



Department for
Communities and
Local Government

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

Our Ref: APP/C3810/A/14/2228260

13 September 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL
KEITH LANGMEAD LIMITED
LAND TO THE SOUTH OF FORD LANE, EAST OF NORTH END ROAD, YAPTON**

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 carried out an inquiry between 7-10 July 2015 into your client's appeal against a decision of Arun District Council ('the Council') to refuse outline planning permission with some matters reserved for 4.5 hectares of residential development comprising 3.4 hectares of land for up to 100 dwellings (up to 30 (30%) affordable housing) together with 1.1 hectares of land set aside for public open space and strategic landscaping and 2.2 hectares of public open space and green corridors with vehicle access from Ford Lane and pedestrian/cycle access only from North End Road, in accordance with application Ref Y/60/14/OUT, dated 27 June 2014.
2. The appeal was recovered for the Secretary of State's determination on 8 September 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the proposal involves residential development of over 10 dwellings in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.

Inspector's recommendation and summary of the decision

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

Procedural matters

4. An application for an award of costs in regard to this appeal was made by the appellant against the Council. This application is the subject of a separate costs decision letter, also being issued today.

5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in the Annex to this letter. He has carefully considered these representations but, as they do not raise new matters that have affected his decision, he has not considered it necessary to circulate them to all parties.
6. On 9 May the Secretary of State wrote to the appellant and the Council seeking further representations. The matter was:

the implications, if any, of the Court of appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168.
7. As the representations were circulated to the parties the Secretary of State has not found it necessary to reproduce them here. Copies of all representations received can be made available on written request to the address at the foot of the first page of this letter.

Policy and Statutory considerations

8. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the saved policies of the Arun District Local Plan (ADLP) adopted in 2003, and the Yapton Neighbourhood Plan (YNP) made on 5 November 2014. The Secretary of State agrees that the most relevant policies in this case are those set out by the Inspector at IR3.3-4 and IR3.14-16.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework'), the planning guidance published in March 2014 and the Community Infrastructure Levy (CIL) Regulations 2010 as amended and the Guidance on Neighbourhood Planning issued 19 May 2016.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance conservation areas, pursuant to section 72(1) of the LBCA Act.

Main issues

11. The Secretary of State agrees with the Inspector that the main considerations in this appeal are those set out at IR11.1.

Development plan context

12. The Secretary of State has noted the Inspector's assessment of the Development Plan context as set out at IR11.2-3. He agrees that the relevant elements of the Development Plan are those set out at IR11.2.

Arun Local Plan

13. The Secretary of State agrees that the proposals would conflict with ADLP policies GEN2 and GEN3 (IR11.4). He notes that it is agreed that the Council cannot demonstrate a 5 year housing land supply (HLS). As such he agrees with the Inspector (IR11.4) that these policies cannot be considered up to date pursuant to paragraph 49 of the Framework. He notes the Inspector's conclusions at IR11.5 but does not agree with his interpretation. In considering the provisions of paragraph 14 of the Framework he concludes that the paragraph should be used as part of the assessment of whether the development is sustainable. However, he agrees with the Inspector, that given the directions in paragraphs 49 and 215 of the Framework only limited weight should be given to the conflict with these policies.

Emerging Local Plan

14. The Secretary of State has considered the emerging Local Plan (eLP) against the provisions of paragraph 216 of the Framework. He notes its early stage of preparation, the unresolved objections to it, and its significant shortfall in its OAN, contrary to the Framework. He further agrees that there is no certainty as to where future housing allocations will be made by the eLP.

The Yapton Neighbourhood Plan

15. The Secretary of State has carefully noted the Inspector's analysis at IR11.7-16 but he does not agree with his conclusions. He agrees with the Inspector (IR11.8) that the housing policies in the eLP are at an early stage. He notes that the Independent examiner found the Yapton Neighbourhood Plan sound (IR11.9), and he thus finds it complies with the Framework. He notes that Policy H1 states that "additional allocations will be made if the emerging Arun Local Plan requires such action or if the identified housing sites do not proceed." As such he concludes that while the YNP is currently underpinned by an outdated OAN (IR11.9), Policy H1 has flexibility to allow any shortfall in housing supply to be met. As such he gives significant weight to the housing policies of the YNP.
16. The Secretary of State finds that the proposal is in conflict with Policy BB1, as it is not in the built up area boundary and does not fall within any of the exemptions listed in the policy. He agrees that policy BB1 is out of date (IR11.10) in the absence of a 5 year HLS. However, given his conclusions on Policy H1 at paragraph 15 above he gives it significant weight. The Secretary of State considers that neighbourhood plans, once made part of the development plan, should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question. Consequently, in view of Framework paragraphs 198 and 185, and his guidance on neighbourhood planning that this is the case even in the absence of a 5 year housing land supply, the Secretary of State places very substantial negative weight on the conflict between the proposal and policy BB1.
17. He further disagrees that the weight to be given to this conflict would be reduced even further although this decision is issued after 12 months from the YNP being made, because he concludes that the Inspector has misinterpreted paragraph 214 of the Framework, as the 12 month period applies to the publication of the Framework itself, not the YNP.
18. The Secretary of State agrees that Yapton is one of the most sustainable settlements in the District, and that the site is in a sustainable location for additional housing (IR11.11). He notes that no evidence was given as to the probability that the allocations identified

in the YNP, or elsewhere in the district, will come forward within 5 years. He agrees that there is no conflict with YNP policy H1, for the grounds set out by the Inspector at IR11.11. However, he does not agree with the Inspector's conclusion that, given the only conflict is with YNP policy BB1, the weight to be given to conflict with the YNP as a whole should be no more than limited for the reasons set out at paragraphs 15-16 above.

19. The Secretary of State has noted the Inspector's conclusions at IR11.12. However, he does not agree that the potential delay to the provision of additional housing means that priority should not be given to policy BB1, given his findings on neighbourhood planning and taking into account the provisions of paragraph 198 of the Framework.
20. The Secretary of State disagrees with the Inspector at IR11.13 that no weight can be given to the suggestion that the YNP has made adequate provision for housing land, and that policy BB1 is partially compliant with the Framework, for the reasons given at paragraphs 15-16 above. The Secretary of State has given careful consideration to the Inspector's observations at IR11.15.1-11.15-17. However, he does not agree with the Inspector's conclusions at IR11.16 that the weight to be given to the need for additional housing in Arun district, including Yapton, should be given considerably more weight when balanced against YNP policy BB1, given his findings on neighbourhood planning.

Landscape

21. For the reasons set out at IR11.17-8 the Secretary of State agrees that the overall effect on the landscape character of the site itself would be harmful. However, for the reasons given at IR11.19 he agrees that, subject to conditions requiring buffer planting, there is little sound evidence that there would be harm beyond the immediate area. He gives this limited weight.
22. The Secretary of State accepts, for the reasons set out by the Inspector at IR11.20 that the documentation provided by the appellant on the impact on landscape character is adequate.
23. For the reasons given at IR11.21 the Secretary of State agrees that the impact of the scheme on the views of church towers should be given limited weight.
24. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.7-24. The Secretary of State further agrees that, subject to reserved matters, there would be no conflict with ADLP policy GEN7. He agrees that other than the loss of open countryside at the edge of a settlement there would be no significant harm to the character and appearance of the area or the wider landscape, or conflict with paragraph 17 of the Framework. However, he does not agree (IR11.25) that the conflict with the YNP and the conflict with ADLP policies GEN2 and GEN3 and any harm to the countryside by way of policy should not outweigh the benefits of additional housing and affordable housing, given his findings on Neighbourhood Planning.

Heritage

25. For the reasons given by the Inspector at IR11.27-30 the Secretary of State agrees that there is no evidence that the significance of St Mary's Church would be harmed by the proposal. He further agrees, for the reasons set out at IR11.31, that the information provided by the appellant on the settings of heritage assets is comprehensive and the level of analysis is enough for a proper assessment of the setting. He agrees that the scheme would not impact on Church House and Park Lodge, for the reasons given at IR11.32.

26. The Secretary of State therefore concludes that the contribution which the setting makes to the significance of St Mary's church would be unaffected by the changes within an area of that setting in which only part of the church tower can be experienced. As such he agrees with the Inspector (IR11.33) that the proposal would preserve the special architectural and historic interest of St. Mary's Church and its setting, and that thus the tests in paragraphs 132-134 of the Framework are not relevant and that the proposals would accord with s66 of the LBCA. He further agrees that there would be no conflict with the relevant eLP policies or with YNP policy E9.

Conservation Area

27. The Secretary of State has paid special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area, in line with his duty under s72(1) of the LB Act. For the reasons set out at IR 11.34-36 the Secretary of State agrees that, subject to reserved matters, the scheme would not affect the significance of this designated heritage asset or the character or appearance of the conservation area, which would be preserved. He further concludes that it would accord with historic environment policy in the Framework and that paragraphs 133-4 of the Framework would not apply. He agrees with the Inspector that YNP policy E8 is not relevant as it relates to development within the conservation area.

Archaeology

28. The Secretary of State considers that the level of information provided in the Archaeology Statement was adequate and would comply with paragraph 141 of the Framework. For the reasons given at IR11.37-41 he concludes that a pre-condition requiring further archaeological investigation would be proportionate while safeguarding possible remains. Subject to such a condition, the Secretary of State concludes that the scheme would accord with ADLP policy AREA17. He also agrees that applying a condition would comply with paragraph 128 of the Framework.

Benefits

29. The Secretary of State has considered the Inspector's conclusions at IR 11.43 and agrees that the provision of up to 100 dwellings, up to 30% of which would be affordable, would be benefits of considerable weight. He further notes that the site is agreed to be a sustainable location (IR11.44). He has considered the Inspector's consideration of landscaping at IR11.45, and agrees that while the potential benefits of these would be advantageous, they should more properly be considered as mitigation than as benefits.

Other matters

30. The Inspector has considered the engagement with the community with regard to this application, as discussed by the Inspector at IR11.46, and concludes for the reasons given that this was adequate.

31. The Secretary of State notes that the statutory authorities have assessed any additional pressures on infrastructure, roads and the school as acceptable subject to conditions and contributions. He further notes the Inspector's conclusions (IR11.46) that traffic congestion at school drop-off and pick-up times were not exceptional for roads outside a school in southern England.

32. The Secretary of State has considered the Inspector's comments (IR11.47) that no evidence was put forward at the inquiry that the site provides any significant habitat for either protected or non-protected species other than in the field margins where the trees

and hedges would be retained and enhanced. As such he agrees that there would be no conflict with YNP policies E3, E4, E5 and E6.

Overall conclusions

33. 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, including the Neighbourhood Plan, given the conflicts he finds with policies BB1, E1, GEN2 and GEN3. He has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeal. The district does not have a 5 year supply of deliverable housing sites so paragraph 49 of the Framework is engaged and permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole.
34. The Secretary of State has considered the Inspector's conclusion at IR11.48, and agrees for the reasons given that the site is in a sustainable location. He further agrees that, subject to mitigation, the proposal would not cause any significant harm to the landscape or biodiversity (IR11.49). He agrees that the loss of countryside and productive agricultural land counts against the scheme but agrees that the weight given to this, and to the conflict with SDLP policy GEN3 and NP policy E1, should take into account the fact that such land would be lost to housing both under the YNP locations and elsewhere in the district in any event if its housing needs are to be met. He further agrees for the reasons set out above that there would be no harm to heritage assets, and no conflict with adopted PSG criterion 2.3 with regard to the effect on a conservation area.
35. The Secretary of State agrees that only limited weight can be given to its detailed design and the benefits which should flow from conditions and the obligation should be more properly considered as mitigation (IR11.50). He further agrees that the illustrative layout, which could be required through reserved matters, indicates a scheme which would be well integrated, legible and permeable by walking and cycling, and agrees that some weight should be given to this. Overall he finds, in agreement with the Inspector, that the environmental effects would be neutral.
36. The Secretary of State has noted the Inspector's conclusions at IR11.51 and IR11.55. However, he does not agree, given his findings on neighbourhood planning. As such, he weighs the harms caused by conflict with the YNP and the provisions of paragraph 198 of the Framework against the benefits of the proposal, as set out by the Neighbourhood Planning Guidance he has issued. He gives very substantial weight to this conflict. As such he concludes that the proposal does not comply with the social element of sustainability, and he gives very substantial weight to this against the proposal.
37. The Secretary of State gives significant weight to the benefits of the provision of housing, and further significant weight to the provision of affordable housing. He also gives moderate weight to the fact that the proposed development is in a sustainable location.
38. Against this he gives very substantial weight to the conflict with YNP policy BB1, in line with the provisions of paragraph 198 of the Framework, given his conclusions on neighbourhood planning. He gives limited weight to the adverse impact to the character

and appearance of the field, and further limited weight to the loss of agricultural land. He gives moderate weight to the conflict with ADLP policies GEN1 and GEN2.

39. He therefore concludes that the identified adverse impacts of this proposal would significantly and demonstrably outweigh the identified benefits when assessed against the policies in the Framework taken as a whole. The Secretary of State concludes that the appeal should fail.

Conditions

40. Having considered the Inspector's reasoning and conclusions on conditions, as set out at IR9.1-7, and the conditions which he proposes in Annex C to the IR, the Secretary of State is satisfied that, in the form recommended by the Inspector, they are reasonable and necessary and would meet the tests of paragraph 206 of the Framework and the guidance. However, he does not consider that they overcome his reasons for dismissing this appeal.

Obligations

41. The Secretary of State agrees with the Inspector that the contributions outlined at IR10.1-8 are all necessary to make the development acceptable in planning terms (IR10.2) and that the s106 would meet the tests set out in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010. However, he does not consider that they overcome his reasons for dismissing this appeal.

Formal Decision

42. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for outline planning permission with some matters reserved for 4.5 hectares of residential development comprising 3.4 hectares of land for up to 100 dwellings (up to 30 (30%) affordable housing) together with 1.1 hectares of land set aside for public open space and strategic landscaping and 2.2 hectares of public open space and green corridors with vehicle access from Ford Lane and pedestrian/cycle access only from North End Road, in accordance with application Ref Y/60/14/OUT, dated 27 June 2014.

Right to challenge the decision

43. 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 that date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
44. A copy of this letter has been sent to Arun District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Phil Barber

Authorised by Secretary of State to sign in that behalf

ANNEX

Representations received too late to be considered by the Inspector

Name	Date of correspondence
J M Williams	Undated
Paul Every	Undated
Joshua McClelland	Undated
G Weymouth	Undated
N R Roberts	Undated
M J Walker	Undated
Robina Every	Undated
Sean B Murphy M.B.E.	Undated
Timothy Calnan	Undated
Angela Picknell	Undated
Richard Roberts	Undated
Julie McClelland	Undated
Alison Newman	Undated
Ella M Page	Undated
Anne Brearley-Smith	Undated
Mr & Mrs C M Thomas	Undated
Peter J. Sargent	Undated
D Harley	Undated
D & A Pannett	Undated
C & S Taylor	Undated
K. M Chenery and S.L Heaver	Undated
Mr & Mrs R R Neaven	Undated
Marilyn & Paul Hammerton	Undated
A.V.Boxall	Undated
Nick, Julie, Thomas & Emelia Hopkins	Undated
P.E.Mills	Undated
E Cordingley	Undated
E.M Godber	Undated
Jon McClelland	Undated
Julie McClelland	Undated
John Knight	Undated
S A Coomber & Barbara Coomber	Undated
Elle & Graham Coomber	Undated
G V Aldis	Undated
Mrs J E Lott	Undated
Mr P Collins	24 June 16

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: 7 October 2015

TOWN AND COUNTRY PLANNING ACT 1990

ARUN DISTRICT COUNCIL

APPEAL MADE BY

KETH LANGMEAD LTD.

Richborough Estates

Inquiry held on 7-10 July 2015

Land to the south of Ford Lane, east of North End Road, Yapton

File Ref: APP/C3810/A/14/2228260

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Richborough Estates

GLOSSARY

ADC	Arun District Council
ADLP	Arun District Local Plan
Ax	Appendix
CD	Core document
CLG	Communities and Local Government
DAS	Design and Access Statement
dpa	dwellings per annum
EIA	Environmental Impact Assessment
EiP	Examination in Public
HLS	Housing Land Supply
ID	Inquiry Document
IR	Inspector's Report
LB&CA	Listed Buildings and Conservation Areas
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
MEMP	Mitigation, Enhancement and Management Plan
NPPF	National Planning Policy Framework
OAN	objectively assessed needs
POS	Public open space
ReX	Re-examination
RfR	Reason for Refusal
S66	Section 66 of the Planning (LB&CA) Act 1990
S106	Section 106 of the Town and Country Planning Act 1990
SHLAA	Strategic Housing Land Availability Assessment
SoCG	Statement of Common Ground
SoS	Secretary of State
T&CP	Town and Country Planning
WSCC	West Sussex County Council
XX	cross-examination

Richborough Estates

File Ref: APP/C3810/A/14/2228260

Land to the south of Ford Lane, east of North End Road, Yapton

- 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 Keith Langmead Ltd. against the decision of Arun District Council.
- The application Ref Y/60/14/OUT, dated 27 June 2014, was refused by notice dated 2 October 2014.
- The development proposed is: Outline planning application with some matters reserved for 4.5 hectares of residential development comprising 3.4 hectares of land for up to 100 dwellings (up to 30 (30%) affordable housing) together with 1.1 hectares of land set aside for public open space and strategic landscaping and 2.2 hectares of public open space and green corridors with vehicle access from Ford Lane and pedestrian/cycle access only from North End Road.¹

Summary of Recommendation: the appeal should be allowed

1. Procedural Matters

- 1.1 At the Inquiry an application for costs was made by Keith Langmead Ltd. against Arun District Council. This application is the subject of a separate Report.
- 1.2 Determination of the appeals was recovered by the Secretary of State (SoS) by way of a direction². The reason for this direction was because the appeal involves a proposal for residential development of over 10 units in areas where a neighbourhood plan (NP) proposal has been made.
- 1.3 A planning obligation in the form of a Unilateral Undertaking was submitted pursuant to section 106 (s106) of the Town and Country Planning (T&CP) Act 1990. I deal with its contents below.
- 1.4 The application 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 8 reasons³. UDC withdrew its objections with regard to reason for refusal (RfR) 7 on receipt of the s106 obligation. RfR 8 was withdrawn by the Council on 18 December 2014 as the parties agreed that the proposed affordable housing could be secured by means of a condition (see below).
- 1.5 In a screening direction⁴, under the T&CP (Environmental Impact Assessment) (EIA) Regulations 2011, the SoS directed that the development is not EIA development.
- 1.6 The Inquiry sat for 4 days on 7-10 July 2015. I carried out an unaccompanied site visit of the surrounding area before the Inquiry and I conducted an accompanied site visit on 10 July 2015. I saw the traffic near the school before and after 08.45 on 8 July and at around 15.00 on 10 July 2015.

¹ The full description notes that: This application is a Departure from the Development Plan

² Made under Section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 on 17 November 2014.

³ See Decision Notice, main file

⁴ Dated 9 January 2015, main file

1.7 The Examination Inspector at the emerging Arun Local Plan (eLP) arranged a Procedural Meeting on 16 July 2015, after the last sitting day of this Inquiry, and issued a detailed statement (see below). I held the Inquiry open until 31 July 2015 for any further representations on this meeting, on any objections made to relevant eLP policies, and on the distribution of housing in the eLP. Following the LP Inspector's conclusions and the further representations⁵, I gave instructions for the Inquiry to be closed on 5 August 2015⁶. I summarise the LP Inspector's conclusions in s3 below and the additional comments for each party at the end of each of their cases.

2. The Site and Surroundings

- 2.1 Yapton lies between Barnham, Littlehampton and Bognor Regis. As well as the plan of the appeal site in the application drawings⁷, maps of Yapton can be found in the Design and Access Statement (DAS)⁸ and at the back of the eLP⁹. Relevant features are shown on ID4 and ID5.
- 2.2 It is common ground that Yapton has a range of services within walking distance of the site, including two GP surgeries and a primary school¹⁰. It has a small business base¹¹. The nearest railway station is two miles away at Barnham. The village is served by bus routes from Littlehampton to Bognor Regis and Chichester and from Yapton to Bognor Regis¹². There is a level crossing on North End Road as it heads out of the village to the north.
- 2.3 The site comprises a 6.7 hectare (ha) field between North End Road, Ford Lane and footpath 358. There is essentially ribbon development along North End Road while most of Ford Lane runs between fields. The southern boundary to the site also borders the businesses at the Orchard Business Park and the rear gardens to several houses along Church Lane. It follows that roughly half the site perimeter adjoins existing development and the other half is next to other fields. Further details are set out in the Joint SoCG¹³.
- 2.4 Public footpath 357 crosses the appeal site diagonally from its south-eastern tip (where it joins Public footpath 358) to the north-western corner where it connects to Ford Lane. Public Footpath 358/359 starts in Church Lane as a narrow twitten¹⁴ and continues in a straight line northwards towards its junction with Ford Lane along the eastern boundary of the site and the historic field boundary¹⁵. Footpaths 356 and 359 continue these paths beyond the site. The site lies some 4.36km from the Council's South Downs viewpoint¹⁶.

⁵ Inquiry Document (ID) 27 a&b

⁶ ID28

⁷ See folder on main file

⁸ Core document (CD) 7

⁹ CD19

¹⁰ CD20: Yapton Neighbourhood Plan pp 7-8

¹¹ Ibid para 8.3

¹² Ibid paras 11.5-11.7

¹³ ID14a

¹⁴ a Sussex term for a narrow path between two walls or hedges

¹⁵ See footpath numbers on the OS extract at Collins Ax E1

¹⁶ ID24

- 2.5 The site lies within the Chichester to Yapton Coastal Plain¹⁷ whose characteristics include low lying flat open landscape and long views. In the Arun Landscape Study¹⁸, commissioned to assess the constraints of green field land to accommodate future development, the site is within Landscape Character Area (LCA) 29: North of Yapton Coastal Plain, which is noted as having minor areas of woodland and a minor contribution to the setting of Yapton. It was assessed as of substantial landscape sensitivity but slight landscape value producing a landscape capacity of low/medium. Of the 45 LCAs, only 8 were assessed as having greater capacity with 23 having only low or negligible capacity.
- 2.6 At the local level, the Council agreed¹⁹ that the site's character type was intensive arable farmland with relatively large fields across relatively flat landform. However, it went on to argue that the site itself was most closely akin to that with field boundaries which tend to be ditches and/or fences and weak/remnant hedgerow with few mature trees and long views to the Downs to the north, rather than that of having a well developed structure of hedges, shaws, copses and woodland which break up views across it and give a sense of large scale enclosure.
- 2.7 It is common ground that the site comprises agricultural land which, according to the Soil and Agricultural Land Assessment Study²⁰, is classified as being of Grade 2 quality and the LPA raises no objection to the loss of agricultural land. It is also common ground that the appeal site is not subject to any surface water flood risk as it is situated in Zone 1, as classified by the Environment Agency, and that foul water drainage can be disposed of via the Ford Wastewater Treatment works which serves this part of Yapton. On my site visit I stopped and closed my eyes, as requested, to listen to a skylark.
- 2.8 St. Mary's Church, believed to date from the late 12th to early 13th centuries with few alterations²¹, is listed at Grade I. It is mostly of flint and its tower is surmounted by a shingled timber spirelet of pyramidal form; this is a typical Sussex feature known as a Sussex cap²². The churchyard is surrounded by trees which provide particularly dense cover to the rear between the church and the appeal site. The church tower can be seen above the trees from the site and beyond. Two other listed buildings on the south side of Church Lane are Church House, across the road from the church lych gate, and Park Lodge, further west along Church Lane. The Council raised no concerns with regard to the settings of these other two buildings.
- 2.9 The Yapton (Church Lane) Conservation Area²³ was designated in 1994 and is fairly tightly drawn around the church, Church Farm House and the two listed buildings on the south side of Church Lane. The description identifies its loose grouping of buildings, high substantial flint boundary walling, mature

¹⁷ Sheet SC9 of the West Sussex Land Management Guidelines at McKenzie Ax EDP2 and Collins Ax E6

¹⁸ CD17

¹⁹ McKenzie Ax EDP2: Landscape Character Assessment, paras A2.17-2.20

²⁰ CD35 published by Arun District Council in March 2013

²¹ See the little guide book at ID21 p3

²² Ibid p11

²³ CD27: Description and map; Dr Wightman's appendix 1; and Collins's appendix F

landscaping and chimneys as important features. Church Farm House is an unlisted residential property within the conservation area. The appeal site touches the northern boundary of the Conservation Area where it borders part of the extended garden to Church Farm House beyond the churchyard.

- 2.10 The Yapton Manor/Place print²⁴ provides persuasive evidence that the building once stood to the east of the appeal site, behind Church Farm House, and I was shown an undulation in the field outside the site which might have been the location of its ha-ha or other earthworks. Burndell Road, with a development site at on the eastern side of the village, was subject to an Archaeological Evaluation²⁵.

3. Planning Policy

- 3.1 The T&CP Act 1990, the Planning and Compulsory Purchase Act 2004, the Localism Act 2011, the Planning (Listed Buildings and Conservation Areas) (LB&CA) Act 1990, the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) are particularly relevant.
- 3.2 Following the revocation of the WSCC Structure Plan and the South East Regional Plan, the only relevant part of the development plan for the area now comprises the Arun District Local Plan (ADLP), adopted in 2003²⁶ and with many policies saved in 2007, and the Yapton Neighbourhood Plan (YNP) which was made on 5 November 2014. The site is close to, but outside, the built-up area boundaries in the ADLP and in the YNP.
- 3.3 All relevant policies are listed in the SoCG. Particularly pertinent are saved ADLP policies GEN2, GEN3, and GEN7(ii). Policy GEN2 does not permit development outside the built-up area boundaries defined in the ADLP. Policy GEN3 defines areas outside the built-up area boundaries as countryside where development will not be permitted other than in specific circumstances. Policy GEN5 makes provision for new dwellings up to 2011 but the Plan makes no policy provisions in terms of housing allocations to meet the housing requirements for the district beyond 2011. Policy GEN7 sets criteria for development which should display high quality design and layout including, at criterion (ii), that it should respond positively to the characteristics of the area to create attractive places and spaces and respect local distinctiveness.
- 3.4 ADLP policy AREA2 only permits development which would preserve or enhance the character or appearance of a conservation area or its setting. ADLP policy AREA17 does not permit development which would harm the significant archaeological interest of a site and, where the presence of remains is known or suspected, requires an assessment of the site before the application is determined. Where this shows that preservation in situ is not justified, conditions may be attached to require investigation before development starts.

²⁴ ID16, as provided in the evidence of Vicky Newman and the No Yap-town group

²⁵ CD16

²⁶ Core Document (CD)18

Emerging Arun Local Plan (eLP)

- 3.5 The eLP 2011-2029 Publication Version is dated October 2014²⁷. At the time that the application was refused, the Council's timetable for this was for pre-submission publication (Regulation 19) in October - December 2014; submission in Jan 2015; examination in April/May 2015; Inspector's Report during August 2015; and adoption in September 2015. The consultation exercise attracted representations raising objections on legal compliance and soundness grounds in respect of all the relevant draft policies in this appeal. The RfRs assert conflict with emerging policies SD SP2, H SP1, C SP1, LAN DM1, HER DM1, HER DM3, HER DM6 and INF SP1. Given my conclusions on the eLP (below), I do not summarise these policies here.
- 3.6 The LP Inspector convened a meeting for 16 July 2015, after all evidence at the Inquiry had been heard. He issued a discussion note²⁸ before the meeting explaining that its purpose was to consider the implications for the future progress of the examination on the issue of 'the full objectively assessed needs (OAN) for market and affordable housing' with reference to the requirement in NPPF 47. He referred to the discrepancy between the OAN figure of 580 dwellings per annum (dpa), in the submitted eLP, and the figures of 786 dpa and 758 dpa, the first in an appeal in December 2014, and the second in a study by G L Hearn Ltd (Hearn report)²⁹.
- 3.7 The Council met on 17 June 2015 and considered whether to proceed with the figure of 580, withdraw the eLP and prepare a replacement plan based on 758 dpa, or to seek suspension. It resolved to ask the LP Inspector to agree to suspend the eLP for six months in order to put forward an OAN of 641 dpa as an interim measure pending a longer review.
- 3.8 In his conclusions after the Procedural Meeting³⁰, the LP Inspector set out the Council's position and summarised the duties, in NPPF 47 and PPG ref ID 2a 016 20150227, to meet the full OAN as informed by the latest available information. He then explained his concerns with the Council's approach as first, that a 30% increase would be a meaningful change following the 2011 census, and second that no OAN figures/methodologies had been tested at examination as representations were only made with regard to the 580 dpa. Given the findings of the Hearn report, he was not convinced that it would be sound or appropriate to proceed on the basis of a figure of 641 dpa. Moreover, he considered that planning to meet a target limited to 641 dpa could prejudice more sustainable strategies including any which might follow the announcement of an Arundel bypass. He did not view suspension for six months as effective protection against 'planning by appeal' as the Hearn report would continue to be raised to argue that the plan was out of date even at adoption.

²⁷ CD19

²⁸ ID26a

²⁹ CD22: Committee report dealing with GL Hearn report 'Objectively Assessed Housing Need: Arun District', March 2015

³⁰ ID26b

- 3.9 The eLP Inspector noted the suggestion in the committee reports³¹ that withdrawal to pursue the full OAN would effectively render all of the NPs immediately out of date. He felt that this was to overstate the position but acknowledged that changes in the amount of development provided for by the eLP could result in certain parts of some NPs being superseded or in need of revision and that NPPF 184 is clear that NPs should not promote less development than that set out in an up-to-date LP. He noted that Arun's NPs have emerged at a time when the adopted ADLP has been growing increasingly out of date, finding the marked lack of synchronisation between the eLP and the NPs to be unfortunate. Finally on this point, he found that ruling out sound judgements on strategic matters which should be set out in the LP, in order to avoid the possibility that resultant policies might not fit with some NPs, would not meet the tests in NPPF 182.
- 3.10 In conclusion, he found that suspension as suggested would not be an appropriate option. However, he went on to consider whether suspension for more than six months could provide a faster option for achieving a sound plan than withdrawal. He therefore invited the Council to consider a 12-18 month suspension with a view to examining the issue of the OAN as soon as possible following representations on the basis of 758 dpa. Any consideration of reasonable alternatives would need to avoid any appearance of pre-determination or over-reliance on the sustainability assessment accompanying the submitted plan.

Yapton Neighbourhood Plan (YNP)

- 3.11 An Examination into the YNP was held in June 2014 and the Examiner's Report is dated 17 August 2014. The referendum version, reflecting the Examiners recommendations, was published in late September 2014³². A referendum was held on 23 October 2014 and the results were as follows: 724 votes cast (22.13% turnout), 681 votes cast in favour of a Yes (94.45%) and 40 votes cast in favour of no (5.55%). At a Full Council meeting on 5 November 2014, Arun District Council resolved to 'make' the YNP which means that it has been brought into legal force, and forms part of the statutory development plan.
- 3.12 The Independent Examiner considered a representation that it should not proceed to referendum until the new ADLP has been adopted. He noted that the adoption process would have established the objectively assessed housing needs for Arun District but was satisfied that the YNP had been prepared in a proportionate and responsible way, as set out in the PPG, to the extent that the qualifying body and the LPA should discuss and aim to agree the relationship between policies in the various plans³³.
- 3.13 He accepted that if the adopted policies of the eLP are different from those which underpin the YNP then they would take precedence and that the qualifying body might wish to carry out a review of the YNP. Finally, in considering the development plan context, he recognised the importance of flexibility and the ability of the YNP to contribute towards the District's

³¹ To the Local Plan Sub-Committee and the Full Council – see ID26 para 11 and 14

³² CD20 and CD21

³³ CD21 para 3.8 and PPG Ref ID 41-009-20140306

objectively assessed housing needs and made recommended modifications accordingly.

- 3.14 All relevant YNP policies are listed in the SoCG. Those with a particular bearing on this appeal are: policy BB1, which does not permit development outside the built-up area boundary except in certain circumstances which do not apply here. Policy E8 which echoes the national and local requirements for conservation areas but makes no reference to development within their settings. Policy E9 concerns the loss of listed buildings of structures of character. YNP policies E3, E4, E5 and E6 are concerned with natural habitats, trees and shrubs, biodiversity and green infrastructure.
- 3.15 The first objective of the YNP, based on figures taken from the eLP, is to provide for a minimum of 100 new dwellings. Policy H1 identifies that the minimum housing requirement for Yapton will be established by the eLP. It notes that additional allocations will be made if the eLP requires such action or if the identified housing sites do not proceed. The policy justification adds that the Community Survey³⁴ showed 58% support for 'control' over housing development in order to prevent children from having to leave the village. Housing and development were seen by the authors of the Survey as the key component of the YNP³⁵.
- 3.16 The YNP identifies two housing allocations within its boundary for Yapton (policies SA1 and SA2) which could yield 95 dwellings and states that, with sites in the planning pipeline, this would total 208 dwellings³⁶. The Council pointed out that the allocated sites are in different landscape character areas to the appeal site³⁷. The YNP notes that all the land surrounding the village is either classed as grade 1 or grade 2 agricultural land³⁸. YNP policy E1 is to refuse development on grade 1 and grade 2 agricultural land unless allocated under policies SA1 and SA2 or required by policy H1 to meet the needs in the Plan area.

Housing position

- 3.17 It was common ground at the Inquiry³⁹ that the Council could not demonstrate a 5 year HLS. It was also agreed that the appropriate buffer under NPPF 47 is 20% and that the OAN for 2014-2019 is at least 3,790 (5x758) plus a past shortfall of 712. The precise calculation depends on the order of calculation for the buffer, but the requirement was agreed to be roughly 2,000 more than the deliverable supply over the 5 year period. On the basis of this agreement, no evidence was put forward as to the likelihood that this supply would come forward and be developed within 5 years and my report and recommendations proceed on this basis. The maximum available HLS was agreed to be either 3.01 or 2.92 years.

³⁴ ID22 section 3 Q4

³⁵ ID22 s3 Housing comments

³⁶ CD20 – YNP paras 6.4-6.5. See also ID15

³⁷ ID24

³⁸ CD20 para 6.14

³⁹ ID14b HLS SoCG

Other policy

- 3.18 Adopted Supplementary Planning Guidance (SPG) for conservation areas sets criteria for development within them. Criterion 2.3 expects a high standard for new development both within or affecting the setting of a conservation area. Historic England (HE), Historic Environment Good Practice Advice in Planning Note 3 – The Setting of Heritage Assets⁴⁰ provides a step by step approach to settings and proportionate decision taking.

4. The Proposals

- 4.1 The submitted application comprised several documents, plans and supporting information⁴¹. The scheme would include a housing development, with affordable housing, and public open space between the conservation area and the proposed housing. There would be strategic landscaping along its boundaries and on either side of retained footpath 357. Landscaping described as green corridors would be focused around retained footpath 358 and the south east of the site adjoining the village. Vehicular access would be from Ford Lane and pedestrian/cycle access only from North End Road. All existing hedges and trees on the site are proposed to be retained and enhanced. All these details would be subject to conditions controlling reserved matters. An earlier application for 250 houses, over a larger site, went to appeal but was withdrawn.
- 4.2 Four statements of common ground (SoCGs) were agreed: (a) Joint; (b) housing land supply (HLS); (c) Conditions & obligations; and (4) Archaeology⁴². Agreed matters include that:
- Yapton is a sustainable location for housing growth of the scale proposed (up to 100 houses);
 - the appeal site lies outside the built up area of Yapton as defined by "saved" Arun District Local Plan 2003 (ADLP) Policy GEN 2 but is nonetheless in a sustainable location being immediately adjacent to the settlement boundary of Yapton and close to a range of services and facilities that are all within walking and cycling distance;
 - none of the appeal site is subject to any specific national or local adopted/emerging landscape, heritage or ecological designation but is in the "countryside" for the purposes of ADLP Policy GEN 3;
 - the access from Ford Lane and all other proposed highway works have been agreed by the West Sussex County Highway Authority, the Highways Agency and Network Rail (subject to the imposition of relevant and suitably worded conditions) and the Council raised no objections in these regards; and

⁴⁰ CD26

⁴¹ Including Application Forms; A Planning Statement (including a Design and Access Statement [DAS], Affordable Housing Statement, Flood Risk and Drainage Strategy, Heritage Statement and Archaeology Statement); Transport Assessment; Arboricultural Survey; Extended Phase I Habitat Survey; Location Plan drawing no. 200B; Proposed Indicative Layout/open space proposals: drawing no. 201C; Illustrative Strategic Landscape/open space proposals: drawing no. 202B; Means of access drawing no. 130431-10A; and a Photographic Survey.

⁴² Inquiry Document ID14 a-d

- the Flood Risk Assessment and Drainage Strategy has been agreed by the Environment Agency, Southern Water Services and the Council's Drainage Engineers.

4.3 The appeal site forms part of the larger site which was the subject of a previous application⁴³ for which there was pre-submission consultation as described in its Statement of Community Involvement.

5. The Case for the LPA

- 5.1 The appeal should be determined in accordance with the development plan unless material considerations indicate otherwise. This comprises the ADLP and the YNP. The latter is very recent and up-to-date, went through the proper process of consultation and enjoys the support of the local community. The Independent Examiner concluded that, as a whole, the YNP was in conformity with the ADLP⁴⁴. He considered whether the plan should proceed before adoption of the eLP but was satisfied that it had been prepared in a proportionate and responsible way as set out in PPG. Planning permission should not normally be granted which would conflict with a plan which has been brought into force (NPPF 198).
- 5.2 Relevant policies include ADLP policies GEN2, GEN3, GEN7 and AREA2. Various policies in the eLP are relevant, as is YNP policy BB1. The YNP allocates housing sites as it is entitled to do. Considerable weight should be given to the emerging plan, which is at an advanced stage⁴⁵, in accordance with NPPF 216. There are few objections to it other than to housing policies. Already 50% more planning permissions have been granted in Yapton than were allocated in the YNP⁴⁶. Yapton is doing its bit to provide housing in the district.
- 5.3 Four recent SoS decisions⁴⁷ emphasise the importance he attaches to NPs. In *Broughton Astley* he found that conflict with the NP would significantly and demonstrably outweigh the benefits in terms of increasing housing land supply. At *Winslow* he found that, once made part of the development plan NPs should be upheld as an effective means to shape and direct development in the neighbourhood planning area. At *Sedlescombe* the SoS found limited adverse impact but concluded that granting permission would undermine the NP process. Although there was no 5 year HLS at *Earls Barton*, the SoS found a proposed development to be in clear conflict with the emerging NP.
- 5.4 The YNP is a government front runner, with public funding and considerable public support. 3½ years of hard work by 12 volunteers has gone into it⁴⁸. Allowing the appeal would undermine the principles of localism and the belief that future development could be shaped through NPs. It would undermine neighbourhood planning around the country. The government has confirmed⁴⁹

⁴³ Council ref. Y/99/13

⁴⁴ CD21 para 3.4

⁴⁵ Conceded in XX but ultimately a matter for the decision maker – see *Woodcock* paras 105 and 112

⁴⁶ See ID15

⁴⁷ Weatherhead appendices 6 and 7, 8, 9 and 10 respectively

⁴⁸ Andy Faulkner for the Parish Council

⁴⁹ Mr Boles in a Parliamentary Debate

that the weight to be given an emerging NP is in no way contingent on the status of the LP.

Landscape

- 5.5 While undesignated, protecting and enhancing a valued landscape is a requirement of the NPPF and this was further supported by a ministerial letter⁵⁰. Weight can be given to an undesignated landscape⁵¹. The Arun Landscape Study assessed the site's capacity for development as low to medium as a result of a combination of factors including the small amount of woodland, the local topography, the contribution to the setting of the village and the loss of broad long views to the South Downs and Arundel. This accords with the decision at *Westbourne*⁵² that harm to the local landscape would outweigh any environmental gains.
- 5.6 The appellant has not made a proper assessment of the impact on landscape character or submitted a Landscape and Visual Impact Assessment (LVIA) in accordance with the LVIA guidelines⁵³ as noted in the Council's response, its screening opinion, and the evidence of its landscape witness⁵⁴. Considerable weight should therefore be given to the Council's visual appraisal which identifies harm to key visual receptors including: walkers on public rights of way in the South Downs National Park; local residents on Church Lane and North End Road; passengers on the railway line; road users on Ford Lane; and walkers on footpaths 356, 357, 358 and 359. The scheme would cause clear harm as a result of its 'suburbanising' impact.

Heritage assets

- 5.7 Two key assets would be harmed. St. Mary's Church, believed to date from the 12th century, is listed at Grade I and its tower is a distinctive feature. Views of church towers are recognised in the 'West Sussex Landscape Land Management Guidelines' as a key characteristic of the coastal plain⁵⁵. The Church Lane Conservation Area is adjacent to part of the appeal site. In both cases it is the setting which would be harmed. Setting is defined⁵⁶ as 'the surroundings in which a heritage asset is experienced'. Inadequate assessment has been made of the settings⁵⁷ contrary to NPPF 128, PPG⁵⁸, and Historic Environment Good Practice Advice in Planning Note 3. Historic England advice⁵⁹ and eLP policies HER DM1(d) and HER DM3(i). The

⁵⁰ From Brandon Lewis MP, as Minister of State for Housing and Planning, to the Chief Executive of The Planning Inspectorate, dated 27 March 2015, McKenzie Ax EDP6

⁵¹ *Bishops Tachbrook* paras 23, 24, 26, 30 and 31

⁵² CD32 para 30

⁵³ The third edition of Guidelines for Landscape and Visual Impact Assessment (GLVIA3) was published by the Landscape Institute on 17 April 2013.

⁵⁴ CD10, CD15 and McKenzie

⁵⁵ See sheet SC9 at Collins Ax E6

⁵⁶ In the glossary to the NPPF

⁵⁷ See the evidence of Dr Wightman

⁵⁸ PPG: Conserving and Enhancing the Historic Environment. Ref. ID: 18a-013-20140306

⁵⁹ CD26. Historic England document, published March 2015: Historic Environment Good Practice Advice in Planning Note 3 – The Setting of heritage Assets.

Consultation Response from English Heritage⁶⁰ acknowledges that the appellant's evidence constitutes a 'slightly more thorough assessment'.

- 5.8 Statutory duties⁶¹ apply to listed buildings and conservation areas. Recent case law⁶² has emphasised that, for listed buildings, this requires 'considerable importance and weight' to be given the desirability of preserving their setting such that there is a tilted balance even where the harm would not be substantial. Here, there would be harm to the rural tranquillity of the setting in which the church and conservation area are experienced⁶³. Views of the church tower from existing footpaths would be harmed by the surrounding housing estate. The historic character of this setting would be replaced with a domestic suburban one which would harm the significance of the assets.
- 5.9 The importance of the setting of the conservation area is set out in the Appeal Decision for Church House⁶⁴. In the case of *Mordue* the Court found that the Inspector failed to give reasons demonstrating that he had given considerable weight to the harm to the settings of each of the listed buildings that he found would be harmed to some extent.

Archaeology

- 5.10 Where necessary, NPPF 128 requires developers to submit a field evaluation for sites which have the potential to include heritage assets with archaeological interest. The Council's evidence of the residual finds on the site⁶⁵, the review of the data in the Sussex Historic Environment Record and neighbouring evaluations⁶⁶ should be preferred to that of the appellant which has simply assembled documents without analysis. In these circumstances a planning condition would be insufficient to deal with the archaeological potential and this was the view of the county archaeologist⁶⁷. Rather, an archaeological evaluation should be carried out prior to determining the appeal, as happened for the application at Burndell Road in Yapton⁶⁸.

Other material considerations

- 5.11 Weight should be given to the considerable number of objections⁶⁹, the number of residents who attended the Inquiry⁷⁰, and the submissions by these and the Yapton Parish Council. Local feeling was summed up in the statement from Nick Gibb MP: 'If localism and the drive to encourage and support the new wave of planning policy through NPs and community involvement is ever to thrive and develop into meaningful policy then Yapton's NP must be allowed to carry the weight it derives.'

⁶⁰ CD13

⁶¹ Under s66 and s72 of the Listed Buildings and Conservation Areas (LB&CA) Act 1990

⁶² *Barnwell Manor* followed by *Forge Field* and *Mordue*

⁶³ The evidence of Dr Wightman

⁶⁴ CD28. Land at Church House. Ref. APP/C3810/A/08/2090433

⁶⁵ As shown to the Inquiry by Mr Burn from 4 walkovers and at his photos 1 and 2

⁶⁶ By Cotswold Archaeology at Goodhew Close, Yapton

⁶⁷ CD11

⁶⁸ CD16

⁶⁹ The report to committee, CD6, identifies 369 letters of objection to the original planning application.

⁷⁰ Approximately 31 on Day 1

Public benefits

5.12 These include the provision of housing where the Council cannot demonstrate a 5 year HLS. Affordable housing is a clear benefit. However, these benefits would apply to any development for additional housing on the edge of any settlement in the district. There are no demonstrable heritage benefits⁷¹. Weighed against the clear harm to landscape, heritage assets and potential archaeological remains, the benefits would not outweigh the harm identified by the Council's expert witnesses.

Planning balance

5.13 NPPF 14 is not engaged as the proposal would not amount to sustainable development⁷². The scheme would be in clear conflict with the YNP and local housing policies. It would cause less than substantial harm to designated heritage assets and environmental harm to the character of the area. Despite the benefits of additional housing, on balance, the proposals would be contrary to the NPPF and would not constitute sustainable development. In the alternative, NPPF 14 footnote 9 applies and the harm to the heritage assets would outweigh any presumption in favour of the development. In *Broughton Astley* the SoS found that conflict with the NP was not beyond the range of reasonable planning judgement.

Additional comments

5.14 Following the procedural meeting into the eLP, the Examining Inspector issued a note suggesting suspension for some 12-18 months so that the Council could undertake the necessary work with regard to the objectively assessed housing needs for the district. There were previously objections to eLP policies LAN DM1, H SP1, SD SP2, C SP1, HER DM1, HER DM3 and HER DM6. The Parish allocations are the result of several components. The plan does not rely on revisiting the NP allocations but will review the strategic allocations.

6. The Case for Keith Langmead Ltd.

6.1 The main issues cover: character and appearance with regard to the development plan, the settings of listed buildings, the conservation area, archaeological remains, sustainable development, and the tilted balance in NPPF 14 when assessed against the NPPF as a whole.

Housing land supply (HLS)

6.2 RfR1 was predicated on the Council being able to demonstrate a 5 year HLS through the strategic locations in the eLP and the allocations in the Referendum Version of the YNP. The YNP is now a made plan with its policies BB1 and H1 based on the housing requirements in the eLP. The Council subsequently⁷³ advised that it could no longer demonstrate a 5 year HLS. It is now agreed that the supply is around 3 years. Despite objections, the Council

⁷¹ As made clear by EH (as was) in CD13A. In fact the Council's closing refers to 'environmental' benefits but the email uses the word 'heritage' and defers to the LPA to judge whether other public benefits exist.

⁷² See *William Davis*, para 37, within ID7

⁷³ December 2014 – see Joint SoCG at CD5

submitted the eLP for examination in January 2015. In February 2015, two appeal decisions⁷⁴ left no doubt that the housing figures in the eLP were inadequate and in March the eLP Examination Inspector made clear that there were major issues over the soundness of the plan (see update below).

- 6.3 Consequently, neither the eLP nor the YNP make sufficient provision for housing. With regard to the housing policies at least, only limited weight should be applied to the eLP. While Yapton has more than 100 dwellings being built or with recent planning permission, this number is included within the Council's figure which only amounts to around a 3 year supply compared with the NPPF requirement of 5 years plus a 20% buffer. The new ALP will need to make provision for higher numbers. As Yapton is one of the more sustainable locations in the District, it is likely that the YNP will need to be reviewed.
- 6.4 Significant amounts of greenfield land beyond settlement boundaries will be required to meet the housing requirements of the District in any event. The YNP allocations are for land in agricultural use. It follows that none of the housing policies in the eLP or in the YNP are up to date. The PPG advises that NPs may be prepared in advance of the adoption of a LP. However, where the housing policies are out-of-date, a NP made in advance of adoption is plainly in a potentially more fragile position. NPPF 198 provides that permission should not normally be granted if it would conflict with a NP. However, it is not a normal situation for a recently made NP to be not up-to-date on account of the Council not being able to demonstrate a 5 year HLS. The position in Arun and Yapton is not normal.
- 6.5 With regard to other SoS decisions concerning NPs, in *Broughton Astley*⁷⁵ the allocated sites, leading to a combined total of 648 dwellings, significantly exceeded the CS requirement of 400 dwellings, quite unlike the situation at Yapton. *Sedlescombe*⁷⁶ concerned an emerging plan and prematurity is not an issue in this appeal. Furthermore, all the cases cited predate *Woodcock*⁷⁷ from which it is clear that policies BB1 and H1 of the YNP are not up to date, as defined by NPPF 49, despite being recently made as the LPA does not have a 5 year HLS.

Character and appearance

- 6.6 The Council's allegations are that the scheme would constitute a significant encroachment into the countryside, on a site not well related to the settlement, which would harm the visual amenities of the location and the character of the area.
- 6.7 On the first point, it should be noted that ADLP countryside policies GEN2 and GEN3 have been found to be out-of-date and inconsistent with the NPPF (see *Westergate*) while there would be no conflict with policy GEN7, criterion (ii) or otherwise. Only limited weight should be given to the relevant eLP policies which all have substantial unresolved objections. As above, YNP policy BB1 is also out of date. While the Council's landscaping witness would have done

⁷⁴ in *Westergate* - Collins AxD p175-225

⁷⁵ *Weatherhead Ax 6*, IR para 45 and DL para 17

⁷⁶ *Ibid Ax 9*

⁷⁷ ID7, divider 9, dated 1 May 2015

things differently, that is not the test. The appellant's witness has sufficient experience and expertise to assess the landscape and visual issues. Save for the single viewpoint on the South Downs⁷⁸, it was agreed that the effects would be localised and no other material receptor had been omitted.

- 6.8 The late suggestions, that inadequate information had been submitted to assess the scheme, and that biodiversity would be harmed, were without merit and at odds with the SoCGs. The site is not in any gap. The rationale for strategic landscaping is clear and could be secured by the suggested conditions. The site is not a valued landscape as defined by NPPF 109 and interpreted in *Leonard Stanley*⁷⁹. It was acknowledged that the development would change the character of the area and have some impact on the visual amenities of the locality, as would any edge of settlement countryside site. Here this harm would be very limited in these terms and would not significantly and demonstrably outweigh the benefits of the scheme. It is common ground that the site is well related to the settlement.

Heritage

- 6.9 RfR3 is misconceived in suggesting that insufficient information was submitted. It was never suggested that the appellant's witness did not have the experience or expertise to judge these matters in accordance with NPPF 128 and HE guidance. Although there are several listed buildings in the vicinity, it is common ground that of these only the effect on the church was at issue.

St Mary's church

- 6.10 It is acknowledged that the site is within the setting of the church. However, the setting makes a limited contribution to the significance of the church as a heritage asset as there is limited historical, physical or visual relationship. A small proportion of the church tower is visible from the site but that does not equate to contributing to its significance as a heritage asset. The scheme would ensure that the visual relationship, such as it does exist, would be maintained and so the setting would be preserved in accordance with s66 of the LB&CA Act. A setting is not a heritage asset in its own right and it is only the contribution to significance which matters. The Council has wrongly conflated visibility with harm. If there would be any harm at all it would be less than substantial. In fact, the scheme has been designed to respect the significance of the church. In any event, the s66 test need not be of overriding importance as found at *Razors Farm*⁸⁰ and *East of Hawton*⁸¹ and elsewhere⁸². The balancing exercise must still be carried out taking account of the considerable weight to be given to the social and economic benefits of market and affordable housing, where there is a substantial shortfall, and the environmental benefits of public open space and landscaping.
- 6.11 The tilted balance in favour of sustainable development in NPPF 14 does not apply where specific policies indicate otherwise (footnote 9) including

⁷⁸ McKenzie viewpoint 1

⁷⁹ Collins AxD p 226 and as upheld in *Stroud v SSCLG & Gladman*: ID7/14

⁸⁰ ID7/12, IR 10.50

⁸¹ DI7/13, D/L para 21

⁸² *Old Guildford Road and Kingsland Haines*

designated heritage assets. The Council argued that this exclusion applied even when the harm would be less than substantial⁸³. The correct interpretation should be that footnote 9 should only apply to impact on a listed building or conservation area which would cause substantial harm or total loss of significance. Then the presumption in favour of granting permission would be lost and, as set out in NPPF 133, consent should be refused. Otherwise the balance in NPPF 134 and NPPF 14 should remain. This is clear from every other instance in footnote 9 where another specific policy in the NPPF applies⁸⁴. It is also consistent with the approach to footnote 9 in *Razor's Farm*.

Conservation area

6.12 None of the appeal site is within the Church Lane Conservation Area. It is historically, physically and visually separated from the conservation area by intervening modern development and tree cover. It does not form part of the setting of the conservation area for the purposes of the NPPF. The Council is again wrong to conflate (limited) visibility with harm. The design of the scheme, and the proposed public open space in particular, would preserve any contribution that the site might make to the significance of the conservation area as a designated heritage asset, including any views towards Church Farm House. In the event that there would be any harm to the character of appearance of the conservation area, the test in s72, and appropriate balancing exercise, should be applied in the same way as s66 at *Razors Farm* and *East of Hawton*. Finally on this point, the Council⁸⁵ accepted that there would be no conflict with YNP policy E8.

Archaeology

6.13 There is no issue as to the potential archaeological interest in the site. The SoCG for Archaeology⁸⁶ makes clear that the matter could be dealt with by a condition⁸⁷. There was no credible basis for the Council taking up Inquiry time arguing that work should be carried out before determining the appeal. The appellant has submitted the relevant information⁸⁸, including maps and descriptions of the parkland to Yapton Place/Manor⁸⁹, and the Council submitted nothing that was materially different. The suggested pre-commencement condition could protect any remains, even something as dramatic as the suggested Roman villa. The evidence of the Council's archaeological witness was misconceived, unjustified and counter-productive. Applying the suggested conditions would also be consistent with the similar situation in *Westergate*.

⁸³ Citing the *Bishops Tachbrook* decision para 45 – McKenzie Ax 4

⁸⁴ Listed in detail in para 50 of the closing

⁸⁵ Dr Whiteman in XX

⁸⁶ ID11 – as suggested by the Council and agreed between the parties

⁸⁷ See also the findings of the SoS and Inspectors with regard to post decision archaeology conditions at *Westergate 175-225*, *Old Guildford Road 241*, and *Land at Kingsland Laines 259*

⁸⁸ The HER, regression maps, British History Online etc.

⁸⁹ Collins at appendix F1 paras 48-50 pp 430-431 and F2 pp 439-445

Sustainable development

- 6.14 The scheme would meet the social and economic dimensions of sustainability within the definition in the NPPF. The claim that it would not satisfy the environmental dimension, due to the existence of alleged landscape and heritage harm and the conflict with the YNP, is misconceived. Even if some harm or conflict did arise, it would be necessary to balance this with the benefits of the scheme. It is common ground that Yapton is a sustainable location for housing growth of the scale proposed (up to 100 houses) and the Council has welcomed the proposed provision of 30% affordable housing. While outside the defined built up area in the development plan⁹⁰ it is nonetheless in a sustainable location relative to the settlement being both adjacent to the boundary and close to a range of services, facilities and employment.
- 6.15 Subject to conditions, the access is acceptable to the local Highway Authority, there are no landscape, heritage or ecological designations affecting the site and it is in Zone 1 for flooding as classified by the Environment Agency. The site is Grade 2 agricultural land but the district is bound to lose some such land to meet its housing needs and it is common ground that the Council raises no objection for this reason⁹¹. The site does not provide any habitat for protected or even non-protected species other than in the field margins where the trees and hedges would be retained. The provision of significant levels of open space and landscaping would have a significant positive ecological impact⁹². The scheme would therefore also deliver environmental benefits.

Balance

- 6.16 Relevant ADLP policies and the housing policies of the YNP are not up to date. The presumption in favour of sustainable development in NPPF 14 applies. Any adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole. The scheme should therefore be granted permission.

Conclusion

- 6.17 The scheme would minimise impact on the character and visual amenities of the locality, preserve the setting of the church and the character and appearance of the conservation area. It would provide a high quality residential development in an extensively landscaped publicly accessible parkland setting that would relate to its surroundings and provide ready access to local services and facilities. Housing is needed now to address the 5 year HLS deficit and the difficulties in delivering affordable housing. The proposals would bring many social, economic and environmental benefits to the local community and so permission should be granted.

⁹⁰ Under both ADLP policy GEN2 and YNP policy BB1, and therefore in the countryside for the purposes of ADLP policy GEN3

⁹¹ CD35 pp1-2; 29-33; and Fig 10. SoCG para 8.

⁹² Officer's Report at CD6 and Collins Ax A p59

Additional comments

- 6.18 With regard to the procedural meeting, there is no written report to committee, there are no minutes and no further response from the eLP Inspector and so the Council's comments⁹³ are speculative. Whether the eLP is suspended for 12-18 months or withdrawn, no more than extremely limited weight can be given to the eLP policies cited in the RfRs.
- 6.19 There were 453 representations regarding the eLP policies referred to by the Council in its RfRs, many of which have yet to be considered by the LP Inspector. While the distribution of housing allocations amongst parishes is a matter of record, these figures should no longer be relied upon. The comment that the NP allocations would not be revisited is not credible given the LP Inspector's comments⁹⁴. Rather, these figures will need to be reviewed, as predicted by the Independent Examiner, and the outcome of this is impossible to predict at this stage.

7. The Cases for Interested Parties⁹⁵

- 7.1 Many of the representations echoed the concerns which are more fully articulated by the Council above so I do not repeat them.
- 7.2 **Hilary Flynn** read out a statement on behalf of **Nick Gibb MP** for Bognor Regis and Littlehampton. This highlights local opposition, the YNP and the fact that this site was never considered by the NP group. The YNP identified sufficient new homes against the draft LP allocation and, if localism and NPs are to thrive, then the YNP must be allowed to carry the weight it deserves. In addition, the proposals would fail to meet key policy criteria in the NPPF, including that for heritage assets, as well as saved ADLP and eLP policies. The appellant has not engaged with the community affected, there have been large scale developments in this small village already and this speculative scheme is deeply unpopular with the local community.
- 7.3 **Andy Faulkner** introduced the representations by the **Yapton Parish Council**⁹⁶. He referred to the requirement in the Localism Act that consultation should take place prior to submitting an application having regard to any advice from the LPA about local good practice. The submission was endorsed by the new Clerk to the Parish Council, **Andrew Gardner**.
- 7.4 **Tricia Wales**, a representative of the YNP Group, argued that if the YNP is disregarded it would set a precedent all over the country. It would become another worthless piece of paper and neighbourhood planning would become another empty sound-bite. She advised that the focus of the YNP was to prevent housing on agricultural or greenfield land and that any development allowed should be small, around 30-40 houses, and not allow sprawl. The group reluctantly agreed to allocations for 100 houses when it became apparent that there was not enough brownfield land.

⁹³ By Mr Weatherhead on 31 July 2015.

⁹⁴ Paras 11-15 and 17-23 of his letter dated 28 July 2015, ID26b

⁹⁵ At ID17a, b and c except for Nick Gibb MP at ID10 and those of the Parish Council (below)

⁹⁶ ID12

- 7.5 **Vicky Newman**, of Church Farm House, read a statement on behalf of the community group, **No Yap-town** which represents residents throughout the village⁹⁷. This highlighted some of the points in the group's written submission. She explained that local opinion was strongly against large scale housing, preferring small infill as advocated by the YNP. She emphasised three areas of concern:
- a) First that the site is outside the YNP and fails to meet its policies. The YNP must be allowed to carry the weight it deserves. She quoted from SoS Decisions⁹⁸ and highlighted the Decision in Devizes where the SoS found that the need for housing would not outweigh the conflict with the NP.
 - b) Second, the appellant's failure to engage with the community.
 - c) Third, the loss of valuable open space which forms the backdrop to the church and conservation area and the historic boundary to the village. This would fail the NPPF test to conserve the historic environment.
- 7.6 The group asked that the YNP be properly considered and given the weight it deserves, together with the many adverse impacts which would outweigh the suggested benefits.
- 7.7 **John Mills**, local resident, stressed in his statement the conflict with several ADLP policies. With regard to sustainability, he argued that the scheme would not supply land of the right type in the right place or at the right time. It would not reflect the community's needs or protect the natural, built or historic environment. The site is currently productive agricultural land and so the scheme would be contrary to policy. The YNP has allocated the 100 dwellings in the emerging LP with a 20% buffer. It was overwhelmingly agreed at referendum. Although there was a public presentation with regard to an earlier scheme, the appellant declined to engage with the YNP or the Parish Council over this application.
- 7.8 Traffic flows from the site are constrained to the north by the level crossings at North End Road and Station Road. The former is considered to pose a significant risk requiring reduced train speeds. The Traffic Assessment (TA) is based on a previous, older statement. It is Network Rail's intention to make the level crossing at North End Road fully gated which would have a dramatic effect on traffic flows and movement. It is totally unrealistic to say that there would be no increase in traffic through Church Lane/Road when this is already used as a rat run. With existing committed developments, the scheme would put additional pressures on infrastructure, roads and the school.
- 7.9 Ford Lane is a rural unclassified road with 'T' junctions at both ends and which is subject to flooding. Photographic evidence shows the extent and depth of flooding. The Travel Plan is purely aspirational, with little real meaning, and so the scheme would not be truly sustainable.

⁹⁷ In XX she clarified that its members were a group of concerned residents, with no formal structure, who were welcome to turn up at her house. They amounted to an email list of around 132 people.

⁹⁸ At Harrogate on 2 July 2015

- 7.10 More dwellings have been approved and some of the Yapton allocation has commenced. Another has been approved subject to a s106 Agreement. The Olive Branch pub will shortly be converted to flats. The needs of Yapton can be met through small sites without the need for this development. The community of Yapton wish their village to remain exactly that.
- 7.11 **Margaret Sarson** read Mr Sarson's letter which recalled the days when his eldest daughter would ride past his house bareback, leading a string of horses down to the beach, when he would play football in the middle of the road with his boys, or when he would lie under his car with his legs stretched out into the road. Now it can take minutes to cross the overused roads. His plea also raised concerns over light pollution and loss of agricultural land.
- 7.12 **Mary Kinnersley** highlighted the principle of local democracy and argued that there was no need for parkland. She was concerned that further development would follow and took issue with the sustainability of the site with regard to public transport and local employment.

8. Written representations⁹⁹

Many of the written representations also echoed the Council's major concerns.

- 8.1 The **Yapton Parish Council** submitted its original objection and additional comments as well as being represented by Messrs. Faulkner and Gardner. These set out its policy objections with regard to the ADLP, the eLP and the YNP. It referred to the Strategic Housing Land Availability Assessment (SHLAA) carried out in 2009 which rejected the site as: 'too remote and inaccessible from village facilities'. An adjacent site was also rejected in 2012. It pointed to a loss of employment in the village, the unreliability of bus services and the risks associated with the level crossing.
- 8.2 It reported that there was unanimous opposition at a well attended public meeting and dismissed the suggestion that the volume of representations was as a result of one resident. It argued that the land is all top grade agricultural land and pointed out that it is currently all used for crop production. It reported that the SHLAA Ford Eco Town site 71 for 5,000 homes, of which this site would have been part, was rejected. The Eco town site was never considered to be suitable for development in smaller packages because of the perceived infrastructure benefits which a larger development could finance.

Additional points made by **a variety of writers** are summarised below.

- 8.2.1 The appeal ignores the YNP and eLP.
- 8.2.2 The landowner failed to engage with Yapton's residents.
- 8.2.3 It would not be sustainable in terms of infrastructure or community facilities.
- 8.2.4 Increased traffic would be detrimental to both North End Road and the level crossing.
- 8.2.5 The school is full.

⁹⁹ See red folder with main file

- 8.2.6 The site is top grade agricultural land.
- 8.2.7 There are new housing developments in two other areas nearby.
- 8.2.8 The site floods in very wet weather.
- 8.2.9 The surgeries and pharmacy are beyond capacity.
- 8.2.10 The village offers limited employment.
- 8.2.11 There is already public land in Yapton so a green space is not needed.
- 8.2.12 The access would be dangerous.
- 8.2.13 The traffic chaos in the vicinity of the school has to be seen to be believed.
- 8.2.14 It is a back-door attempt to gain approval for 250 houses.
- 8.2.15 It would make a mockery of the hours of hard work put into the YNP.
- 8.2.16 The village shop cannot be extended and is not satisfactory as it is.
- 8.2.17 Questions have been raised over the sewage system.
- 8.2.18 It is wrong to suggest that there is only one objector who is rallying protests.
- 8.2.19 Bus services are limited and there is no public transport to Ford Station.
- 8.2.20 The village is willing to take its share of the burden of new housing providing it remains in proportion.
- 8.2.21 There are no pavements in Ford Lane.
- 8.2.22 Lorries sometimes have to mount the kerb to get past school traffic.
- 8.2.23 Nearby Walberton should shoulder proportionately more of the burden.
- 8.2.24 Whilst it is difficult to argue against the need for more houses to be built in England in general it is easy to argue against this proposal.

9. Conditions

- 9.1 A Schedule of conditions was discussed and was mostly agreed between the Council and the appellant¹⁰⁰. The suggested conditions were discussed at the Inquiry and, following a few changes, these are set out at Appendix C. Except as explained below, should planning permission be granted for the proposals, for the reasons accompanying the attached conditions, I recommend that they should be imposed.
- 9.2 As well as for the reason given, as the distinction between access within the site (which is not reserved) and layout (which is reserved) is not always clear, condition 4 is also required for the avoidance of doubt. Although landscaping is reserved, condition 5 is needed as it covers retention, protection, biodiversity, management and timing.

¹⁰⁰ ID19 and ID25

- 9.3 As the negatively worded condition for affordable housing has been discussed with the appellant, as no financial contribution would be necessary and as it would meet the six tests in NPPF 206, it would be acceptable. To maximise the probability that the affordable housing would meet local needs, suitable criteria should be part of the scheme and the condition must have a retention clause. While access is not reserved, a condition is necessary to control full details.
- 9.4 In the Archaeology SoCG¹⁰¹, the Council accepted that the matter [archaeological field evaluation into the potential impact on archaeological remains] could be undertaken post decision by virtue of the suggested condition. However, unhelpfully, it went on to argue that the scheme should be refused as best practice means that it is appropriate for evaluation to be undertaken prior to a decision. For the reasons set out below, I have found that, in principle, a condition would be adequate but I recommend that, for greater precision, the fuller condition suggested at the Inquiry (ID19), with a minor amendment for clarity, should be adopted.
- 9.5 It was common ground that the TA proposals (in response to requests from and agreements with the Highway Agency, Network Rail and the WSCC Highway Authority) for off-site highway works comprising improvements for North End Road, the Lake Lane/Yapton Lane junction to the north of Yapton Railway Crossing and the junction of Yapton Lane with the A27 could be controlled and delivered by way of conditions. Although there is a statutory right to a foul water sewerage connection¹⁰² a condition requiring the details is reasonable.
- 9.6 The requirement for a Travel Plan (TP) lacks any specific targets, such as numerical goals for modal shift, and there is nothing to suggest that the measures in the TP would involve more than the provision of information. As argued by interested parties, it would be largely aspirational. Nevertheless, given the lack of objection from the Highways Authority and the Council's agreement that the scheme is in a relatively sustainable location, the condition would be adequate to reinforce the argument that the proposals would amount to sustainable development.
- 9.7 In addition to the suggested conditions, to allow the scheme to be as set out in the description of development as discussed at the Inquiry, and as this was the basis for my considerations, a condition is required to limit development to 100 dwellings.

10. Obligation

- 10.1 The planning obligation¹⁰³ contains provisions for contributions to be paid to the Council (ADC) and to the County Council (WSCC). The ADC contributions would go towards Artificial Pitches, the NHS, the Sports Hall and the Swimming Pool. Those payable to WSCC would be for Fire and Rescue, Highways, the Library and for Primary Education. There would also be a requirement for Fire Hydrants.

¹⁰¹ ID14d

¹⁰² *Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water)* [2009] UKSC 13, para 59

¹⁰³ ID2

- 10.2 ADC has provided justification for the contributions and calculations for the amounts sought under the Community Infrastructure Levy (CIL) Regulations and the NPPF¹⁰⁴. WSCC also provided a justification¹⁰⁵. Both were satisfied that the undertakings would comply with the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. For the reasons given, I agree with this assessment except as set out below.
- 10.3 The transitional period under CIL Regulation 123(3) (as amended), ended nationally on 6 April 2015. After this, s106 planning obligations designed to collect pooled contributions ('tariffs') may not lawfully be used to fund infrastructure which could be funded from the CIL. From that date only very limited pooled contributions (for up to five separate planning obligations relating to planning permissions granted within the charging authority's area) will be permitted towards infrastructure which could be funded from the CIL. As consideration by the SoS may take a little longer, in the event that the appeal is to be allowed, it might, in theory, be necessary to revert to ADC to establish whether or not the limit has been exceeded at that time. However, at the time of the Inquiry, the justification explained that none of the contributions would come near to the limit of five.
- 10.4 Clause 12 provides that if there is an express finding within the Decision that one or more of the obligations in the Undertaking does not meet the statutory tests in CIL Regulation 122 or 123 then that obligation would not take effect. Should ADC adopt a Charging Schedule prior to planning permission being granted, then the owner would be released from any obligations which relate to an item included on that list of infrastructure. The Obligation refers to the decision of the Planning Inspector, whereas this will be made by the SoS, but the difference is of no consequence.
- 10.5 The Artificial Pitches Contribution would be put towards the cost of funding additional 3G artificial turf pitches at Littlehampton Leisure Centre. This is a costed project for the leisure centre serving the catchment area. The Sports Hall contribution would be towards a major makeover of the same centre to increase activity space and provide a better experience. The Swimming Pool Contribution would be put towards increasing the pool capacity there from 6 to 8 lanes. All these would satisfy the CIL tests. On the other hand, no detailed justification was put forward for the NHS Contribution and no defence for this was offered in evidence. Consequently, the NHS contribution would not meet the statutory tests and I recommend that it should not take effect.
- 10.6 The Highways Contributions would be put towards a traffic regulation order for a 20 mph speed limit in Church Lane where there is limited footway provision. The local primary schools are over capacity and the Primary School Contribution would be used to extend provision at Yapton Primary School in accordance with WSCC's published document: Planning School Places 2015. The Library Contribution would be for a 'Tier 7' service whereby a shared facility is used for a click and collect service. As the development would

¹⁰⁴ ID3

¹⁰⁵ CD24

increase the population in the village, it would increase the demand for this service.

10.7 The Fire and Rescue contribution would be intended for Community Fire Link supplementary smoke alarms within the Parish of Yapton. While standard smoke alarms would be fitted to the new houses, these additional specialist alarms would be for vulnerable people. I note that there is no detailed costing for this, no identification of the likely number of such devices which might be required and no explanation of how additional houses would recreate a need for further alarms for existing houses. I conclude that the Fire and Rescue contribution would not meet the statutory tests and I recommend that it should not take effect.

10.8 The Fire Hydrants would be to provide access for fire brigade vehicles and would be provided at the owner's expense rather than by a financial contribution. These would satisfy the relevant tests.

Richborough Estates

11. Inspector's Conclusions

From the evidence before me at the inquiry, 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

11.1 The main considerations in this appeal are as follows:

- i) the effects of the proposals on the character and appearance of the area, with regard to the development plan and its landscape value;
- ii) whether the proposals would preserve the special architectural and historic interest of the listed building of St. Mary's Church and its setting;
- iii) whether the proposals would preserve or enhance the character or appearance of the setting of the Church Lane Conservation Area;
- iv) the effects of the proposals on potential archaeological remains;
- v) whether the proposals would amount to sustainable development as set out in the National Planning Policy Framework (NPPF), having regard to the above matters and any benefits of the scheme.

Development plan context

11.2 Two elements of the development plan are relevant: the extant policies of the Arun Local Plan (ADLP), adopted in 2008 and saved in 2007, and the Yapton Neighbourhood Plan (YNP), which was 'made' on 5 November 2014. These provide the starting point for the appeal which should be determined in accordance with the development plan unless material considerations indicate otherwise. [3.2]

11.3 The NPPF is a material consideration. It says so in paragraph 2 (NPPF 2). It acknowledges the primacy of the development plan in planning decisions, in NPPF 2 and 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 it is necessary to assess whether or not the scheme would amount to sustainable development and, if so, balance the weight to be given to its benefits against the conflict with the relevant policies in the development plan.

Arun Local Plan (ADLP)

11.4 The proposals would conflict with ADLP policies GEN2 and GEN3. The ADLP is now rather dated. It is common ground that the Council cannot demonstrate a 5 year housing land supply (HLS). Following the LP Inspector's conclusions, significantly more housing land in sustainable locations will need to be found within the next 12-18 months. In these circumstances, under NPPF 49, relevant policies for the supply of housing should not be considered up-to-date. Moreover, the Council can at best demonstrate 3 years HLS. [3.3]

11.5 ADLP policies GEN2 and GEN3 are policies for the supply of housing. They are not only dated but are not up-to-date under NPPF 49. This was confirmed in the *Westergate* appeals. Under NPPF 14, these policies are

therefore out-of-date. In the event that it is found the proposals would amount to sustainable development, the tilted balance in NPPF 14 would apply and the scheme should only be refused if adverse impacts would significantly and demonstrably outweigh the benefits. Given the directions in NPPF 49 and NPPF 215, only limited weight should be given to conflict with ADLP policies GEN2 and GEN3. If the only conflict with the development plan arose from these two out-of-date policies, a favourable conclusion with regard to the NPPF should outweigh any such conflict and the scheme should be allowed. [3.3][5.13][6.5][6.7]

Emerging Local Plan (eLP)

- 11.6 For the reasons set out in the LP Inspector's Conclusions after the Procedural Meeting, limited weight should be given to the eLP. Moreover, the published draft is not just short of its full OAN, it is significantly short. The future requirement is likely to be 758 dpa compared with 580 dpa. With the past shortfall, the Council can barely demonstrate 3 years supply against the NPPF 49 requirement for 5 years. From this the LP Inspector concluded that the eLP would be unsound without a substantial increase. Very limited, if any, weight should therefore be afforded to the eLP's housing policies and allocations. The only conclusions which can safely be drawn on this are that there is no 5 year HLS and that there is no certainty as to where future allocations will be made. [3.5-3.10] [5.2] [5.14][6.2][6.18-19]

The Yapton Neighbourhood Plan (YNP)

- 11.7 The Independent Examiner found that the YNP met all the necessary legal requirements and should proceed to referendum subject to modifications. Nevertheless, he was far more cautious about the relationship with the eLP than the Council's closing submissions suggest, in particular with regard to the full OAN. He found that the qualifying body and LPA had discussed and aimed to agree the relationship between the plans. He did not say that the relationship was satisfactory. He could not, given the stage the eLP had reached. Indeed, he found that producing a NP in this context was 'challenging'. This conclusion came before the LP Inspector's Conclusions after the Procedural Meeting. [3.11-3.16][5.1-5.4][6.18-6.19]
- 11.8 Following the LP Inspector's latest letter, the housing policies in the eLP are once again at an early stage and are likely to remain so for some time. What is certain, however, is that the new LP will need to find additional housing land. There is as yet no clear indication of where that land will be but, in this context, the policies within the YNP for the supply of housing are no longer consistent with the eLP however recently the YNP was made. Moreover, the YNP based its allocations of land for 95 dwellings on a figure in the eLP of 100. Even if it was possible to simply allocate more land proportionately, which it is not, as the Council only has a supply for 3 years instead of 5, the YNP would need to allocate land for an additional number of dwellings equivalent to 5 years rather than 3 years at present. [3.8-3.9][5.14] [6.18-6.19]
- 11.9 This possibility was identified by the Independent Examiner when he recognised the importance of flexibility, and accepted that if the adopted policies of the eLP were different from those which underpin the YNP then they would take precedence and that the qualifying body might wish to

carry out a review of the YNP. However, he is unlikely to have anticipated the scale of review following the appeal decision in December 2014 and the Hearn Report in March. Given the shortfall in HLS identified in the LP Inspector's conclusions after the Procedural Meeting, the comment by the Independent Examiner should be given new force. While he anticipated a review, that cannot now meaningfully take place for another 12-18 months, if the LP Inspector's conclusions are followed, or longer if the emerging LP is withdrawn. Although the Independent Examiner was entitled to find the YNP sound at that time, based on the information before him and the PPG, there is now a vacuum in district-wide housing allocation policy which leaves YNP policy BB1 with nothing to underpin it. [3.10][3.13]

- 11.10 In *Woodcock* the judge found that paragraphs 14 and 49 of the NPPF do apply to the housing supply policies in a draft development plan, including a NP. It follows that NPPF 14 and 49 apply to a made NP. Relevant policies for the supply of housing within the YNP are therefore out-of-date as defined by the NPPF. While other policies in the YNP can continue to have full effect, and despite the YNP being only recently made, policy BB1 is out-of-date and should be given limited weight. In the event that the SoS's decision is not issued within 12 months of the YNP being made, on 5 November 2014, under NPPF 215, the weight should be reduced even further. It would be irrational to dismiss the appeal as inconsistent with a recently adopted NP when it is clear that the position will be the same after the 12 month period has expired. [3.17]
- 11.11 Furthermore, Yapton is one of the more sustainable settlements in the district and it is common ground that the site is a sustainable location for some additional housing. Other sites on settlement edges in the district, some of which have NPs, are likely to face similar opposition. In agreement with the Council, no evidence was given as to the probability that the allocations identified in the YLP, or elsewhere in the district, will actually come forward within 5 years. Although it deals with housing, YNP policy H1 is a permissive policy which anticipates additional allocations and so there would be no conflict with it. It follows that if the only conflict with the YNP is with policy BB1, the weight to be given to conflict with the YNP as a whole should be no more than limited. [3.15][5.13][6.14]
- 11.12 The alternative, to give priority to YNP policy BB1 when the eLP is about to reconsider HLS, and when Yapton is one of the more sustainable settlements in the district, would be to cause unnecessary delay in providing additional housing and meeting the needs of the population of Arun District for adequate housing and affordable housing. It would give preference to one YNP policy which aims to restrain housing in circumstances where more housing is needed and where planning policy is urging increased delivery (NPPF 47). Neither the Localism Act nor the NPPF suggest that it is enough for a neighbourhood to assert that it has assessed its share of the housing needs and to then disregard the rest of the district. The requirement in NPPF 49 is directed squarely and exclusively at the LPA. [3.12-3.13][3.17]
- 11.13 Local residents have referred to the allocations in the YNP and argued that these provide enough sites for the needs of the village. As above, this was based on earlier needs assessments which no longer apply. As there are no agreed targets for either Arun district or Yapton, no weight can be given to

the argument that the YNP would provide the necessary HLS for the village or for its share of the district. All that is known is that the published eLP would not have met the full OAN for the district. Furthermore, no evidence was heard as to whether the stated supply figures were achievable either in the district or the village. It follows that no weight can be given to the suggestion that the YNP has made adequate provision for housing land. [5.2][6.3][7.4][7.7]

- 11.14 The weight to be given to a NP as a whole is not contingent on the status of the LP. With regard to most of the YNP policies, that is not an issue. At the time, the YNP was entitled to allocate housing sites and did so through the permissive policy H1, based on the housing requirements in the eLP, before the Council acknowledged that it could not show a 5 year HLS. It then created a settlement boundary through policy BB1. Nevertheless, the lack of error in the YNP process is not to say that significant weight should still be given to one specific policy within the YNP which aims to restrict housing when the eLP has no overall strategy for its HLS, and is out-of-date under NPPF 49, as is the case here. If YNP policy BB1 represents the whole thrust of the village's aspirations for the NP, i.e. to prevent additional housing, then this policy would have had no basis in the statute or in the NPPF. [5.2][6.3][7.2-7.7]
- 11.15 The weight to be attributed to YNP policy BB1 is a matter for the SoS. However, the following facts are relevant:
- 11.15.1 Arun's NPs have emerged at a time when the adopted ADLP has been growing increasingly out-of-date with its housing policies only running to 2011; [3.2][3.9]
- 11.15.2 the eLP housing policies are now back at an early stage and merit limited weight; [3.10]
- 11.15.3 the YNP was prepared and made on the basis that the Council could show a 5 year HLS, now it has agreed that it cannot; [3.11][3.17]
- 11.15.4 in fact, ADC now has barely 3 years HLS compared with the NPPF requirement of 5 years, a considerable shortfall; [3.17]
- 11.15.5 proportionally, the YNP allowance of 100 is also only three-fifths of what it should be; [3.15-3.16]
- 11.15.6 ADC has a persistent record of under-delivery (hence the agreed 20% buffer); [3.17]
- 11.15.7 the YNP built-up area boundary (policy BB1) is out-of-date as it restricts the supply of housing land where there is no 5 year HLS (see *Woodcock*); [6.5]
- 11.15.8 the YNP housing allocations are also for sites in agricultural use; [3.16]
- 11.15.9 there was no evidence at the Inquiry that the sites allocated in the YNP would be delivered, or on the likelihood that even the 3 years' HLS sites in the district are deliverable within 5 years; [3.17]
- 11.15.10 over half of those surveyed for the YNP (58%) were in favour of additional housing for local people in need, albeit controlled; [3.15]

- 11.15.11 Yapton is one of the more sustainable villages in the district; [3.10]
- 11.15.12 the YNP mistakenly assumed that the eLP would be adopted soon; [3.10]
- 11.15.13 while the Council has stated that it would like to increase its HLS through strategic allocations, without affecting allocations in the villages, the LP Inspector has not accepted this; [3.8][5.14]
- 11.15.14 now that the eLP will be suspended for 12-18 months, or withdrawn, the relationship between the eLP and YNP can on longer be viewed as complementary; [3.10][3.12]
- 11.15.15 the LP Inspector acknowledged that changes in the amount of development provided for by the eLP could result in certain parts of some NPs being superseded or in need of revision; [3.9]
- 11.15.16 the Independent Examiner acknowledged that changes in the eLP could result in parts of some NPs being in need of review; [3.13] and
- 11.15.17 NPPF 184 is clear that NPs should not promote less development than set out in an up-to-date LP.
- 11.16 For all these reasons, the weight to be given to the need for additional housing in Arun district, including Yapton, as urged by NPPF 47, should be given considerably more weight when balanced against YNP policy BB1.

Landscape

- 11.17 The Arun Landscape Study assessed the capacity of LCA 29 as a whole for development as low/medium. This is a greater capacity than that of half the LCAs studied which were assessed as Negligible to Low. The site lies within LCA 29 but with half of its boundaries adjoining built development along or across from either North End Road, the Orchard Business Park or the rear gardens to Church Lane. The accompanied visit showed that the site is on the cusp of a landscape exhibiting the features of LCA 29 but is also adjacent to built-up areas of the village. Moreover, while looking east beyond the site the view is of open fields, with a weak hedgerow structure, the site itself has several mature trees along footpath 358 and more around its perimeter with the village than in other parts of the character area. On this point the capacity of the site for development in landscape terms is significantly greater than that of LCA 29 as a whole which in turn has a greater capacity than average for the district. [2.5]
- 11.18 The scheme would change an open field into a housing estate. There would be a loss of countryside. It is a pleasant field with some open views and its loss would therefore be likely to cause some harm to the character and appearance of the immediate area. The proposals are in outline form and so, while conditions would control the detail, little positive weight can be given to the likely quality of the detailed design of the buildings at this stage. The illustrative drawings would push the housing towards Ford Lane and North End Road retaining the footpath across the site and creating open space between the church and the housing. This could provide a pleasant buffer between the older parts of the village and the new houses but, in the absence of further details, it should be assumed that the overall effect on the landscape character of the site itself would be harmful. [4.1]

- 11.19 On the other hand, subject to conditions requiring buffer planting, there is little sound evidence that there would be harm beyond the immediate area. It is likely that there would be no more than glimpses of the houses from Church Lane, while views from North End Road would be screened, and both would be in the context of existing housing. In time, the views from footpath 358 and from footpaths 356 and 359 beyond the site would be of landscaping. Footpath 357 would be significantly affected at first but could be lined with substantial planting so that ultimately its amenity value would be retained. For road users on Ford Lane there would be boundary planting and any glance towards the housing from a passing train along the railway line beyond would be of even less consequence. The site visit confirmed that the suggestion that there would harm to views from the South Downs was not credible. [2.4][5.6][6.7]
- 11.20 The Council has alleged that the appellant has not made a proper assessment of the impact on landscape character, or submitted a Landscape and Visual Impact Assessment (LVIA) in accordance with the LVIA guidelines. However, this is not mandatory and the appellant's evidence includes the relevant landscape documents and a detailed photographic survey. The DAS contains an assessment and analysis of the site and explains how that has informed the illustrative layout. The documentation was therefore adequate. [4.1(f/n39)][5.6][6.8]
- 11.21 Views of church towers are recognised in the 'West Sussex Landscape Land Management Guidelines' as a key characteristic of the coastal plain. The scheme would impair views of the tower from the appeal site and immediately to the north. On the other hand, the scheme would protect views along the footpaths and those from the east, further into LCA 29, would be unaffected. This concern should be given limited weight. [5.7][6.7]
- 11.22 While NPPF 17 bullet 5 recognises the intrinsic character and beauty of the countryside, there is no evidence that the site should be considered as a valued landscape, as defined in NPPF 109, bullet one. As interpreted by the Courts in *Stroud v SSCLG & Gladman*, the site would need to be more than just popular with local residents for this to apply. With regard to the letter from Brandon Lewis MP, this only draws attention to the fact that the impact of development on the landscape can be an important material consideration and does not alter the law or policy or suggest that landscape impact should be an overriding factor where the harm would be limited. [5.5(f/n50)][6.8(f/n77)]
- 11.23 Given the concern shown by local residents for their environment, as typified by the enormous effort that has gone into the YNP, it is reasonable to expect that great interest would also be given to the detailed design that would be put forward at reserved matters stage. Contrary to the Council's concern that there would be a 'suburbanising' impact, there was no evidence that the detailed design could not be suitable for the edge of a rural settlement rather than adopting its style from a low-density zone to a town or city. Subject to satisfactory proposals at the details stage, it is likely that a good scheme would come forward that would accord with the design requirements of ADLP policy GEN7(ii). [5.6]
- 11.24 Overall, there would be some localised harm to the character and appearance of the locality but there would be no significant harm to the

wider landscape. Moreover, given the need for much more housing in the district, and so the need for greenfield land to meet this demand in any event, the likely net harm to the district would be nil.

Conclusions on character and appearance

- 11.25 The site lies outside the settlement boundary in the ADLP and so within an area defined as countryside. However, ADLP policies GEN2 and GEN3 are for the supply of housing which serve to restrain development. In accordance with NPPF 49 and 14, the weight to be given to the need for housing should clearly outweigh the conflict with these out-of-date ADLP policies and with any harm to the countryside by way of policy rather than harm to the landscape. The site is also beyond the settlement boundary in YNP policy BB1. The YNP was only recently made. However, for all the above reasons, conflict with this policy alone should not outweigh the benefits of additional housing and affordable housing.
- 11.26 Subject to reserved matters, there would be no conflict with ADLP policy GEN7. Other than the loss of open countryside at the edge of a settlement, which must be inevitable if the Council is to meet its housing targets, there would be no significant harm to the character and appearance of the area or the wider landscape or conflict with NPPF 17.

Heritage

Listed building

- 11.27 St. Mary's Church is a fine, attractive, historic building and this is consistent with its Grade I listing. As an important designated heritage asset, under NPPF 132, great weight should be given to its conservation. Its significance is mostly on account of its great age and the degree of survival of much of its early fabric. Setting is defined in the glossary to the NPPF as 'the surroundings in which a heritage asset is experienced' and so it extends to cover anywhere from which the church tower can be experienced. The whole of the church can be seen, and experienced, from within the churchyard and from a short section of Church Lane. [2.8]
- 11.28 The top of the tower can be seen from much further afield, including the whole of the appeal site. This is all therefore within its setting as are parts of the existing village, notably some of Church Lane. However, unlike its Church Lane frontage, there is no inter-visibility between the appeal site and most of the church, only one way views of the tower. Little if any of what is important to the significance of the asset can be experienced from beyond the churchyard and the contribution which the wider setting makes to its significance is very limited. [2.8][5.7][6.10]
- 11.29 The setting of a heritage asset is not limited to where there is inter-visibility but HE Advice Note 3 confirms that this can be important. However, none of its examples of where views contribute more to understanding the significance of a heritage asset are relevant. This is because there is no important relationship between the church and the appeal site, no historical association, the composition in the view was never part of its design or function, and no relationship with features or phenomena. The evidence with regard to West Sussex churches standing towards the edge of villages

is interesting but here the church is already surrounded by land in residential use and the appeal site is off to one side so that the church would still be visually open to the countryside beyond the grounds of Church Farm House. The scheme has been designed with a wide margin of open space to respect the significance of the church. [2.9][3.18]

- 11.30 The proposed houses would obscure the tower from some views within the field and from parts of Ford Lane. Otherwise, the views from the footpath would be retained albeit that the view would be framed by houses rather than an open field. While this would alter the experience of this heritage asset from this part of its setting, subject to the detailed design of the houses, there is no evidence that the significance of the asset would be harmed by a change within what is effectively a relatively peripheral part of its setting. [5.8] [6.10]
- 11.31 The Council alleged that an inadequate assessment had been made of the settings. NPPF 128 requires the level of detail to be sufficient to understand the potential impact of the proposal on the significance of the assets. The Consultation Response from HE acknowledges that the appellant's evidence constitutes a 'slightly more thorough assessment'. While the Council seems to have interpreted this as damning with faint praise, it should be taken at face value as a lack of overt criticism. In any event, the information is comprehensive and the level of analysis is enough for a proper assessment of the setting. It would accord with PPG Ref. ID: 18a-013-20140306 that a thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it. [5.7][6.9]
- 11.32 Two other listed buildings, Church House and Park Lodge, stand on the south side of Church Lane with other houses between them and the appeal site. The Council rightly raised no concerns with regard to the settings of these buildings and, given the separation, no harm would be caused. While the Council has referred to the historic character of the parkland to Yapton Place/Manor, there was no evidence that this setting ever made an important contribution to the significance of the church and in any event the parkland is no longer there. [2.8][2.10]
- 11.33 For all these reasons, the contribution which the setting makes to the significance of the church would be unaffected by the changes within an area of that setting in which only part of the church tower can be experienced. The proposals would therefore preserve the special architectural and historic interest of St. Mary's Church and its setting. Given that no harm would occur, the tests for substantial or less than substantial harm in NPPF 132-134 are not relevant and the proposals would accord with s66 of the LB&CA Act. While the relevant eLP policies carry rather more weight than those for housing, as there have few objections to these, there would be no conflict with these either. There would be no conflict with YNP policy E9. [3.1][3.14][5.8][6.10]

Conservation area

- 11.34 The Church Lane Conservation Area is tightly drawn around the church and the oldest part of the village. Its character and appearance are closely

linked with the historic buildings within it and the pattern of roads and boundaries. Views are not identified in any character appraisal for the conservation area. Although the photographic evidence suggests that Yapton Place/Manor probably adjoined Church Farm House, and its park may have covered part of the appeal site, their remains have blended into the landscape and they do not feature in the conservation area boundary, any stated reason for its designation or, consequently, its significance as a designated heritage asset. Rather, the character and appearance of the conservation area, and its significance, are derived from the extant historic structures, including the vernacular style and materials they exhibit, and their arrangement and patterns. [2.9][5.9][6.12][7.5]

- 11.35 The conservation area adjoins part of the appeal site over a short distance but the proposed houses would be well outside its boundary. While there would be some inter-visibility at Church Farm House and views of the church tower (see above), in general the site is physically and visually separated from the conservation area by intervening modern development and tree cover. Historically, it has not formed part of the setting to the conservation area which would be unharmed. The site is therefore very different to that at Church House which was within the conservation area and in front of the church. [2.9][4.1][5.9]
- 11.36 Subject to reserved matters, the houses would stand well beyond the conservation area and separated by open space and landscaping. For these reasons, the scheme would not affect the significance of this designated heritage asset or the character or appearance of the conservation area, which would be preserved. It would accord with historic environment policy in the NPPF and neither NPPF 133 nor NPPF 134 would apply. There would be no conflict with saved ADLP conservation area policy AREA2. As there would be no harm to the conservation area, let alone substantial harm, NPPF 14 footnote 9 does not apply. YNP policy E8 is not relevant as it refers to development within the conservation area. [3.1][3.14][5.8][6.12]

Archaeology

- 11.37 The Archaeology Statement refers to policy in the NPPF, available records, a single recorded find (despite development at Orchard Business Park and ploughing practice on the site) and a desktop assessment. It concludes that, while there is some evidence for historical settlement, a condition requiring more detailed evaluation and assessment prior to development would be appropriate. For these reasons, the level of information was adequate and would comply with NPPF 141. [4.1(f/n39)][5.10][6.13]
- 11.38 The site may contain the remains of human activity, either from the parkland to Yapton Place/Manor or from earlier occupation. The Council's witness found as much on site, albeit it was not suggested that the finds were important or unusual for West Sussex. Supported by a response from WSCC Archaeologists, the Council sought an evaluation, including the excavation of trial trenches, prior to determination. [5.10]
- 11.39 There was no evidence at the Inquiry that the scale or quality of any buried deposits are likely to be any greater than under any other typical agricultural field in the district or that there are likely to be finds for which preservation in situ is justified. Although it was not agreed in evidence that

this could provide adequate protection, the wording in the suggested condition set out in the Archaeology SoCG would prevent development proceeding until extensive investigation has been carried out. [6.13]

- 11.40 At Burndell Road an archaeological evaluation, including excavation of trial trenches, was carried out prior to determining the application. However, while a number of features and finds were turned up, as would be expected at the appeal site, nothing in the report suggests that the buried remains would have been any less well protected if permission had been granted subject to a condition requiring the evaluation prior to development rather than before approval. There was no evidence that the appeal site is likely to contain significantly more important finds than at Burndell Road. Moreover, as the Council was minded to allow that application, the developer could be more certain that the cost of the evaluation would not be abortive. [4.2]
- 11.41 Other appeal decisions suggest that a pre-condition is the normal route for dealing with potential archaeological interest in West Sussex and there was no evidence that this site should necessarily require greater protection than elsewhere. To require more would therefore be inconsistent and contrary to PPG, Ref ID: 18a-040-20140306, which requires a proportionate response, and a field evaluation where necessary, but estimates that following an initial assessment of archaeological interest only a small proportion – around 3 per cent – of all planning applications justify a requirement for detailed assessment. [6.13]
- 11.42 It follows that, for this outline application, a pre-condition requiring further investigation would be proportionate while still safeguarding possible remains. Subject to a condition, the scheme would accord with ADLP policy AREA17, which allows conditions to be attached to require investigation before development starts. Applying a condition would also comply with NPPF 128. [3.4]

Benefits

- 11.43 The scheme would provide up to 100 dwellings in a district whose Council can barely show 3 years HLS and where there is no prospect of additional allocations coming forward in less than 12 months and probably much longer than that. It would include 30% affordable housing, a benefit which the Council would welcome and for which there is also an acknowledged need. As a material consideration, supported by the NPPF 47 exhortation not just to boost, but to boost significantly, the supply of housing, and in circumstances where there is a very substantial shortfall, these benefits should be afforded considerable weight. [4.1] [9.3]
- 11.44 The proposals would provide the housing in what was agreed to be a sustainable location. It is wrong to say that the benefits of housing where there is no 5 year HLS, and of affordable housing where there is a clear need, would apply to any development for additional housing on the edge of any settlement in the district. There is no evidence that sustainable locations proliferate in this way and the appellant's evidence was that Yapton is one of few such settlements. [4.2][5.12][6.14]
- 11.45 The appellant put forward the opportunity for landscaping, with potential benefits for wildlife, public open space and other matters that would be

required by conditions or by the planning obligation. However, while these would be advantageous, as above, they should more properly be considered as mitigation than as benefits. [5.12][6.15]

Other matters

- 11.46 Although there was limited engagement with the community with regard to this application, there was pre submission consultation as described in the Statement of Community Involvement for an earlier application and, while not ideal, it is not unreasonable for the appellant to claim that it knew what the response to any further consultation would be. Local residents had plenty of time to comment and many did. The statutory authorities have assessed any additional pressures on infrastructure, roads and the school as acceptable subject to conditions and contributions. The two site visits during school drop-off and pick-up times showed that the roads were busy and congested at these periods, with consequential traffic delays, but did not show anything exceptional for roads outside a school in southern England. [1.6][4.2][4.3][7.7][7.9][8.2.1-8.2.24][9.5]
- 11.47 Concerning the issue of biodiversity, raised for the first time by the Council in evidence at the Inquiry, the field has been planted with a single crop. While there was a skylark singing above the appeal site during the site visit, there was no evidence at the Inquiry that the site itself provides any significant habitat for either protected or non-protected species other than in the field margins where the trees and hedges would be retained and enhanced. There would be no conflict with any development plan policies, including YNP policies E3, E4, E5 and E6. [3.14][6.8][6.15]

Conclusion on sustainability.

- 11.48 Sustainable development is defined in NPPF 6 as the policies in NPPF 18 to NPPF 219 as a whole while NPPF 7 identifies 3 dimensions to sustainability as economic, social and environmental. New construction would provide economic benefits. More residents would increase support for local services and public transport. There would be no significant economic downside to the proposals. New housing, and affordable housing in particular, would provide substantial social benefits. Although disputed by local residents, given the primary school and other services in the village, the proximity of potential employment at the Orchard Business Park and elsewhere nearby, and the regular bus services, it is not surprising that it is common ground that the site is in a sustainable location. [5.13][6.14]
- 11.49 With regard to the environmental dimension, subject to mitigation by the proposed planting, no significant harm would be caused to the wider landscape or biodiversity. The loss of countryside and productive agricultural land counts against the scheme but the weight to this, and conflict with ADLP policy GEN3 and YNP policy E1, should take account of the fact that such land would be lost to housing both under the YNP allocations and elsewhere in the district in any event if its housing needs are to be met. For the above reasons, there would be no harm to heritage assets. There would be no conflict with relevant development plan policies or with adopted SPG criterion 2.3 with regard to the effect on the setting of a conservation area. [5.13][6.14]

- 11.50 As the scheme is still in outline, limited weight can be given to its detailed design and the benefits which should flow from the conditions and obligation should be more properly considered as mitigation. Nevertheless, the illustrative layout, which could be required through reserved matters, indicates a scheme that would be well integrated, legible and permeable by walking and cycling and some weight should be given to this. Overall, I find that the environmental effects would be neutral. [1.4]
- 11.51 The policies in the NPPF also include the section on NPs at NPPF 183-185. The latter confirms that the policies in a NP take precedence over those LP policies but only once it has demonstrated its general conformity. The YNP did comply with this at the time but, as above, the position with regard to the housing policies in the LP now leaves nothing to underpin those in the YNP. Consequently, while the conflict with one policy in the YNP should not be disregarded in assessing the sustainability of the scheme, it should be given little weight. Although NPPF 198 states that an application which conflicts with the NP should not normally be granted, the appellant is justified in arguing that, given the level of shortfall and the status of the eLP, the situation here is far from normal. [5.4][6.5]
- 11.52 While there are many similarities with the *Broughton Astley* appeal, the shortage in supply there (4.1 years) was less than half that of around 3 years agreed to exist in Arun District and there the NP allocated significantly more sites than the Core Strategy requirement for the settlement. The cases at *Winslow*, *Sedlescombe* and *Earls Barton* are quite different as other significant harms or policy conflict were identified.
- 11.53 For all these reasons, on balance, the proposed scheme would amount to sustainable development as defined by the NPPF. This is a material consideration which should attract considerable weight.

Overall conclusions

- 11.54 As set out above, as the relevant development plan policies are out-of-date, and as the proposals would amount to sustainable development, the tilted balance in NPPF 14 should apply and the scheme should only be refused if adverse impacts would significantly and demonstrably outweigh the benefits. In this case the only adverse impact would be to the character and appearance of the field itself, and the loss of agricultural land, harm which is likely to be inevitable somewhere in the district if housing targets are to be met. That is to say, for the district as a whole, the net harm would be nil while there would be considerable benefits. The proposals would therefore amount to sustainable development and the tilted balance should apply. However, even a straightforward balance weighs in favour of the scheme. This material consideration firmly indicates determination in favour of the proposals rather than in accordance with the development plan.
- 11.55 Given that there is far more than a limited degree of conflict between NPPF 47, 49 and 14, under NPPF 214 less than full weight should be given to YNP policy BB1. YNP policy H1 identifies that the minimum housing requirement for Yapton will be established by the eLP, and notes that additional allocations will be made if the eLP requires such action. While

there is doubt about what the eLP will require, this only reinforces the lack of foundation to the housing policies in the YNP. [3.14-3.15][5.2][6.16]

- 11.56 If the SoS's decision is made after 5 November 2015, NPPF 215 is also relevant and the weight to YNP policy BB1 should be reduced even further. In the alternative approach, if the development plan is taken as the starting point, as required by the Act and confirmed in NPPF 2, then considerably more weight should be given to the need for housing such that it would clearly outweigh the conflict with YNP policy BB1. Either way, the government imperative to boost the supply of housing should be given considerably more weight than the conflict with a single YNP policy, which is out-of-date and inconsistent with the NPPF as a whole. [5.13][6.16]
- 11.57 The proposals expose the tension in the NPPF between the desire for local people to decide on local issues and the need to provide an adequate supply of housing. Neither the Localism Act nor the NPPF suggest that local people should have the power to restrain housing development yet that is what the YNP seeks to do and was one of the main aims in its production. Whichever way the decision is made, it is likely to be criticised as reneging on either the commitment to localism, through NPs, or the commitment to adequately house the local population, as is heavily emphasised in the NPPF. A finding of substantial weight to YNP policy BB1 would mean that, for consistency, all Arun's NP boundaries could be argued to be sacrosanct and leave the eLP with little room to manoeuvre. [3.9][3.17][5.4][6.3][7.4]
- 11.58 Moreover, dismissing the appeal might be a very short lived victory for local residents given the likelihood that the eLP will need to find additional housing sites and that, other than policy conflict and local opposition, the proposals would not cause significant harm and not cause any harm that is not likely to be caused elsewhere if this site is not developed for housing. In the absence of any other harm, the scheme should be allowed to proceed. [5.14][6.18-6.19]
- 11.59 To give limited weight to YNP policy BB1 would be a great disappointment to many local residents and should not be undertaken lightly. It was argued that to allow the appeal would undermine all NPs. However, for all the reasons set out above, this would not be to negate all the other work leading to all the other policies in the YNP, and elsewhere, which remain valid. Any weakening of policies generally would only apply to those with the express aim of preventing new housing where there is considerable shortfall, which would be contrary to the purpose of NPs in the NPPF and which has no support in the Localism Act.

12. Recommendation

- 12.1 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 the obligation satisfies the statutory tests.

David Nicholson

INSPECTOR

Appendix A

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anne Williams of Counsel	instructed by Arun District Council
She called	
Andrew Burn	Waterman Energy, Environment & Design Limited
BA MCIFA	
Dr Ian Whiteman	Arun District Council
BA (Hons) MSc PhD	
Fiona McKenzie MA (Cantab)	The Environmental Dimension Partnership
MA CMLI AIEMA AArborA	
Peter Weatherhead	Peter Weatherhead Planning
BA MRTPI FRICS	

FOR THE APPELLANT:

Graeme Keen of Counsel	instructed by the appellant
He called	
Paul Collins BA (Hons) DipTP	Phoenix Planning Consultancy
MRTPI	

INTERESTED PERSONS:

Laura Floodgate	West Sussex County Council
Hilary Flynn	on behalf of Nick Gibb MP for Bognor Regis and Littlehampton
Andy Faulkner	Chairman, Yapton Neighbourhood Plan Group, and former Vice-chairman Yapton Parish Council
Tricia Wales	Yapton Neighbourhood Plan Group
Vicky Newman	Representative of 'No Yap Town' Residents Group
Margaret Sarson	Local resident
John Mills	Local resident
Andrew Gardiner	New Clerk to the Yapton Parish Council
Mary Kinnersley	Local resident

Appendix B

LIST OF INQUIRY DOCUMENTS

- ID1 Notification of inquiry.
ID2 S106 planning obligation.
ID3 ADC's statement on infrastructure contributions.
ID4 Fiona McKenzie's suggested site visit plans.
ID5 Appellant's plan of Yapton identifying relevant features.
ID6 Local plan examination update clip.
ID7 Appellant's authorities bundle (separate folder).
ID8 Appellant's opening statement.
ID9 ADC's opening statement.
ID10 Statement by Nick Gibb MP.
ID11 Archaeology SoCG.
ID12 Mr Faulkner's statement.
ID13 ADC's response to Local Plan Examination Inspector.
ID14 SoCGs: (a) Joint; (b) HLS; (c) Conditions & obligations; (4) Archaeology.
ID15 Mr. Faulkner's new homes data.
ID16 Yapton Place print. A copy of S H Grimm's 1792 painting, submitted by the No Yap-town community group (see also its written representation) .
ID17 (a) Mrs Newman's statement; (b) Mr Mill's statement;
(c) Mr Sarson's letter.
ID18 Biodiversity checklist.
ID19 Mr Burn's suggested amended archaeology condition.
ID20 PPG extract.
ID21 Information on St Mary's church.
ID22 YNP community survey.
ID23 ADC leisure strategy.
ID24 Note from Ms McKenzie.
ID25 Updated list of suggested conditions (including disputed version of Condition 15).
ID26 Council's Closing.
ID27 Appellant's Closing.
ID28 Arun Local Plan examination:
a) Inspector's discussion note for Procedural meeting on 16 July 2015 and
b) Inspector's Conclusions after the meeting, dated 28 July 2015
ID29 Further representations on the LP Inspector's conclusions.
ID30 Letters closing the Inquiry on 5 August 2015.
ID31 Costs application and response.

CORE DOCUMENTS

- CD1 National Planning Policy Framework
CD2 Planning Practice Guidance
CD3 LPA Statement of Case (Dec 2014)
CD4 Appellant's Statement of Case
CD5 Statement of Common Ground (22/12/2014)
CD5A Statement of Common Ground on planning obligations
CD5B Statement of Common Ground – housing land supply

- CD6 Officer's Recommendation Report
- CD7 Appellant's Design and Access Statement and Planning Assessment
- CD8 Appellant's Extended Phase 1 Habitat Survey – Corylus Ecology
- CD9 Appellant's Tree Survey
- CD10 Objection from Landscape Architect (Terra Firma), WSCC
- CD11 Consultation Response from WSCC Archaeology
- CD12 Consultation response from Historic Buildings Adviser
- CD13 Consultation Response from English Heritage (4/8/14) – Samantha Johnson
- CD13A Further Response from English Heritage to Paul Collins (14/8/14)
- CD 14 Consultation Response from Yapton Parish Council: (18/8/2014)
- CD15 Screening Opinion issued by Arun District Council on previous application
- CD16 Cotswold Archaeology, Land off Burndell Road, East Yapton, West Sussex - Archaeological Evaluation – May 2011 - CA Report: 11143
- CD17 Arun Landscape Study, Hankinson Duckett Associates 2006
- CD18 Arun Local Plan 2003
- CD19 Publication Version Arun Local Plan 2011 – 2028
- CD20 Referendum Version Yapton Neighbourhood Plan
- CD21 Yapton Neighbourhood Plan Examiner's report
- CD22 Committee report dealing with GL Hearn report 'Objectively Assessed Housing Need: Arun District', March 2015
- CD23 Open Space and Recreational Standards Supplementary Planning Guidance (October 2000)
- CD24 WSCC CIL Justification Statement
- CD25 Guidelines for Landscape and Visual Impact Assessment (GLVIA) 2013
- CD26 Historic Environment Good Practice Advice in Planning Note 3. Historic England 2015
- CD27 Plan of Yapton Conservation Area
- CD28 Appeal Decision Re Character of Conservation Area: APP/C3810/A/08/2090433
- CD29 Arun Local Plan 2003 Map of Yapton
- CD30 Arun Local Plan 2014 Map of Yapton
- CD31 Recent Appeal Decisions re sites in Westergate: APP/C3810/A/14/2220943 APP/C3810/A/14/2217385
- CD32 Appeal Decision re Heritage Assets at Westbourne APP/L3815/A/13/2205297
- CD33 Chartered Institute for Field Archaeologists "Standard and Guidance for historic environment desk-based assessment" December 2014
- CD 34 ADC Conservation Areas SPG, 2000

Appendix C

Schedule of conditions

- 1) Details of 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.

Reason: To ensure that all reserved matters are considered and approved by the LPA prior to commencement of work.

- 2) Application for approval of the reserved matters shall be made to the LPA before the expiration of three years from the date of this permission. The development hereby permitted shall begin before the expiration of one year from the date of approval of the last of the reserved matters to be approved.

Reason: To accord with the requirements of Section 92 of the T&CP Act 1990.

- 3) This permission relates to the following submitted plans:
 - Location Plan Drg: 200B
 - Proposed Indicative Layout/open space proposals: Drg 201C
 - Illustrative Strategic Landscape/open space proposals: Drg 202B
 - Means of access Drg: 130431-10A

Reason: To ensure that the development is carried out in accordance with the permitted drawings and in accordance with the PPG Paragraph Ref ID: 21a-022-20140306.

- 4) The layout details submitted pursuant to condition 1 shall accord with Proposed Indicative Layout/open space proposals: Drg 201C and shall include:
 - i) 4.5 hectares (ha) of residential development comprising up to 100 dwellings on 3.4 ha at a net site density of 29 dwellings per ha (dph) and 1.1 ha of ancillary open space and landscaping laid out within the area marked A on Drg: 201C and;
 - ii) 2.2 ha comprising public parkland and green corridors laid out within the area marked B on Drg: 102C.

No more than 30 dwellings shall be constructed unless or until the proposed 2.2 ha of public parkland and green corridors has been laid out in accordance with the approved details.

Reason: To ensure that the proposed development is carried out in accordance with the approved drawings and to ensure timely delivery of the proposed public parkland and green corridors in order to protect residential amenity.

- 5) The landscaping details submitted pursuant to condition 1 shall include:
 - i) a plan showing existing hedging and trees to be retained together with details of measures for their protection, during the course of development;

- ii) the species, number, sizes and position of new trees, shrubs and hedging to be planted and details of any grassed or other planted areas, including seeding with an appropriate Native British Wildflower Flora mix;
- iii) measures to enhance biodiversity;
- iv) a landscape management plan detailing a programme for the implementation, long term management and maintenance of the 1.1 ha of ancillary open space and the 2.2 ha of public parkland.

No more than 50 dwellings shall be occupied unless and until the landscaping has been implemented in accordance with the approved details and any trees, shrubs or hedging plants which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise approved in writing by the LPA.

Reason: To ensure that appropriate landscape details are submitted to and approved by the LPA and that the landscape proposals are delivered in a timely manner in order to protect residential amenity.

- 6) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the LPA. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the NPPF or any future guidance that replaces it. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of the total number of dwellings approved at reserved matters stage of which 80% shall be social rented and 20% intermediate housing;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no Registered Social Landlord involved);
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

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

Reason: In order to ensure the delivery of appropriate affordable housing in accordance with the proposed development and the NPPF.

- 7) No development shall commence until detailed design and construction drawings for the means of access/egress onto Ford Lane as shown on the submitted Drg: 130431-10A (including street lighting) and the proposed improvements to North End Road as shown on the submitted Drg nos.:

130431-04B and 130431-05B, including bus stops, pedestrian facilities and street lighting along and across North End Road have been submitted to and approved by the LPA and no part of the development shall be commenced until these means of access have been constructed in accordance with the approved detailed design and construction drawings.

Reason: To ensure the timely delivery of required highway improvements in order to protect the safety of road users and residents.

- 8) No development shall commence until detailed scheme, design and construction drawings for the retention and improvement of public rights of way routes 357, 358 and 359 together with the provision of new cycle and new pedestrian routes through the site and to North End Road have been submitted to and approved by the LPA and no dwellings shall be occupied until the improvements and new pedestrian and cycle routes have been implemented and constructed in accordance with the approved detailed scheme, design and construction drawings and any legal requirements, as may be necessary.

Reason: To ensure that the proposed enhancements to footpaths and cycle routes are delivered in a timely manner.

- 9) No development shall commence until detailed design and construction drawings, including provision of a Stage 1 Road Safety Audit for the proposed improvements to the Lake Lane/Yapton Lane junction as shown on the indicative Drg: 130431-09A, have been submitted to and approved by the LPA and no more than 50 dwellings shall be occupied until the junction modifications have been constructed in accordance with the approved detailed design and construction drawings.

Reason: To ensure the safety of residents and highway users and the timely delivery of required junction improvements.

- 10) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the LPA. The Statement shall provide for (but not necessarily be limited to):
- i) vehicle parking for site operatives and visitors, and on-site turning space;
 - ii) loading and unloading of plant and materials;
 - iii) storage of construction plant and materials;
 - iv) erection and maintenance of security hoarding, including decorative displays and facilities for public viewing as appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) the location of any site huts/cabins/offices;
 - viii) routing of construction vehicles to and from the development site;
 - ix) details of any temporary traffic management works required to construct any of the works;
 - x) details of Chapter 8 signage on the approaches to the site warning of the presence of construction vehicles and associated activities on or close to the public highway;
 - xi) details of the Construction Design Management Co-ordinator and site foreman including contact details (and out-of-hours contact details);

- xii) evidence of community involvement and/or public consultation prior to any works being carried out.

Details of how measures will be put in place to address any environmental problems arising from any of the above shall be provided. A named person shall be appointed by the applicant to deal with complaints shall be available on site and their availability made known to all relevant parties.

The Statement as approved shall be adhered to at all times throughout the construction period.

Reason: To ensure highway safety and to protect the amenities of residents.

- 11) No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved by the LPA. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:

- i) a timetable for its implementation, and
- ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for the adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

Reason: To ensure that an appropriate drainage strategy is implemented in accordance with the submitted proposals.

- 12) No part of the development shall be occupied until a Travel Plan, including a timetable for implementation and periodic review, has been submitted to and approved in writing by the LPA. The Travel Plan shall be implemented as approved.

Reason: To encourage the use of sustainable modes of transport.

- 13) No development shall take place until a detailed scheme of highway works has been submitted to and approved in writing by the LPA (who shall consult with the Highways Agency on behalf of the Secretary of State for Transport). The works shall comprise a staggered junction ahead sign to diagram number 507.1 of the Traffic Signs Regulations and General Directions 2002 (TSRGD) on the westbound approach to the A27 junction with Yapton Lane. The sign shall have a height of 1.20 metres, be erected between 245 and 305 metres in advance of the hazard, have clear visibility of 105 metres and be supported on a yellow backing board. In addition, at the end of the A27 right turn lane into Yapton Lane, the priority arrangement shall be highlighted by the provision of additional "Give Way" signs and road markings to diagram number 602 and 1023 of the TSRGD. No dwelling in the development hereby permitted shall be occupied until the scheme approved by the LPA has been completed in full.

Reason: To ensure highway safety as directed by the Highways Agency.

- 14) No more than 50 dwellings of the development hereby permitted shall be occupied until the completion of the improvements to the A27 junction with Yapton Lane shown on Drg: 130431-06B (or such other scheme of works substantially to the same effect, as may be approved in writing by the LPA (who shall consult with the Highways Agency on behalf of the Secretary of State for Transport)).

Reason: To ensure highway safety as directed by the Highways Agency.

- 15) Development shall not commence until a programme of archaeological work has been implemented and completed in accordance with a written Archaeological Mitigation Strategy document to be submitted to and approved by the LPA. This should include a historic environment desk based assessment, to include an assessment of the potential to encounter previously unknown archaeology and its potential significance.

The mitigation strategy shall outline appropriate specific methodology and include commitments to:

- Carry out on site archaeological investigation in accordance with an agreed project design. This shall include but not be limited to archaeological field walking and geophysical survey, in order to inform the trial trenching.
- Use the results of trial trenching with the results of this assessment to identify areas that warrant further archaeological investigation in advance of development as appropriate, such as open excavation or archaeological watching brief.
- Preserve in situ and intact non-designated archaeological heritage assets that are demonstrably of equivalent significance to scheduled monuments (with reference to Historic Environment guidance in Paragraphs 132, 133 and 139 of the National Planning Policy Framework, March 2012);
- Fully investigate, record, analyse and report, to a specification to be submitted to and approved by the LPA, and to a standard proportionate to their significance, archaeological heritage assets that unavoidably will be affected adversely by development-related ground excavations;
- Prepare and implement satisfactory procedures to communicate the findings of archaeological investigation to the local community, including involvement in community archaeological projects where appropriate.

Reason: To ensure that the archaeological potential of the site is appropriately investigated and where necessary a mitigation strategy is implemented.

- 16) Construction of the development shall not commence until details of the proposed means of foul water sewerage disposal have been submitted to, and approved in writing by the LPA in consultation with Southern Water. No dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.

Reason: In order to ensure that appropriate foul water sewerage disposal means are available prior to occupation.

- 17) Details of the laying out of a minimum 400 sq m area designated as a Local Equipped Area of Play (LEAP) and three Local Areas of Play (LAP), each of at least 100 sq m, and all other amenity areas (other than private gardens) to be provided on site together with their defined boundaries, means of enclosure, proposed use and items of equipment and other structures to be installed shall be submitted to and approved in writing by the LPA. No more than 50 dwellings shall be constructed unless or until the amenity areas including the LEAP and at least 2 LAPs have been laid out in accordance with the approved details.

Reason: To ensure the timely delivery of appropriate play areas for children resident in the approved development in accordance with the Council's adopted Open Space and Play Areas Supplementary Planning Guidance 2000.

- 18) The development hereby approved shall be carried out in accordance with the recommendations set out in the Extended Phase 1 Habitat Survey prepared by Corylus Ecology and submitted with the planning application. This will include updates to the existing Phase 1 Habitat Survey and any necessary protected species surveys undertaken no less than 12 months prior to the commencement of development and measures to avoid or mitigate ecological impacts and provide ecological enhancements. Details shall be submitted to the LPA and approved in writing prior to the commencement of development.

Reason: To enhance biological diversity in accordance with the NPPF and policy GEN29 of the Arun District Local Plan and to protect the ecological interest of the site.

- 19) The total number of dwellings shall not exceed 100.

Richborough Estates



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.