



Department for
Communities and
Local Government

Mr John Escott
Robinson Escott Planning
Downe House
303 High Street
Orpington
Kent
BR6 0NN

Our Ref: APP/D3830/W/15/3137838
Your Ref: JE/CN/13/223/FD

08 August 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CREST NICHOLSON OPERATIONS LTD
LAND NORTH OF BIRCHEN LANE, HAYWARDS HEATH, WEST SUSSEX
APPLICATION REF: DM/15/3415**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry between 16-18 February 2016 into your client's appeal against the refusal by Mid Sussex District Council ("the Council") to grant planning permission for residential development of up to 40 dwellings with associated garaging, car parking, open space, landscaping and formation of access roads at Land north of Birchen Lane, Haywards Heath, West Sussex, RH16 1RZ, in accordance with application ref: DM/15/3415 dated 19 August 2015.
2. The appeal was recovered for the Secretary of State's determination on 20 November 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the scheme involves 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.

Inspector's recommendation and summary of the decision

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

Policy considerations

4. 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

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determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the Mid Sussex Local Plan (LP) 2004 and the Lindfield & Lindfield Rural Neighbourhood Plan (LNP) made on 24 March 2016. The Secretary of State agrees with the Inspector that the only relevant LP policies, other than those relating to matters in the s106 agreement, are B10 and C1 (IR11); and that policies 1 and 2 of the LNP are also relevant (IR15).

5. The Secretary of State notes the flaws with the LNP identified by the Inspector at IR15 and that, once the Council had made some further amendments, the LNP was progressed to referendum. The Council considered that their amendments appropriately addressed the concerns identified and that the LNP met the basic conditions. The parties to the appeal inquiry had agreed that the LNP would be out-of-date once it was made, due to the lack of a five year housing land supply in the district. Given the lack of five year supply, the Secretary of State attaches limited weight to the policies in the LNP.
6. The Secretary of State has also had regard to the emerging Mid Sussex District Plan (DP) (IR13). However, the emerging plan is at an early stage with slow and delayed progress; there are unresolved objections; and a lack of consistency with the Framework - in part arising from the slow progress and previous failure to have sufficient regard to the duty to cooperate. Therefore the Secretary of State finds that relatively limited weight should be given to the emerging DP.
7. The Haywards Heath Neighbourhood Plan (IR14) has recently completed consultation under regulation 16 of the Neighbourhood Planning (General) Regulations 2012 and is yet to go through examination. Therefore, having regard to paragraph 216 of the Framework, as this plan is not yet at an advanced stage of preparation, with potential for significant objection, and yet to be critically assessed against the policies in the Framework, it can be given only limited weight.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework) and the subsequent planning guidance as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended. He has also had regard to section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires the decision-maker to have special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess.

Main issues

9. The Secretary of State agrees with the Inspector that the main issues are those set out at IR91. However, in considering the issue listed at IR91(iii), the Secretary of State has also included the housing land supply position as set out by the Inspector at IR21.

Development Plan

10. For the reasons given at IR106-114, the proposal would be contrary to LP policy C1 and LNP policies 1 and 2. The Secretary of State notes that the Council is unable to demonstrate a 5 year housing land supply and so, in accordance with paragraph 49 of the Framework, LP policy C1 is out-of-date and so only attracts greatly reduced weight. The same also applies for policies 1&2 in the LNP.

Heritage assets

11. The Secretary of State gives considerable importance and weight to the less than substantial harm to the setting of the Grade II listed Sunte House, but considers that this harm is clearly outweighed by the public benefit of providing housing (IR92-96). The degree of harm would be small but should still be given considerable importance and weight in the overall balance (IR99).
12. Turning to the harm to the non-designated medieval assarts, the Secretary of State agrees with the Inspector's assessment at IR97-98 that, although there would be harm to the appreciation of these assets on account of the development, in the absence of designation the weight to be given to this harm should be less than to the alteration of part of the setting of the listed building. For the reasons given at IR99, the Secretary of State also agrees with the Inspector that the same tests do not apply for non-designated heritage assets as for listed buildings, and any harm should make little difference to the overall balance (IR99).

Flooding Ecology and Landscape

13. The Secretary of State has considered whether the scheme would exacerbate the existing flooding problem downstream from the appeal site (IR100-103). Overall, he agrees with the Inspector that the proposed sustainable urban drainage scheme (SuDS) would be the best the appellant could offer to protect houses downstream from flooding exacerbated by the development of the appeal site and that it would accord with paragraphs 100-101 of the Framework.
14. Turning to the Inspector's conclusions on the effects of the proposal upon biodiversity, the Secretary of State recognises that the loss of some potentially important hedgerow to vehicular accesses would be regrettable. However, in terms of overall ecological value this could be more than offset by the proposed creation of a wildflower meadow in the southern field. On balance the Secretary of State finds that concern about adverse impacts on the biodiversity of the site should not count against the scheme and he finds that it would accord with paragraph 118 of the Framework (IR104).

Sustainability

15. For the reasons given at IR116, the Secretary of State goes on to consider whether the proposal can be considered sustainable development. He gives very significant weight to the economic and social benefits of new housing and agrees with the Inspector at IR117 that, given the woeful position of the Council in regard to housing land supply, the argument that housing should go elsewhere in the district whilst other applications are being refused for the same reasons, is disingenuous and highlights the need for new housing.
16. The Secretary of State has also taken account of the Inspector's reasoning at IR118 and agrees with him that some weight should be given to the harm to the setting of Sunte House and further slight weight to the harm to non-designated heritage assets. With many aspects of the design of the scheme to be dealt with as reserved matters, the Secretary of State agrees with the Inspector at IR119 that, taken as a whole, design should not count against the scheme. He also agrees with the Inspector's conclusion at IR120 that, on balance, the economic and social benefits of housing would outweigh any slight environmental harm and any conflict with paragraph 17 of the Framework so that it should be assessed as sustainable development in the terms of the Framework.

Conditions

17. The Secretary of State has considered the proposed conditions at Annex C to the IR and the Inspector's reasoning of them at IR81-83. He is satisfied that the conditions recommended by the Inspector and set out at Annex A to this letter are reasonable and necessary and meet the tests of the Framework and the guidance.

Obligation

18. The Secretary of State has considered the Inspector's assessment of the planning obligations as put to the Inquiry at IR84-90. He agrees, for the reasons given, that the contributions toward the community building, local community infrastructure, access and infrastructure contribution, management plans, affordable housing and SuDs meet the CIL tests. However, for the reasons given at IR89-90 the Secretary of State agrees with the Inspector that, as the contributions towards unspecified fire hydrants in unspecified locations would not meet the CIL tests, this provision should be excluded and managed instead by way of Condition No. 15 at Annex A to this letter.

Planning balance and conclusion

19. Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State concludes that, for the reasons outlined above, the appeal proposal is not in accordance with the Development Plan as a whole. Paragraph 198 of the Framework states that where a planning application conflicts with a made neighbourhood plan planning permission should not normally be granted; and the conflict with policies 1 and 2 of the LNP means that the proposal cannot be said to comply with the neighbourhood plan overall. The Secretary of State has therefore gone on to consider whether there are any material considerations which indicate the case should be decided otherwise than in respect of the development plan.

20. As the Council cannot demonstrate evidence of a five year supply of deliverable housing sites across the local authority area, the Secretary of State concludes that the relevant development plan policies for the supply of housing are out-of-date. Therefore, in line with the presumption in favour of sustainable development at paragraph 14 of the Framework, he considers that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted.

21. Having carefully assessed the evidence before him, the Secretary of State is satisfied that there are no adverse impacts which, either individually or together, are of sufficient weight to indicate that the development should be restricted. Overall, therefore, the Secretary of State finds that, when taking the policies of the Development Plan and the Framework as a whole, the adverse impacts of granting the proposed development are limited and that there are no material harms that significantly and demonstrably outweigh the substantial benefits which would result from the provision of new housing and affordable housing to boost supply as required by the Framework.

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation to allow the appeal and grant planning permission. He hereby allows your client's appeal and grants planning permission for residential

development of up to 40 dwellings with associated garaging, car parking, open space, landscaping and formation of access roads at Land north of Birchen Lane, Haywards Heath, West Sussex, RH16 1RZ, in accordance with application ref: DM/15/3415 dated 19 August 2015.

23. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
24. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

25. 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 day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
26. A copy of this letter has been sent to Mid Sussex District Council. Notification has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

JEAN NOWAK

Authorised by the Secretary of State to sign in that behalf

Richborough Estates

Annex A: Conditions

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins and the development shall be carried out as approved.

Application for approval of the reserved matters shall be made to the LPA not later than three years from the date of this permission.

The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

2. No development shall take place, including any works of demolition, until a Landscape and Ecological Management Plan has been submitted to, and approved in writing by, the LPA. The Plan shall include, but not be limited to, the following:
 - a wildlife protection and mitigation plan and method statement setting out the practical steps to be taken to avoid impacts on wildlife during site preparation and construction;
 - drainage and pollution prevention details sufficient to demonstrate that there will be no adverse impacts on the ecology of watercourses;
 - protection, including during construction, of trees, hedgerows and woodland including any area of trees and hedgerows associated with the medieval assart field boundaries.
 - a bat sensitive lighting scheme which shall include lighting designed to face away from, and minimise light spill onto, the woodland edge and hedgerows.
 - details of the management of open space; mitigation measures for protected species including badgers, bats and reptiles based on recent surveys of those species and; habitat enhancement to offset unavoidable impacts (i.e. loss of hedgerow to provide for site access).

The development shall be carried out in accordance with the approved details and the Plan shall be adhered to throughout the construction period. If there is a delay of greater than 24 months between the submission of a reserved matters application and the date of the ecological surveys submitted in support of this application, an updated survey report shall be submitted to support the reserved matters application.

3. The details submitted in respect of layout pursuant to Condition 1 shall provide for a buffer of at least 15m between the development and the edge of Birchen Wood. If surface water attenuation areas are to be provided within the minimum buffer zone, these shall not be located within the root protection area of any tree.
4. No development shall be carried out unless and until samples of materials and finishes to be used for external walls / roofs / fenestration/ external surfaces of the proposed development have been submitted to and approved by the LPA. The works shall be carried out in accordance with the approved details unless otherwise agreed with the LPA in writing.
5. The details submitted in respect of landscaping pursuant to Condition 1 shall include details of a Locally Equipped Area of Play (LEAP) of 400sqm, and particularly of its layout, drainage and fencing. Details shall also be provided in respect of the timetable for the completion and future management & maintenance of the LEAP, including details of the management company and maintenance schedules. The details shall be implemented as approved and the approved play area(s) shall thereafter be permanently retained as such.

6. The development hereby permitted shall not commence unless and until details of the proposed surface water drainage have been submitted to and approved in writing by the LPA. Before details of the surface water drainage works are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the LPA. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. include a timetable for its implementation; and provide a management and maintenance plan, which shall demonstrate the optimum operation of the scheme throughout its lifetime.

No buildings hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the LPA.

7. No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the LPA. Thereafter the approved Construction Management Plan shall be implemented and adhered to throughout the construction period. The Construction Management Plan shall provide and give details for:
- a timetable for the commencement, construction, occupation and completion of the development
 - the anticipated number, frequency and types of vehicles used during construction
 - the method of access and routing of vehicles during construction and directional signage for the purposes of such
 - the siting and layout of site compounds and welfare facilities for construction workers
 - the provision of parking of vehicles by site operatives and visitors
 - the provision for the loading and unloading of plant, materials and removal of waste
 - the provision for the storage of plant and materials used in construction of the development
 - the design, erection and maintenance of security hoardings and other measures related to site health and safety
 - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway, including the provision of temporary Traffic Regulation Orders
 - a scheme to protect existing neighbouring properties from dust and noise emissions
 - a noise management plan to include consideration of vibration
 - measures to deal with surface water run-off from the site during construction
 - a scheme for community liaison and public engagement during construction, including the provision of information to occupiers moving onto the site before the development is complete
 - contact details of site operations manager, contracts manager, and any other relevant personnel.

8. Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0900 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank or Public Holidays.
9. No dwelling shall be occupied until covered and secure cycle parking spaces have been provided in accordance with details to be submitted to and approved in writing by the LPA.
10. No dwelling shall be occupied until such time as the vehicular access from Gatesmead and the emergency access from Birchen Lane have been constructed in accordance with plans and details submitted to and approved in writing by the LPA.
11. No dwelling shall be occupied until the road(s), footways, and casual parking areas serving the development have been constructed, surfaced, and drained in accordance with plans and details to be submitted to and approved in writing by the LPA.
12. No dwelling shall be occupied until any parking spaces, garages and turning areas associated with them have been provided in accordance with details to be submitted to and approved in writing by the LPA. Thereafter, the parking and turning areas provided shall not be used for any purpose other than the parking and turning of vehicles.
13. No dwelling shall be occupied until the refuse and recycling storage facilities serving the dwelling have been provided in accordance with details to be submitted to and approved in writing by the LPA.
14. No development shall take place until a written scheme of investigation (WSI) has been submitted to and approved in writing by the LPA. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and the programme and methodology of site investigation and recording and the nomination of a competent organisation to undertake the agreed works. The WSI shall include provision for a purposive Lidar survey at a resolution of 0.25m and specialist scientific dating techniques of ironworking features revealed in field evaluation including archaeo-magnetic dating and radiocarbon dating. The WSI shall set out the programme for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI. Archaeological fieldwork investigation must take place between April and September.
15. No dwelling shall be occupied until fire hydrants have been provided in accordance with details to be submitted to and approved in writing by the LPA.

Report to the Secretary of State for Communities and Local Government

by David Nicholson RIBA IHBC

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

Date: 12 April 2016

TOWN AND COUNTRY PLANNING ACT 1990

MID-SUSSEX DISTRICT COUNCIL

APPEAL MADE BY

CREST NICHOLSON OPERATIONS LTD.

Richborough Estates

Inquiry held on 16-18 February 2016

Land north of Birchen Lane, Haywards Heath, West Sussex RH16 1RZ

File Ref: APP/D3830/W/15/3137838

File Ref: APP/D3830/W/15/3137838

Land north of Birchen Lane, Haywards Heath, West Sussex RH16 1RZ

- 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 Crest Nicholson Operations Ltd. against the decision of Mid Sussex District Council.
- The application Ref DM/15/3415, dated 19 August 2015, was refused by notice dated 29 October 2015.
- The proposal is for residential development of up to 40 dwellings with associated garaging, car parking, open space, landscaping and the formation of access roads.

Summary of Recommendation: the appeal should be allowed.

Procedural Matters

1. The appeal was recovered by the Secretary of State (SoS) for his own determination by way of a direction dated 20 November 2015¹. The reason given for the direction was 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*.
2. The application to which the appeal relates was made in outline form except for access. All other matters (appearance, landscaping, layout and scale) were reserved. The application was refused by the Council for three reasons². These related to: impact on the setting of Sunte House, harm to the medieval assart landscape and adjacent Hollow Way and, finally, infrastructure contributions. The first two reasons also refer to sustainable development for the purposes of the National Planning Policy Framework (NPPF).
3. An Agreement was submitted under section 106 of the Town and Country Planning Act 1990 (s106)³. I deal with the contents and justification for this below. The Council subsequently withdrew its third reason for refusal.
4. The Save Birchen Fields Action Group (SBF) did not seek Rule 6 status but represented a large number of objectors. I was told that some of these could not attend as the Inquiry fell over school half-term holidays. Consultations responses were received both from English Heritage (as was) and its new incarnation as Historic England (HE). I refer to both as HE.
5. The Inquiry sat for 3 days from 16-18 February 2016. I conducted an accompanied site visit on 18 February 2016⁴.

The Site and Surroundings⁵

6. The appeal site extends to some 10.2ha and comprises: three adjoining fields; Birchen Wood, to their north; and Birchen Lane. All of these abut the built-up

¹ Core Document (CD) 23

² CD21

³ Inquiry Document (ID) 23

⁴ Roughly following the route on ID14, taking in the points from where the parties' photographs were taken

⁵ As well as the location plan, maps and aerial views can be found in the Design and Access Statement at CD4

area of Haywards Heath. The fields are separated by well-established tree belts and hedgerows. They have been identified as medieval assarts, that is to say fields created by the clearing of woodland, including tree root balls, and their subsequent enclosure. The western boundary runs along a footpath to the town centre, known as the Hollow Way, which is set down below the fields and flanked by high hedges. The eastern side of the site borders existing 20th century houses around Birchen Lane, Gatesmead, Brook Lane and Roundabout Lane.

7. To the south stands Sunte House in grounds which extend from Birchen Lane to the Hollow Way. Gardner's Cottage stands opposite Sunte House at the end of Birchen Lane. The site falls away from Sunte House down to a stream running between the first two fields and rises again up to and through Birchen Wood. The fields are separated by thick mature hedges.
8. Archaeological investigation of the site revealed primary iron workings, dated to the Iron Age, and agreed to be of regional significance⁶. Together with the assart fields and, probably, the Hollow Way these were also agreed by the Council and appellant to be non-designated heritage assets under the NPPF. Sunte House has finely detailed early 18th century elevations to its east and south⁷ while those to the west and north are later and/or extensions. I did not have the benefit of seeing the interior.
9. It was agreed between the appellant and the Council⁸ that the site is within 2km of the town centre, around 7 minutes walk from the nearest bus stop, and a 1.8km walk from Haywards Heath train station. The nearest convenience store is about 800m away and there is a doctors' surgery, local hall, supermarket and leisure centre within 2km.
10. The site is within the Landscape Character Area 45 as identified in the July 2007 *Mid Sussex Landscape Capacity Study* by Hankinson Duckett Associates⁹. It is also near, but outside, the High Weald Area of Outstanding Natural Beauty (AONB). It shares some of the features of the High Weald Fringes Landscape Character Area 10 in the November 2005 study: *A Landscape Character Assessment for Mid Sussex*¹⁰.

Planning Policy¹¹

11. The development plan for the area includes the Mid Sussex Local Plan (LP) 2004¹². Other than those policies relating to matters in the s106 Agreement, it was common ground between the Council and the appellant, if not SBF, that the only relevant LP policies are B10 and C1¹³. LP Policy B10 aims to protect listed buildings and their settings; it is therefore consistent with the NPPF.

⁶ ID10: Agreed Statement on Archaeology

⁷ See list description at Worlledge appendix 3 and the *Land south of Sunte House* Decision: Escott appendix 2 paragraph 9

⁸ See ID7: Appellant's Site Accessibility Statement

⁹ Haywards Heath North Weald (LCA 45) at Gibbs appendix 3, p53 and paragraph 6.2

¹⁰ Taylor proof paragraph 4.1 and Walker appendix D(i)

¹¹ See Questionnaires for this appeal and APP/D3830/W/15/3012022

¹² See relevant extracts at Lindley appendix 12

¹³ SoCG para 4.1

12. LP policy C1 states that: *Outside built-up area boundaries, as detailed on the Proposals and Inset Maps, the remainder of the plan area is classified as a Countryside Area of Development Restraint where the countryside will be protected for its own sake. Proposals for development in the countryside, particularly that which would extend the built-up area boundaries beyond those shown will be firmly resisted and restricted to: ...* . It then lists criteria which do not apply here.
13. The Council expects adoption of the emerging Mid Sussex District Plan (DP)¹⁴ in August 2016. The appellant highlighted delays and the number of objections¹⁵. None of the policies in the DP is referred to in the Council's decision notice.
14. The appeal site straddles two Neighbourhood Plan areas. Of these, the main parties agreed that the draft Haywards Heath Neighbourhood Plan (HHNP) covers the southern fields of the appeal site and should be given relatively limited weight¹⁶ while SBF noted that it has not yet reached the final consultation stage and considered that none of its emerging policies should be given weight¹⁷.
15. The Lindfield & Lindfield Rural Neighbourhood Plan (LNP)¹⁸ was subject to a referendum on 28 January 2016 and accepted by the vast majority who voted. It is scheduled to be formally 'made' by the Council on 23 March 2016¹⁹. LNP policy 1 only supports development within the built up area boundaries of Lindfield and Scaynes Hill. Policy 2 supports proposals of 10 or fewer net new homes within the built up area boundaries. The LNP independent examiner found that policies 1 and 2 were flawed due to: insufficient regard to the emerging District Plan; insufficient provision for future housing and affordable housing; the built-up area boundary not reflecting the established situation on the ground; and the lack of allocation of potential sites based mainly on the fact that local landowners did not promote them. He concluded that, unless amended, the LNP would not comply with national policy and recommended 9 amendments including the allocation of a site in the draft Strategic Housing Land Availability Assessment (SHLAA)²⁰. The LNP proceeded to referendum without this allocation. It was therefore agreed between the main parties that, if made in its current form, it would be out-of-date as soon as it is made.
16. The Judgment in *Woodcock Holdings Limited*²¹ includes the paragraphs:
86. It is common ground that policies C1 and H1 to H4 of the neighbourhood plan represent "housing supply policies" for the purposes of paragraph 49 of the NPPF ... Accordingly, there is no dispute that if at the date when that plan formally became part of the statutory development plan ... a 5 year supply of housing land could not be shown, (a) those policies would then be treated as out of date and (b) the presumption in paragraph 14 of the NPPF would apply to a decision at that stage whether to grant planning permission.

¹⁴ ID20: Timeline note

¹⁵ ID1: Appellant's opening para 3

¹⁶ SoCG para 7.1.10

¹⁷ Walker para 3.81

¹⁸ See questionnaire to linked appeal 3012022, now withdrawn

¹⁹ ID16

²⁰ Escott appendix 4, paragraphs 65-68 and 96-98

²¹ Escott appendix 10: *Woodcock Holdings Limited v SoS and Mid-Sussex District Council [2015] EWHC 1173 Admin* dated 1 May 2015

87. ... in such a situation the NPPF does not prescribe the weight to be given to "out of date policies" ... in many cases the weight may be greatly reduced, but this will vary according to the circumstances. It must follow, of course, that where paragraph 49 of the NPPF applies, the decision-maker is also obliged to decide how much weight should be given to the housing supply policies of a plan (or plans) by assessing the reasons why those policies are to be treated as out of date and any other relevant circumstances.
17. SBF considered that some weight should be applied to the LNP given its advanced stage but accepted that it merited reduced weight on account of the findings in *Woodcock* and the failure to follow the suggestions of the Independent Examiner. A Decision by the SoS, referred to as *Sayers Common*²², was issued on 10 February 2016 just a few days before the Inquiry opened but in time for all parties to comment on it.
18. Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 states that: *Before submitting a plan proposal to the local planning authority, a qualifying body must—(a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area—*
(i) details of the proposals for a neighbourhood development plan;
(ii) details of where and when the proposals for a neighbourhood development plan may be inspected;
(iii) details of how to make representations; and
(iv) the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicised; ...
19. The recently updated section on *Neighbourhood Planning* at ID: 41 in the *Planning Practice Guidance (PPG)* is also particularly relevant²³.
20. The appeal site is contained within site reference 33 of the draft SHLAA²⁴ which identified constraints as: the relevant NP, lack of access, need for an ancient woodland buffer, hedgerow maintenance and enhancement, and archaeological mitigation.
21. I invited the parties to submit their assessment of housing land supply (HLS). The appellant did so but the Council declined. I have therefore based my assessment on the unchallenged evidence of the appellant that the supply is between 1.91 and 2.36 years²⁵. I note that this is also remarkably close to the range of between 1.97 and 2.43 years' supply found in the Decision for *Land at Penland Farm*²⁶ (see below).

²² Walker appendix H(i): Ref. APP/D3830/A/12/2189451 the SoS dismissed a redetermined appeal on an outline application for 120 dwellings and associated development on 10 February 2016. This follows a previous Decision on the same site which was quashed by Order dated 1 May 2015 in *Woodcock* – see Escott appendix 10

²³ Especially paragraphs 082 and 083, inserted between 007 and 008, and extra sentences added to 040, both on 11 February 2016

²⁴ Escott appendix 7

²⁵ ID6 para 8.

²⁶ Escott appendix 3, Ref. APP/D3830/A/14/2218078

Planning History

22. An outline planning application for up to 48 dwellings and associated works was submitted in January 2014²⁷. This was withdrawn the following November. It was resubmitted in December 2014 and refused on 31 March 2015 for three reasons²⁸. The proposals, as illustrated, were to develop the two northern of the three fields within the current appeal site plus the northern half of the southernmost field. HE objected on the basis of the harm that the proposal for a significant housing development, on land adjacent to the northern part of the existing estate, would cause to the setting of Sunte House. An appeal against this was withdrawn on 15 December 2015²⁹.
23. An appeal regarding *Land to the south of Sunte House*³⁰ was dismissed on 12 August 2014. The balance turned on the considerable importance and weight to the less than substantial harm to the setting of Sunte House that would be caused by residential development in an important part of its context and close to the southern boundary of the formal gardens.
24. Another appeal, regarding *Penland Farm* just west of the appeal site, was allowed by the same Inspector on 12 January 2015. He found that the residential scheme would amount to sustainable development and that there would be no harm to the significance of designated heritage assets.

The Proposals

25. Illustrative drawings which, if no preferred details are forthcoming, could be required through conditions controlling reserved matters, indicate that only 2.41ha of the middle and northern fields would have built development. The southern field would be enhanced as a wildflower meadow and there would be no development at Birchen Wood which would remain as it is with a wide buffer between it and the nearest houses. The trees and hedgerows would remain but for short sections required for access into the site and between the fields.
26. A Flood Risk Assessment (FRA)³¹ proposes a comprehensive sustainable urban drainage system (SuDS) which would aim to prevent runoff from the development increasing the existing flood risk to other areas downstream from the appeal site.
27. An assessment of the section of hedgerow proposed for removal was submitted in October 2015³². An emergency access, requested by West Sussex County Council (WSCC), would run through the southern field from the main access at the end of Gatesmead back to Birchen Lane. The submitted details³³ suggest a surface and treatment for this which would be as low-key and unobtrusive as possible.

²⁷ Ref. 14/00209/OUT

²⁸ Ref. 14/04475/OUT. Refused on the grounds of harm to the setting of Sunte House, to a medieval assart landscape, and the lack of a s106 Agreement.

²⁹ Ref. APP/D3830/W/15/3012022

³⁰ Escott appendix 2, Ref. APP/D3830/A/14/2216410

³¹ CD8

³² ID18

³³ Technical note at ID8

Common ground

28. A Statement of Common Ground (SoCG)³⁴ between the Council and the appellant confirms agreement to the following:
- the application plans,
 - the description of the site,
 - its planning history,
 - relevant policies,
 - the lack of a 5 year HLS,
 - the site's sustainable and accessible location,
 - the benefits of housing and affordable housing,
 - the views of HE and the status of the assart landscape,
 - that considerable weight should be attributed to section 66³⁵,
 - that relatively limited weight should be given to the draft DP and the HHNP,
 - that in its current form, the housing policies of the LNP would be out-of-date as soon as it is made,
 - the lack of objections, subject to conditions, with regard to highways, drainage, flooding, ecology, arboriculture or neighbour amenity.
29. A further SoCG with regard to archaeology agreed that the Iron Age iron making site is of regional significance and that the below ground assets could be preserved by record which could be secured by a condition³⁶.
30. As below, SBF did not reach agreement on all of these matters and there were many written objections from local residents.

The Case for Crest Nicholson Operations Ltd.

The gist of its case was:

31. The Government seeks to boost significantly the supply of housing. The context for this appeal is a district where there has been a persistent failure to make a proper contribution to the supply of housing. Rather than the required 5 year supply, the unchallenged evidence is of no more than between 1.91 and 2.36 years³⁷. Local policies which seek to restrict housing development must be considered out-of-date and should carry very limited weight. Planning permission should be granted in line with NPPF paragraph 14 (NPPF 14) and NPPF 49.

The setting of Sunte House

32. HE identified: *The essential question to be determined in setting cases is to what extent the experience, as available today, contributes to our understanding or appreciation of the heritage asset, and the extent to which it would change in such a way as to diminish its significance*³⁸. The proposals have been amended to accord with the concerns of HE over travellers approaching Sunte House past Gardeners Cottage where views of the open countryside come into view. Here

³⁴ Signed by the appellant and the Council, main file, blue folder

³⁵ Of the Planning (Listed Buildings and Conservation Areas) Act 1990

³⁶ ID10 and condition 14

³⁷ ID6

³⁸ ID2 p5

- there is a change of character from suburban to rural with the combination of pasture and the stable and farm courtyard giving the sense of entering a country estate³⁹. This relationship provides the significance to this part of the setting.
33. In the Decision for land to the south of Sunte House⁴⁰, the Inspector's view was that the site there contributed to the setting. This was because: it was historically associated with a country estate, with an extensive land holding where the open character and screening separated the house from the 20th century suburbs; and there was a designed relationship between the south elevation and the driveway approach.
34. In the current appeal, the part of the site that would be developed makes no such contribution to the setting of Sunte House and would not be directly overlooked by it. There are no designed views towards the north and SBF accepted that the setting did not extend that far⁴¹. Either way, the relationship between Sunte House and the land to the north is different from that to the south where there is a degree of formality and a designed relationship with the driveway and views. The significance of the setting to the north is as a reminder of its history as a country house with farmland. That was the concern of HE. Sunte House is now primarily experienced from within its own curtilage rather than in long public views, the land to the north is less sensitive to change, and now the house: *is barely visible from outside its own grounds*⁴².
35. This is not to doubt the value and significance of Sunte House. It is listed at Grade II* and of national importance. The setting to the north contributes to the experience of it as a country house which once had more extensive agricultural surroundings. HE therefore recommended removing built development from the proposals for the southernmost field where there is intervisibility between the house, its farm outbuildings and the countryside. HE pointed out that: *The other field parcels to the north of this are screened by well-developed belts of mature trees and hedges [which] ... would be sufficient to maintain the rural experience of the approach to Sunte House and its important connection with the wider landscape*⁴³.
36. The appellant has followed this advice, removed all proposals for built development in this field, and reduced the impact of the access roads to a minimum, such that there is no longer an objection from HE. This advice was formal, as statutory guardians of the historic environment and Government advisers, and mindful of the duty under *section 66* and the Decision on the land to the south. If the appellant's evidence is accepted, there would be no harm and no balancing act to carry out.
37. If the view is that there would be some residual harm then that should be at the bottom of the spectrum or HE would have objected. By contrast, the public benefits of 40 new homes, 12 of which would be affordable, in an accessible location, fulfilling economic and social roles, should carry substantial weight. Added to this would be the modest benefits of a restored wildflower meadow and

³⁹ ID2: HE letter dated 16 January 2015

⁴⁰ Escott appendix 2

⁴¹ Butler in XX

⁴² Worlledge paragraph 13, line 9

⁴³ ID2: HE letter dated 16 January 2015 p5 paragraph 3

some betterment to flood attenuation. The balance in this scenario should be that any harm would be very small and more than outweighed by the public benefits. HE's lack of objection was just in terms of heritage assets without even considering the public benefits of housing where there is no 5 year HLS⁴⁴.

Undesignated heritage assets / archaeological interest

38. There was agreement that the archaeological interest could be preserved through investigation and recording secured by the agreed condition⁴⁵. With regard to the assart fields, the Hollow Way and the hedges, the expert professional advice to the Council was that this was not a sound reason for refusal⁴⁶. This found that any harm could be offset by recording. There would be no direct impact on the Hollow Way. Assart fields are not rare. There are some 58.09ha of assarts within 1km of the appeal site and assarts comprise nearly 20% of land in the district⁴⁷. HE acknowledged that assarts are of some limited significance in themselves and the preservation of the layout and boundaries of the fields would mean that they could still be appreciated by those who understood them.
39. Making a balanced judgement under NPPF 135 of the effect on the appreciation of the assets means taking account of the scale of any harm or loss together with their significance. Very little benefit would be needed to outweigh the effect of the proposals given that the appreciation could continue. The Hollow Way would not be directly affected and would remain a public right of way. The s106 contribution could help with its maintenance or improvement, the trees would stay and the hedgerows would remain but for the short sections required for access. As above, the benefits of the scheme would be substantial.
40. LP policy C1 and LNP policy 1 both restrict development outside the built-up area boundary and are referred to in the Council's reason for refusal. In the subsequent SoCG, the Council has accepted that policy C1 is out-of-date, that NPPF 14 applies and that the relevant LNP policies would be out-of-date as soon as it was made. Although weight remains a matter for the Decision maker, the Judgment in *Woodcock*, and now in PPG ID: 41, make clear that weight is to be determined by looking at relevant factors. Here, those factors are:
- the age and provenance of the LP, adopted in 2004 to conform with the Regional Planning Guidance (long superseded), the Structure Plan (never approved) and housing policies up to 2006. Policy C1 is the corollary of the housing policies in that housing is restrained outside the built-up area which was drawn to encompass new allocations until 2006. Regardless of the recent *Sayers Common* Decision, it would therefore be unreasonable to give the policy any significant weight when the NPPF seeks to boost significantly the supply of housing. It is not known what evidence or arguments were presented to that Inspector but for this appeal the Inspector and the SoS should attribute very little weight to LP policy C1.
 - the stark scale of the housing shortfall – at around 2 years of HLS;

⁴⁴ Worlledge in answer to Inspector's questions (IQs) could find no reference to this benefit in HE's balancing exercise

⁴⁵ ID10

⁴⁶ SCC archaeologist – see ID2 email and memo dated 14 October 2015

⁴⁷ Some 6,326 ha in Mid-Sussex District Council's area

- the Council and SBF's hopes rest on the emerging DP but this is not at an advanced stage being far from examination with substantial objections to its housing policies. At *Sayers Common*, very limited weight was given to its emerging policies;
- every greenfield allocation in the emerging DP is currently in breach of LP policy C1.

41. In these circumstances, very little if any weight should be given to LP policy C1.

42. The emerging LNP, which only covers the northernmost field of the appeal site, should not be made even though it has passed its referendum. As its examiner reported, it fails to make proper provision for housing and should not be made without doing so. He pointed to possible areas within the SHLAA and saw the emerging LNP as in conflict with the NPPF and the emerging DP with regard to housing and observed that the absence of promoted sites was no excuse for failing to allocate sites. That appears to have been without the knowledge that the plan preparation did not include engagement with local land owners⁴⁸ or comply with the publicity requirements of Neighbourhood Planning Regulation 14. The only objection to the appeal site in the SHLAA – its access – has been resolved. If the LNP is made it would therefore be unlawful and no weight should be afforded to LNP policy 1.

Infrastructure

43. The s106 obligation has been agreed and signed. The Council has acknowledged that this reason for refusal has been overcome.

Balance

44. It is common ground that the scheme would fulfil the economic and social roles of sustainable development. The Council now only takes issue with the effect on heritage matters. If the SoS finds for the appellant on these issues, the scheme would amount to sustainable development. If it is found that there would be any harm it would be very limited and heavily outweighed by the benefits.

Other matters

POTENTIAL FLOODING

45. There has been flooding downstream from the appeal site but the proposed development would not exacerbate this. Rather there would be some modest betterment. The site is not suitable for greater attenuation and not available for this. The SuDS scheme would be controlled by the proposed management company. This would not be a novel arrangement but consistent with Government policy and that of the SoS's own WMS⁴⁹. SuDS schemes are of benefit to downstream occupiers⁵⁰ and one example in Swindon was designed to be of specific benefit to immediate neighbours. There are many successful schemes elsewhere.

⁴⁸ Escott's proof paragraph 5.32 and 6.14 and appellant's closing paragraph 17, both unchallenged

⁴⁹ To the House of Commons dated 18 December 2014, setting out the requirement for SuDS for developments of 10 houses or more

⁵⁰ As explained by Stewart in response to IOs

46. It would be in the interests of the new residents to maintain the SuDS for drainage and for amenity reasons and their payments would be only a small part of the larger maintenance charge for the amenity areas and roads. The legal structure for the management company has been explained and WSCC has statutory powers to ensure that the system works and that maintenance is carried out⁵¹. Climate change is built in as required by Government with an ample allowance of 30% additional provision.

ECOLOGY

47. The majority of the site supports semi-improved, species poor grassland. Much of this would be removed for the development. However, as this has been assessed to be of negligible ecological value, the overall impact would also be negligible. Dr. Tyson's suggestion that this is erroneous is based on it being good quality semi-improved grassland. Natural England's criteria in Technical Information Note TIN 110 mean that the grassland fields within the site would not be classified as good semi-improved grassland due to the high percentage of perennial rye-grass within the sward (above 30%) and the low species diversity (less than 8 species/m²). Hence the original assessment presented in the Ecological Assessment submitted with the planning application is correct.

ACCESSIBILITY

48. The position has been agreed with the Council. The site is in an accessible location where occupiers would have the opportunity to walk, cycle and use public transport, reducing their reliance on the private car.

CHARACTER AND APPEARANCE

49. The site has no existing or proposed landscape designation. It lies within the same LCA as *Penland Farm*, where permission was granted in breach of LP policy C1, and shares a remarkable number of similarities with that site. The relatively small area encompassing the appeal site which was assessed as LCA 45 in the Landscape Capacity Study, in turn part of the evidence base for the emerging DP, found the area to be one of the few sites in the district with a medium to high landscape capacity to accommodate new development without significant detrimental effects.

DESIGN

50. As design and layout are reserved matters, the Masterplan simply illustrates one way of addressing these details. Additional unchallenged evidence⁵² includes that the site is well related to the existing urban area and abuts existing housing in Brook Lane. The proposals would be low density in keeping with the character of the neighbouring housing, there would be good space for landscaping and amenity areas, a safe access, and affordable housing located close to the footpath in agreement with the MSDC housing officer. There would be good access by foot and cycle and the s106 Agreement includes a contribution with regard to the footway.

⁵¹ Stewart p9 para 2.28 v). As the Local Flood Authority, WSCC has powers under the Flood and Water Management Act 2010 and the Land Drainage Act 1991 to enforce works

⁵² In answer to Inspector's questions

Conclusions

51. It is common ground that NPPF14 applies as the policies for the supply of housing are out-of-date. As the adverse impacts would not significantly and demonstrably outweigh the benefits, planning permission should be granted.

The Case for Mid Sussex District Council

The gist of its case was:

52. The main issues are agreed to be as the reasons for refusal plus the presumption in favour of sustainable development in the NPPF. Of these, that concerning infrastructure has been overcome by the s106 Agreement.

Development plan

53. The position is as set out in the SoCG. This includes the Council's inability to demonstrate a 5 year HLS; that policy C1 is out-of-date, so that NPPF 14 applies; that the policies of both emerging neighbourhood plans should be given only limited weight; and that, if made, the Lindfield Neighbourhood Plan would be out-of-date as soon as it is made. Other than LP policy B10, which is consistent with the NPPF and statute⁵³, the Council's assessed the proposals against the NPPF.

Heritage assets

LISTED BUILDING

54. The harm to both relevant heritage assets, the Grade II* listed building, and the medieval assart fields, would be high. It was common ground that the significance of Sunte House derives in part from its historic position as a country house at the seat of a large land holding, that its setting covers the whole of the appeal site and that development within this is capable of causing harm. Other points of note include: its designed relationship with its parkland and rural setting, its evidence of the Country House tradition and evolution including the visual expression of elite settings, the contrast between the house in its garden setting and the wider rural landscape with its sense of isolation, evidence of architectural fashion, and the functional relationships between the house and the farming landscape and routes around it.
55. As is usual for an English country house, Sunte House was important both in reflecting the high status of its owners and as the administrative centre for its estate. Sunte House has historic associations with persons of high status albeit not with any titled person. Its gardens reflect their time even if they have no direct association with Repton or 'Capability' Brown who were active at around that time. The importance of Sunte House retaining its rural setting is evident from both the consultation responses and the earlier Sunte House Decision.
56. First, in response to the earlier scheme⁵⁴, HE explained that ... *the open countryside to the north ... contribute[s] positively to the experience of Sunte House as a country manor which once benefited from a more extensive*

⁵³ Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁵⁴ ID2 – letter dated 16 January 2015 p3 and p6

*agricultural environment. It went on to advise that the worst impacts ... could be mitigated to some extent by removing built form from the southernmost of the three fields where there is clear intervisibility While it was agreed that HE's fundamental concern was protection of the southern field, it found that what mattered was the relationship between Sunte House and its countryside/rural land-holding setting. This was confirmed by the Inspector in the *Land south of Sunte House Decision*⁵⁵ who found that *the key point is that the house was set within an extensive land holding. He went on to emphasise the importance of that which remains and that the open nature of the appeal site is an important part of the historic context of Sunte House.**

57. In commenting on the previous scheme⁵⁶, HE identified harm as a result of development within the setting of Sunte House. It was quite wrong of the appellant to characterise this as a small or very small degree of harm. Its comments say no such thing. HE identified some harm. It may then have considered that the level of harm did not warrant it objecting to the scheme and left the final balance to the Council. The Council then reached a different view. The appellant has no justification for reaching the conclusion that there would be no harm. It remains the case that the legal position is that *considerable importance and weight*⁵⁷ must be given to the assessed harm.
58. The Council's case is that the harm would be high. This is based on the significance of the history of Sunte House as a country house, the contribution to this made by the fields to the north, and the cumulative effect of the significant encroachment of modern development on the rural fields that were once part of its land-holding. The housing to the east already strongly influences the surrounding area and, even without housing in the southern field, the proposals would further diminish the appreciation of Sunte House as a former country house that oversaw a large land-holding.
59. The vehicular access to the housing would be across the corner of the southern field. This would be two lanes wide with a footway and lighting and would breach the hedge allowing views through to the housing beyond. It would also contribute to the harm as assessed by the Council. The emergency access, for which there are no sectional drawings or details of signs, railings, lighting etc., would add to this. Overall, there would be a high level of harm to the significance of Sunte House from development within its setting which would distort an understanding of the house and how it has evolved. This would harm its historic significance, and its architectural and aesthetic understanding which, under *section 66*, must be given *considerable importance and weight*.

MEDIEVAL ASSARTS

60. The issues surrounding the assarts were narrowed during the Inquiry so that it was agreed between the main parties that: the site is composed of medieval assarts which are non-designated heritage assets under the NPPF; and primary iron workings, of regional significance, can be preserved through archaeological

⁵⁵ Appeal Decision: APP/D3830/A/14/2216410 *Land south of Sunte House, off Gander Green, Haywards Heath* paragraph 12 at Worlledge appendix 7

⁵⁶ ID2 letter 16 January 2015

⁵⁷ Restated in *Court of Appeal judgment in Jones v Mordue, SSCLG & South Northamptonshire Council [2015] EWCA Civ 1243*, 03 December 2015, paragraphs 22-23

evaluation and controlled by a condition. As well as these assets, the Hollow Way is likely to be of some antiquity given the available maps, which date the appeal site boundaries at between the 13th and 16th centuries. Although doubt was cast as to the date of Birchen Wood, as it is not shown on the 1808 OS map, its appearance on the more reliable Tithe Map of 1845, as a wood and not a plantation or coppice, suggests that it is much older.

61. Developing the appeal site would transform its character to something very similar to the adjacent suburban development to the east, with the loss of the heritage landscape at this location, with high resultant harm producing a negative feature.

Sustainable development

62. Common ground between the main parties includes that: relevant policies in the development plan are out-of-date so that NPPF 14 applies, there would be economic and social benefits from increasing the supply of housing and affordable housing and that, in principle, harm to heritage assets could be sufficient to significantly and demonstrably outweigh the benefits⁵⁸.
63. These economic and social benefits could accrue from the provision of a similar number of houses in a different location. On the other hand, preserving the significance of Sunte House and the medieval assart landscape, necessary for the development to be sustainable, cannot be delivered elsewhere. Removing the proposals for the southern field might be welcomed by HE but would not alter the further enclosure of Sunte House by the strong influence of urban development. Set against the proper preservation of the historic relationship between Sunte House and its wider rural land-holding, this would be a token gesture.

Conclusions

64. The high degree of harm to the heritage assets, both the undesignated landscape and the setting of Sunte House to which *considerable importance and weight* must be given would, individually as well as cumulatively, significantly and demonstrably outweigh the accepted benefits of the scheme. Consequently the proposals would not meet the requirements of NPPF14 and would not constitute sustainable development. The appeal should fail.

The Case for Save Birchen Fields Action Group (SBF)

65. LP policy C1 is part of the development plan for the area. While it may not be up-to-date insofar as it restrains housing development, it also aims to protect the countryside for its own sake. It is therefore consistent with NPPF 17, bullet points 5 and 7, NPPF 61 and NPPF 109 which advocate environmental protection and recognition of the intrinsic character and beauty of the countryside. The assart fields and Hollow Way are natural and historic components of the countryside and so policy C1 is consistent with NPPF 61.
66. NPPF 215 requires weight to be given to development plan policies which are consistent with the NPPF. The passage of time since policy C1 was first uttered may be relevant to HLS but does not affect its role in protecting the countryside.

⁵⁸ Escott in XX

SBF's environmental objections are therefore backed by LP policy C1. Moreover, the WMS⁵⁹ confirms that impact on the landscape can be an important material consideration beyond AONBs.

67. The LNP is likely to be made in the near future. It is true that LNP policy 1 would seek to control development outside the plan's built up area, and that it would fail to implement the recommendation of its independent examiner, but this should not prevent it being given some weight. Regard should be had to the examiner's recommendation as to the built-up area boundary⁶⁰, which excluded the appeal site, as it was on an independently formed basis.
68. The HLS shortage dictates that the environmental objections must significantly and demonstrably outweigh the benefits of remedying that shortage. The heritage issues are covered by the Council but, while the main outlook from Sunte House was agreed to be from the east and south, there is still an important relationship between the house and the fields to the north, which are within its setting. While HE and the archaeological officer⁶¹ advising the Council have commented, they did not show the same level of local knowledge as the objectors' witnesses⁶². The appellant has not taken account of the historical perspective of the town's heathland or its relationship with the assart fields which provides an important context. The extent to which the assart fields around Haywards Heath have been developed shows the historic importance of retaining a very rare example of an assart field in close proximity to the former heathland.
69. The suggested condition, with regard to the iron working, may be soundly based but this would not overcome the fact that the important non-designated heritage asset would be emasculated by the development. NPPF 141 confirms that recording is not an acceptable proxy for the loss of an historic asset. It is very likely that the Hollow Way was linked to the assart fields and the unique combination of these three heritage assets together adds cumulative weight to the overall harm which would arise from the proposals.
70. The overall judgement requires an allowance for the benefits of the scheme. This is what the witnesses for both the Council and SBF have done taking account of the provisions in NPPF 134, NPPF 135 and NPPF 61. The latter supports the weight to be given to the conflict with LP policy C1.

Landscape

71. Although there is no right of way across the site, its longstanding use for passive recreation adds to the extent to which the impact would be noticed by the general public. In any event, the most important consideration is the impact on views from the Hollow Way which would be substantially adverse. Moreover, the appeal site is in an area of high landscape value which shares many of the characteristics of the AONB. Taken together, these three conclusions amount to a robust landscape objection.

⁵⁹ dated 27 March 2015

⁶⁰ Walker appendix G – SHLAA site annotated in pink

⁶¹ ID2

⁶² Taylor for the Council and Butler for SBF

72. The relatively sporadic form of development, with a large area of remaining countryside between Sunte House and the proposed housing⁶³ would add to this harm. The proposals would therefore be contrary to NPPF 17, bullet points 5 and 7, NPPF 61, NPPF 75 and NPPF 109 as well as LP policy C1.

Drainage

73. The extent of area subject to a 1 in 100 year flood risk was common ground and covers some 55 properties. In reality they may be subject to a 1 in 10 year risk and there is a history of flooding. Furthermore this country is currently undergoing a period of unforeseen flood risk with flood levels exceeding even cautious predictions⁶⁴. The appellant's proposed arrangements for the maintenance of flood alleviation measures cannot be guaranteed in perpetuity⁶⁵. This is not to say that the appellant is not acting in good faith, but because:

- the proposed variable rent charge may lead to future disagreement;
- there is no safeguard in the event that the appellant goes into liquidation; and
- the future security against flood risk might not be viable.

74. Taken together these reasons mean that it would be unsound to grant permission when there are alternative sites in Mid Sussex which do not flood. The scheme would therefore be contrary to NPPF 100-101 and permission cannot be justified.

Overview

75. The balance must take account of the undoubted benefits of new dwellings where there is a housing shortage. However, the shortage is temporary as the DP is proceeding towards adoption while the environmental harm from the scheme would last in perpetuity. Furthermore, the new dwellings would only contribute 0.29% of the objectively assessed need to 2031. The proposals would fall far short of performing the advocated environmental role in NPPF 7 and each of the four objections above (listed building, non-designated heritage assets, landscape character, and drainage) would significantly and demonstrably outweigh the benefits of additional housing.

Sayers Common Decision

76. Since SBF submitted its case, a further SoS Decision has been issued for this site (see above) again dismissing the appeal. While this latest Decision may be the subject of a further challenge, unless and until that happens it is a material consideration in this appeal. Although the details are different, both sites are in Mid Sussex and so the weight to be given to LP policy C1 in that Decision is relevant. Specifically, having considered NPPF 49, the SoS found that the appeal should be dismissed because it would be contrary to LP policy C1, being outside the built-up limits for Sayers Common, and so in the open countryside.

77. This reliance on LP policy C1 by the SoS was absent any acknowledged harm to the landscape or any other environmental asset which would justify refusal. The same applies here with regard to the built-up area boundary for Haywards Heath

⁶³ Walker in response to IQs

⁶⁴ ID18 and appendices – Mayall for SBF

⁶⁵ See the full arguments in ID17

and Lindfield. The proposals should therefore be dismissed as contrary to LP policy C1 as well as all the other matters set out above.

The Case for Dr Tyson

78. The High Weald AONB supports a diversity of species as a result of the ancientness, interconnectedness and heterogeneity of its habitats such that the biodiversity of its landscape is greater than the sum of its parts. This includes its semi-improved grassland which, even if it has lost many of the grasses and wildflowers associated with unimproved grassland, may still support a significant number of species. The appeal site is only 1km away from the AONB boundary and also supports a high level of biodiversity.
79. The western half of the pair of parallel medieval hedges which span the proposed entrance to the site meets the criteria to be classified as important under the 1997 Hedgerow Act which sets a strong presumption in favour of their protection. Although only relatively narrow in width, given the thickness of the hedge up to 200m² could be lost in total. Rather than of negligible ecological value, as the appellant argues, there is reason to believe that the semi-improved grassland to the fields is of good quality. However, in neither case has the necessary survey been carried out. The ecological value of Birchen Fields is of District importance. Two key elements would be damaged without the surveys necessary to predict the impact on biodiversity.

Written Representations

80. There were around 385 written representations objecting to the application⁶⁶. Some 130 further written objections were made at the appeal stage⁶⁷. Other than concerns with regard to highway safety and accessibility, noise and light pollution, and infrastructure (see Conditions and Obligations discussions below) these generally raised objections to the proposals on grounds similar to those made in much greater detail at the Inquiry by either the Council or SBF and I do not repeat them here.

Conditions

81. A list of agreed conditions, and the reasons for them, was discussed in detail and then updated⁶⁸. Except as explained below, or as modified by me for clarity or to accord with the PPG on the *Use of planning conditions*⁶⁹, should planning permission be granted for the proposals, for the reasons accompanying the attached conditions, I recommend that they should be imposed.
82. The principles behind the proposed highway measures, including the emergency access from Birchen Lane, are as suggested by the local highway authority. Conditions could also alleviate concerns raised by local residents with regard to

⁶⁶ See CD from MSDC. Summarised on pp 3-4 of the committee report dated 29 October 2015 (see Questionnaire) including one from the Rt Hon Nicholas Soames MP

⁶⁷ See red folder

⁶⁸ ID15: Updated list of agreed conditions

⁶⁹ Reference ID: 21a-20140306 paragraphs 003 and 004

noise and light pollution. It was common ground during the Inquiry that archaeological evaluation could be controlled by condition 14⁷⁰.

83. The provision of 4 fire hydrants is covered by the s106 Agreement. However, as below, there was doubt over whether these would be directly related to the development as required by NPPF 204. Moreover, as set out in NPPF 203, obligations should only be used where the impact could not be addressed through a planning condition. It was agreed during the discussions that the provision of hydrants could be required in this way although no wording was put forward. I have therefore added a suggested condition to this effect.

Planning obligation

84. I have assessed the s106 Agreement in the light of the Community Infrastructure Levy Regulations 2010 (CIL Regulations), and NPPF 204, which set 3 tests⁷¹ for such obligations. From April 2015, CIL Regulation 123(3) also restricts the use of pooled contributions that may be funded via a s106 agreement if five or more obligations for that project or type of infrastructure have already been entered into since April 2010 which could have been funded by the levy.
85. The Agreement covenants the owners to pay contributions towards formal sport, the community building, local community infrastructure, access and infrastructure, education, library, and fire hydrants. It also requires a SuDS management plan, a landscape and ecological management plan, and provision of affordable housing.
86. Clause 2.2 confirms that payment of all the contributions would be effective and enforceable but allows an exception where there is an express finding by the SoS (either directly or by reference to this report) that any identified contribution would not meet the statutory tests in CIL Regulation 122.
87. WSCC submitted a detailed justification⁷² for contributions towards nearby primary and secondary education, Haywards Heath library, specific sustainable transport improvements and fire hydrants. With the exception of the hydrants, it identified where the contributions would be spent and confirmed that none of these would exceed the limit of five pooled contributions set out in CIL Regulation 123(3)(b). It submitted a further email with two previous appeal decisions⁷³, where the Inspector had accepted that similar contributions would satisfy the CIL tests, but as neither of these Decisions sets out the detailed considerations they are of limited assistance.
88. The community building, local community infrastructure, access and infrastructure contributions would be payable to MSDC. The Agreement identifies that these would be spent on the community sports facilities at the St Francis Hospital site and improvements to facilities at Clair Hall, both in Haywards Heath, and on allotment provision in Lindfield. Given the need and direct relationship with the proposals, there was no dispute that the management plans and the

⁷⁰ ID10: SoCG on archaeological matters

⁷¹ necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

⁷² By email dated 23 December 2015 – red folder

⁷³ ID13

affordable housing would meet the CIL tests. SBF's concerns with regard to SuDS were connected with whether the plan would be properly implemented and I deal with this in my conclusions below.

89. The appellant accepted these requirements except for the library contribution and fire hydrants. The former would be towards replacing shelving and making internal improvements to maximise the use of space at Haywards Heath library to cope with the demands of a growing population. It would be calculated in accordance with a formula and WSCC confirmed that it would not exceed the limit of five in CIL Regulation 123. It would therefore meet the three tests in CIL Regulation 122(2). The hydrants would be necessary and related but, with no indication of where they would be sited, it is not evident that they would be directly related.
90. For the above reasons, all but the fire hydrants would satisfy the CIL tests. With regard to these, it was agreed in discussion at the Inquiry that the hydrants could be controlled by a condition, which would require details to be put forward, and so could ensure that they would be directly related. As conditions are to be preferred to obligations, in the event that the SoS is not satisfied that the contributions towards unspecified fire hydrants in unspecified locations would meet the CIL tests, this provision should be expressly excluded.

Richborough Estates

Inspector's Conclusions

From the evidence before me, the written representations, and my inspection of the appeal site and its surroundings, I have reached the following conclusions. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

91. The main considerations in this appeal are as follows:

- i) whether the proposals would preserve the special architectural and historic interest of the Grade II* listed Sunte House and its setting;
- ii) the effects of the proposals on non-designated heritage assets including medieval assarts and potential archaeological remains;
- iii) whether the proposals would amount to sustainable development, as set out in the NPPF, having regard to the above matters and any benefits of the scheme.

Heritage assets

LISTED BUILDING

92. The list description identifies the two early 18th century principal elevations to Sunte House, to the south and to the east, and some of their key features including the diaper pattern brickwork, rubbed brick arches and stone detailing. It also refers at some length to the surviving interior details at the time of listing. The appellant's Heritage Assessment adds that the significance of Sunte House also includes its approaches, originally from the east and later from the south, and the contribution that the setting makes, but notes that it is in a private location where the landscape and topography are now strongly influenced by modern developments in Haywards Heath. It did not doubt that it was at the centre of a small estate. [7][8][32][33][35][68]
93. The Council has highlighted: the designed relationship between Sunte House and its parkland and rural setting; evidence of the Country House tradition and evolution; the visual expression of elite settings; the contrast between the house in its garden setting with the wider rural landscape; its sense of isolation within a rural landscape; evidence of changing fashions of architecture; the functional relationships between the house and the farming landscape around it, and between the house and the routes around it. HE's advice included that the worst impacts of the previous proposals could be mitigated to some extent by removing built form from the southernmost of the three fields. The appeal proposals aim to follow this advice. [55][56][57]
94. From the evidence at the Inquiry, and the site visit, apart from its interior, the most important aspects of the significance, and special interest, of Sunte House lie in its architectural qualities including the gardens which provide the immediate context to the house. Next in importance comes the two different access drives up to Sunte House, which are likely to have been very deliberately designed and to have influenced which were the principal elevations and formal gardens, and the views which take in these approaches and façades. While still part of the significance of the house, the association with the wider farmland, and the extent of buffer isolating the house from other development, are likely to be of a lower order of importance. Moreover, the extent to which the importance of the setting is derived from the wider farmland, which may or may not have been part of the

estate, diminishes the further away that land is from the house and its designed approaches. The same applies to the extent to which the building can be experienced from the farmland. [34][36][56][57]

95. In the absence of any evidence that the farmland beyond the two approaches was part of the estate of a person of particular historical importance, or that it was landscaped in any way after its medieval transformation (see below), the extent to which this part of its setting contributes to its significance is of a much lower order. Although not the only factor, the degree of intervisibility is also relevant to whether or not part of its setting is important to counter the sense that modern development has encroached on the grounds to the house. As well as being subject to conditions, it would be in the appellant's interests to keep the extent of works to create the emergency access, and so its impact, to a minimum. [35][36][37][57][58][59][68]
96. While the emphasis may be different, this assessment is not inconsistent with the evidence of either of the main parties and aligns closely with the advice of HE. It follows that the development of part of the wider setting to the house, which is important on account of its contribution to the record of its farmland estate despite little or no intervisibility, would harm its significance and special interest. However, the weight to be given to this harm should be of a much lower order than if there were to be harm to the house itself or to its approaches. Overall, the evidence points towards much less than substantial harm.

MEDIEVAL ASSARTS

97. It was common ground that the fields within the site were medieval assarts. This means that they are non-designated heritage assets in their own right. This conclusion also reduces the likelihood that the fields were significantly remodelled when, or after, the house was built. Agreement between the Council and the appellant with regard to the suggested condition narrows the issue to one of character rather than a concern over remains of probable archaeological interest. Any harm to the Hollow Way would be with regard to its setting, albeit that in the absence of a designation, the statutory test does not apply. [6][7][8][38][60]
98. There was persuasive evidence that the shape, surrounding hedges, sunken footpath and ancient woodland can tell an informed observer of the history of the land as assarts but that this would not be apparent otherwise. While assarts are not uncommon, SBF argued that those around the town's original heath were now rare. However, there is little to suggest that these are more special than others and the appeal site is some distance from that heath in any event. The fields' features around the proposed houses would be retained but would not be as easy to identify without the clear views across the fields to see them in context. It follows that there would be harm to the appreciation of these heritage assets on account of the development. On the other hand, in the absence of designation, the weight given to this harm should be less than to the alteration of part of the setting of the listed building. [8][39][61][68][69]

CONCLUSIONS ON HERITAGE ASSETS

99. The proposals would cause harm to the significance and special interest of Sunte House contributed by its setting. The degree of harm would be small but should still be given *considerable importance and weight* in the overall Decision. The product of these findings is that some weight should be given to the effect

on the designated heritage asset such that development should not be permitted unless other factors would outweigh the harm. The impact on the non-designated heritage assets would be identifiable but of a lower order again. For these assets the same tests do not apply as for listed buildings and any harm should make little difference to the overall balance.

Other matters

FLOODING

100. There was no dispute that houses downstream from the appeal site are prone to flooding. The disagreement between the appellant and SBF concerned the likelihood that the scheme would exacerbate the existing problems. The proposed SuDS is based on the FRA and its delivery would be controlled through the s106 Agreement. SBF's objections centred on the shifting patterns of flooding through climate change and the mechanism for maintaining the SuDS. [7][45][73]
101. On the first point, while there is recent evidence that casts doubt on the accuracy of some flooding predictions, the FRA takes account of the latest government advice and the SuDS would make allowances for climate change and, in theory, offer some small betterment. Given the dire shortage of HLS in the district, little weight should be given to the argument that the development should be located away from any flood risk. [26][28][45][46]
102. The Inquiry heard evidence that SuDS schemes can be of benefit to downstream occupiers and was told of one example in Swindon which is apparently of specific benefit to immediate neighbours. On the other hand, although the request for this information was made on the first day of the Inquiry, it was not supplied until the last day and with no specific details that could be checked by the other parties. It should therefore be given reduced weight as evidence. Apart from this, none of the other examples of SuDS were claimed to be specifically designed to offer primary benefit to residents beyond the development site where there would be no flood related incentive for those paying the maintenance charges to get the work done. [26][45][46]
103. Nevertheless, it was acknowledged by SBF that, in the absence of any likelihood that the local flood authority would be willing to adopt the scheme, the proposed management company for maintaining the SuDS would be the best the appellant could offer and would accord with Government advice. Regardless of the structure and composition of the management company, it would be in the interests of new residents to maintain the SuDS for amenity reasons and their payments would be only a small part of the larger maintenance charge for the amenity areas and roads. Subject to detailed design, maintenance could be simple to monitor and carry out. On this point, the SuDS would accord with NPPF 100-101. [44][74]

ECOLOGY

104. There was no dispute that Birchen Wood, the Hollow Way and the hedgerows are of ecological value. The vast majority of these would be retained untouched and, subject to conditions, there could be wide buffer strips. The loss of some potentially important hedgerow to vehicular accesses would be regrettable. However, in terms of overall ecological value, this could be more than offset by the creation of a wildflower meadow in the southern field and through the

amenity areas as part of the SuDS. The argument that the grass within the fields themselves are of significant ecological interest was not borne out by the evidence. While the site visit was carried out during the wrong season to see wild flora, the percentage of ryegrass means that the possible extent of biodiversity is likely to be limited. On balance, this concern should not count against the scheme which would accord with NPPF 118. [10][27][49][66][71][82]

LANDSCAPE

105. The appeal site lies within LCA 45 in the Landscape Capacity Study. This identifies it as more suitable for development than most potential sites in the district. Given the overall shortage of HLS, this weighs in its favour rather than against. Although there are some landscape views from the Hollow Way, the design anticipates suitable buffer planting which could mitigate against any harm from this direction so that the scheme would comply with NPPF 61. While the site itself may have been used informally, anyone doing so is likely to have been trespassing and no weight should be given to the loss of views from land on which there was no right to be present. Most of the characteristics which the site shares with the AONB would be retained around the perimeter of the development. The site is within the same landscape character area LCA 10 as *Penland Farm* where development was permitted. There was no evidence to show that the site should be assessed as a valued landscape under NPPF 109. For all these reasons, landscape impact should not count against the proposals. [10][27][49][66][71][82]

Development plan

106. The development plan provides the starting point for the appeal which should be determined in accordance with it unless material considerations indicate otherwise. At the time of the Inquiry, the LP was the only relevant plan. The LNP will become part of the development plan if it is made. The SoCG confirms that the Council is unable to demonstrate a 5 year HLS, and that LP policy C1 is out-of-date, so NPPF 14 applies. Indeed, the lack of any evidence at all from the Council as to its HLS, and the slow progress on the emerging DP, casts doubt on its commitment to the action being taken to address the shortfall. While noting the correct assertion of SBF that LP policy C1 is still applicable as a part of the development plan, this affects the weight that it should be afforded. [11][40][53][65]

107. Other than LP policy B10, which is consistent with the NPPF and the statutory duty, the Council was therefore right to assess the proposals primarily against the NPPF. The argument that policy C1 also aims to protect the countryside, in line with NPPF 17, is also relevant but, as the Landscape Capacity Study shows, there are few if any potential sites where there would be no landscape impact. There would be no conflict with NPPF 109. [11][12][66]

108. The Council did not dispute the evidence of its very significant shortfall or challenge the appellant's assessment that it has a long and persistent history of under supply of housing. In the light of *Woodcock*, the extent of shortfall is relevant to the weight to be given to conflict with housing policy C1. In the context of the considerable shortfall in HLS, the decision should be based on the agreed position that policy C1 is out-of-date and the conflict with it should be given limited weight. [16][40][41][53]

109. SBF altered its arguments in the wake of the Decision at *Sayers Common*, also in Mid Sussex District. The appellant suggested that this might be successfully challenged in the Courts but, unless or until this happens, it should be a material consideration. Its particular relevance is the weight given to LP policy C1 and other factors. It was common ground at that Inquiry that, as policy for the supply of housing, LP policy C1 was not up-to-date. In these circumstances NPPF 49 and NPPF 215 mean that the weight to be given to the policy should not be full weight but only due weight according to the degree of consistency. In resisting development, the policy is wholly inconsistent with the NPPF but, in aiming to protect the countryside for its own sake, there is a measure of consistency with NPPF 17 bullet 5. [17][65][66]
110. While giving considerable importance and weight, as required, to the less than substantial harm to the setting of nearby listed buildings the SoS acknowledged, at *Sayers Common*, that the harm would be clearly outweighed by the public benefit of providing housing given that the same LPA could not demonstrate a 5 year HLS. Insofar as the considerations are similar, a comparable balance should apply in this case. The SoS gave the emerging DP limited weight and, at the time of the current Inquiry, little had changed. [17][40][76]
111. At *Sayers Common* the SoS identified conflict with LP policy C1, the built-up limits as defined by the LP, and the recently made NP there as meriting substantial weight. He also gave substantial weight to the benefits of the scheme effectively resulting in an equal balance on these the weightiest factors in that case. On the plus side, he also gave significant weight to the proposals as sustainable development. Against the scheme was the less than substantial harm to the setting of the listed buildings which he recognised would be clearly outweighed by the public benefit of housing and so of a lower order of weight. His overall balance was therefore essentially between the significant benefits and harm which warranted less than substantial weight. [40][76]
112. On this balance, the SoS found that the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole. Now that the LNP has passed its referendum, and is likely to be made very soon, the issues and policies in this appeal will be very similar. The SoS also had regard to policy in NPPF 198 that permission should not normally be granted if it would conflict with a NP. However, while he was aware of the current state of play with regard to emerging plans, he may have assessed the NP to have been made within a normal LP context. This may be true of the country as a whole but would not appear to be the case in Mid Sussex where no NP can have been made in a context of a 5 year HLS given the long and persistent lack of HLS. Nevertheless, in the interests of consistency it follows that the comparison with the Decision at *Sayers Common* is a material consideration. [17][40][76]
113. On the other hand, on the day after the *Sayers Common* Decision was issued, the PPG was updated and this is also material. PPG ID: 41 *Neighbourhood planning* now states that: *decision makers may still give weight to relevant policies in the emerging neighbourhood plan, even though these policies should not be considered up-to-date. Paragraph 216 of the NPPF sets out the weight that may be given to emerging policies in decision taking.* It continues: *Documentation used to support or respond to emerging neighbourhood plans, such as ... independent examiners' reports, may be of assistance to decision*

makers in their deliberations. As above, the examiner's report is pretty damning of the lack of any serious attempt to allocate housing land in the LNP. Furthermore, it would appear that he reached his conclusions without the knowledge that adjacent landowners had not been consulted. The PPG now guides the decision maker to take this into account in determining the weight to be given to NP policies which are out-of-date, however recently made. [18][19][40][77]

114. The updated PPG not only strengthens the case for giving reduced weight to conflict with the LNP but also highlights the differences between the evidence at this appeal and that at *Sayers Common*. While the weight to be given to each element of the balance is for the decision maker, as the *Sayers Common* Decision both predated the latest PPG, and did not relate to the same examiner's report, it should be given limited weight as a precedent.

Neighbourhood Plans

115. The main parties agreed that only relatively limited weight should be given to the policies of the draft HHNP and that, if made, the housing policies of the LNP would be out-of-date as soon as they are made. SBF argued that the LNP should be given some weight but put it no stronger than that. For similar reasons to those for LP policy C1, even if the LNP is made, conflict with it should be given limited weight. As the LNP only relates to the northernmost field, the weight to conflict with the proposals as a whole should be reduced further. Finally if, as the appellant claimed in unchallenged evidence, the LNP failed to comply with Regulation 14 then the LNP may be challenged and never come forward, but that is a matter for another place and time. [14][15][42][53][67]

Sustainability

116. The NPPF is a material consideration. It says so in NPPF 2. It acknowledges the primacy of the development plan in planning decisions, in NPPF 11-12, but goes on to emphasise the need for an up-to-date LP. At the heart of the NPPF is a presumption in favour of sustainable development defined as NPPF 18-219 taken as a whole. It follows that an assessment should be made as to whether or not the scheme would amount to sustainable development.
117. NPPF 7 assists by identifying three dimensions to sustainability. First, there would be economic and social benefits from new housing. In theory, these could accrue from the provision of a similar number of dwellings in a different location. However, given the woeful position with regard to HLS, this is most unlikely to be the case. Adequate land is simply not being made available in the District. It is therefore disingenuous of the Council and SBF to argue that housing should go somewhere else while simultaneously pursuing the same argument at other appeals as shown by the other Decisions cited at the Inquiry. [44][62][70]
118. With regard to the environmental role, any harm to the listed building's setting, the medieval assarts, and potential remains of archaeological interest all count against the scheme. Landscaping, flooding and ecological provisions would offset any harm with regard to these matters. However, the benefits of a restored wildflower meadow and some betterment to flood attenuation, through the conditions and the s106 obligation, would be more akin to mitigation for the harm through loss of hedgerow and risk to downstream riparian occupiers than

benefits. Nevertheless, for the reasons set out above, some weight should be given to the harm to the setting of Sunte House and further slight weight to the harm to the non-designated heritage assets. [44][63][75]

119. Subject to conditions, many aspects of the design of the housing would be for reserved matters. The access is not reserved and exposes difficulties with regard to the connections between the scheme and the town, and with integration between the two, matters which are pertinent to policy in NPPF 61. On the other hand, the site: is geographically quite well related to the urban area; abuts housing around Birchen Lane, Gatesmead, Roundabout Lane and Brook Lane; would be of a similar density to adjacent housing; and has reasonable access by foot and cycle including an offer under the s106 Agreement in relation to the footpath. Taken as a whole, design should not count against the scheme. [2][48][50][81]
120. On balance, the economic and social benefits of housing would outweigh any slight environmental harm and any conflict with NPPF 17 and the scheme should be assessed as sustainable development. [28][44][51][63][75][82][85]

Overall conclusions

121. The proposals would be contrary to LP policy C1 and to LNP policies 1 and 2. There would be some harm to the setting of Sunte House but of a low order. Indeed, HE found that the residual harm from the revised proposals was reduced to a point at which it did not object to the scheme and, it would seem, this was made in the context of a general need for housing without considering the lack of a 5 year HLS. There would be an even lower degree of harm to non-designated heritage assets. On balance, the character of the landscape and its ecological value would be unharmed and the risks to downstream riparian owners would be no worse than at present. There would be substantial benefits as a result of new housing and affordable housing. The conclusion on the policies in the NPPF as a whole should be that the scheme would be sustainable. On the ordinary balance, the benefits would outweigh the harm and the conflict with the LP and the appeal should be allowed.
122. Furthermore, the district has a poor HLS so that LP policy C1 and LNP policies 1 and 2 are out-of-date. LP policy C1 should be given greatly reduced weight. The extent to which the independent examiner's report was disregarded should reduce the weight given to conflict with the LNP even further even if it is made. Moreover, in these circumstances, NPPF 14 and NPPF 49 mean that the balance is not a simple one but requires, where the scheme would be sustainable development, that any harm must significantly and demonstrably outweigh the benefits if the proposals are not to be approved without delay. This hurdle has not been reached in this case and so the appeal should be allowed.

Recommendation

123. The appeal should be allowed and outline planning permission granted subject to the attached Schedule of conditions and with appropriate findings with regard to whether all the provisions in the s106 Agreement satisfy the statutory tests.

David Nicholson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Byass of Counsel	instructed by the solicitor to MSDC
He called	
Mark Taylor BA MA FSA MCIfA	Principal Archaeologist, West Sussex County Council
Christopher Lindley BA MSc MRTPI	Development Planning and Design Services Limited (DPDS Consulting Group)
Nicholas Worlledge BSc PGDip MRTPI IHBC	Worlledge Associates, Oxford

FOR THE APPELLANT:

Rhodri Price Lewis QC	instructed by Mr J Escott
He called	
Dr Jonathan Edis BA MA PhD MCIfA IHBC	Director, Heritage Collective
John Escott BA DipTP MRTPI	Senior partner, Robinson Escott Planning LLP
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Duncan Hawkins BA MSc FSA MCIfA	CgMs Consulting
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FOR THE SAVE BIRCHEN FIELDS ACTION GROUP:

Richard Walker DipTP MRTPI	Planning Consultant, Brighton
Chris Butler MCIfA FSA CertEd	Chris Butler MCIfA Archaeological Services
Miles Mayall BSc MBA MEI	Local resident

INTERESTED PARTY:

Dr Fiona Tyson BSc (Zool)	Local resident
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INQUIRY DOCUMENTS

- 1 Appellant's opening
- 2 Compilation of statutory consultations
- 3 Council's opening
- 4 Appellant's historic landscape characterisation data plot showing assarts
- 5 Updated PPG section ID: 41 on Neighbourhood Planning
- 6 Appellant's further note regarding HLS
- 7 Appellant's Site Accessibility Statement
- 8 Technical note with regard to surface treatment for the emergency access
- 9 SBF's map of Haywards Heath showing the 17th century heathland and assart fields

- 10 SoCG on archaeology
- 11 Extracts from Taylor's references including: *A Regional history of England: The south east from AD1000* by Brandon and Short; *Kingsley's Printed maps of Sussex 1575-1900*; and *A History of the Ordnance Survey* by Seymour
- 12 Agreed statement of s106 justification
- 13 Email from WSCC and attached Appeal Decisions APP/L3815/W/14/3000690 and APP/L3815/W/15/3003656
- 14 Site visit route
- 15 Updated list of agreed conditions
- 16 Lindfield Neighbourhood Plan update – 18 February 2016
- 17 Management company establishment details
- 18 Statement by M W Mayall for SBF on drainage and flood risk
- 19 Ecological statement and appendices by Dr Fiona Tyson
- 20 Timeline note on the emerging Mid Sussex District Plan
- 21 SBF's closing submissions
- 22 Council's closing submissions
- 23 Agreement under s106
- 24 Appellant's closing submissions

CORE DOCUMENTS

- 1 Application letter and form
- 2 Illustrative Masterplan
- 3 Planning statement
- 4 Design & Access Statement including Statement of Community Involvement
- 5 Planning obligations statement
- 6 Affordable housing statement
- 7 Transport statement, appendices and plans
- 8 Flood risk assessment
- 9 Foul sewerage & utilities assessment
- 10 Sustainability statement
- 11 Ecological assessment
- 12 Landscape & visual impact assessment
- 13 Heritage assessment
- 14 Arboricultural assessment
- 15 Archaeological assessment
- 16 Archaeological evaluation – submitted October 2015
- 17 Ecological assessment of section of hedgerow – submitted October 2015
- 18 Assessment of section of hedgerow proposed for removal – submitted October 2015
- 19 Heritage note – submitted October 2015
- 20 Committee report of 29 October 2015
- 21 Decision notice dated 29 October 2015
- 22 Email from MSDC dated 7 January 2016 confirming error in Decision notice regarding policy E17
- 23 Letter dated 20 November 2015 from SoS directing recovery of the appeal for his own determination
- 24 Committee report dated 19 March 2015 for application 14/04475
- 25 Judgment in *Bedford Borough Council v SoSCLG [2013] EWHC 2847 (Admin)*

Appendix C.

Suggested conditions

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins and the development shall be carried out as approved.

Application for approval of the reserved matters shall be made to the LPA not later than three years from the date of this permission.

The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

2. No development shall take place, including any works of demolition, until a Landscape and Ecological Management Plan has been submitted to, and approved in writing by, the LPA. The Plan shall include, but not be limited to, the following:

- a wildlife protection and mitigation plan and method statement setting out the practical steps to be taken to avoid impacts on wildlife during site preparation and construction;
- drainage and pollution prevention details sufficient to demonstrate that there will be no adverse impacts on the ecology of watercourses;
- protection, including during construction, of trees, hedgerows and woodland including any area of trees and hedgerows associated with the medieval assart field boundaries.
- a bat sensitive lighting scheme which shall include lighting designed to face away from, and minimise light spill onto, the woodland edge and hedgerows.
- details of the management of open space; mitigation measures for protected species including badgers, bats and reptiles based on recent surveys of those species and; habitat enhancement to offset unavoidable impacts (i.e. loss of hedgerow to provide for site access).

The development shall be carried out in accordance with the approved details and the Plan shall be adhered to throughout the construction period. If there is a delay of greater than 24 months between the submission of a reserved matters application and the date of the ecological surveys submitted in support of this application, an updated survey report shall be submitted to support the reserved matters application.

Reason: to ensure that the proposals avoid adverse impacts on protected and priority species and contribute to a net gain in biodiversity, in accordance with 109 and 118 of the NPPF, policies C5 and C6 of the LP, and policies DP36 & DP37 of the DP.

3. The details submitted in respect of layout pursuant to Condition 1 shall provide for a buffer of at least 15m between the development and the edge of Birchen Wood. If surface water attenuation areas are to be provided within the minimum buffer zone, these shall not be located within the root protection area of any tree.

Reason: to ensure that the proposals avoid adverse impacts on protected and priority species and contribute to a net gain in biodiversity, in accordance with 109 and 118 of the NPPF, policies C5 and C6 of the LP, and policies DP36 & DP37 of the DP.

4. No development shall be carried out unless and until samples of materials and finishes to be used for external walls / roofs / fenestration/ external surfaces of the proposed development have been submitted to and approved by the LPA. The works shall be carried out in accordance with the approved details unless otherwise agreed with the LPA in writing.

Reason: To enable the LPA to control the development in detail in the interests of amenity by endeavouring to achieve buildings of visual quality and to accord with Policy B1 of the LP, Policy DP24 of the DP and Policy E11 of the HHNP.

5. The details submitted in respect of landscaping pursuant to Condition 1 shall include details of a Locally Equipped Area of Play (LEAP) of 400sqm, and particularly of its layout, drainage and fencing. Details shall also be provided in respect of the timetable for the completion and future management & maintenance of the LEAP, including details of the management company and maintenance schedules. The details shall be implemented as approved and the approved play area(s) shall thereafter be permanently retained as such.

Reason: To ensure satisfactory provision of equipment and to ensure that play areas are provided and retained within the development for use by the general public and to accord with Policy R3 of the LP and Policy DP22 of the DP.

6. The development hereby permitted shall not commence unless and until details of the proposed surface water drainage have been submitted to and approved in writing by the LPA. Before details of the surface water drainage works are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the LPA. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters,
 - ii) include a timetable for its implementation; and provide a management and maintenance plan, which shall demonstrate the optimum operation of the scheme throughout its lifetime.

No buildings hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the LPA.

Reason: To ensure that the proposal is satisfactorily drained and to accord with the NPPF requirements, LP Policy CS13, DP Policy DP41 and HHNP Policy E8.

7. No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the LPA. Thereafter the approved Construction Management Plan shall be implemented and adhered to throughout the construction period. The Construction Management Plan shall provide and give details for:
- a timetable for the commencement, construction, occupation and completion of the development

- the anticipated number, frequency and types of vehicles used during construction
- the method of access and routing of vehicles during construction and directional signage for the purposes of such
- the siting and layout of site compounds and welfare facilities for construction workers
- the provision of parking of vehicles by site operatives and visitors
- the provision for the loading and unloading of plant, materials and removal of waste
- the provision for the storage of plant and materials used in construction of the development
- the design, erection and maintenance of security hoardings and other measures related to site health and safety
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway, including the provision of temporary Traffic Regulation Orders
- a scheme to protect existing neighbouring properties from dust and noise emissions
- a noise management plan to include consideration of vibration
- measures to deal with surface water run-off from the site during construction
- a scheme for community liaison and public engagement during construction, including the provision of information to occupiers moving onto the site before the development is complete
- contact details of site operations manager, contracts manager, and any other relevant personnel.

Reason: To allow the LPA to control in detail the implementation of the permission and to safeguard the safety and amenities of nearby residents and surrounding highways and to accord with Policy B3 of the LP, Policy DP24 of the DP.

8. Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0900 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank or Public Holidays.

Reason: To safeguard the amenities of nearby residents and to accord with Policy B3 of the LP, Policy DP24 of the DP.

9. No dwelling shall be occupied until covered and secure cycle parking spaces have been provided in accordance with details to be submitted to and approved in writing by the LPA.

Reason: To enable adequate provision for a facility which is likely to reduce the amount of vehicular traffic on existing roads and to accord with Policy T6 of the LP, Policy DP19 of the DP and Policy T2 of the HHNP.

10. No dwelling shall be occupied until such time as the vehicular access from Gatesmead and the emergency access from Birchen Lane have been constructed in accordance with plans and details submitted to and approved in writing by the LPA.

Reason: In the interests of road safety and to accord with Policy T4 of the LP, Policy DP19 of the DP and Policy T1 of the HHNP.

11. No dwelling shall be occupied until the road(s), footways, and casual parking areas serving the development have been constructed, surfaced, and drained in accordance with plans and details to be submitted to and approved in writing by the LPA.

Reason: To secure satisfactory standards of access for the proposals and to accord with Policy T4 of the LP, Policy DP19 of the DP and Policy T1 of the HHNP.

12. No dwelling shall be occupied until any parking spaces, garages and turning areas associated with them have been provided in accordance with details to be submitted to and approved in writing by the LPA. Thereafter, the parking and turning areas provided shall not be used for any purpose other than the parking and turning of vehicles.

Reason: To secure satisfactory standards of access for the proposals and to accord with Policy T4 of the LP, Policy DP19 of the DP and Policy T1 of the HHNP.

13. No dwelling shall be occupied until the refuse and recycling storage facilities serving the dwelling have been provided in accordance with details to be submitted to and approved in writing by the LPA.

Reason: In the interests of the amenity of the locality in accordance with policies B1 and B3 of the LP and policy DP24 of the DP.

14. No development shall take place until a written scheme of investigation (WSI) has been submitted to and approved in writing by the LPA. For land that is included within the WSI, no development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and the programme and methodology of site investigation and recording and the nomination of a competent organisation to undertake the agreed works. The WSI shall include provision for a purposive Lidar survey at a resolution of 0.25m and specialist scientific dating techniques of ironworking features revealed in field evaluation including archaeo-magnetic dating and radiocarbon dating.

The WSI shall set out the programme for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI. Archaeological fieldwork investigation must take place between April and September.

Reason: The site is of archaeological significance and it is important that it is recorded by excavation before it is destroyed by development and to accord with Policy B18 of the LP, Policy DP35 of the DP and Policy E11 of the HHNP.

15. No dwelling shall be occupied until fire hydrants have been provided in accordance with details to be submitted to and approved in writing by the LPA.

Reason: In the interests of fire safety.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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