate judicial review challenges and that your client had asked that the Court stay/defer those cases pending the outcome of this appeal. The Secretary of State's letter made it clear that he intended to await the outcome of those cases before issuing his decision on the appeal and

Jean Nowak, Decision Officer  
Planning Casework  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel 0303 444 1626  
pcc@communities.gsi.gov.uk

he accordingly varied the date for determining the appeal. Judgment was subsequently handed down on 21 January 2016 dismissing the two judicial reviews, and you wrote to the Secretary of State on 15 February 2016 to confirm that your clients would not be appealing the judgments and asking the Secretary of State to grant permission for the site. The Secretary of State replied on 16 February 2016 indicating that he would be proceeding to determine the appeal having regard to the full information available to him on the case. Copies of all this correspondence may be obtained by written request to the address on the bottom of the first page of this letter.

### **Other correspondence not seen by the Inspector**

5. The Planning Inspectorate received a letter from Mr R Slade on 3 September 2015, but dated 8 December 2014. In it, he expressed concern that a letter which he attached and which was dated 8 December 2014 had not been logged as part of the appeal process. The Secretary of State has carefully considered that substantive letter, but is satisfied that it does not contain any evidence which might have affected his overall decision. Copies of both letters may be obtained by written request to the address on the bottom of the first page of this letter.
6. The Planning Inspectorate also received an email from the Council, dated 2 December 2015, informing the Secretary of State that they had adopted a CIL Charging Schedule to come into effect from 1 February 2016 alongside a Planning Obligations and Affordable Housing SPD. As these documents have been subjected to their own adoption regime, including full consultation, the Secretary of State saw no need to separately seek views on them from the parties to this appeal, and copies of these documents can be inspected on the Council's website.

### **Policy considerations**

7. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the Chichester Local Plan: Key Policies 2014-2029 (LP) and the NP. The LP was adopted on 14 July 2015 and the NP was made on the same date. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the associated planning practice guidance (the Guidance) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

### **Main considerations**

9. The Secretary of State agrees with the Inspector that the main considerations are those listed at IR218.

#### *Consistency with development plan policies on the location of residential development*

10. Having carefully considered the Inspector's arguments at IR219-232, the Secretary of State agrees with his overall conclusion at IR233 that the appeal scheme is not in accordance with the policies of the development plan on the location of residential development. In coming to that conclusion, the Secretary of State recognises that the LP was adopted and the NP made after the Council's decision on this case (IR231). However, the Secretary of State takes the view that, at the time at which it determined this planning application, the LP and NP were material considerations to which, in accordance with paragraph 216 of the Framework, the

Council was required, as decision maker, to give substantial weight. As things now stand, the Secretary of State is satisfied that the appeal scheme does not accord with the development plan, and so he has gone on to consider whether there are any material considerations which might indicate that it should be determined otherwise.

#### *Housing land supply position*

11. Having carefully considered the appeal Inspector's reasoning at IR235-246 with regard to the housing requirement and land supply, the Secretary of State acknowledges the LP Inspector's recognition that the area's objectively assessed housing need (OAN) cannot be met in full in a way that is compatible with the principles of sustainable development (IR241). He therefore also agrees with the appeal Inspector's acceptance at IR243 that the LP figure should be the relevant starting point for considering the five year supply rather than the OAN. Furthermore, for the reasons given at IR 244, the Secretary of State agrees with the Inspector's support at IR246 for the Council's methodology in respect of the appropriate backlog and, for the reasons given at IR245, with the Inspector's conclusion that there is no need to add past shortfalls against the South East Plan to the requirement constituting the OAN.
12. The Secretary of State has also given careful consideration to the Inspector's discussion at IR247-250 of the disagreement between the parties relating to the relevant period over which the five-year supply of land should be considered. The Secretary of State acknowledges the appellant's concerns at IR250 relating to the seemingly rapid change in the Council's evidence on the five year position, but notes that no challenge was made to the evidence on future anticipated completions from individual sites included in the supply identified by the Council. The Secretary of State therefore agrees with the Inspector at IR250 that, despite the change in the Council's evidence on the future trajectory, it appears to remain the best evidence available, with no alternative substantive evidence to contradict it.
13. The Secretary of State therefore also agrees with the Inspector's conclusions at IR251 that there is no compelling basis on which to conclude that the LP finding that there is a five year housing land supply for the Plan area no longer applies. The Secretary of State therefore also agrees with the Inspector that relevant policies for the supply of land of housing in the LP and NP should not be regarded as out-of-date for the reason of such a supply not being demonstrated.

#### *Effect on the character and appearance of the locality and the settings of heritage assets*

14. For the reasons given at IR252-254, the Secretary of State agrees with the Inspector at IR256 that there would be a degree of conflict with those LP policies which seek to conserve and enhance the rural character of the area and its landscape, but that only minor localised harm would result from the loss of open undeveloped land at the edge of the settlement and the contribution that that makes to the countryside setting. He also agrees with the Inspector that, for the reasons given at IR255, there would be no harm to the significance of the listed buildings on the east side of the High Street across the road from the appeal site or any other non-designated heritage assets by way of impact on their settings.

#### *Whether the proposal amounts to sustainable development*

15. The Secretary of State agrees with the Inspector that the provision of 25 dwellings including 11 affordable homes would provide an economic benefit to which he gives significant positive weight (IR259).
16. On the environmental dimension, the Secretary of State also agrees with the Inspector (IR260) that the site is well located for accessibility to facilities of the village and that the infrastructure requirements necessary for the development could be met with no serious cumulative effects. Against that, however, the Secretary of State agrees with the Inspector

(IR260) that the loss of undeveloped land and erosion of the countryside would represent an element of harm so that, overall, the appeal scheme can be rated as performing moderately well on the environmental aspects.

17. The Secretary of State agrees with the Inspector (IR261) that the social dimension includes the supply of housing, particularly the affordable housing element. As concluded in paragraph 13 above, the Secretary of State agrees with the Inspector that there is not an established current shortfall in the District's five year housing land supply, but he nevertheless gives significant positive weight to the potential gain, particularly with regard to affordable housing.
18. Overall, for the reasons given at IR262-263, and having regard to paragraphs 183 and 198 of the Framework, the Secretary of State agrees with the Inspector that these sustainability benefits need to be weighed against the making of the NP and the exercise of local choice in the allocation of sites therein to meet strategic need. He agrees with the Inspector at IR263 that appeal proposal does not accord with the NP and that this conflict carries very substantial weight so that, as the Inspector concludes at IR264, the appeal scheme does not represent fully sustainable development.

### **Conditions**

19. The Secretary of State has considered the Inspector's recommended conditions in the Annex to the IR and his assessment at IR198-204 and IR265-278. The Secretary of State is satisfied that the proposed conditions are reasonable and necessary and meet the tests of the Framework and the guidance. However, he does not consider that these overcome his reasons for refusing the appeal.

### **Obligations**

20. The Secretary of State has noted the Inspector's comments at IR205-216 and IR279-285 with regard to the planning obligations contained in the submitted unilateral undertaking. However, as the Council's Community Infrastructure Levy (CIL) charging regime came into force on 1 February 2016, the terms of those obligations have now fallen away with all contributions now being subject to CIL.

### **Overall planning balance and conclusion**

21. The Secretary of State considers that there is no compelling basis on which to conclude that the LP finding that there is a five year housing land supply for the Plan area no longer applies. Therefore, as the appeal scheme fails to comply with the policies of the LP and the NP on the location of new residential development, the Secretary of State concludes that it does not comply with the development plan as a whole and so, having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, he has gone on to consider whether there are any material considerations which might nevertheless indicate that the scheme should be allowed. The Secretary of State gives the economic benefits of the scheme significant positive weight and, on balance, moderate weight to the environmental and social benefits. However, his overall conclusion is that the proposal does not represent fully sustainable development and, having regard to paragraph 198 of the Framework, he concludes that there is no overriding reason to reach a decision other than as indicated by the development plan.

### **Public Sector Equality Duty**

22. In making this decision, the Secretary of State has had due regard to the requirements of Section 149 of the Public Sector Equality Act 2010, which introduced a public sector equality duty that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity

between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. In this regard, and in coming to his decision, the Secretary of State acknowledges that the proposed scheme would have had some positive impact on protected persons arising from the provision of affordable housing, but he does not consider that this benefit would have been sufficient to outweigh his reasons for refusal.

### **Formal Decision**

23. 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 25 residential dwellings to comprise 14 private residential dwellings and 11 affordable residential dwellings, associated private amenity space and parking, in accordance with application reference LX/13/03809/OUT, dated 3 December 2013.

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

24. 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 six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
25. A copy of this letter has been sent to Chichester District Council. Notification has been sent to all other parties who asked to be informed of the appeal decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

Richborough Estates

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

by Terry G Phillimore MA MCD MRTPI

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

Date: 13 October 2015

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TOWN AND COUNTRY PLANNING ACT 1990

CHICHESTER DISTRICT COUNCIL

APPEAL MADE BY

CROWN HALL ESTATES LTD

Richborough Estates

Inquiry held on 8-10 September 2015; site visit made on 10 September 2015

Land South of Loxwood Farm Place, High Street, Loxwood, Billingshurst, West Sussex RH14 0RF

File Ref: APP/L3815/A/14/2223343

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Richborough Estates

**File Ref: APP/L3815/A/14/2223343**

**Land South of Loxwood Farm Place, High Street, Loxwood, Billingshurst, West Sussex RH14 0RF**

- 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 Crownhall Estates Ltd against the decision of Chichester District Council.
- The application Ref LX/13/03809/OUT, dated 3 December 2013, was refused by notice dated 25 June 2014.
- The development proposed is erection of 25 residential dwellings to comprise 14 private residential dwellings and 11 affordable residential dwellings, associated private amenity space and parking.

**Summary of Recommendation: The appeal be dismissed.**

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**PROCEDURAL MATTERS**

1. Determination of the appeal was recovered by the Secretary of State by way of a direction dated 5 November 2014. The reason given for the recovery is that "*the appeal involves a proposal for residential development of over 10 units in areas where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.*"
2. The appeal relates to an outline planning application with all matters of detail other than access and layout reserved for later approval. The Council reached its decision based on revised drawings showing some changes to the proposed layout, and the inquiry proceeded on the basis of these.<sup>1</sup>
3. The application was refused for three reasons. In summary the grounds for these were: 1) conflict with the emerging Loxwood Neighbourhood Plan which would result in an unsustainable rate of growth and undermine the Neighbourhood Plan making process; 2) insufficient information to enable assessment of the full highway safety impacts of the proposal; 3) failure to make adequate and proper provision for affordable housing and infrastructure.<sup>2</sup> On 27 July 2015 the appellant was advised by the Council that, on the basis of further assessments and additional information, and subject to appropriate planning conditions and obligations, the Planning Committee had agreed on 22 July that reason for refusal no. 2 would not be contested further at appeal.<sup>3</sup>
4. At the inquiry a unilateral undertaking containing planning obligations pursuant to section 106 of the Act was submitted by the appellant.<sup>4</sup>
5. I carried out an accompanied site visit on 10 September 2015.

**THE SITE AND SURROUNDINGS**

6. The site is located on the south-west edge of the village of Loxwood, a settlement which lies in the north-eastern part of the District. The parish of Loxwood has a population of around 1,480 in 608 households. The village is some 8km from

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<sup>1</sup> Document JSD.1 para 11

<sup>2</sup> LPA.4 Appendix 1

<sup>3</sup> JSD.1 para 20; LPA.4 Appendix 2

<sup>4</sup> APP.5



Cranleigh, 10km from Billingshurst, 16km from Petworth and 18km from Haselmere.<sup>5</sup>

7. The site comprises a rectangular parcel of unmanaged grassland of some 1.1ha which is enclosed by native trees, hedging and shrubs on all four boundaries. There is an existing field gate access into the north-eastern corner of the site from the B2133 (High Street) which abuts the full length of the eastern boundary. The site falls towards the road and to the south. The western side of the road has a grass verge abutting the site frontage but no footpath, with the footpath on this side of the road commencing some 41m to the north of the site's northern boundary. The eastern side of the road has a footpath running the full length of the frontage of the site. The speed limit is 30mph.
8. There is existing residential development to the east (across the road), north and south-east of the site, with open agricultural land to the west and north-west and a grazing field to the south. There are 6 Grade II listed buildings opposite on the east side of the High Street, with other listed and historic buildings in the vicinity. There are overhead electricity cables crossing the southern part of the site.
9. The site is within 100m of the village post office and store lying to the north, less than 400m from the village primary school and less than 500m from the doctor's surgery. There are 3 bus stops and access to the nearest public right of way within 100m. The village hall is 800m to the north and sports pitches about 1.3km away. The Wey and Arun canal with access to the towpath lies 300m to the south.<sup>6</sup>

## THE PROPOSAL

10. The drawings indicate a residential development across the site with a single point of access in the position of the existing field gate. Areas of public open space are shown at the southern end and along the eastern edge. The existing boundary vegetation would be maintained and enhanced, with wildlife planted areas in the north-west and south-east corners. The affordable housing units would be distributed around the development. A new footpath link from the access point would be provided to the village centre.<sup>7</sup>

## PLANNING POLICY

11. The development plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029 and the Loxwood Neighbourhood Plan 2013-2029. The Local Plan was adopted on 14 July 2015 and replaced the previously saved policies of the Chichester Local Plan First Review 1999. The Neighbourhood Plan was made on the same date. The development plan position has therefore changed since the Council's refusal of the appeal application, with the reasons for refusal citing the previous Local Plan and the draft Neighbourhood Plan as they were at that stage.<sup>8</sup>
12. The relevant policies in the two parts of the development plan are as follows.

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<sup>5</sup> JSD.1 paras 1-3

<sup>6</sup> JSD1 paras 4-9; location plans in LPA.4 Appendix 3; photos in LPA.1

<sup>7</sup> APP.2 Appendix A

<sup>8</sup> JSD.1 paras 14-16

## **Chichester Local Plan<sup>9</sup>**

### ***Strategic policies***

13. Policy 1 sets out the presumption in favour of sustainable development.
14. Policy 2 provides the development strategy and settlement hierarchy. This identifies the locations where sustainable development, infrastructure and facilities will be accommodated which in terms of scale, function and character support the role of the settlements. It starts with the Sub-regional Centre of Chichester City, followed by the Settlement Hubs of East Wittering/Bracklesham, Selsey, Southbourne and Tangmere. Outside of these, a number of identified Service Villages will be the focus for new development and facilities. The list includes Loxwood. Within these, provision will be made for: small scale housing developments consistent with the indicative housing numbers set out in policy 5; local community facilities; and small scale employment, tourism or leisure proposals. There is a presumption in favour of sustainable development within the Settlement Boundaries, which will be reviewed through the preparation of Development Plan Documents and/or Neighbourhood Plans, reflecting the following general approach: respecting the setting, form and character of the settlement; avoiding actual or perceived coalescence of settlements; and ensuring good accessibility to local services and facilities. Finally, development in the Rest of the Plan Area (small villages, hamlets, scattered development and countryside) is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with policies 45-46.
15. According to the supporting justification in paragraph 5.6, the Rest of the Plan Area is defined as the areas outside defined Settlement Boundaries.
16. Policy 4 deals with Housing Provision. This states that provision is made in the Plan to deliver 7,388 homes over the period 2012-2029. A broad distribution of housing across different parts of the Plan area is indicated, including 339 units in the North.
17. Policy 5 deals with Parish Housing Sites 2012-2029. Small scale housing sites will be identified to address the specific needs of local communities in accordance with the indicative parish housing numbers set out. Suitable sites will be identified in neighbourhood plans or in a Site Allocation DPD. The indicative number for Loxwood is 60.
18. Policy 6 sets out requirements for Neighbourhood Development Plans.
19. Policy 9 deals with Development and Infrastructure Provision, which will be coordinated to ensure that growth is supported by the timely provision of adequate infrastructure, facilities and services. The role of the Infrastructure Delivery Plan in this is identified.

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<sup>9</sup> LPA.4 Appendices 6-8

### ***Development management policies***

20. Policy 25 indicates that provision will be made for small scale development in the North of the Plan area through Neighbourhood Plans and/or the Site Allocation DPD, in accordance with policies 2 and 5.
21. Under policy 33 on New Residential Development, permission will be granted where it can be demonstrated that all of a number of specified criteria have been met. These include: the highest standards of design; adequate infrastructure; the proposal respects and where possible enhances the character of the surrounding area and site.
22. Policy 34 seeks a 30% affordable housing contribution as part of residential development, with this to be on site on all sites of 11 dwellings or more.
23. Policy 39 sets out criteria to be met relating to transport, accessibility and parking.
24. Policy 45 deals with Development in the Countryside. Within the countryside, outside Settlement Boundaries, development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements. Criteria to be met are that: the proposal is well related to an existing farmstead or group of buildings, or located close to an established settlement; the proposal is complementary to and does not prejudice any viable agricultural operations on a farm and other existing viable uses; and proposals requiring a countryside setting, for example agricultural buildings, ensure that their scale, siting, design and materials would have minimal impact on the landscape and rural character of the area.
25. Paragraph 19.21 states that areas outside Settlement Boundaries are defined as 'countryside' which includes villages, hamlets, farms and other buildings as well as undeveloped open land. In order to protect the landscape, character, quality and tranquillity of the countryside it is essential to prevent inappropriate development. At the same time, it is necessary to provide for the needs of small rural communities, and enable those who manage, live and work in the countryside to continue to do so.
26. Policy 46 deals with Alterations, Change of Use and/or Re-use of Existing Buildings in the Countryside.
27. Heritage and Design objectives are set out in policy 47, and criteria relating to the Natural Environment in policy 48.
28. Policy 54 on Open Space, Sport and Recreation seeks to retain, enhance and increase these facilities and improve access to them.

### **Loxwood Neighbourhood Plan<sup>10</sup>**

29. Policy 1 indicates that the Plan will provide a minimum of 60 houses on allocated and windfall sites located within the Settlement Boundary defined in accordance with policy 2. According to paragraph 18.2.2, there is a presumption in favour of sustainable development throughout the Plan Area. It is the intention to

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<sup>10</sup> LPA.4 Appendix 11

concentrate development within the Settlement Boundary in the context of a presumption in favour of sustainable development. This does not preclude sustainable development in the rural areas outside the Settlement Boundary in accordance with this Plan, the Chichester District Saved and Emerging Local Plan and the NPPF. Paragraph 18.2.3 states that the Settlement Boundary of the parish as defined in the CDC Saved Local Plan has been expanded to reflect the new developments which have been built since the Boundary was last drawn. This also includes the new allocated sites under the Neighbourhood Plan of Farm Close and the Nursery, and makes provision for windfall development adjacent to North Hall. The re-drawn Settlement Boundary also limits the potential for back garden developments.

30. According to policy 2, within the Neighbourhood Plan Area there is a presumption in favour of sustainable development as defined in this Neighbourhood Plan, the Chichester District Saved and Emerging Local Plans and the NPPF. The Settlement Boundary of Loxwood village is defined in figure 6. Any land within the parish which is outside the Settlement Boundary is deemed to be rural.
31. Under policy 3, the provision of allocated sites over the Plan period will be in accordance with policies 4 and 5. These deal respectively with Land at Farm Close and the Nursery Site, requiring a minimum of 17 and 43 units.
32. Policy 7 seeks to restrict street lighting. Policy 8 deals with foul sewerage.
33. Policy 9 requires the density of any new development to be in character with the local surrounding area, respect the semi-rural nature of the parish and be designed to give the impression of spaciousness. Under policy 10, all new developments should reflect the character and historic context of existing developments.
34. Policy 12 indicates that development within the rural area will be in accordance with the NPPF paragraph 55, the CDC Emerging Local Plan and the General Permitted Development Order. Paragraph 18.12.1 confirms that the rural area is defined as anywhere outside the Settlement Boundary. Under paragraph 18.12.3, any development will be limited primarily to that which requires a rural location, is sensitive to its setting by means of size, bulk and location, and supports rural diversification and sustainability of the rural area.
35. Policy 15 seeks fibre or internet connectivity for new developments. Policy 16 proposes that traffic calming along the B2133 and Station Road be progressively introduced by means of developer contributions where applicable.
36. The Neighbourhood Plan was subject to an examination in 2014 and the Examiner recommended that it proceed to referendum with modifications. A successful referendum was subsequently held on 24 July 2014. This was followed by a claim for judicial review, primarily on grounds relating to strategic environment assessment. This was settled without a hearing, with a second examination undertaken in February 2015. The recommendation was again to proceed to referendum with modifications, and a second successful referendum was held on 25 June 2015, after which the Plan was made.<sup>11</sup>

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<sup>11</sup> LPA.2 paras 4.23-4.28; LPA.4 Appendices 9 & 10; APP.1 paras 37-40; APP.2 Appendix D (first part)

37. There are currently further claims for judicial review, which are set for hearing on 18/19 November 2015.<sup>12</sup> At this stage the Neighbourhood Plan remains in place as part of the development plan.

### **AGREED MATTERS**

38. A Statement of Common Ground has been agreed between the appellant and the Council.<sup>13</sup> This describes the site, the proposal and the policy context. It also confirms that reason for refusal 2 is withdrawn subject to suitable conditions and/or planning obligations, and that reason for refusal 3 is capable of being addressed by way of a unilateral undertaking and conditions.
39. The summaries of cases of the main parties now set out are based on the closing submissions<sup>14</sup>, as supplemented orally, and the written and oral evidence, with references given to relevant sources.

### **THE CASE FOR CHICHESTER DISTRICT COUNCIL**

#### **Consistency with the policies of the development plan on the location of residential development**

40. The development plan comprises both the Chichester Local Plan: Key Policies 2014-2029 (LP) and the Loxwood Neighbourhood Plan 2013-2029 (NP).<sup>15</sup>
41. Policy 2 of the LP sets out its "*Development Strategy and Settlement Hierarchy*". It supports "*small scale housing*" in a defined list of "*service villages*", which include Loxwood, provided that such housing is "*consistent with the indicative housing numbers set out in Policy 5*".<sup>16</sup> Policy 2 therefore defers to policy 5 as to what the indicative housing number for Loxwood should be.
42. Central to policy 2 is that all service villages are to have "*settlement boundaries*" which "*will be reviewed through the preparation of Development Plan Documents and/or Neighbourhood Plans*". The LP Inspector was satisfied that this "*provides a clear strategy for addressing boundary reviews at an appropriate stage in the process of identifying and allocating sites*".<sup>17</sup> The principle that service villages should have settlement boundaries is plainly integral to the approach to sustainable development in the LP.
43. Policy 5, a strategic policy of the LP, indicates that Loxwood should provide 60 new dwellings in the period 2012-2029, with suitable sites to be "*identified in neighbourhood plans or in a Site Allocations DPD*".<sup>18</sup> As accepted by the appellant<sup>19</sup>, this provides a policy basis for the use of a neighbourhood plan to identify suitable sites for housing within the settlement boundary required by policy 2.
44. The NP for Loxwood has been made and is now formally part of the development plan. In her report on the emerging NP, the Examiner concluded that the

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<sup>12</sup> LPA.2 para 4.28; APP.1 paras 37-40; APP.2 Appendix D (first part)

<sup>13</sup> JSD.1

<sup>14</sup> LPA.19; APP.8

<sup>15</sup> LPA.2 section 4

<sup>16</sup> LPA.4 Appendix 6

<sup>17</sup> LPA.4 Appendix 4 para 18

<sup>18</sup> LPA.4 Appendix 7

<sup>19</sup> Cross-examination of Mr Collins

*"housing allocations will contribute towards the achievement of sustainable development and that there are no adopted strategic policies to justify a more significant growth strategy".*<sup>20</sup> At that time, the LP was still emerging, as the NP Examiner acknowledged.<sup>21</sup> Nevertheless, she noted the Council's proposed modification to the LP to increase the level of housing provision to 435 dwellings per annum.<sup>22</sup> That was ultimately the level of provision approved by the LP Inspector and carried forward into the adopted LP.<sup>23</sup> On this central issue of housing delivery, there was therefore no material difference between the adopted LP and the emerging LP considered by the NP Examiner. In this context, the NP Examiner concluded:

- The NP met the 'Basic Conditions' and, subject to her recommendations (all of which were then followed), the NP would *"provide a strong practical framework against which decisions on development can be made"*.<sup>24</sup>
  - One of the 'Basic Conditions' was that the NP would *"contribute to the achievement of sustainable development"*.<sup>25</sup>
  - The NP had *"sought to provide for sustainable growth by allocating two sites and identifying the provision of a minimum of 60 dwellings on those sites and windfall sites"*. The Examiner reiterated that, by doing so, policy 1 of the NP *"meets the Basic Conditions"*.<sup>26</sup>
45. Policy 1 of the NP states that it will provide *"a minimum of 60 houses on allocated and windfall sites located within the Settlement Boundary defined in accordance with policy two of this Plan"* (emphasis added).<sup>27</sup>
46. Policy 2 of the NP defines the settlement boundary for Loxwood. There is no dispute that the appeal site is not within it. Reading policies 1 and 2 together, it is plain that the NP provides no support for seeking to deliver any of the indicative provision of 60 houses on the site. The area covered by the NP is larger than the area within the settlement boundary, and there is a presumption in favour of sustainable development within the NP area as a whole under policy 2. However, the settlement boundary is obviously critical when deciding whether a development proposal is sustainable because it reflects a considered judgment about the area in which the indicative level of housing for Loxwood should be provided. The NP does not preclude the provision of any housing beyond the settlement boundary, but policy 2 is clear that land beyond the boundary is *"rural"*.
47. NP policy on the *"rural"* area is provided in policy 12. Development within this rural area *"will be in accordance with the NPPF paragraph 55, the CDC Emerging Local Plan and the General Permitted Development Order"*.<sup>28</sup> These are cumulative, not alternative requirements.

<sup>20</sup> LPA.4 Appendix 10 para 2

<sup>21</sup> LPA.4 Appendix 10 para 25

<sup>22</sup> LPA.4 Appendix 10 para 41

<sup>23</sup> LPA.4 Appendix 7 para 7.10 & policy 4 (7,388 dwellings over 2012-2029: 7,388/17 = 435)

<sup>24</sup> LPA.4 Appendix 10 para 6

<sup>25</sup> LPA.4 Appendix 10 para 18

<sup>26</sup> LPA.4 Appendix 10 para 45

<sup>27</sup> LPA.4 Appendix 11

<sup>28</sup> LPA.4 Appendix 11

48. The appellant's witness makes the ambitious claim<sup>29</sup> that the proposal complies with paragraph 55 of the NPPF because it is consistent with the first sentence of that paragraph, which is: *"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities"*. This high-level statement of policy cannot be read in isolation from development plan policies that deal specifically with the issue of where housing can be sustainably located. Moreover, it is difficult to see how the rural community of Loxwood would be 'enhanced or maintained' by having forced upon it a development proposal which it had decided democratically ought not to come forward in the NP. The suggestion that this sentence of paragraph 55 alone provides a sufficient basis for commending the proposal is fanciful and serves only to draw attention to the weakness of the policy support for it.
49. In any case, policy 12 of the NP explicitly defers to LP policy on development in the rural area. In the LP, the rural area is described as the *"Rest of Plan Area"* under policy 2.<sup>30</sup> The site is unquestionably within it, as the appellant's witness ultimately accepted having initially sought to argue, unrealistically, that it was not.<sup>31</sup> Policy 2 of the LP is clear that development in the Rest of the Plan Area is *"restricted to that which requires a countryside location or meets an essential rural need or supports rural diversification in accordance with Policies 45-46"*. This proposal could not possibly meet these criteria and the appellant has never suggested that it could.
50. Necessarily, therefore, the proposal is flatly contrary to policy 2 of the LP. The appellant's witness still sought to suggest that there was no substantive breach of policy 2 because the NP settlement boundary was approved by the NP Examiner prior to the formal adoption of policy 2. It was contended, therefore, that the settlement boundary was not drawn in accordance with the three criteria listed under the heading *"Settlement Boundaries"* in policy 2. This argument has no merit. As already stated, the version of policy 2 of the LP that was emerging when the NP Examiner wrote her report was not in any way materially different from the adopted policy 2, with the appellant's witness not even suggesting that there was a difference.
51. In truth, it is inconceivable that any of the 3 criteria set out under *"Settlement Boundaries"* in policy 2 would have led the settlement boundary for Loxwood to be drawn so as to include the appeal site. The NP Examiner was required to ensure that the NP complied with the 'Basic Conditions', one of which was that the NP contributed to the achievement of sustainable development. She could not have concluded that it did so had it been her judgment that, applying the criteria in policy 2, it failed to respect *"the setting, form and character of the settlement"*, it caused *"actual or perceived coalescence of settlements"*, or it failed to ensure *"good accessibility to local services and facilities"*. Were the NP Examiner to write her report again now following the adoption of the Local Plan, given the views that she expressed in her previous reports it is implausible that she would reject the Loxwood settlement boundary on any of these bases. This aspect of the appellant's evidence has no substance.

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<sup>29</sup> APP.1 para 158

<sup>30</sup> LPA.4 Appendix 6

<sup>31</sup> Cross-examination of Mr Collins

52. Notably, the appellant's witness failed to refer to a critical policy in the NPPF relating to neighbourhood plans that have been made. Paragraph 198 of the NPPF could not be clearer: *"Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted."*
53. The Loxwood NP has been brought into force. The proposal is unquestionably in conflict with it. The clear expectation of the Secretary of State in these circumstances is that planning permission should be refused.

### Housing land supply

54. Paragraph 47 of the NPPF states that local planning authorities, to *"boost significantly the supply of housing"*, should *"use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period"*. This paragraph makes clear that the exercise of seeking to meet the objectively assessed need (OAN) for housing is one for the plan-making stage. Neither it nor any other paragraph in the NPPF refers to the OAN when setting out policy for development management.
55. The evidence base for the LP led to an OAN of 505 dwellings per annum (dpa) for the Local Plan area (i.e. the District excluding the land within the South Downs National Park, which is the subject of separate policy).<sup>32</sup> The LP set a lower housing delivery requirement for the Plan area of 435 dwellings per annum.<sup>33</sup> The examining Inspector recorded the common ground before her that *"development in the Plan area is constrained by flood risk, environmental designations such as Chichester Harbour AONB, the SDNP [the South Downs National Park] and a number of designated or candidate sites of international importance for nature conservation"*.<sup>34</sup> The LP Inspector stated that she was satisfied that *"the Plan demonstrates a positive approach to maximising the delivery of new housing"*.<sup>35</sup>
56. The Council's formal adoption of the LP as recently as 14 July 2015 means that it unquestionably has at least a 5-year housing land supply for the purpose of the NPPF. Indeed, the Council's most recent evidence, based on the data available on 1 September 2015, is that it now has a 5.7 years supply (in respect of the period 2016-2021).<sup>36</sup>
57. The appellant has not made a serious attempt to challenge this in its evidence. Its witness sought to provide two 'Assessments'<sup>37</sup>, which he then updated<sup>38</sup>. However, his underlying methodology was unchanged and both assessments are fundamentally flawed.

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<sup>32</sup> LPA.4 Appendix 7 para 7.4

<sup>33</sup> LPA.4 Appendix 7 para 7.10 & policy 4 (7388 homes over 2012-2029: 7388/17 = 435)

<sup>34</sup> LPA.4 Appendix 4 para 50

<sup>35</sup> LPA.4 Appendix 4 para 60

<sup>36</sup> LPA.5

<sup>37</sup> APP.2 Appendix G – alternative calculations of a supply of 3.95 years or 4.7 years

<sup>38</sup> APP.3 Appendices A & B – alternative calculations of a supply of 3.8 years or 4.5 years



58. His 'Assessment A' starts by calculating the housing shortfall against the South East Plan target for Chichester District over the period 2006-2011. He derives a shortfall of 380 dwellings from this earlier period and then adds this to the OAN figure for the first 5 years of the plan period. This amounts to impermissible double-counting, contrary to the judgment of the High Court in *Zurich Assurance Ltd v (1) Winchester City Council and (2) South Downs National Park Authority [2014] EWHC 758 (Admin)*<sup>39</sup>, where Sales J rejected the claimant's submission that the inspector had erred by not making an arithmetical addition in respect of an alleged South East Plan "shortfall" when assessing the housing land requirement of the new core strategy.
59. The OAN figure in the LP already takes account of the historic shortfall.<sup>40</sup> The consultant that worked on assessing the OAN for the Council, GL Hearn, has given written confirmation of this.<sup>41</sup> There is no evidence to contest this point.
60. In any case, the appellant's methodology in Assessment A is infected by a further fundamental flaw in that it uses the OAN figure as the housing requirement for the Plan area. That approach is directly contrary to the advice of the relevant section of the Planning Practice Guidance (PPG) which states without qualification: "*Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply*".<sup>42</sup> The appellant's witness tacitly accepted that he was not taking an orthodox approach, but still sought to argue, unrealistically, that the 'housing requirement figure' in the LP should be taken, for this purpose, to be the OAN rather than the housing requirement of 435 dwellings per annum approved by the LP Inspector. That is an obvious misapplication of the PPG, which clearly distinguishes between the OAN on the one hand, and the Local Plan housing requirement, taking account of constraints, on the other. In effect, the appellant's evidence on this issue disregards the clear conclusion of the LP Inspector that the current Plan was sound in requiring 435 dwellings to be delivered at this time, pending a review within 5 years. The Inspector did not in any way suspend her conclusion on soundness until that review had been completed; she could not lawfully have commended the Plan for adoption had she done so.
61. Another basic error in Assessment A is that the South East Plan requirement for 2006-2012 that is relied upon was a plan-based constrained requirement. It is obviously inconsistent, and illogical, to count the South East Plan shortfall against the constrained, plan-based figure, but then to use the unconstrained OAN figure as a basis for calculating the housing requirement since 2012.
62. Moreover, the South East Plan housing requirement of 480 dpa applied in respect of Chichester District as a whole, including the area of the District within the South Downs National Park (SDNP). The new LP housing requirement of 435 dpa does not apply to the area within the SDNP, for which provision is to be made in a separate Local Plan. The emerging SDNP Local Plan requirement is likely to be some 70 dpa for the area of the SDNP within Chichester District.<sup>43</sup> The South East Plan housing requirement of 480 dpa therefore provided a lower level of

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<sup>39</sup> LPA.17 in particular paras 35, 40, 69-71, 92-97, 104

<sup>40</sup> Evidence in chief of Mr Davidson

<sup>41</sup> LPA.9

<sup>42</sup> ID: 3-030-20140306030 cited at APP.1 para 164

<sup>43</sup> Evidence in chief of Mr Davidson; LPA.4 Appendix 7 para 7.4

housing across the District than is now likely to be provided by a combination of provision in the Chichester LP and the SDNP Local Plan (in excess of 500 dpa). The appellant's Assessment A does not acknowledge any of this given its inconsistent use of figures from both the historic District-wide context and the current Plan-area context.

63. The Council's reliance on a constrained housing requirement of 435 dpa is not inconsistent with sustainable development. There is nothing in policy which states that a sustainable approach means that a level of housing meeting the OAN must always be delivered. Paragraph 47 of the NPPF is qualified: the full OAN is to be met in the Local Plan "*as far as is consistent with the policies set out in the Framework*". The judgment made by the LP Inspector was that an annual housing provision of 435 dpa "*can be realistically and sustainably delivered within the period, having regard to the identified constraints and potential development capacity*".<sup>44</sup> Having regard to this and the clear guidance in the PPG, it is plain that using the OAN figure as a basis for calculating the five year housing land supply in the Plan area is not justified in the face of a very up-to-date Local Plan.
64. The appellant's Assessment B uses the constrained Plan requirement instead of the OAN, but the other errors highlighted above remain. Neither Assessment is credible.
65. The appellant has not made any challenge to the Council's evidence on housing supply. The complaint of the appellant's witness that he had not had adequate time to do so<sup>45</sup> was spurious given that he had received the Council's detailed evidence on supply<sup>46</sup> when proofs were exchanged a month before the inquiry in the usual way. The Council's evidence was updated before the inquiry to reflect the position on 1 September 2015, taking account of a modest amount of further information it had received from developers in August after proofs were exchanged.<sup>47</sup> Some of this information enabled the Council to be more optimistic about the delivery of certain aspects of its supply and this was duly reflected in the updated evidence.<sup>48</sup> Having not adequately engaged with the Council's evidence on supply, exchanged a month before the inquiry, the complaint of the appellant's witness about the Council's approach had no foundation.
66. This left him with little more than a concern about the Council's housing delivery trajectory not meeting previous projections in the last 2 years. However, there were particular circumstances pertaining to sites in the District that explained this, including the need for strategic sites to come on stream and which were now starting.<sup>49</sup> In any case, it is only 4 months ago that the LP Inspector expressed herself satisfied, having reviewed all the evidence in a way that cannot be done in this section 78 appeal, that the LP "*demonstrates a positive approach to maximising the delivery of new housing*".<sup>50</sup> It is not yet 2 months since the Plan was formally adopted. It is reasonable that the Plan be given a proper

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<sup>44</sup> This quotation is from the LP as at LPA.4 Appendix 7 para 7.8

<sup>45</sup> Cross-examination of Mr Collins

<sup>46</sup> LPA.4 Appendix 12

<sup>47</sup> LPA.5

<sup>48</sup> Evidence in chief of Mr Davidson

<sup>49</sup> Cross-examination of Mr Davidson

<sup>50</sup> LPA.4 Appendix 4 para 60

opportunity to take effect before a fair assessment is made of its impact on the housing trajectory for the plan period.

67. It is also reasonable that the Council be allowed to rely on the five year period of 2016-2021 upon which its updated assessment of the housing land supply, as of 1 September 2015, is based.<sup>51</sup> This is consistent with the advice in the PPG that *"local planning authorities should have an identified five-year housing supply at all points during the plan period"*.<sup>52</sup> This advice is, in turn, consistent with earlier advice published by the DCLG in 2009 that it *"would rather authorities are looking forward for the purposes of land supply than submitting information that will be a year out-of-date by the time it lands on our desks"*.<sup>53</sup> This provides a reasoned justification for a forward-looking approach. Whilst the Council has provided updated evidence at the inquiry in relation to the period 2015-2020, showing a 5.3 years supply<sup>54</sup>, its approach of using the period 2016-2021 in its September 2015 assessment should be preferred.
68. In summary on this issue, therefore, the evidence demonstrates overwhelmingly that the Council has at least a five year housing land supply. The appellant's challenge to that position is not properly evidenced and is infected by several fundamental errors of logic and understanding; it should be rejected.

### **Impact on the character and appearance of the locality, including the effects on the settings of heritage assets**

#### **(a) Impact on character and appearance**

69. In addition to the conflict with strategic policy, the proposal is also contrary to several policies in the LP and NP which seek to protect the character and appearance of the site and its surroundings. In particular, these are policies 25, 33, 47 and 48 of the LP<sup>55</sup> and policies 9 and 10 of the NP<sup>56</sup>. Paragraph 61 of the NPPF is also clear that *"planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment"*.
70. LP policy 25 recognises that the north-east part of the LP area has a distinctive character. This area is predominantly rural, characterised by undulating landscapes with a high proportion of woodland, typical of the Low Weald. The Chichester Landscape Capacity Study (2011) concluded that the site lies within an area of substantial sensitivity and low landscape capacity.<sup>57</sup>
71. On the approach to the site from the south, the land rises fairly steeply from the Wey and Arun canal crossing, with the winding narrow road becoming enclosed by mature vegetation and rising land on the western side.<sup>58</sup> On the east side, there is traditional and historic built development. At this point, the narrow road

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<sup>51</sup> LPA.5

<sup>52</sup> ID: 3-030-20140306

<sup>53</sup> LPA.12

<sup>54</sup> LPA.13

<sup>55</sup> LPA.4 Appendix 8

<sup>56</sup> LPA.4 Appendix 11

<sup>57</sup> LPA.2 para 7.37; LPA.4 Appendix 19 Chichester District Landscape Capacity Study Extension pp 36 & 76

<sup>58</sup> LPA.1 section 3; LPA.2 p25

is at a lower level than the adjacent land and there is a distinct sense of enclosure and mystery. The proximity of the historic building development to the road, its height above the road level and the modest boundary treatments of the buildings mean that they are the predominant element in this scene. It is only beyond the site to the north that the village approach opens up.

72. The appellant argues that it is intended to retain some of the planted frontage on the site and to set the dwellings back beyond a planted open space. However, the proposal would still require the construction of an engineered road junction, associated visibility splays (59m to north and 59m to south), and a footway to the north for highway safety and access reasons.<sup>59</sup> These works would compromise the integrity of the planted boundary, and give an inappropriately urbanised character to an area that is semi-rural. The setting back of the development away from the road towards the surrounding countryside would also be at odds with the established character of Loxwood as comprising limited ribbon development along the High Street and the western end of Station Road, with the remaining built form being well concealed.
73. As a result the development would breach LP policies 25, 33, 47 and 48 as it would not:
- conserve or enhance the rural character of the area, the quality of its landscape and the natural and historic environment (policy 25);
  - respect or enhance the character of the surrounding area and site or its setting (policy 33);
  - recognise, respect and enhance the local distinctiveness and character of the area, landscape and heritage assets (policy 47);
  - recognise distinctive local landscape character and sensitively contribute to its setting and quality (policy 48);
  - respect and enhance the landscape character of the surrounding area and site, and public amenity (policy 48);
  - maintain the individual identity of settlements (policy 47).
74. The development would also undermine the integrity of the predominantly open and undeveloped character of the area (policy 47), have an adverse impact on the tranquil and rural character of the area (policy 48), and undermine the integrity of predominantly open and undeveloped land between settlements (policy 48).

**(b) Impact on settings of listed buildings**

75. There would also be significant harm caused to the settings of the listed historic buildings to the east of High Street which have historically dominated over the road.<sup>60</sup>
76. The close relationship of these properties to the road, their modest proportions, their traditional construction and appearance using local materials, and their interrelationship with the rural land to the west and its mature boundary all contribute to their special interest. The site, particularly the south-east corner, rises up to around 1.5m above the adjacent road, and development at this level would impose upon the rural setting of these historic buildings.

<sup>59</sup> Plans 1319/PL02 Rev Q & 130524-01

<sup>60</sup> LPA.1 pp4-8

77. The setting of these properties would also be harmed through the change in characteristics of the site and associated environmental effects including noise, activity, light and traffic movements in addition to the physical form of the development.<sup>61</sup>
78. For these reasons the development would also not comply with LP policies 25, 33, 47 and 48 in that it would not conserve or enhance the special interest and settings of these heritage assets or conserve features and elements that contribute to their special interest. Having regard to the duty imposed by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the proposal would fail to preserve the settings of the listed buildings.

### **Planning balance**

79. The development plan and national policy unequivocally require the dismissal of the appeal. It has been bold of the appellant, to say the least, to continue with the appeal in the face of a made NP which it clearly breaches. Whatever the sustainability credentials of the proposal in the narrow sense of its proximity to services, the appellant has no answer to the point that one of the three dimensions of sustainability in the NPPF is the social dimension. This requires the planning system to support "*strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being*".<sup>62</sup> The Loxwood community has responded keenly and conscientiously to the Government's support for neighbourhood planning, preparing a NP that has, in accordance with the NPPF and local strategic policy, made provision for the sustainable expansion of the settlement. To allow this appeal would drive a coach and horses through those efforts and fundamentally undermine confidence in neighbourhood planning. This would be not only in this District but in all areas of England where communities have responded positively to the "*direct power*" purportedly given to them in the NPPF "*to develop a shared vision for their neighbourhood and deliver the sustainable development they need*".<sup>63</sup>

### **Conclusion**

80. In summary, the proposal would fundamentally breach strategic and other policies in the development plan and there is no other material consideration that warrants granting planning permission. To the contrary, paragraph 198 of the NPPF, as a material consideration, reinforces the importance of upholding the NP. The appeal should be dismissed.

### **THE CASE FOR CROWN HALL ESTATES LTD**

81. Planning permission is sought for a modest and sustainable housing development on Loxwood's High Street. The development would contribute both to the vitality of the settlement of Loxwood and to the District as a whole, which has persistently failed to meet its housing requirements.

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<sup>61</sup> LPA.1 pp 9-11

<sup>62</sup> Para 7

<sup>63</sup> Para 183

82. To be noted at the outset is the changing nature of the Council's case. Many of the objections raised in reason 1 of the decision notice<sup>64</sup> have been abandoned, and concerns which were explicitly rejected in the decision and Committee report<sup>65</sup> were brought up in proofs of evidence. Whilst the Council's Committee was asked to and approved the withdrawal of reason for refusal 2 in July 2015, it did not approve the changes to the case under reason 1, in particular the raising of fresh alleged breaches of policy.<sup>66</sup> The appellant's witness was not cross-examined on many of the major issues which arose. The Council's closing submissions included at least six allegations about his conduct.<sup>67</sup> Those attacks were wholly unwarranted and there was no proper basis for them. He quite properly gave his professional view to the inquiry.
83. With regard to the reference by Counsel for the Council to paragraph 198 of the NPPF, that paragraph merely sets out one of the most basic principles of planning law (as in s38(6) of the Planning and Compulsory Purchase Act 2004). It is of no assistance to the Secretary of State for parties to berate witnesses for not mentioning trite principles. More substantively troubling, and of wide importance, is that it became apparent during the inquiry that the Council's housing delivery has failed and that the trajectory on which the Local Plan Inspector was persuaded to find the plan sound has turned out to be completely wrong, as explained below.

### The policy position

84. As relevant, the development plan for Loxwood comprises the Chichester Local Plan: Key Policies 2014-2029 (LP) and the Loxwood Neighbourhood Plan 2013-2029 (NP), both adopted in 2015.<sup>68</sup>
85. As the Council's Planning Policy Officer suggested in the consultation response prior to the application's determination, "*the site and development proposal appear generally acceptable in planning terms*".<sup>69</sup> This acceptability has subsequently been questioned by the Council in its revised case as put to the inquiry. However, the policy position has remained fundamentally the same since the original determination, save for the fact that now the LP has been adopted and the NP has been made.
86. In summary, the position in policy terms is:
- The appeal scheme accords with both of these Plans;
  - The housing policies in these plans are out-of-date because the Council does not have a five year housing land supply;
  - Permission to judicially review the Loxwood Neighbourhood Plan has been granted. If those proceedings are successful then the Neighbourhood Plan can be put aside;
  - The proposal accords with the presumption in favour of sustainable development (paragraph 14) and development in rural areas (paragraph 55) in the NPPF.

<sup>64</sup> LPA.4 Appendix 1

<sup>65</sup> APP.2 Appendix B

<sup>66</sup> LPA.4 Appendix 2

<sup>67</sup> LPA.19

<sup>68</sup> APP.1 Section 4

<sup>69</sup> APP.2 Appendix B p103

87. The presumption in favour of sustainable development applies across the Loxwood area.<sup>70</sup> The proposal is sustainable development that, in accordance with paragraph 55 of the NPPF, would enhance the vitality of Loxwood, and should be granted permission.

88. Each of these aspects of the policy position will be examined in turn.

### ***The Chichester Local Plan***

89. Policy 1 of the LP applies the NPPF presumption in favour of sustainable development to the District.<sup>71</sup>

90. Policy 2 identifies service villages such as Loxwood as locations to accommodate sustainable development. It provides that: "*Outside of Chichester city and the Settlement Hubs, the Service Villages will be the focus for new development and facilities*".<sup>72</sup> Such new development will be provided for through, among other means, "*Small scale housing developments consistent with the indicative housing numbers set out in Policy 5*".<sup>73</sup> The remainder of policy 2 refers to Settlement Boundaries and the Rest of the Plan Area, as considered below.

91. The Committee report and the reasons for refusal rightly accepted that the proposal complies with LP policy 2. The Council's Statement of Case maintained that acceptance. The Council first tried to allege a breach of policy 2 in the evidence of its planning witness.<sup>74</sup> Its policy witness agreed in his oral evidence<sup>75</sup> that the proposal accords with policy 2, which was also then accepted by its planning witness<sup>76</sup>. That is not surprising, since development of this scale is acceptable in service villages. The indicative housing figure for Loxwood in the LP policy 5 is 60, a figure which is a minimum and which is intended to be exceeded. The criticism of the position of the appellant's witness on this point in the Council's closing submissions<sup>77</sup> is incompatible with the Council's acceptance in its decision and evidence of compliance with that policy. This shows that the Council's case is far removed from its decision and from reality.

92. Policy 2 does not confine sustainable development at the Service Villages to that within the Settlement Boundaries. It is a common error, and one often made by the Council, to treat policy text which supports development in particular circumstances as opposing development under any other circumstances.

93. Policy 2 further provides that settlement boundaries will be "*reviewed through the preparation of Development Plan Documents and/or Neighbourhood Plans*". It provides that reviews should be conducted using the following general approach:

- 1. Respecting the setting, form and character of the settlement;*
- 2. Avoiding actual or perceived coalescence of settlements; and*

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<sup>70</sup> LPA.4 Appendix 11 policy 2

<sup>71</sup> LPA.4 Appendix 6

<sup>72</sup> LPA.4 Appendix 6

<sup>73</sup> LPA.4 Appendix 6 - policy 5 identifies that the indicative housing number for Loxwood will be 60

<sup>74</sup> LPA.2 section 7

<sup>75</sup> Cross-examination of Mr Davidson

<sup>76</sup> Cross-examination of Ms Langford

<sup>77</sup> LPA.19 para 10(2)

3. *Ensuring good accessibility to local services and facilities*.<sup>78</sup>

94. The NP's purported review of the Settlement Boundaries for Loxwood did not, and did not claim to have, followed this approach.<sup>79</sup> It simply took the old boundary and added sites it proposed to allocate. Indeed, the Examiner was critical of the Settlement Boundaries adopted, but could not intervene under the 'Basic Conditions',<sup>80</sup> noting that the LP was not part of the development plan at that time. The Settlement Boundary review cannot therefore be said to be in accordance with the requirements of the LP. The Council's policy advice that there was compliance with LP policy 2 was after the new settlement boundaries had been accepted (for the first time) by the Examiner.
95. Correctly, no breach of the Rest of the Plan Area part of policy 2 has been alleged in the Council's decision and case. That part of the policy rests on Settlement Boundaries being in accordance with policy 2. The development in the countryside policy which applies is policy 45.<sup>81</sup> The Council has also rightly not alleged a breach of that policy, since it is concerned with development in the countryside with needs which "*cannot be met within or immediately adjacent to existing settlements*". The appeal site is immediately adjacent to an existing settlement, so is not subject to that approach.
96. The appeal scheme, alongside the two allocated sites within Loxwood identified by the NP (see below), would result in the provision of a greater number of dwellings than the indicative figure. However, this additional housing would deliver the shortfall in the North of Plan Area that the LP identifies. The scheme would therefore achieve the housing requirements of the Local Plan, contributing to the 339 dwellings needed in the North of Plan Area.<sup>82</sup> It would remedy almost exactly the 24 dwelling shortfall which the Local Plan presently forecasts for this area.<sup>83</sup> The Council's planning witness accepted that it is desirable to meet that need.<sup>84</sup> It would do this before any consideration is given to the inadequacy of the LP in terms of its current accepted inability to deliver the Objectively Assessed Needs of the District, which is considered in further detail below.
97. The Council's decision does not allege any breach of the LP's locational policies, as distinct from its development management policies.

***The Loxwood Neighbourhood Plan***

98. Policy 1 of the NP sets a minimum housing requirement of 60 dwellings within the Settlement Boundary but no maximum number. The 60 figure is anticipated to be brought forward principally on two allocated sites, Farm Close and the Nursery site.<sup>85</sup> The Council's planning witness accepts that the 60 figure is expected to be exceeded.<sup>86</sup> However, there is no figure for the amount of housing that should be delivered in Loxwood village as a whole or in the parish, even though

<sup>78</sup> LPA.4 Appendix 6

<sup>79</sup> LPA.4 Appendix 11 para 18.2.3 & figure 6

<sup>80</sup> LPA.4 Appendix 10 para 53

<sup>81</sup> LPA.4 Appendix 8

<sup>82</sup> LPA.4 Appendix 7 policy 4

<sup>83</sup> LPA.4 Appendix 7 pp48-49 Table 7.1

<sup>84</sup> Cross-examination of Ms Langford

<sup>85</sup> LPA.11 policies 4 & 5

<sup>86</sup> LPA.2 p22 para 7.23



- the Neighbourhood Plan envisages residential development beyond the Settlement Boundary.
99. Policy 2 of the NP applies a presumption in favour of sustainable development, in accordance with the NPPF, both inside and outside the Settlement Boundary. Outside of the settlement boundary, land such as the appeal site, "*within the parish of Loxwood*" but "*which is outside the Settlement Boundary of Loxwood village is deemed to be rural*", brings into play Policy 12.<sup>87</sup> The appeal proposal is sustainable in accordance with local and national policy and therefore accords with Policy 2.
100. The decision notice alleged a breach of the NP policy 3, but that has not been raised in the Council's evidence.
101. NP policy 12 applies NPPF paragraph 55 and provides that rural development must be in accordance with the LP. NPPF paragraph 55 establishes that "*housing should be located where it will enhance or maintain the vitality of rural communities*". As accepted by the Council's planning witness<sup>88</sup>, the appeal proposal would enhance the vitality of the rural community of Loxwood, and therefore accords with the NPPF paragraph 55. It thus also accords with the NP policy 12. Given the admitted compliance with LP policy 2 there is no locational issue with NP policy 12, even had the strands of the latter been conjunctive rather than disjunctive. In this respect the claim by the Council's planning witness that any development must comply with the NPPF, LP and the General Permitted Development Order is nonsensical; the policy is not confined to permitted development rights requiring prior approval processes. She was also wrong to say that policy 12 is not concerned with housing, since the only NPPF text the policy refers to is paragraph 55, which is solely about housing. The appeal site is an appropriate and sustainable site for housing development within the District which would bring benefits to the community of Loxwood, as set out below.
102. The Council's Committee report made much of an alleged conflict between the proposal and the then emerging NP.<sup>89</sup> Now that the NP has been made, the prematurity arguments put forward at the time of the original determination have fallen away. In their place, the Council has sought to maintain that there is a conflict between the proposal and the NP. However, no such conflict has been identified.
103. It is acknowledged that the NP identifies several allocated sites as the community's preferred developments within the expanded Settlement Boundary.<sup>90</sup> However, that site selection exercise confirmed the sustainability and deliverability of the appeal site, notwithstanding defective scoring of sites by the Parish Council. The site meets the Strategic Housing Land Availability Assessment and NPPF criteria for being deliverable and developable.<sup>91</sup> The site is deliverable because it is available now, provides a suitable location and is achievable and viable within the next five years. It is developable for the same

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<sup>87</sup> LPA.4 Appendix 6

<sup>88</sup> Cross-examination of Ms Langford

<sup>89</sup> APP.2 Appendix B pp100-104

<sup>90</sup> LPA.11 policies 4 & 5

<sup>91</sup> APP.2 Appendix G paras 2.5-2.7; NPPF para 47 footnotes 11 & 12

reasons. The NP process recognised this by including the site in its site assessment process, which examined and assessed all sustainable "*potential housing sites*" "*capable of accommodating 6 or more houses*".<sup>92</sup>

104. The NP clearly applies the presumption in favour of sustainable development within the whole of the neighbourhood plan area, as it must do in accordance both with the LP and the NPPF.<sup>93</sup> The neighbourhood plan witness accepted that the appeal site is sustainable.<sup>94</sup> Leaving aside any five year housing land supply assessment, the NP permits sustainable development where it complies with paragraph 55 of the NPPF. The Council has not undertaken a serious analysis as to why the appeal scheme would not accord with paragraph 55. Instead, it has merely alleged a conflict with the NP which does not exist.
105. The supporting text in the NP seeks to limit rural development "*primarily to that which requires a rural location*" except where development will be "*sensitive to its setting by means of size, bulk and location*".<sup>95</sup> The policy text prevails. Development compliant with paragraph 55 of the NPPF requires a rural location since it could not perform that service otherwise. Some of the relevant features of the proposed development would be determined at the reserved matters stage, but the appeal scheme has been and will be designed with the required sensitivity. Consequently, the development would support the "*sustainability of the rural area*".<sup>96</sup>
106. It should be noted that the NP is subject to two separate judicial review challenges which centre on the potential unlawfulness of the methodology surrounding the housing policymaking process during the preparation and making of the NP. In particular, among other things, the site selection procedure and assessment is under challenge, including the scoring system. Were the NP to be quashed in the judicial review proceedings, due to be heard in November, then that plan would cease to have any material impact on this appeal.<sup>97</sup> As stated above, the prematurity argument does not apply now (as the plan has been made). It would also not apply in the event of a quashing, since the plan process has been subject to repeated, and twice admitted, legal errors and it cannot be said what its future would be were a third error to be established.
107. The principle that the appeal site is a sustainable site "*with potential for development*" is nevertheless established in the NP.<sup>98</sup>
108. In view of its Committee report and the decision taken by elected members, the Council cannot take issue with the basic suitability and sustainability of the site. The recommendation was made to refuse permission on the sole grounds of prematurity and alleged conflict with the then emerging NP. However, there is no justification for the claim that the proposals conflict with either the LP or the

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<sup>92</sup> LPA.4 Appendix 11 paras 18.3.1 & 18.3.3

<sup>93</sup> LPA.4 Appendix 11 policy 2

<sup>94</sup> Cross-examination of Mr Colling

<sup>95</sup> LPA.4 Appendix 11 para 18.12.3

<sup>96</sup> LPA.4 Appendix 11 para 18.12.3

<sup>97</sup> Order of Dove J, 5 June 2015 & Order of Cranston J, 5 August 2015: they determined that the Appellant has an arguable case

<sup>98</sup> LPA.4 Appendix 11 para 18.3.5

NP. In fact, the development accords with both, despite that the NP currently remains subject to the judicial review proceedings.

### **Conclusions on Policy**

109. There is no conflict between the appeal proposal and LP policy 2, a position accepted by the Council's witnesses. The proposal also complies with the NPPF paragraph 55 and it follows that there is compliance with the NP policy 12.

### **Five Year Housing Land Supply**

110. Whilst important in general, the five year housing land supply debate does not matter for this appeal as the proposal accords with the development plan and is sustainable. However, the overarching position is that Chichester has failed persistently to meet its housing requirements. That failure is continuing and has no immediate solution, and the Council is incapable of predicting housing completions with any accuracy. Most worryingly, the Local Plan Inspector was persuaded to recommend adoption on the basis of a housing trajectory which has collapsed within months, losing 200 homes in two years. The Council does not have a five year housing land supply, and its policies for the supply of housing in the LP and NP are therefore out-of-date.

111. The Council in its Committee report and Statement of Case recognised that the District does not have a five year housing land supply.<sup>99</sup> It has attempted to reverse this acceptance in its evidence.<sup>100</sup> It further fundamentally changed its position by producing another purported updated statement a few days before the commencement of the inquiry, which took the five year housing land supply position from 2016-2021<sup>101</sup>, with its policy witness giving evidence in support of this. The Council has also produced an updated statement which is meant to reflect actual completions for the period of 2015-2020.<sup>102</sup>

112. The actual position is as follows. The last published NPPF-compliant annual five year housing land supply assessment is for 2014-2019.<sup>103</sup> That assessment showed a 3.7 year supply. The current period is 2015-2020 in accordance with the PPG. The attempt to adopt a later period, following the exchange of evidence, exacerbates two of the major failings in the Council's housing approach. It requires six years of predictions rather than five, despite the Council finding the next year's predictions to be challenging enough. It also extends the time in which necessary development is being allowed to come forward, since the requirement only has to be met by the end of that period. This undermines the purpose of a five year housing land supply, which is for housing to actually be built. A 2009 letter from the DCLG to a local authority cannot assist on the meaning of subsequent policy and guidance.<sup>104</sup>

113. The Council's five year housing land supply statements for 2015-2020 and for 2016-2021 also omit two central factors which increase the shortfall.<sup>105</sup>

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<sup>99</sup> APP.2 Appendix B para 8.2 – refers to a supply of 4.3 years

<sup>100</sup> LPA.4 Appendix 12

<sup>101</sup> LPA.5

<sup>102</sup> LPA.13

<sup>103</sup> APP.2 Appendix E

<sup>104</sup> LPA.12

<sup>105</sup> APP.2 Appendices F & G

114. Firstly, the housing land supply should meet the shortfall which occurred prior to the plan period within the first five years of the plan. This is to accord with the PPG, which confirms that "*local planning authorities should aim to deal with any undersupply within the first five years of the plan period where possible.*"<sup>106</sup> The pre-2012 shortfall has been completely omitted by the Council (although it was included in the 2013 figures). The Council seeks to argue that the shortfall was accommodated in the Objectively Assessed Need (OAN). This assertion is based on an email from GL Hearn.<sup>107</sup> However, the underlying report used for the OAN, dated August 2014<sup>108</sup>, contains no reference to the shortfall and nothing has been identified in its calculations which use it in any form. The earlier April 2014 report<sup>109</sup> does refer to the shortfall to 2011, but not the greater cumulative shortfall to 2012. That report did not seek to meet the earlier shortfall, but rather vaguely included it in market indicators.
115. With respect to the case of *Zurich Assurance Limited v Winchester City Council*<sup>110</sup>, that concerned the Winchester Local Plan and the shortfall was factored into the relevant calculation. The difference here is that, looking at the material, nothing can be found that relates to the shortfall. The Council asserts that it is inappropriate to add the allegedly constrained figure in the South East Plan to the unconstrained OAN for the Chichester District.<sup>111</sup> However, there is no evidence before the inquiry as to whether the South East Plan figure was constrained. More importantly, the point has no weight. The Council has not explained by any analysis its argument that the use of a shortfall based on what is said to be a constrained South East Plan figure is illogical when added to an unconstrained OAN figure.
116. The second fundamental error is that the housing land requirement should be based on the OAN for the area. The LP confirms that the OAN for the District outside the South Downs National Park Area is 505 dwellings per annum (dpa).<sup>112</sup> As prepared, the LP final draft submission only provided for an annual requirement of 410 dpa.<sup>113</sup> It was acknowledged during the LP examination that this was an inadequate figure, and the Inspector asked the Council to undertake an evidence audit of its housing supply assessment to see whether it could get closer to meeting the required OAN.<sup>114</sup> The figure of 435 dpa was finally set on the basis, as stated in the LP, that "*the Council will review the Local Plan within five years to aim to ensure that OAN is met.*"<sup>115</sup> The attempt to now use the 435 figure as the requirement ignores the basic point that the OAN still remains to be met. This is not a Local Plan which sets a requirement lower than the OAN on the basis that the OAN cannot be achieved because of constraints, but a plan that meets part of the OAN and requires a quick review in order to make up the difference.

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<sup>106</sup> ID: 3-035-20140306

<sup>107</sup> LPA.9

<sup>108</sup> LPA.11

<sup>109</sup> LPA.10

<sup>110</sup> LPA.17

<sup>111</sup> Cross-examination of Mr Collins

<sup>112</sup> LPA.4 Appendix 7 paragraph 7.4

<sup>113</sup> LPA.4 Appendix 4 para 49

<sup>114</sup> LPA.4 Appendix 4 para 51

<sup>115</sup> LPA.4 Appendix 7 para 7.9

117. The LP was therefore found sound only on condition that the Council will undertake a review after five years in order to ensure that progress towards the delivery of the District's OAN is monitored and adjusted accordingly.<sup>116</sup> The Inspector expected that the OAN would be achieved after the first five years of the plan period, that is from 2017-2018.<sup>117</sup> She stated: "*Subject to setting [the 435] target ... and the commitment to an early review of the Plan, I am satisfied that the Plan demonstrates a positive approach to maximising the delivery of new housing*" as required by national planning policy.<sup>118</sup> The Council's need to meet the OAN is reflected in modification MM09, which added:

*"The Council acknowledges that whilst accommodating a significant increase in housing provision the plan does not meet the current objectively assessed need for housing[...]"*

*For this reason the Council will review the Local Plan to aim to ensure that OAN is met. Initial priorities are to progress the Site Allocation DPD and support identification of sites through neighbourhood plans."*<sup>119</sup>

118. The LP consequently accepts that the OAN figure should be achieved and that the LP fails to do so, and for that reason "*the Council will review the Local Plan within five years to aim to ensure that OAN is met*". The Council's witnesses did not seriously try to contest this fact. Indeed, its policy witness agreed that it was desirable that the OAN is achieved in accordance with the NPPF, and accepted that the OAN from 2012 had to be achieved.<sup>120</sup> This means that there is a substantial and increasing shortfall which should be acknowledged and addressed as much as possible. The reality is that the OAN can be achieved, but the LP failed to do so. Rather than delay the plan further or require its withdrawal, the Inspector decided that it should be approved but with urgent steps taken to review and improve the situation.

119. Consequently the housing requirement for the District is the OAN, and all parts of the planning system should try to increase housing supply to that level. The simple and obvious ways of approaching the OAN figure are to grant planning permission for further sustainable sites or include them in the Site Allocations DPD and Neighbourhood Plans. It would be harmful to leave attempts to achieve the OAN until after the LP review when previous undersupply will have to be dealt with. The housing requirement is quite simply 'what does the Council need to provide?', and that is the OAN. Both the LP and the NP are consistent with this more ambitious approach in supporting sustainable housing development beyond the proposed levels or allocated sites.

120. Using the OAN adds 70 dwellings per year to the requirement, increasing the shortfall in the 2015-2020 period by 560.<sup>121</sup>

121. Even without these adjustments, the Council's new information shows there is no five year housing land supply and, at least as importantly, the trajectory which persuaded the LP Inspector has proved to be seriously wrong. The Council

<sup>116</sup> LPA.4 Appendix 4 paras 38-56

<sup>117</sup> LPA.4 Appendix 4 para 56

<sup>118</sup> LPA.4 Appendix 4 para 60

<sup>119</sup> LPA.4 Appendix 4 Appendix 4 Modifications p4; Appendix 7 para 7.9

<sup>120</sup> Cross-examination of Ms Langford

<sup>121</sup> 3 x 70 for 2012-2015, then 5 x 70 for the five years

had predicted, and told the Inspector, that completions in 2014-2015 would be 477.<sup>122</sup> The reality, shown by the County Council figures, was 351.<sup>123</sup> Therefore, housing completions had been over estimated by a third. This was not a temporary blip, since completions for 2015-2016 are now predicted to be 70 less than the figure given in the August 2015 evidence.<sup>124</sup>

122. This has three consequences.

123. Firstly, 200 homes have dropped off the next two years of the trajectory which the Local Plan process considered showed the achievement of a five year housing land supply. Contrary to the Inspector's belief, the existing plan period shortfall will not be made up in the next five years.

124. Secondly, the Council's predictions have been shown to be hopelessly optimistic. Whilst they are said to be based on information from developers, the Council has so little understanding of what is going on in its area that even months after the 2014-2015 year it was still telling the Secretary of State in its inquiry evidence that there would be a surplus.

125. Thirdly, the housing requirement for 2015-2020 exceeds the housing supply identified in the Council's August evidence.<sup>125</sup>

126. During the inquiry the Council produced new 2015-2020 figures.<sup>126</sup> The requirement conformed with the figures accepted by its policy witness<sup>127</sup>, but the claimed supply was increased by 306<sup>128</sup>. This was despite that no new permissions had been granted since 5 August 2015. The end of the tables to the August and September figures shows that the Council has reduced the completions for 2015-2016 and 2016-2017, but increased those for the latter part of the period to very high levels (879 in 2018-2019). Given its previous forecasting errors, the persistent undersupply in the area and the frequent changes in its figures, those assumptions need to be tested, but the Council has produced no evidence upon which they could be.

127. The Council has bizarrely criticised the appellant for not having analysed the August 2015 tables.<sup>129</sup> However, the details of these do not matter on the August figures, which raise larger issues of principle which were addressed in detail in the appellant's evidence.<sup>130</sup> Further, the August 2015 figures have simply appeared in the most recent statements without a proper evidential basis.

128. This is a promise of delivery tomorrow when the problem exists now. Even tomorrow is said to be a long way off, and on the Council's previous performance will never come. The Secretary of State ought to be very concerned at the

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<sup>122</sup> LPA.4 Appendix 12 p4 (under Notes)

<sup>123</sup> LPA.13 (under Notes)

<sup>124</sup> LPA.5 p4 (under Notes – 566) cf LPA.4 Appendix 4 Updated Appendix D (Housing Trajectory) – projected supply for 2015-16 = 646, or LPA.4 Appendix 12 = 661

<sup>125</sup> Requirement 5 x 629 cf supply 3,115 = 4.95 years

<sup>126</sup> LPA.13

<sup>127</sup> Cross-examination of Mr Davidson

<sup>128</sup> LPA.13 – 3,269 cf LPA.4 Appendix 12 p4 – 2,963

<sup>129</sup> LPA.19 para 24

<sup>130</sup> APP.1 section 5

constant under delivery by the Council, and approve sustainable sites that contribute to the supply.

129. As there is no five year housing land supply, both the LP and NP housing supply policies are out-of-date. Whilst unfortunate, plans can be out-of-date under the NPPF paragraph 49 as soon as they are adopted or made. That means specifically that policies 2 and 5 of the LP and policies 1 and 2 of the NP are out-of-date for the purposes of the determination in this appeal.<sup>131</sup> Policy 12 of the NP can also be added to the list.

130. In the present circumstances, the presumption in favour of sustainable development should be applied, in accordance with paragraph 49 of the NPPF. The scheme accords with the NPPF, is sustainable development and should be permitted because no adverse impacts have been demonstrated which would significantly and demonstrably outweigh the benefits of the proposal.

131. The five year housing land supply position has been compounded by the approach taken by the Council to this issue during the course of the inquiry. It produced its housing land supply figures specifically for the appeal at and beyond the last possible moment, without a proof of evidence from the policy officer responsible for the five year housing land supply position.<sup>132</sup> The Council having accepted the need for him to give evidence to the inquiry, he agreed with the following propositions:

- The latest completion figures show that the Council is failing to meet its requirement already in its first year, by at least 200 dwellings.
- The housing supply trajectory put to the LP Inspector is therefore no longer being met.
- It is important for LPAs to meet OAN according to the NPPF and this is especially the case in situations where there has been persistent undersupply.
- The LP states that it will seek to meet the derived figure for OAN for the District of 505 dpa and this is established in paragraph 7.5 of the LP.
- The Council has repeatedly and persistently failed to meet its housing requirements, perhaps only making them in a couple of the last ten years.
- The Council has a "*serious problem*" with its housing requirement delivery which it is "*trying to address*".<sup>133</sup>

132. This list of concessions shows that the Council has consistently failed to achieve its housing supply requirements. Its position substantially fluctuated over just the last six weeks. There is little reason why it should be believed to any significant extent now. The Council's woeful record and inability to show it has a five year housing land supply illustrates the need in a District such as this one for deliverable sites to be approved without further delay.

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<sup>131</sup> Inspector's questions to Mr Collins

<sup>132</sup> Mr Davidson

<sup>133</sup> Cross-examination of Mr Davidson

## Landscape and Heritage Impacts

133. The sole environmental concern raised about the appeal development in the original Committee report was a claimed impact on the setting of listed buildings from a proposed house in the south-east corner of the site.<sup>134</sup> An updated report to the Committee claimed heritage impacts from noise, activity, light and traffic movements.<sup>135</sup> However, the Council accepted that this did not warrant a separate reason for refusal, at the most providing additional weight to the neighbourhood plan objection.<sup>136</sup>
134. The Council's case in its evidence has broadened still further, alleging harm to the historic environment from the proposed access and the presence of houses generally on the appeal site.<sup>137</sup> New complaints are made about effects on the character of the area and landscape including on alleged views from the footpath by the canal and gaps between settlements.
135. However, the heritage and landscape points were essentially abandoned by the Council during the inquiry. There was no cross-examination of the appellant's witness on these issues other than him being asked whether there was a photomontage (which there is not). He was not challenged on the main issues of substance.
136. With regard to the relationship between the proposed buildings on the site with the listed buildings along the High Street, the site is within the setting of these buildings. However, given the boundary planting, what goes on in the interior of the site does not affect the setting as defined in the NPPF, that is where the heritage assets are experienced. The development would not be readily visible. The Council's design witness suggested that there would be "*glimpses*" of the interior of the site through some of the tops of the boundary planting.<sup>138</sup> However, she accepted that the inter-visibility is so slight that it could be demonstrated only by taking photographs as close to the boundary as possible.<sup>139</sup>
137. The context for the listed buildings is defined by the existing buildings on the High Street, the road itself and the boundary planting. The possibility of glimpses of rooftops on the appeal site from listed buildings would not alter their setting, let alone harm it.<sup>140</sup> There would not be even less than substantial harm. Alternatively, were it to be considered that there would be some harm, this would be so slight as to be outweighed by the public benefits of the scheme, even bearing in mind the considerable weight to be attached to harm to the setting of listed buildings.
138. These new objections are even less substantial than the original ones. Although the original Committee report suggested that the proposal included plans to remove some of the boundary planting at the site, enhancements to the

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<sup>134</sup> APP.2 Appendix B para 8.20

<sup>135</sup> LPA.7 para 8.20b

<sup>136</sup> LPA.7 para 8.44

<sup>137</sup> LPA.2 para 7.44

<sup>138</sup> Cross-examination of Ms Le Vay

<sup>139</sup> LPA.1 p3

<sup>140</sup> APP.4



planting are actually proposed.<sup>141</sup> As accepted by the Council's design witness, this would ensure that the screening of most of the site would prevent any unnecessary visual impact from the street or other vantage points, such as the towpath.<sup>142</sup> No reduction in planting would occur in the south-eastern part of the site. She further accepted that the proposed small reduction in vegetation at the access to the development was not subject to any objection by the Council. This concession is ignored by the Council in that the complaint is nevertheless still made.<sup>143</sup>

139. She also acknowledged that her recently arrived at view on the potential impact of the appeal proposal was rejected by the Council in its original Committee report. Referring to the layout of the scheme, which retains the boundary planting, this stated that:

*"it is considered that the setting of the historic buildings along High Street, the sense of enclosure experienced when entering Loxwood from the south will be better preserved by retaining the planting. Setting the development back from the highway and retaining the planting is therefore considered to be consistent with and complementary to the existing pattern."*<sup>144</sup>

140. In terms of other visual impacts, the Council's design witness sought to argue that the parking of cars in the appeal scheme behind what was agreed to be thick boundary planting, and more than 20-30 metres away, would have a greater impact on the listed properties along High Street than the presence in between of a B-class road or houses on either side of them. Headlights shining through the boundary planting were, for the first time, raised as an objection. She maintained that the impact of this would differ from the presence of cars driving along this road, with the noise of these vehicles said to be objectionable in heritage terms. However, she accepted that the Council has no amenity objection to the proposal. Given that there is car parking within the curtilages of the row of listed and other buildings, the claim that there would be greater harm from parking activities on the appeal site is erroneous.

141. It still remains unclear whether non-designated heritage assets are said to be affected. The Council's evidence made no mention of paragraph 135 of the NPPF, which sets the test for those. Whilst there was vague reference to the village (undefined), no heritage value has been ascribed to it. Categories of "*significant positive*" and "*positive*" have been attached to unlisted buildings without any policy basis for this.<sup>145</sup> Unlike the use of positive buildings in conservation areas<sup>146</sup>, it is not apparent what these are said to positively contribute to. Any impact on undesignated heritage assets would be less than the effect on the listed buildings, which itself is perfectly acceptable.

142. Notwithstanding the Council's recent attempts to claim otherwise in its evidence, the original Committee report recognised that:

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<sup>141</sup> Plan 1319/PL02 Rev Q

<sup>142</sup> Cross-examination of Ms Le Vey; LPA.7 paras 8.20 & 8.44

<sup>143</sup> LPA.19 para 31

<sup>144</sup> APP.2 Appendix B para 8.21

<sup>145</sup> LPA.1 para 3.2.2 & p8

<sup>146</sup> NPPF para 138

*"The distances and relationships between the dwellings are considered to be within acceptable tolerances, having regard to the Council's design guidance. All dwellings are set away from the boundaries, avoiding both direct and perceived overlooking to existing neighbouring development. Parking is provided on curtilage to most plots, and within well-overlooked shared areas for the remainder. The public open space to the southern and eastern boundaries also benefits from good natural surveillance, and is considered appropriate for the scale and layout of the development as required by saved Local Plan policy H5. The positioning of the open space to the east and the south pulls the build [sic] form away from the most sensitive boundaries, in terms of protecting the trees and maintaining the rural nature of the setting of the village when viewed from the canal. The layout also allows scope for landscaping within the site and to supplement the existing boundaries".<sup>147</sup>*

143. This remains an accurate summary of the proposal and its sensitive design, which avoids any material harm. The reversal of position such that the Council's planning witness now asserts that there would be harm to views from the canal is not credible.<sup>148</sup> Rooftops elsewhere in the village are visible from the canal footpath, so that an observer knows that they are on the edge of the village. In addition, the appellant's land survey shows that there would be no inter-visibility.<sup>149</sup> Were there to be any, it would be less than and part of the views of the existing village buildings from the canal.
144. The Chichester District Landscape Capacity Study considered the sensitivity of the landscape to strategic development and does not assist on smaller scale development such as the appeal site or the Conifer Nursery.<sup>150</sup> The Council's other new point concerning alleged gaps between settlements was not sustained at the inquiry by the planning witness<sup>151</sup>, despite that this is not reflected in the Council's closing statement.<sup>152</sup>
145. The Council's planning witness accepted that no objection is taken in relation to policies 9 and 10 of the NP even though they were cited as breaches of policy in the reason for refusal.<sup>153</sup> This is again re-raised in the Council's closing<sup>154</sup> without any explanation as to what the alleged objections under policies 9 and 10 actually are.
146. The heritage and landscape objections now raised show no conflict with LP policy 25 (Development in the North of Plan Area), policy 33 (New Residential Development), policy 47 (Heritage and Design) and policy 48 (Natural Environment). Notwithstanding the lack of any conflict with these policies, the LP development management policies are non-strategic and therefore must give way to neighbourhood plan policies in Loxwood, which has a made

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<sup>147</sup> APP.2 Appendix B para 8.23

<sup>148</sup> LPA.2 para 7.41

<sup>149</sup> APP.4 attached plan

<sup>150</sup> LPA.4 Appendix 19

<sup>151</sup> Cross-examination of Ms Langford

<sup>152</sup> LPA.19 para 33

<sup>153</sup> Cross-examination of Ms Langford; LPA.4 Appendix 1

<sup>154</sup> LPA.19 para 28

neighbourhood plan with its own strategic policies designed to shape and direct sustainable development proposals in the area.<sup>155</sup>

147. Moreover, as the NP points out, "*the parish of Loxwood does not contain any Sites of Special Scientific Interest, Conservation Areas or Areas of Outstanding Natural Beauty - nor is any part of the parish within the South Downs National Park.*"<sup>156</sup> Not only is the village in principle a good location for modest development, but this site is a good one. There would be no environmental harm from the scheme. In fact, it is an appropriate site for housing development which is much needed in the Chichester District as a whole and in the North of Plan Area in particular.

### **The Planning Balance and Sustainability**

148. As the Council accepted in the Committee report and, by inference, in the original reasons for refusal, the appeal proposal is sustainable development. In the circumstances, it should be granted permission according to the principles established in the NPPF, and applied in policy 1 of the LP.

### **Sustainability of the Site and its Location**

149. The sustainability of the site and its location is common ground. The Committee report recognised this and that it is "*well integrated with the existing village and accessible to local facilities*".<sup>157</sup>

150. As the LP establishes, Loxwood is a service village, and therefore one of the three desirable locations for development in the North of the Plan Area.<sup>158</sup> It defines service villages as "*Villages that either provide a reasonable range of basic facilities (e.g. primary school, convenience store and post office) to meet the everyday needs of local residents, or villages that provide fewer of these facilities but that have reasonable access to them in nearby settlements.*"<sup>159</sup>

151. In accordance with the LP definition, and according to the Council's Settlement Capacity Profile Update, prepared as part of the evidence base for the then emerging LP, Loxwood is "*a compact village with a reasonable range of everyday facilities*" and "*... although the village lies in a rural location relatively distant from the nearest town, there are relatively few development constraints.*"<sup>160</sup> Indeed, it highlighted that Loxwood enjoyed "*relatively limited development constraints compared to some other villages in the plan area (North)*". Consequently, Loxwood is a good location for sustainable development, and one of the better ones in the District's North of Plan Area. The accessibility of the village for modest levels of development is sufficient.

152. The appeal site is surrounded by housing on three sides and is close to the village's Post Office, butcher's shop and bus stop. Despite that proximity it is visually well-contained, with substantial planting on all sides, making it an ideal

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<sup>155</sup> NPPF para 185

<sup>156</sup> LPA.4 Appendix 11 para 9.1

<sup>157</sup> APP.2 Appendix 2

<sup>158</sup> LPA.4 Appendix 6 policy 2

<sup>159</sup> LPA.4 Appendix 6 para 5.1

<sup>160</sup> LPA.4 Appendix 19 - Settlement Capacity Profiles Update (October 2013) p112

site for a suitable housing development. It is also near the village primary school and the doctor's surgery.<sup>161</sup>

153. Like the other sizeable sites at Loxwood – Farm Close and the Conifer Nursery – it is not previously developed and is on the edge of the built up area. Like those other schemes it is appropriate in size for the village, whose neighbourhood plan "*welcomes incremental change that will sustain and enhance its facilities and character and contribute to a greater sense of community and neighbourliness*".<sup>162</sup> The appeal proposal would sustain and enhance the facilities, character and community feel of the village, on a site which was included in the NP as a site with development potential<sup>163</sup>, by providing an incremental boost to the local population and economy. As such, it would ensure that the village is able to continue to grow sustainably.

154. It is agreed that the infrastructure impacts of the development can be addressed by planning obligations or CIL payments. No cumulative impacts with the other sites have been identified. Loxwood is able to accommodate physically and socially what remain modest levels of development.

### ***The benefits of the scheme***

155. The proposal would provide 25 dwellings, including 11 affordable homes, on a deliverable site. Other benefits would be provided through the scheme by way of a wildlife planted area, a drainage and wildlife pond close to the eastern boundary and additional public open space.<sup>164</sup> These benefits are shown on the submitted layout plan.<sup>165</sup> It is intended to replace and reroute the current overhead electric cables underground and there is a proposed condition to that effect.<sup>166</sup>

156. The Committee report acknowledged the appellant's efforts to ensure by negotiation that the proposal would be acceptable in planning terms.<sup>167</sup> The housing mix which resulted from the amendments would represent a sound example of what the NP describes as the integration of affordable housing "*into the whole development*", an approach which "*has shown that mixing up rented and open market housing helps promote social cohesion and neighbourliness*".<sup>168</sup> Its location is perfect for contributing to the village facilities, and the proposal would cause no environmental harm.

157. The sustainability of the site in economic, social and environmental terms arises from the benefits of development, its location and ability to contribute to the village and the environmentally sensitive way in which it is proposed.

158. Other than the heritage and landscape points, discussed above, the Council's only argument on sustainable development is that a development is not sustainable in social terms if it is not what local people want. The premise of this

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<sup>161</sup> LPA.4 Appendix 3

<sup>162</sup> LPA.4 Appendix 11 para 5.1

<sup>163</sup> LPA.4 Appendix 11 para 18.3.5

<sup>164</sup> APP.1 Appendix B para 3.4

<sup>165</sup> Plan 1319/PL02 Rev Q

<sup>166</sup> APP.1 Appendix B para 3.4; JSD.2

<sup>167</sup> APP.1 Appendix B para 3.2

<sup>168</sup> LPA.4 Appendix 11 para 17.6

point ignores the policy context, in that the NP policy 12 explicitly allows housing development outside the Settlement Boundary which contributes to the village's vitality. More broadly it ignores the NPPF and the fundamental basis of the planning system that decisions are made in the public interest.

159. The social role or dimension to sustainable development is, according to paragraph 7 of the NPPF:

*"supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being;"*

160. This concerns what development provides, what it does and the impact it actually has. Providing housing is identified as a particular social role. Sustainable development is not about whether particular people approve of the development, whether this is said to be local people generally or the small number of individuals who were the driving force for the Loxwood Neighbourhood Plan. Decision-making in planning involves decisions being taken by local planning authorities and Ministers in the public interest having regard to policy as to what is or is not acceptable. A good, sustainable scheme does not cease to be so because some people dislike it.

161. As to the assertion that allowing this appeal would undermine the neighbourhood planning system, the proposal accords with the NP. If there is found to be non-compliance, the scheme is sustainable development which accords with the NPPF and is needed to provide homes. Separate to that general housing need point, the failure to have a five year housing land supply means that any restrictions on housing supply in the NP are out-of-date.

162. As the Council acknowledges, and mentioned above, the appeal site is both deliverable and developable in planning policy terms. The dwelling designs are indicative at this stage and the precise details and designs would be the subject of the reserved matters. However, the appeal proposal is well-designed to avoid harmful impact and to enhance the community of Loxwood, and would provide the *"economic and social benefits of delivering additional dwellings."*<sup>169</sup>

163. These are considerable public benefits which must weigh heavily in favour of the grant of planning permission. This is especially true in circumstances where there is no conflict with planning policy in the development plan, either the LP or the NP, or national policy and guidance as set out in the NPPF or the PPG.

164. In the alternative, in view of the Council's inability to demonstrate a five year housing land supply its housing policies are out-of-date. Consequently, applying paragraph 49 of the NPPF, the appeal proposal should be approved without delay. The Council has not demonstrated significant adverse impacts which would outweigh the benefits of the appeal proposal. It is common ground that no specific policies in the NPPF indicate that development should be restricted.

165. In the circumstances, the appeal proposal accords with national policy.

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<sup>169</sup> APP.2 Appendix B para 8.42

### **Other Matters**

166. Infrastructure issues can all be dealt with satisfactorily by conditions and the section 106 obligation. The Parish Council's concerns about utilities and flooding have been addressed. The County Council is satisfied about educational provision.
167. The main parties agree that highways matters can be satisfactorily addressed by condition, and reason for refusal no. 2 has fallen away.<sup>170</sup> The Council is not pursuing any objection concerning the vehicular access to the appeal site.<sup>171</sup> The high traffic speeds identified by the Parish Council are not at the appeal site but to the north in the vicinity of the conifer nursery.
168. Financial contributions are agreed, save for public art, and it is also agreed that no contributions are payable if the Council adopts the Community Infrastructure Levy prior to the grant of planning permission. Any other matters can be addressed by condition. Reason for refusal no. 2 therefore also falls away.

### **Conclusion**

169. This is a sustainable site. The proposal would contribute to the vitality of Loxwood and cause no harm. It accords with the development plan and the NPPF and would provide much needed housing for the District.
170. The Secretary of State is asked to allow the appeal.

### **THE CASES FOR OTHER PARTIES WHO GAVE EVIDENCE AT THE INQUIRY**

#### **The Case for Tony Colling**

171. Mr Colling is Chairman of the Loxwood Neighbourhood Plan Steering Group and Chairman of Loxwood Parish Council Planning Committee.
172. It is clear that the appellant does not understand, or chooses not to for financial reasons, the concept of Neighbourhood Planning. This allows local people to choose where and what type of development should take place in their own parish, provided the Plan complies with national and local policies. In this case the regulations have been followed rigorously. The NP was made at the same time as the LP.
173. The NP started with a community led plan which established the aspirations of the parish over the next 15 years. This went through an extensive consultation exercise, with a high response rate. The survey included questions about preference for specific development sites taken from the SHLAA. There was a comprehensive review of 11 potential sites based on scoring against defined criteria. This led to the choice of the Farm Close and the Nursery sites as the preferences for development. These were included in the NP and together are capable of delivering the required housing allocation for the parish of 60 houses under the LP.

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<sup>170</sup> LPA.4 Appendix 2; JSD.1

<sup>171</sup> Cross-examination of Ms Le Vey and Ms Langford

174. Extensive public consultation was carried out on the NP, with a very high yes vote in two referendums.
175. The NPPF sets out the role for NPs to develop planning policies to determine planning applications. The NP is a made plan, and the appellant's site is not allocated and sits outside the Settlement Boundary. On that basis alone the appeal should be rejected.
176. The LP has been through a recent examination and the Inspector was satisfied it meets national policy. Adding 25 more houses on the appeal site would be a 42% increase in the allocated site provision for the parish, which is not sustainable.
177. If the appeal is successful, it would destroy the concept of neighbourhood planning both locally and nationally.
178. The argument about a lack of a five year housing supply carries less weight when taking into account that Loxwood has a made NP.
179. There was no reason to change the NP settlement boundary after the LP was adopted as the indicative housing numbers did not change.
180. Policy 12 of the NP does not promote sites such as the appeal site. The policies cross refer to the NPPF and the LP. The proposal does not meet the criteria in LP policy 45.

### **The Case for Chris Agar**

181. Mr Agar is Chairman of Loxwood Parish Council and a member of the Loxwood Neighbourhood Plan Steering Group.
182. The site is not bounded on three sides by residential development as the appellant claims but only on one side. It has lain fallow for approximately 25 years and is bordered by mature hedgerows and trees.
183. There is no gas in Loxwood village and waste water infrastructure has insufficient capacity without major upgrades. There is no evidence to confirm that the existing overhead high voltage cables could be placed underground.
184. The NP was developed in parallel with the emerging LP and was designed to comply with it in all respects. The NP Steering Group worked very closely with the Council. There is full consistency.
185. The proposal is clearly in conflict with paragraphs 183-185 and 198 of the NPPF relating to neighbourhood plans. It defers to neighbourhood plans as being the prime decision making tool where they align with the strategic plan. The Loxwood NP does exactly that by allocating the required minimum number of houses on two selected sites within the Settlement Boundary as determined by a proper democratic process. The NP clearly does not allocate the appellant's site and the Settlement Boundary specifically excludes it. Thus the proposal is clearly in conflict with the NP. There would be an adverse impact on the NP.
186. The suggestion that the NP Settlement Boundary was not revised in accordance with the LP is incorrect. It was redrawn to incorporate the required minimum number of allocated houses as contained in the then emerging and now adopted LP. This number has not changed after review within the LP of the

- overall required housing number across the District, thus there was no need to amend or review the boundary again. The number of allocated dwellings in the NP exactly aligns with the required number. They have been allocated on sites which not only respect the form and setting of the settlement but also provide additional benefits to the community, which is one of the fundamental planks of sustainability.
187. The addition of a further 25 houses would be excessive, resulting in an additional 42% to the LP allocation.
188. If allowed, the proposal would directly impact on the principles of neighbourhood planning nationally and be a deterrent to any wishing to follow the process.
189. The setting back of the development behind the existing mature hedgerow and tree filled boundary would serve to isolate the development from the village's built environment despite its proximity to the village centre. Outside the NP settlement boundary it effectively would become an isolated rural development, in conflict with the NP and LP. The vegetation barrier is deciduous and will lose its effectiveness as a screen, especially to light and noise pollution during the winter months. Houses within the development would be plainly seen from the historic buildings on the eastern side of the B2133. Listed buildings and houses of historic interest are protected by NP policy 10. It is clear that any development immediately opposite them would affect them in terms of their outlook, tranquillity and setting.
190. The Loxwood primary school is at maximum capacity. The cumulative impact of additional development on the infrastructure of wastewater, electricity and water supplies and surface water drainage, both from sites allocated within the NP and the appeal site, would add strain to an already overburdened system.
191. The proposed removal of vegetation for the site access would open up sight lines of the development to two grade 2 listed buildings at the north-eastern corner, contrary to policy 10 of the NP, policy 47 of the LP and the NPPF.
192. The site is effectively infilling of what is currently a ribbon of old dwellings along the B2133 and would extend the southern boundary of the village into the countryside. This is an over urbanisation and extension of development into the countryside.
193. There would be considerable adverse impact in terms of sustainability in that there would be a need to drive children to alternative schools; there are no local employers of any size within the parish; working members of households would be required to use cars or other vehicles to get to work; there is no sustainable transport service consistent with commuting; local facilities are likely to close; peak hour traffic and speeding through the village are key issues identified by residents. There are proposals for a large number of houses nearby in Surrey, which would have a dramatic impact on traffic, schooling and infrastructure provision in Loxwood.



## WRITTEN REPRESENTATIONS

### Representations Made at Appeal Stage

194. There is a written representation from **Loxwood Parish Council**.<sup>172</sup> This sets out in more detail the points raised at the inquiry by Mr Colling and Mr Agar who represented it.

195. There are some 23 **individual written representations**<sup>173</sup> on the appeal. These raise objections to the proposal on grounds similar to those made at the inquiry, in particular citing the preparation of the Neighbourhood Plan.

### Representations Made at Application Stage

196. The representations received by the Council as a result of its consultation on the planning application were attached to its appeal questionnaire and summarised in the Committee report.<sup>174</sup> The report records that **56 third party objections were received**. It provides an analysis of the matters raised in the objections, which are generally are on grounds repeated by the Parish Council and third parties at appeal stage.

197. The report also sets out the responses from **consultative bodies** to the application.<sup>175</sup>

## CONDITIONS

198. Prior to the inquiry separate lists of proposed conditions in the event of the appeal being allowed were put forward by the Council and the appellant.<sup>176</sup> During the inquiry the parties merged these into a single list of suggested conditions on which they were in agreement.<sup>177</sup> In addition there were two further conditions on which they did not agree.<sup>178</sup> The suggested conditions were discussed at the inquiry, with a number of points raised as follows.

199. Mr Agar suggested that noise control be added to condition 5 on submission of a construction method statement. The main parties agreed that this could be dealt with by specifying an hours of works restriction.

200. Mr Colling referred to the requirement of policy 7 of the NP on street lighting, which seeks to limit this.<sup>179</sup> The main parties agreed that this could be dealt with by way of the reserved matters, with a reference added in conditions 9 and 16.

201. Mr Colling suggested a requirement for traffic calming in Loxwood High Street in advance of the scheme. The main parties pointed to the planning obligation on sustainable transport (see below), considering that this would deal adequately with the extent of works that could justifiably be required for the development to proceed.

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<sup>172</sup> TP.1 updates the earlier submitted statement of case in INSP.1

<sup>173</sup> INSP.1; TP.3

<sup>174</sup> APP.2 Appendix B pp109-110

<sup>175</sup> APP.4 Appendix B pp 98-109

<sup>176</sup> LPA.4 Appendix 22 and APP.2 Appendix J

<sup>177</sup> JSD.2

<sup>178</sup> JSD.3

<sup>179</sup> LPA.4 Appendix 11

202. With respect to the disputed conditions, the first put forward by the appellant seeks to secure the provision and control the details of the affordable housing element of the scheme. The Council argues that this should be a matter dealt with by way of a planning obligation, such that there would then be no requirement for a condition. This debate is set out below. On the requirements of the suggested condition, I raised the matter that the specification of 11 units at some 44% of the development exceeds the level of 30% sought under Local Plan policy 34.<sup>180</sup> The appellant considered that this nevertheless meets the tests for a condition in that the scheme deliberately promotes 11 units and the condition would give effect to that.

203. Mr Colling expressed a wish for the affordable units to be allocated on a priority basis to those with a local connection. The main parties pointed out that under the condition the Council would be able to control the mechanism for allocation of units.

204. The second additional condition is a suggestion by the Council for a requirement on site levels and sections. It contended that these details should be agreed in advance of drainage details and that layout is a matter for consideration at this stage. The appellant responded that this could be adequately dealt with by way of the reserved matters.

## **OBLIGATIONS**

205. The submitted unilateral undertaking<sup>181</sup> contains planning obligations for the following financial contributions in its First Schedule:

- £43,975 community facilities
- £20,470 sport and leisure
- £46,718 primary education
- £50,280 secondary education
- £11,779 sixth form education
- £4,887 Library
- £53,115 Total Access Demand
- £443 Fire and Rescue
- 5% Monitoring fee

206. The contributions would be index linked.

207. The Council has provided evidence in support of the obligations<sup>182</sup>, as has the County Council on the matters which fall within its remit<sup>183</sup>. This evidence addresses the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and explains in each case why it is considered that the obligations meet these on the basis of dealing with needs that would arise from the development. Copies of local guidance documents covering the relevant matters, setting out the basis of the contributions that are sought from

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<sup>180</sup> LPA.4 Appendix 8

<sup>181</sup> APP.5; accompanying power of attorney – APP.7

<sup>182</sup> APP.2 pp 29-30; APP.4 Appendices 13, 15 & 21; LPA.15; LPA.16

<sup>183</sup> APP.4 Appendix 21

- developments and how these will be spent, are provided. Policies 9, 39 and 54 of the LP<sup>184</sup> and policies 3 and 16 of the NP<sup>185</sup> are also relevant.
208. The County Council's evidence identifies particular issues of school capacity and how these would be addressed. It also identifies traffic calming within Loxwood village as the particular scheme that would benefit from the sustainable transport (Total Access Demand) contribution.
209. On the monitoring fee, the Council considers that it is no longer able to apply this and therefore does not seek it.<sup>186</sup>
210. Clause 12.1 in the undertaking seeks to disapply individual obligations in the event of a finding of non-compliance with Regulation 122. The appellant emphasised that such a finding is not invited.<sup>187</sup>
211. With respect to the requirement of Regulation 123 relating to a maximum number of projects for pooling, I was assured that in no case would the limit be breached.
212. Clause 12.2 in the undertaking is that, in the event that a Community Infrastructure Levy and/or Charging Schedule under the CIL Regulations is adopted by the Council before a decision is made, no payments or direct provision required under the Undertaking shall be made and the Undertaking shall cease to have effect. The preparation of the Council's CIL is at an advanced stage<sup>188</sup>, and I was told that it was expected to be adopted at the end of October 2015. The parties agreed that, were this to be the case, CIL would deal with all of the contributions contained in the Undertaking, and that in effect the requirements of this would fall away.
213. A matter in dispute is that the Council considers that there should be a planning obligation to secure the proposed affordable housing provision rather than relying on the appellant's suggested condition to achieve this. Detailed points are made in support of this contention.<sup>189</sup> In summary, these are that: a deed would be registered as a land charge and its restrictions would be clearly apparent; it would be more enforceable, enabling the Council to take direct action and recover expenses; it would be better able to deal with the necessary level of detail to ensure that the dwellings are affordable in perpetuity and provide for certainty; it would be a more conventional mechanism that would better achieve delivery and monitoring of provision, and is required by the Council's emerging Supplementary Planning Document<sup>190</sup>. In response<sup>191</sup>, the appellant argued that a condition would be evident as part of a permission on the planning register; it would be enforceable, with scope for an immediate remedy by way of a breach of condition or stop notice, whereas enforcement of an obligation would require court proceedings and an injunction; it would ensure the approval of the details of a scheme and future maintenance; delivery and monitoring could equally be achieved in the same way as an obligation.

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<sup>184</sup> APP.4 Appendix 8

<sup>185</sup> APP.4 Appendix 11

<sup>186</sup> LPA.14 penultimate paragraph

<sup>187</sup> Oral submission

<sup>188</sup> LPA.2 para 7.52; LPA.4 Appendix 16

<sup>189</sup> LPA.14 section 1

<sup>190</sup> LPA.4 Appendix 15 para 2.2

<sup>191</sup> Oral submission; APP.1 paras 73-74

214. A further matter in dispute is the Council's assertion that there should be an obligation to make a financial contribution towards Public Art to a minimum value of £6,602.<sup>192</sup> Reference is made to policies 33, 40 and 47 of the Local Plan and the Chichester District Public Art Strategy<sup>193</sup>. The appellant's position is that there is no development plan policy requirement for such provision, that the site is off the main road, landscaping would need to be approved anyway as a reserved matter, and such provision is not necessary to make the development acceptable.<sup>194</sup>
215. The Council also contends that internal estate roads should be covered by an obligation to ensure that these are properly constructed and managed in perpetuity if not to be adopted.<sup>195</sup> The appellant considers that as the proposed roads are all within the site and no payments would be involved a condition would suffice, and if to be adopted this would be subject to a s38 Highways Agreement.<sup>196</sup>
216. Finally, the Council makes a number of detailed points on the wording of the undertaking.<sup>197</sup> These include that the specific projects intended to benefit from the contributions should be identified, and queries on title details and other definitions and specifications. The appellant countered that the undertaking has already been executed, was prepared with due diligence and that it is considered to be an adequate document in these respects which can be properly understood; and that if the Council has outstanding concerns on these matters it could pursue them in writing.<sup>198</sup>

Richborough Estates

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<sup>192</sup> LPA.4 Appendix 21 section 5; LPA.14 section 2

<sup>193</sup> LPA.4 Appendix 8 & Appendix 14

<sup>194</sup> APP.1 para 23; oral submission

<sup>195</sup> LPA.14 section 3

<sup>196</sup> Oral submission

<sup>197</sup> LPA.14 sections 4,5 & 6

<sup>198</sup> Oral submission

## CONCLUSIONS

217. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

### Main Considerations

218. Having regard to the Council's reasons for refusal of the application, the relevant policy context and the evidence to the inquiry, the main considerations that need to be addressed are as follows:

- a) whether the proposal is consistent with the policies of the development plan on the location of residential development;
- b) the implications for consideration of the proposal of the current housing land supply position in the District;
- c) the effect the development would have on the character and appearance of the locality and the significance of heritage assets in the vicinity by way of the effect on their settings;
- d) whether the proposal overall amounts to sustainable development;
- e) the planning conditions and planning obligations that are required in the event of permission being granted and the likely effectiveness of these with respect to mitigation of impacts on infrastructure and the environment.

#### **a) Whether the proposal is consistent with the policies of the development plan on the location of residential development**

219. The development plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029 and the Loxwood Neighbourhood Plan 2013-2029. The Local Plan (LP) was adopted on 14 July 2015 and replaced the previously saved policies of the Chichester Local Plan First Review 1999. The Neighbourhood Plan (NP) was made on the same date. [11,40,84]

220. Policy 2 of the LP sets out the Development Strategy and Settlement Hierarchy. This forms the basis for the distribution of growth in the plan area. At the top of the hierarchy is the sub-regional centre of Chichester City, followed by a number of identified Settlement Hubs. Below these are identified Service Villages, including Loxwood, which will be the focus for new development and facilities outside of Chichester city and the Settlement Hubs. Within the Service Villages provision will be made for: small scale housing developments consistent with the indicative housing numbers set out in policy 5; local community facilities; and small scale employment, tourism or leisure proposals. [14,41,50,90-92]

221. A further part of the policy refers to Settlement Boundaries, which will be reviewed through the preparation of Development Plan Documents and/or Neighbourhood Plans. There is a presumption in favour of sustainable development within these. Finally, the policy refers to the Rest of the Plan Area: Small villages, hamlets, scattered development and countryside. It describes this Area as outside the listed settlements. Given the incorporation of settlement boundaries within the policy, this would appear to be intended to mean outside the settlements as defined by the boundaries. This is confirmed by paragraph

5.6 of the supporting justification, which explicitly states that the Rest of the Plan Area is defined as the areas outside defined Settlement Boundaries. On the basis that this paragraph also describes the Area as rural in character with many smaller villages, hamlets and scattered development along with open countryside, a location just outside a Settlement Boundary as in the case of the appeal site does not render the relevant part of the policy inapplicable to the site. According to the terms of the policy, development in the Rest of the Plan Area is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with policies 45-46 (considered below). [14-15,42,46,92-93,95]

222. Policy 5 deals with Parish Housing Sites. These are small scale housing sites to be identified to address the specific needs of local communities in accordance with parish housing numbers. Suitable sites will be identified in neighbourhood plans or in a Site Allocations DPD. For Loxwood, the indicative number is 60. [17,43,91]
223. Consistent with this, in the Loxwood NP policy 1 reiterates that the plan will provide a minimum of 60 houses on allocated or windfall sites located within the Settlement Boundary defined in accordance with its policy 2. The latter policy states that, within the Neighbourhood Plan Area, there is a presumption in favour of sustainable development as defined in the Neighbourhood Plan, the (then) Chichester District Saved and Emerging Local Plans and the National Planning Policy Framework (NPPF). The Settlement Boundary of Loxwood village is referred to as defined in an attached figure. Finally, the policy states that any land within the parish of Loxwood which is outside the Settlement Boundary is deemed to be rural. [29-30,43-46,98-99,184]
224. Policy 3 of the NP indicates that the provision of allocated sites will be in accordance with its policies 4 and 5. The Settlement Boundary as shown in the figure incorporates two sites with indicative provision totalling 60 units as set out by policies 4 and 5, with the Boundary drawn to include these. The sites respectively are Land at Farm Close (minimum of 17 units) and the Nursery Site (minimum of 43 units). Paragraph 18.3.5 refers to the methodology used to identify three sites as having potential for development, which are the above two sites plus Land South of Loxwood Farm Place. The latter, the appeal site, is not allocated and lies outside the Settlement Boundary as defined on the figure. [31,44,100,103,185]
225. Drawing the above elements of the development plan together, it is clear that Loxwood as an identified 'Service Village' is in general terms recognised as an appropriate location for modest housing development of the scale of the current proposal (25 units), with no maximum limit in the policy. However, the provision for Loxwood as a Service Village to have a defined Settlement Boundary is an integral element of the spatial strategy in both the LP and NP. The firm indication of this is that land outside the Settlement Boundary is intended to be treated differently from land inside it. Where there is a neighbourhood plan the requirement of the LP is for the Boundary to be drawn in that, as it has been for Loxwood. Under the LP, the Service Village part of policy 2 applies only to that within the Boundary. Since the appeal site lies outside the Boundary as defined in the NP, it is not covered by that part of the policy. The policy makes clear that, as a site falling within the Rest of the Plan Area, it is subject to a restrictive

approach to development, including by reference to policies 45 and 46. These policies set out criteria to be met. [42,46,49-50,90-96,98,150-151]

226. Policy 46 deals with existing buildings and is not relevant in this case. Policy 45 refers to development in the countryside that requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements. Given the housing provision made in the NP which is in accord with LP policy 2, there is nothing in the development plan to suggest that the local housing need of Loxwood cannot be met within the defined Settlement Boundary. Despite the appeal site being adjacent to an existing settlement, and there being no evidence of harm to agricultural operations from the proposal, there is no reason why the appeal development requires a countryside location. The proposal is therefore not one that complies with the terms of policy 45. Again, and consistently, the supporting justification for the policy in paragraph 19.21 defines areas outside Settlement Boundaries as countryside. [24-26,44,49,95,180]
227. With respect to policy 12 of the NP, this states that development in the rural area will be in accordance with NPPF paragraph 55, the CDC Emerging Local Plan and the General Permitted Development Order. The latter is not applicable in this case. The Local Plan is now adopted, and as found above the proposal does not accord with its Rest of the Plan Area policies. Paragraph 55 of the NPPF opens with: *"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities"*. The paragraph also sets out restrictive circumstances for allowing isolated homes in the countryside. Given the purposeful nature of the Settlement Boundary in the NP, I agree with the Council that the high level statement of policy in paragraph 55 should not be regarded as overriding the restriction on development outside the Boundary to that which requires a countryside location or meets an essential local rural need or supports rural diversification as set out in LP policy 2. [34,47-49,101,105,180]
228. Furthermore, the Planning Practice Guidance (PPG) states that: *"Assessing housing need and allocating sites should be considered at a strategic level and through the Local Plan and/or neighbourhood plan process."*<sup>199</sup> The NP was clearly prepared with an awareness of the strategic need and the potential of the appeal site for residential development of the order now proposed, being one of the assessed sites identified as having such potential. The NP was subsequently made with the site excluded from the Settlement Boundary and not allocated, while providing for expansion of the village in other locations. Notwithstanding that the figure of 60 is not a maximum, it would be inconsistent and not in accordance with the evident intention of the NP to now regard the proposal as acceptable under the rural areas policy. The degree of disparity with the locational approach of the development plan in this respect is shown in that, notwithstanding the welcome aspects of new housing, the proposal would make up the whole of the shortfall in the North of Plan area identified in the LP (24 units). [96]
229. The preparation of the NP plainly involved choices being made in the selection of allocated housing sites and drawing of the Settlement Boundary. It was

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<sup>199</sup> ID: 50-001-20140306

examined having knowledge of the general approach for the review of Settlement Boundaries now in policy 2 of the LP, and found to meet the 'basic conditions'. The NP accommodated the amount of housing required in Loxwood by the LP. The Settlement Boundary now forms part of the development plan. There is nothing to suggest that the approach indicated in policy 2 of the LP for the review of Settlement Boundaries should be taken to undermine the location of the Boundary as drawn in the NP by reason of this being out-of-date or inconsistent. [29,36,44,46,50-51,93-94,173-175,179,185-186,103]

230. There is a presumption in favour of sustainable development at all levels of policy. It explicitly appears in policy 1 of the LP and policy 2 of the NP. I deal with whether the proposal is sustainable development specifically as the third main consideration. At this stage I note that both the LP and NP were found in examination to support sustainable development, and this includes with respect to the hierarchical classification of settlements and the provision for the Settlement Boundary in Loxwood, with the implications of this as assessed above. It could therefore be expected that a decision in accordance with the development plan would reflect sustainable development principles. [13,29-30,44,46,48,86-87,89,92,99,104]
231. References are made to the policy assessment of the proposal undertaken by the Council at the time of the application. However, the LP was adopted and the NP made after the Council's decision. The development plan position has therefore changed since then, with the reasons for refusal citing the previous Local Plan and the draft Neighbourhood Plan as they were at that stage. [11,82,85,91,95,97,100,102]
232. With regard to views on compliance or otherwise with various policies expressed at the inquiry, I have been assisted by the evidence but reach my own conclusions on this. The interpretation of policies is ultimately a matter for the courts, but I have applied the policies according to my understanding of them as set out above. [50,82,91-92,95,109]
233. Overall I find that the proposal is not in accordance with the policies of the development plan on the location of residential development. [50,53,79,86,108-109]
234. The NP is currently the subject of judicial review proceedings, scheduled to be heard in November. The outcome of these is a matter on which the Secretary of State will wish to be informed prior to the decision, but this Report is based on the development plan as it currently stands. [36-37,86,106,108]

**b) The implications for consideration of the proposal of the current housing land supply position in the District**

235. The NPPF sets out an aim in paragraph 47 to boost significantly the supply of housing. It requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. They should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. The NPPF indicates that the buffer should be



- increased to 20% where there has been a record of persistent under delivery of housing. [54]
236. According to paragraph 49 of the NPPF, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
237. At the time of its decision on the planning application (25 June 2014) the Council considered that it could not demonstrate a five year housing land supply, assessing that the position then was a supply of around 4.3 years. [111]
238. The LP Inspector found there to be a five year supply in her report of 18 May 2015.<sup>200</sup> The Council considers that still to be the case, but this is disputed by the appellant, with the latter suggesting that the supply could be as low as 3.8 years. [56-57,68,110,132]
239. There is no disagreement on the need for a 20% buffer, this as noted by the LP Inspector being a reflection of under delivery in the period 2001-2012.<sup>201</sup> However, two matters relating to the methodology of calculation of the requirement figure are in dispute. Firstly, the source on which the figure should be based, and secondly what should comprise the backlog. [57,113,131]
240. According to the PPG, "*Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light.*" [60]
241. As part of the preparation of the LP, a study of objectively assessed need (OAN) was carried out for the Council. This identified a need for 505 homes per year for the area covered by the Plan. The LP refers to a number of constraints which it explicitly states mean that it is not considered that the area's objectively assessed housing need over the Plan period can be met in full, in a way that is compatible with the principles of sustainable development (paragraph 7.5).<sup>202</sup> These were recognised by the LP Inspector. Paragraph 7.8 of the LP states that as a result of these constraints the Plan is not able to meet the full, objectively assessed housing needs. The Plan target is therefore based on the level of housing that can be realistically and sustainably delivered within the period, having regard to the identified constraints and potential development capacity. It goes on to state in paragraph 7.9 that a number of matters which remain uncertain now may, when resolved, enable housing provision to be increased. For this reason the Council will review the LP within five years to aim to ensure that OAN is met. [55,60-64,116-120]
242. Paragraph 7.10 states that the LP makes provision to deliver 7,388 homes over the period 2012-2029. This equates to an average of approximately 435 homes per year. [16,55,116,117]

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<sup>200</sup> LPA.4 Appendix 4 para 63: "*On the basis of the updated information it is clear that there is a five year housing land supply which is made up predominantly of identified sites or sites with planning permission*".

<sup>201</sup> LPA.4 Appendix 4 para 61

<sup>202</sup> LPA.4 Appendix 7

243. Despite the LP's commitment to a future review and recognition that the figure is not the full OAN, it represents the adopted LP requirement, as incorporated in policy 4. The figure was endorsed through the LP's recent examination. There is no new evidence in this respect, and I find that the figure should be the relevant starting point for considering the five year supply rather than the OAN. This is irrespective of the desirability in general terms of meeting the OAN.
244. With respect to the appropriate backlog, the appellant argues that the District's pre-2012 shortfall against the former South East Plan target should be added to the requirement (a shortfall of 380 for the 2006-2012 period). In support of this contention, reliance is placed on the statement in the PPG that local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. However, the PPG also states that the housing requirement is set at the starting point of the plan, which can be earlier than the date the plan is adopted. In this case the LP covers the period 2014-2029 but paragraph 7.13 of the LP states that identified housing supply will be assessed against the LP requirement starting from a base date of 1 April 2012, which matches the housing provision period of 2012-2029 in policy 4. [58-59,114-115]
245. According to the PPG, need for housing in the context of the guidance refers to the scale and mix of housing and the range of tenures that is likely to be needed in the housing market area over the plan period.<sup>203</sup> This should cater for the housing demand of the area and identify the scale of housing supply necessary to meet that demand. I consider that the assessment of OAN on this basis could be expected to capture need that arises from past shortfalls against targets that occurred prior to the date of assessment. The consideration of market signals, which the PPG says should be a part of the process, would be a relevant aspect of the information base on this. The available evidence on the calculation of the OAN in this case indicates that such need was indeed captured, including over the period 2011-2012. There is therefore no reason to add past shortfalls against the South East Plan to the requirement, as distinct from those arising against the LP requirement since 2012 which the Council properly adds in its five-year supply calculations. [58-59,114-115]
246. On these two disputed points on the requirement I therefore support the Council's methodology.
247. A further matter of disagreement is the relevant period for consideration. The Council has put forward its most recent assessment which covers the period 2016-21 (purporting to show a supply of 5.7 years), and argues that this is to be preferred. The benefit of looking forward in carrying out such an assessment in terms of attempting to remain up-to-date can be recognised. However, the PPG advises that: "*Therefore local planning authorities should have an identified five-year housing supply at all points during the plan period.*" An assessment with a start-date of April 2016 does not provide a demonstration that a five year supply exists before that date. In addition, there is increased uncertainty from relying on assumptions about future completions and from attempting to quantify individual site contributions over a longer period. [56,67,111-112,126]

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<sup>203</sup> ID: 2a-003-20140306

248. With respect to the period 2015-20, the Council prepared an assessment as at 5 August 2015 which claims to show a supply of 5.2 years. A further assessment was provided during the inquiry (dated 1 September 2015) which records a reduced number of completions over 2014-2015 (477 compared with 351), with this based on the results of an annual survey rather than the previous projection. This is therefore a reduction of 126 completions. In addition, completions projected for 2015-16 are also reduced (by 70). Applying the August supply figure to the revised calculated requirement would give a supply of just less than five years. However, in the September assessment the identified supply (i.e. excluding windfalls) has been increased from 2,963 to 3,269, with a calculated supply of 5.3 years. The Council advises that this is based on more recent information on the likely programme of completions from individual sites obtained from discussions with developers. [56,65,111,121-126,131]
249. While the more recent assessment for 2015-20 appears to assume relatively high completion rates towards the end of the five year period, the figures for completions at the beginning of the period are reduced. Some rational explanation for this change is suggested based on an initially slower start on larger strategic sites which are then anticipated to proceed more quickly. [65,66]
250. The concern raised by the appellant about the seemingly rapid change in the Council's evidence on the five year position, in particular from that put to the LP Inspector, and the extent of the drop in the number of completions, has force. However, no challenge has been made to the evidence on future anticipated completions from individual sites included in the supply as identified by the Council. The PPG advises that: "*The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position.*" Despite the change in the Council's evidence on the future trajectory, it appears to remain the best evidence available, and there is no alternative substantive evidence to contradict this. [65-66,83,110,121,121-128,131-132]
251. There is therefore no compelling basis on which to conclude that the LP finding that there is a five year housing land supply for the Plan area no longer applies. Relevant policies for the supply of housing in the LP and NP should therefore not be regarded as out-of-date for the reason of such a supply not being demonstrated. [66,68,86,129]

**c) The effect the development would have on the character and appearance of the locality and the significance of heritage assets in the vicinity by way of the effect on their settings**

252. The site lies on the south-west edge of the village on the west side of the High Street. It is currently unmanaged grassland edged by vegetation. Although there is further agricultural land to the west, there is existing residential development to the north and south-east, and to the east across the road. The wider area is one of undulating countryside which can be regarded as sensitive to development, but the site is only a relatively small element which is relatively well-contained and closely related to the built-up area of the village. There is no

landscape designation covering the site. Only minor localised harm would result from the loss of open undeveloped land at the edge of the settlement that is part of the countryside. [6-8,70,74,144,147,182,192]

253. The thick vegetation border to the road is intended to be retained and augmented. Despite the differing levels and scope for some views through into the site, this would provide fairly substantial screening to the development from the road. There would be open views into it from the new road access, and this and the associated highway works would breach the vegetated boundary and give the appearance of a more urban character. However, this would be at the north end of the site closest to the main centre of the village. [10,71-72,134-135,138-139,191]
254. This part of the settlement is the oldest, with limited ribbon development. The enclave form of the proposal would not accord with this. Nevertheless, previous additions to the village have taken the form of relatively concealed infills, and the proposal would continue this pattern. The characteristic sense of enclosure at the southern end of the village would largely be retained. Any visibility of the buildings from the Wey and Arun canal further to the south are likely to be very restricted due to differing levels and intervening vegetation, and would not be out of keeping with existing glimpsed views of development. There would be no material effect on gaps between settlements due to the relative isolation from other villages. [71-74,134-135,138-139,142-144,189,192]
255. There are a number of listed buildings on the east side of the High Street across the road from the site. These are detached and semi-detached residential properties forming the older part of the village's development, their main significance arising from their architectural features and relationship to the historic route. There is no evidence of any functional or other relationship of the buildings to the appeal site. The vegetated enclosed nature of the road adjacent to the site contributes a small part to the significance of the listed buildings by way of a setting of loose ribbon development. As set out above, this would be largely unaffected by the proposal. Given that part of the existing setting includes cars immediately adjacent to the buildings and passing along the road, the addition of noise and lights from vehicles associated with the proposed development would have minimal effect on this. Overall I assess that there would be no harm to the significance of the listed buildings by way of impact on their settings. The Council suggests that other unlisted properties in the vicinity of the site comprise non-designated heritage assets, but the impact on these would be similarly immaterial. [8,71,75-78,133,136-141,189,191]
256. Policies 25, 33, 47 and 48 in the LP broadly seek to conserve and enhance the rural character of the area and its landscape, and ensure that development would respect the character of the surroundings. With the layout of the development as shown in the plans, and subject to the details of the reserved matters, these objectives could largely be achieved. However, there would be a degree of conflict with the policies by way of minor harm to character through loss of the existing open and undeveloped nature of the site and the contribution that this makes to the countryside setting on the edge of the settlement. Nevertheless, there is no reason why the reserved matters could not achieve the detailed design requirement of policies 9 and 10 of the NP. [20-27,33,69,73-74,78,145-146]

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**d) Whether the proposal overall amounts to sustainable development**

257. The NPPF sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. It states that the policies in its paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means in practice.
258. Paragraph 7 identifies three dimensions to sustainable development: economic, social and environmental.
259. In economic terms, the proposal would provide 25 dwellings, including 11 affordable homes. The potential economic benefits of this development have not been quantified, but there is no dispute that there would be benefits of this nature. The NPPF aims to support growth, and this includes by way of new housing development. The potential economic benefits can be given significant positive weight. [103,153,162]
260. On the environmental dimension, the site is well located for accessibility to facilities of the village. Loxwood as a rural service centre is in general terms a suitable focus for modest new development. The sustainability of the location is common ground, although there would be a need to travel further afield for higher order facilities. The site was identified as having development potential in the preparation of the NP. Infrastructure requirements necessary for the development could be met, as addressed below, and no serious adverse cumulative effects have been identified, despite the reservations expressed by the Parish Council. Conversely, the loss of undeveloped land and erosion of countryside would represent an element of harm. Overall the scheme can be rated as performing moderately well on the environmental aspects. [9,14,73-74,79,103-104,107-108,147-155,176,187,190,193]
261. The social dimension includes the supply of housing. As found under the second main consideration, there is not an established current shortfall in the District's five year housing land supply. However, with the extent of identified need for housing in the District, significant positive weight can be given to the potential gain in this, and specifically to the affordable housing element. The NP also recognises the general benefits of new housing in sustaining and enhancing the community. [101,153,155-157,159-160]
262. However, as set out above, the preparation of the NP has involved the exercise of local choice in the allocation of sites to meet strategic needs, and the proposal does not accord with the NP. Core planning principles given in the NPPF include that planning should *"be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area"* (paragraph 17). Paragraph 183 refers to neighbourhood planning as giving communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. According to paragraph 198, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. [52,79-80,83,172-175,177,185,195]
263. That is the case here. As an aspect of the social dimension of sustainable development, the lack of accord with a neighbourhood plan that has undergone the full process of being made amounts to considerably more than just the dislike of some local people for a proposal described by the appellant. Having regard to

the importance given by the Government to neighbourhood planning, as well as the statutory status of the development plan, the conflict with the NP carries very substantial weight. [36-37,53,79,158-161,177,185,188,195]

264. Bringing these factors together, I reach an overall judgment having regard to the NPPF as whole that the proposal does not represent fully sustainable development.

**e) The planning conditions and planning obligations that are required in the event of permission being granted and the likely effectiveness of these with respect to mitigation of impacts on infrastructure and the environment**

***Conditions***

265. Conditions to be imposed on a grant of permission were discussed at the inquiry, and largely agreed. A set of conditions, incorporating the agreed amendments and minor improvements to wording, which are recommended in the event of the appeal being allowed is included in an Annex. I set out below a justification for the conditions, including where relevant the infrastructure needs that they are intended to address. [198]
266. Requirements on submission of reserved matters and timing appropriate to an outline permission are needed. The details shown in the plans which are not reserved need to be secured for the avoidance of doubt and in the interests of proper planning.
267. The scale of the development and relationship to existing residential properties warrant a requirement for a construction method statement. Hours of construction works are added to this to deal with potential noise impact. [199]
268. Provision for foul and surface water drainage should be made, having regard to the assessments submitted with the application. These indicate that, subject to satisfactory details and requirements for implementation, there would be no adverse impacts in these respects. [183,190]
269. Provision for investigation of identified potential archaeological interest is required to ensure that this is carried out.
270. Although access is not a reserved matter, further details of the proposed site access should be approved and implemented to safeguard highway safety. For the same reason, and in the interests of sustainable travel, the proposed footway to link the site to the village should be secured. Conditions are also needed to secure details of on-site highway and parking provision. Details of any new street lighting are added to the requirements in order to ensure compliance with policy 7 of the NP. Together with a contribution to local traffic calming (dealt with below), these conditions could be expected to deal adequately with the safety and traffic impact of the development. [32,167,193,200-201]
271. Power lines should be undergrounded or diverted in the interests of amenity and to ensure satisfactory electricity provision in the area. Compliance with this would require the developer to agree the details with the statutory undertaker, which is noted as being necessary by the Parish Council. [155,183]
272. While landscaping is a reserved matter, certain requirements can be anticipated and should be imposed at this stage to safeguard visual amenity.

- These cover tree and other vegetation protection during construction, and future landscape maintenance and management.
273. Provision for ecological protection in line with the submitted survey information is needed to safeguard and enhance these biodiversity interests.
274. Refuse and recycling storage provision is needed to protect future amenity. A requirement for internet provision is warranted on amenity and sustainability grounds, in accordance with NP policy 15.
275. The maximum height of dwellings in the development should be limited to 2 storeys to safeguard visual amenity having regard to the character of the surroundings.
276. I deal now with the disputed conditions. With the gradient across the site and to the adjoining road, the levels of the proposed dwellings would have a significant bearing on the perceived building heights. This warrants a requirement on levels, but given that layout is not a reserved matter a simplified version of this is sufficient. [204]
277. In current practice it is usual for affordable housing to be secured by way of a planning obligation. Such obligations are suited to securing the detailed arrangements for the provision and long-term retention of such housing. The appellant's suggested condition is modelled on one that has commonly been used as an alternative, but which would require submission and approval of a detailed scheme for provision. Advice in the PPG is that "*in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.*"<sup>204</sup> In this case, since the number of affordable units, their mix and locations are already set out in the proposal, some elements of the 'scheme' would be relatively straightforward to resolve. Therefore it is not certain that the suggested condition would involve a future obligation or other formal agreement for its requirements to be discharged, although that could be the approach used. Appropriate powers exist for the enforcement of conditions, and general advice in the PPG expresses a preference for the use of a condition rather than an obligation when either could achieve an objective. Having regard to all these factors, I consider in this case that a condition is an acceptable means to secure the affordable housing provision, and that the absence of an obligation on the matter in itself does not make the proposal unacceptable. [10,156,202-203,213]
278. The proportion of affordable units in the scheme at 44% is more than the 30% required under policy 34 of the LP. Nevertheless, a requirement through the condition for all of the proposed affordable housing units to be provided could meet the tests of necessity and reasonableness on the basis of securing the extent of affordable housing actually proposed as a benefit of the scheme and taken into account in assessing its overall merits. [22,202]

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<sup>204</sup> ID: 21a-010-20140306

## **Obligations**

279. The NPPF sets out policy tests for the seeking of planning obligations, and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations (2010) which must be met for obligations to be given weight. Policies 9, 39 and 54 of the LP and policies 3 and 16 of the NP and the contents of local guidance documents on development requirements are also relevant. [16,23,28,31,35]
280. The obligations for payments with respect to community facilities, sport and leisure, education, library facilities, and fire and rescue would deal with needs that can be anticipated would arise from residents of the new residential development, and are properly quantified with appropriate justification. While third party concern has been raised about the potential for the local primary school to expand, the County Council as the education authority appears to be satisfied that appropriate additional facilities could be provided within the local area to meet additional pupil demand. The sustainable transport contribution is expected to be used to provide traffic calming in Loxwood High Street to a level warranted by the scale of the development, and satisfactorily meets the requirements of policy 16 of the NP. The evidence indicates that none of these contributions would lead to a breach of the limit for pooled contributions in Regulation 123. They all meet the relevant policy and statutory tests of being necessary, directly related to the development and fairly and reasonably related to it, and can be accorded weight in support of the proposal. [35,167-168,190,193,201,205-208,210-211]
281. Given the position taken by the Council with respect to the obligation on payment of a monitoring fee, this cannot be regarded as necessary, and should carry no weight. [209]
282. With the progress being made on the Council's CIL, it appears likely that this will be in place by the time of the decision on the appeal. This situation is anticipated in the undertaking, and under its terms the requirements it contains would then fall away, with all of the contributions then being subject to CIL. [168,212]
283. Various legal points have been made by the Council on the wording of the undertaking. I am not qualified to assess the full implications of these, but they do not appear to me to be fatal to its efficacy. The undertaking has already been executed. If the points are considered to be significant, the option of a 'minded to' decision exists to address them as necessary. [216]
284. Turning to the obligations sought by the Council that are not included in the undertaking, the provision of public art within the development could be seen as desirable, and the Council's Public Art Strategy supports this. However, it is not a requirement of the development plan, and therefore the absence of an obligation on this is not a material shortcoming. The internal estate roads would be adequately dealt with by the suggested condition on this, and therefore again an absence of an obligation is not a serious omission. I have already dealt with the matter of affordable housing. [168,213-215]
285. Together with the suggested conditions, the contributions (or, in the alternative, CIL) would deal satisfactorily with the impact of the development on infrastructure and the environment. [166]



### **Overall Conclusion**

286. I have found that the proposal does not comply with the policies of the Local Plan and the Neighbourhood Plan on the location of new residential development. Given the fundamental nature of this finding, the proposal is not in accordance with the development plan as whole.
287. It has not been established that the recent conclusion reached in the preparation of the Local Plan that there is a five year housing land supply for the plan area no longer applies. Relevant policies for the supply of housing in the Local Plan and Neighbourhood Plan should therefore not be regarded as out-of-date based on an absence of a five-year supply.
288. There would be only minor harm to the character and appearance of the area involving the loss of the existing undeveloped countryside. There would be no material harm to heritage assets in the vicinity.
289. In many respects the proposal would contribute positively to sustainable development objectives as set out in the NPPF, and conditions and obligations or CIL could deal satisfactorily with infrastructure and environmental impacts. However, as part of the social dimension of sustainable development, the lack of accord with a Neighbourhood Plan that has undergone the full process of being made carries very substantial weight. As an overall judgment having regard to the NPPF as a whole, the proposal does not represent fully sustainable development.
290. There is no overriding reason to reach a decision other than as indicated by the development plan.

### **RECOMMENDATION**

291. I recommend that the appeal be dismissed.

*T G Phillimore*

INSPECTOR

## **ANNEX: RECOMMENDED CONDITIONS**

- 1) Details of the appearance, landscaping and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 2 years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, insofar as they relate directly to the matters approved within this grant of outline planning permission: 1319-PL01 Location, 1319-PL02 Rev Q Site layout and 130524-01 Access and visibility.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - access timing and maintenance
  - number, frequency, types of vehicles, routing
  - the parking of vehicles of site operatives and visitors
  - loading and unloading of plant and materials
  - storage of plant and materials used in constructing the development
  - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - management and mitigation of dust and dirt including wheel washing facilities
  - control of lighting
  - a scheme for recycling/disposing of waste resulting from demolition and construction works
  - hours of construction limited to 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 Saturdays, with no construction on Sundays or Bank Holidays.
- 6) No development shall take place unless and until a scheme showing the proposed means of foul water disposal including all necessary on and off-site works and a timetable for delivery has been submitted to and approved in writing by the local planning authority and no dwelling shall be occupied until the approved scheme has been implemented in full accordance with the approved details and timetable. The required capacity shall be provided and operational prior to first occupation.
- 7) No development shall take place unless and until full details of a sustainable urban drainage scheme have been submitted to and approved in writing by the local planning authority. This scheme shall set out clearly the implementation, maintenance and management of the sustainable drainage scheme proposed. No dwelling shall be occupied until the approved scheme has

been implemented and thereafter the scheme shall be managed and maintained in accordance with the approved details.

- 8) No development shall take place unless and until an archaeological investigation of the site has been carried out in accordance with a specification to be submitted to and agreed in writing by the local planning authority. The investigation shall be undertaken by an appropriately qualified archaeologist, and shall include the recording of findings and subsequent publication of results.
- 9) No development shall commence until the detailed design of the vehicular access serving the development as shown on approved plans 1319-PL02 Rev Q Site layout and 130524-01 Access and visibility has been submitted to and approved in writing by the local planning authority. The details shall include any proposed street lighting. The development shall not be occupied until the access is constructed in accordance with the approved design.
- 10) No development shall commence unless and until full details of the footway provision to connect the north east corner of the site to the existing footway adjacent to the village shop and bus stop on the western side of High Street (as shown on site plan 1319-PL02 Rev Q) have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the footway has been constructed in full accordance with the approved details and is available for safe use.
- 11) No development shall commence unless and until detailed design and construction drawings for the diversion or provision underground of the overhead power lines crossing the site have been submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until the approved works have been completed in accordance with the approved detailed design and construction drawings.
- 12) No development, site works or the introduction of machinery shall take place on site until all existing trees and hedgerows on the land shown to be retained as part of the landscaping details for the site have been protected in accordance with details to be submitted to and approved in writing by the local planning authority. The extent of works required to achieve satisfactory vehicular and pedestrian visibility splays and reasonably implement the necessary highway works, implement the drainage strategy and deliver the provision of utilities and services must also be clearly shown, with appropriate protection measures applied to protect retained vegetation. Once approved, the protection measures and exclusion zones shall be adhered to until all plant and machinery has been removed from site. No fires shall take place on site. No additional work to trees or hedges other than that set out on this plan and accompanying schedule shall take place during the construction period unless otherwise agreed in writing by the local planning authority. Any trees or vegetation lost during works without approval shall be directly replaced in the next planting season unless alternative provisions are agreed in writing with the local planning authority.
- 13) No development shall take place until a detailed scheme for the long term maintenance and management of all landscaping and amenity space (with the exception of private gardens) shown on the landscaping details submitted in accordance with condition 1 has been submitted and approved in writing by the

local planning authority and no dwelling shall be occupied until the approved details have been implemented.

- 14) No development shall take place until a full reptile mitigation strategy has been submitted to and approved in writing by the local planning authority. Once approved, the mitigation strategy shall be followed completely unless otherwise agreed in writing by the local planning authority, including the post-development and/or post-translocation monitoring.
- 15) No development shall take place, including site preparation, unless and until appropriate ecological protection measures are installed on site in accordance with plans and details to be submitted to and approved in writing by the local planning authority in advance. Once approved, the protection measures shall remain in place as approved throughout the construction process. Development shall thereafter take place in accordance with the approved protection details and the working practices set out in the Ecological Appraisal prepared by ACD Landscape Architects dated June 2013.
- 16) No part of the development shall be first occupied until the road(s), footways, casual parking areas and vehicle turning spaces serving that part of the development have been constructed, surfaced and drained in accordance with plans and details which shall include details of any proposed street lighting to be submitted to and approved in writing by the local planning authority.
- 17) No dwelling shall be first occupied until the car parking spaces or garages associated with that dwelling have been constructed in accordance with plans and details submitted to and approved in writing by the local planning authority. These spaces and garages shall thereafter be retained at all times for their designated use.
- 18) No dwelling shall be first occupied until covered and secure cycle parking has been provided in accordance with plans and details submitted to and approved in writing by the local planning authority and once provided these shall be retained thereafter for their designated use.
- 19) No dwelling shall be occupied unless and until detailed plans and proposals have been submitted to and approved in writing by the local planning authority showing refuse bin and recycling storage (sufficient for 2 no. 240 litre wheeled bins or equivalent) for each dwelling. The approved storage shall be provided for each dwellinghouse prior to first occupation and shall thereafter be kept permanently available for the stated purpose.
- 20) No dwelling shall be occupied unless and until full details that set out how the development will contribute to and be compatible with the existing local fibre or internet connectivity have been submitted to and approved in writing by the local planning authority. Details shall include the need for any groundworks to deliver such connectivity and confirmation from at least one utilities provider that the connection can be delivered and the timetable for this. Once approved, the relevant infrastructure shall be provided on site to enable each dwelling to connect to the local network prior to occupation.
- 21) The maximum height of any dwelling on the development hereby permitted shall not exceed 2 storeys.
- 22) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels and the levels of adjoining land and buildings

(including to the north of the site and to the east side of High Street) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

23) No development shall take place until a scheme for the provision of 11 units of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of 2 x 1 bed, 4 x 2 bed, 4 x 3 bed, 1 x 4 bed dwellings;
- the timing of the construction of the affordable housing which shall be prior to the first occupation of the market housing;
- the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing if no Registered Provider is to be involved;
- the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be provided and retained in accordance with the approved scheme.

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Gwion Lewis of Counsel	Instructed by Nicola Golding, Solicitor for Chichester District Council
He called:	
Lone Le Vay BA DipArch LLB(Hons) RIBA IHBC	Conservation and Design Manager, Chichester District Council
Robert Davidson BA MA MRTPI	Principal Planning Officer, Planning Policy Team, Chichester District Council
Naomi Langford BA(Hons) MA MRTPI	Senior Planning Officer, Major and Business Applications Team, Chichester District Council

### FOR THE APPELLANT:

Richard Harwood QC Assisted by Daniel Stedman Jones of Counsel	Instructed by Phoenix Planning and DMH Stallard
He called:	
Paul Collins BA(Hons) DipTP MRTPI	Phoenix Planning Consultancy

### INTERESTED PERSONS:

Tony Colling	Loxwood Neighbourhood Plan Steering Group Chairman and Chairman of Loxwood Parish Council Planning Committee
Chris Agar	Chairman of Loxwood Parish Council and member of the Loxwood Neighbourhood Plan Steering Group

## INQUIRY EVIDENCE AND SUBMISSIONS – LOCAL PLANNING AUTHORITY

LPA.1	Ms Le Vay's proof
LPA.2	Ms Langford's proof
LPA.3	Ms Langford's summary
LPA.4	Council's appendices 1-22
LPA.5	Chichester Local Plan Area – Five year Housing Land Supply 2016-2021 Updated Position at 1 September 2015
LPA.6	Council's opening submissions
LPA.7	Update to Committee report
LPA.8	Mr Davidson's qualifications and experience
LPA.9	Email exchange with Nick Ireland of GL Hearn
LPA.10	Assessment of Housing Development Needs Study: Sussex Coast HMA: GL Hearn Limited, April 2014
LPA.11	Review of Objectively Assessed Housing Need in light of 2012-

	based Sub-national Population Projections: GL Hearn Limited, August 2014
LPA.12	Letter from Department of Communities and Local Government to Leader, Cheltenham Borough Council dated 20 May 2009
LPA.13	Chichester Local Plan Area Five Year Housing Land Supply 2015-2020 (Housing supply position at 1 September 2015)
LPA.14	Council's response to Unilateral Undertaking provided 25 August 2015
LPA.15	Chichester District Council Open Space, Sport and Recreation Facilities Study (extracts)
LPA.16	Chichester District Council Infrastructure Delivery Plan 2014-2029 (extracts)
LPA.17	Zurich Assurance Ltd v (1) Winchester City Council and (2) South Downs National Park Authority [2014] EWHC 758 (Admin)
LPA.18	Fareham Borough Council decision notice ref P/15/0351/FP
LPA.19	Council's closing submissions

### **INQUIRY EVIDENCE AND SUBMISSIONS – APPELLANT**

APP.1	Mr Collins's proof
APP.2	Mr Collins's Appendices A-J
APP.3	Response to the Council's Updated Housing Land Supply Statement provided to the appellant on 3 September 2015
APP.4	Response to the Council's new issues regarding the effects of the proposals on local character and the setting of the Village and impacts on historic buildings and their settings
APP.5	Unilateral undertaking dated 7 September 2015
APP.6	Appellant's opening submissions
APP.7	Power of Attorney dated 3 September 2015
APP.8	Appellant's closing submissions

### **JOINTLY SUBMITTED DOCUMENTS**

JSD.1	Statement of Common Ground
JSD.2	Agreed suggested conditions
JSD.3	Additional suggested conditions to which the parties cannot agree

### **INQUIRY EVIDENCE AND SUBMISSIONS – THIRD PARTIES**

TP.1	Loxwood Parish Council: revised statement of case 7 August 2015
TP.2	Statement by Tony Colling
TP.3	Letter from Mrs Yvonne Holmes and Mr Andrew Holmes dated 5 September 2015
TP.4	Revision 1 of Tony Colling's statement
TP.5	Statement by Chris Agar

### **INSPECTOR'S DOCUMENT**

INSP.1	Folder of appeal representations
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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 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 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.