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## Appeal Decision

Inquiry held on 14 and 15 March 2017

Site visit made on 15 March 2017

**by David Prentis BA BPI MRTPI**

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

**Decision date: 15 June 2017**

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**Appeal Ref: APP/D3830/W/16/3149456**

**Land rear of 88 Folders Lane, Burgess Hill, West Sussex RH15 0DX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Jones Homes (Southern) Ltd against the decision of Mid Sussex District Council.
  - The application Ref 14/04492/FUL, dated 5 December 2014, was refused by notice dated 15 January 2016.
  - The development proposed is demolition of 88 Folders Lane and residential development of 73 dwellings (a mix of 2, 3, 4 and 5 beds), including 30 percent affordable housing and associated infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of 88 Folders Lane and residential development of 73 dwellings (a mix of 2, 3, 4 and 5 beds), including 30 percent affordable housing and associated infrastructure at land rear of 88 Folders Lane, Burgess Hill, West Sussex RH15 0DX in accordance with the terms of the application, Ref 14/04492/FUL, dated 5 December 2014, subject to the conditions set out in the attached schedule.

### Preliminary matters

2. The Inquiry sat for two days on 14 and 15 March 2017. I carried out an unaccompanied visit to the site and surrounding area before the Inquiry and there was an accompanied visit on 15 March 2017.
  3. The Council's second reason for refusal related to the effects of noise and nuisance from the adjoining Ridgeview Wine Estate (Ridgeview). The Council's concerns included effects on the living conditions of new residents and potential economic harm from restrictions being placed on winery operations as a result of houses being built nearby. Following the submission of a further noise assessment the Council confirmed that it would not pursue this reason for refusal. However, other parties at the Inquiry, (including Ridgeview), maintained objections on these grounds and these issues were explored during the course of the Inquiry.
  4. The Council's third reason for refusal referred to the absence of a s106 Agreement. A s106 Agreement (the Agreement) was completed during the course of the Inquiry. The Council was satisfied that the Agreement resolved this reason for refusal.
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5. The Agreement would secure the delivery of 22 affordable dwellings. It would also make provision for financial contributions to community buildings, formal and informal sports facilities, health facilities, libraries, a cycle lane, play space, primary, secondary and sixth form education, local transport improvements and traffic calming measures in the nearby village of Ditchling. No party at the Inquiry disputed the appropriateness of the various obligations. The Council and the County Council provided written evidence as to how the amounts of the contributions had been calculated and why they were necessary. I allowed a period after the close of the Inquiry for written answers to questions I had asked seeking further information from parties who were not present.
6. Having regard to all of this information, I consider that all but one of the obligations are consistent with Regulation 122 and (where appropriate) Regulation 123 of the Community Infrastructure Levy Regulations. I have therefore taken them into account in my decision. The exception is the East Sussex County Council traffic contribution which relates to unspecified measures to improve Ditchling village. I am unable to conclude that it is consistent with the Regulations due to the lack of evidence regarding the nature of this project and its relevance to the appeal scheme. Consequently I have not taken it into account.
7. After the close of the Inquiry the Supreme Court issued a judgment<sup>1</sup> (*Suffolk Coastal*) concerning the interpretation of paragraph 49 of the National Planning Policy Framework (the Framework) and its relationship with paragraph 14. The Council and the appellant were invited to make submissions in the light of that judgment and I have taken account of the responses received.

### **Main issue**

8. The main issue is the effect of the proposal on the character and appearance of the area, including any effect on the landscape and scenic beauty of the South Downs National Park.

### **Reasons**

#### ***Policy context and housing land supply***

9. The development plan includes the Mid Sussex Local Plan 2004 (LP) and the Burgess Hill Neighbourhood Plan 2016 (NP). LP Policy C1 defines land outside the built-up area boundaries as a Countryside Area of Development Restraint where development is to be restricted, save for some specified exceptions which are not relevant in this case. The greater part of the appeal site is within such an area and the proposals are therefore in conflict with this policy.
10. Policy C3 seeks to safeguard Local Gaps between some settlements. Although the appeal site is not in a Local Gap, it is within an area described generally as '*between Burgess Hill and Ditchling Common*'<sup>2</sup>. At the Inquiry there was some debate as to the precise extent of Ditchling Common. However, for present purposes little turns on that debate because there was no dispute that the appeal site is subject to Policy C3. The policy affords this area the same status

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<sup>1</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council* [2017] UKSC 37

<sup>2</sup> The appeal site is close to the administrative boundary between Mid Sussex and Lewes District. Ditchling Common Country Park is in Lewes District.

as a Local Gap and is generally restrictive of new development. The appeal scheme is therefore in conflict with this policy.

11. There are a number of other policies of the LP which are relevant to the appeal, including those relating to residential amenity, noise, infrastructure, transport and affordable housing<sup>3</sup>. Some of these were referred to in the second and third reasons for refusal. However, those reasons were not pursued and, at the Inquiry, the Council did not suggest that the proposals would conflict with any of these other policies.
12. NP Policy H3 seeks to protect Areas of Townscape Value (ATV). Folders Lane is one such area. No 88 Folders Lane, which would be demolished to form the access to the appeal scheme, is within the ATV. The policy requires special attention to be paid to preserving and enhancing the character of an ATV, having regard to matters such as spaciousness, building lines, site coverage, trees and landscaping.
13. The examination of the emerging Mid Sussex District Plan 2014 – 2031 (MSDP) has commenced and a number of hearings have taken place. Shortly before the Inquiry, the Inspector conducting the MSDP examination issued interim findings on the objectively assessed need for housing (OAN) and the housing requirement for the plan. The Council is currently considering its next steps in the light of the interim findings, which suggest the need for an increase in both the OAN and the housing requirement.
14. The Council's first reason for refusal referred to 4 policies of the MSDP: DP1 (sustainable development), DP10 (protection of the countryside), DP16 (setting of the South Downs National Park) and DP24 (character and design). The Framework states that weight may be given to policies in emerging plans<sup>4</sup>. However, given the circumstances described above, the MSDP as a whole cannot be said to be at an advanced stage. That said, Policies DP1 and DP24 appear to be generally consistent with the Framework and I have not been advised of any unresolved objections to them. Therefore they should carry some weight. On the other hand there are unresolved objections to Policy DP16 and therefore only limited weight can be attached to it. I return to Policy DP10 below.
15. The Framework seeks to boost the supply of housing and states that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. In this case the Council accepts that it cannot demonstrate a five year supply but does not consider that it is necessary to go further and make an assessment of what the supply actually is. I do not share that view. Case law indicates that the extent of any shortfall can be relevant to an overall planning assessment and that an assessment of OAN may be necessary in a s78 appeal in order to apply the policies of the Framework<sup>5</sup>.
16. The Inspector's interim findings, referred to above, suggest an OAN of 876 dwellings per annum (dpa). I appreciate that this is an interim finding which may change if further evidence comes to light. Nevertheless, it is a recent

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<sup>3</sup> These are identified in ID1 – Statement of Common Ground (Planning)

<sup>4</sup> Paragraph 216 of the Framework

<sup>5</sup> Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin) and Shropshire Council v SSCLG and BDW Trading Ltd [2016] EWHC 2733 (Admin)

finding based on an extensive evidence base which has been tested in examination hearings. In my view the Inspector's interim findings carry significant weight for the purposes of this appeal.

17. At the Inquiry I asked for the housing requirement to be calculated from a 2014 base date using an OAN of 876 dpa<sup>6</sup>. That resulted in a figure of 3.76 years supply<sup>7</sup>. The appellant drew attention to the fact that the Inspector's interim findings identified a need for a further 150dpa to meet need from Crawley. However, that would be an addition to the housing requirement. It would not be part of the OAN for Mid Sussex. The requirement is a matter which can only be settled through the development plan process. For the purposes of this appeal I consider that the figure of 3.76 years gives the best available current estimate of the housing land position in Mid Sussex. Clearly that is some way short of the 5 years required by the Framework.
18. It follows that, in accordance with the Framework<sup>8</sup>, relevant policies for the supply of housing should not be considered up-to-date. In the light of the judgment in *Suffolk Coastal* the Council and the appellant agree that LP Policies C1 and C3 are not relevant policies for the supply of housing. It follows that they are not deemed to be out-of-date by virtue of paragraph 49 of the Framework. However, that does not alter the fact that the geographic extent of these policies was established having regard to the housing requirements of a plan period which expired several years ago. In my view the policies are out-of-date for that reason and consequently I attach only limited weight to the conflict with them.
19. Emerging MSDP Policy DP10 is a policy which seeks to protect the countryside having regard to development needs in the forthcoming plan period. The housing requirement, and other development needs, have yet to be settled through the local plan process and therefore only limited weight can be attached to the emerging policy at this time.

***Effect on the character and appearance of the area, including on the South Downs National Park***

*The site and surroundings*

20. The site extends to around 7.1ha. No 88 Folders Lane is within the built-up area of Burgess Hill and is also within the ATV defined in the NP. To the rear of No 88, extending behind the back gardens of some adjoining houses, there is a former paddock which is now part of the garden of No 88. The southern edge of the former paddock is marked by a belt of trees which extends to the west behind the long back gardens of several houses fronting Folders Lane. This tree belt is a strong landscape feature which currently marks the southern edge of the built-up area of Burgess Hill. The greater part of the site lies to the south of the tree belt. It was formerly 3 fields but only a few traces of the internal boundaries remain. It is now a single large field, bounded by trees and hedgerows on all sides.
21. A public footpath runs south from Folders Lane to Fragbarrow Lane. The footpath runs close to the eastern boundary of the appeal site. Although most

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<sup>6</sup> The shortfall from previous years, the need for a 20% buffer and the available supply were not in dispute.

<sup>7</sup> JH8

<sup>8</sup> Paragraph 49

of it is outside the site, the southern section is within. To the east of the footpath is a paddock and residential garden land. Ridgeview is located immediately to the south of the appeal site. The winery buildings are generally in the vicinity of the eastern part of the common boundary. This is also to be the location for a substantial new winery building for which planning permission has been granted. Most of the rest of the southern boundary of the appeal site adjoins a vineyard field which lies within the South Downs National Park (SDNP). To the west there are some fishing lakes.

*Design, layout and effect on the Area of Townscape Value*

22. The southern side of Folders Lane is characterised by detached houses which are set back from the road within deep plots. Vegetation is a predominant feature. A sylvan character is created by mature trees, which spread out over the road, together with extensive planting within gardens. No 88 Folders Lane does not have a strong presence in the street scene and its demolition would have little impact. The new access would require some trees to be removed and there would need to be some works within the root protection areas of trees which are to be retained on either side. The illustrative landscape plan indicates new planting along the access road. Tree protection and new planting could be controlled by planning conditions. The Council has not raised any objection in relation to impacts on trees. I agree that, given the well-treed nature of the locality, the impact of the proposals would not be harmful to the character of the area.
23. The layout of the access has been designed to limit views from Folders Lane into the appeal site. It may be that a few of the new houses could be glimpsed from the access or between houses fronting Folders Lane but, in general, the appeal scheme would have very little effect on the character of the ATV. To my mind the proposal would accord with NP Policy H3 which seeks to preserve the character of the ATV.
24. An area of open space would be located adjacent to the site access, taking advantage of the retained tree belt. The houses would frame and overlook this green space. There would also be woodland planting and amenity open space around the perimeter of the site. These spaces are conceived as buffer zones and wildlife corridors. They would retain and reinforce the existing trees and hedgerows around the site. Within the site the houses would be arranged in perimeter blocks, with clear definition of public and private space. The design of the houses would incorporate projecting bays, gables and chimneys which would provide interest and variety in the street scene. The design and access statement notes that the houses would have steep pitch tiled roofs and materials such as brick, tile hanging and weatherboarding which are typical in the locality. Full details of facing materials could be secured by a condition.
25. The Council's reason for refusal suggests that the proposals would result in an incongruous extension to the boundary of the built-up area which would detract from the visual quality of the area. At the Inquiry it became apparent that this did not amount to a criticism of the design and/or layout. It is fair to say that the scheme would not be integrated into the street scene of Folders Lane. However, that is a feature of the rather secluded nature of the site. In my view the proposals represent a considered and coherent response to the site context. They would create an attractive residential environment which would accord with the design principles set out in MSDP Policy DP24.

### *Landscape effects*

26. The Council and the appellant provided landscape and visual impact assessments which referred to previous landscape character assessments at various scales. The most recent of these was the *Landscape Character Assessment for Mid Sussex 2005* which identified the appeal site as being within a character area known as Hickstead Low Weald. The characteristics of this area include low ridges and clay vales, a mixed arable/pastoral landscape, a mosaic of smaller and larger fields, scattered woodland shaws and hedgerows and views towards the downland scarp to the south. The appeal site is characteristic of this wider character area.
27. There have also been various studies of the capacity of the landscape to accommodate new development. The most recent of these related to the sites included within the Council's Strategic Housing Land Availability Study (the SHLAA review)<sup>9</sup>. This review assessed the overall landscape value of the appeal site as moderate, noting that proximity to the SDNP was the key element in terms of value although there were not considered to be any specific elements or visual interactions to elevate that value. That part of the site to the south of the tree belt was considered to have a low-medium suitability for development, meaning that development here was thought to be *'very likely to give rise to adverse landscape and/or visual effects but these may not reach an unacceptable level'*.
28. In terms of landscape character, the site has two main areas. The former paddock, to the north of the tree belt, now has a more domestic character and is closely associated with the built-up area of Burgess Hill. The larger area to the south of the tree belt has a more rural character which gains value from its gently undulating terrain, enclosing trees and hedgerows and views towards the downland scarp. The Council did not suggest that this should be regarded as a *'valued landscape'* as that term is used in the Framework and I share that view. I agree with the SHLAA review which ascribed moderate landscape value to the site.
29. At the Inquiry the Council sought to argue that earlier landscape capacity assessments, one of which pre-dated the designation of the SDNP, had not fully recognised the landscape value of the site. In my view little turns on that point. I attach greater weight to the more recent SHLAA review which does take account of the SDNP. In any event, whilst the capacity studies give useful contextual information, they are not determinative in the context of an appeal such as this where the effects of a specific scheme fall to be considered.
30. The appeal scheme would transform the character of the site. The open and rural nature of the site would be replaced by new housing, roads and amenity areas. There would be significant elements of mitigation in terms of the proposed buffer zones and woodland planting around the perimeter of the site. Even so there would be a major change within the site itself. (I comment further below on the effect on the wider landscape which includes the SDNP). Overall, I consider that moderate weight should be attached to this loss of landscape character.

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<sup>9</sup> Mid Sussex District SHLAA: Review of Landscape and Visual Aspects of Site Suitability 2015

*Visual effects*

31. The respective visual assessments agree that the visual envelope of the appeal scheme would not be extensive. The main visual receptors would be users of the footpath. The greater part of the path is contained within a wooded shaw and has only filtered views of the site. The full extent of the southern parcel can be appreciated from a section of path in the south eastern corner of the appeal site. This short section of path currently has a rural feel, although houses in Fragbarrow Lane and the winery building are clearly visible. In the future the new winery building is likely to be quite a prominent feature in views from this section of path. The appeal proposals would change the experience of using the path in that open views over the site would be lost. That said, the path would pass through an area of open space where the illustrative landscape proposals show new woodland planting. This section of path does not currently afford any significant views of the SDNP.
32. There would also be views of the new houses from the side and/or rear elevations of houses in Folders Lane and Fragbarrow Lane, as well as from the gardens of those properties. These views would be filtered by existing and proposed planting and the buffer zones around the perimeter of the site would give a good degree of separation between existing properties and the new houses to the south of the tree belt. There would be 4 houses to the north of the tree belt which would back on to the rear garden boundaries of houses in Folders Lane. Although there would be no buffer zone here there would be sufficient separation distance to avoid any overbearing or enclosing effect.
33. Visitors to Ridgeview and the fishing lakes could be regarded as sensitive visual receptors to the extent that they are engaged in leisure activities in which appreciation of landscape and surroundings form a part of the overall experience. However, in both cases that sensitivity is tempered by the fact that the primary focus of the visitors would be on the winery and vineyards, or on the activity of fishing.
34. The new houses would be seen from various points within Ridgeview, including parts of the parking and service areas and the western vineyard field. Existing trees and hedgerows provide some screening and the extent of visibility would vary with the seasons. The layout includes a broad buffer within the site and the illustrative landscape proposals show woodland planting along the southern boundary. Even so, it seems likely that visitors to the winery would be aware of the proposed houses. That said, I do not think that the overall experience of visiting the winery would be changed significantly. Houses on Folders Lane can already be glimpsed from the western vineyard and visitors will be aware that the town of Burgess Hill is nearby. The views of the downland scarp which can be seen from the eastern vineyard would be unaffected.
35. The fishing lakes are surrounded by trees and vegetation which provide a substantial degree of screening from the appeal site, even in winter. There would be a buffer zone and scope for additional planting between the houses in the western part of the site and the fishing lakes. I consider that any visual impact on users of the fishing lakes would be negligible.
36. In summary, the most significant visual effects would be those experienced from a relatively short length of the public footpath where it passes through the south east corner of the site. Views from locations outside the site would be very limited.

*Effect on the South Downs National Park*

37. Part of the southern boundary of the appeal site adjoins the boundary of the SDNP. It is therefore necessary to have regard to the purposes for which the SDNP was designated<sup>10</sup>, which are to conserve and enhance natural beauty, wildlife and cultural heritage and to promote opportunities for the understanding and enjoyment of their special qualities by the public. It is also necessary to bear in mind that the Framework states that great weight should be given to conserving landscape and scenic beauty in National Parks.
38. Given that the appeal site adjoins the SDNP, and that there is some inter-visibility, there can be no doubt that it is properly to be regarded as within the setting of the designated landscape. However, setting is not in itself a landscape designation. No party at the Inquiry identified any public viewpoints where there are views into or out of the SDNP which would be significantly affected by the appeal proposals.
39. Extensive panoramic views over the Low Weald may be obtained from Ditchling Beacon and the footpaths which give access to the top of the scarp. The appeal site lies within these views, at a distance of about 4.8km, but is not discernible with the naked eye. It is possible that the roofscape of the proposed houses could be identified with the aid of binoculars but there would be no change to the general appreciation of the view. As noted above, there is some inter-visibility between the western vineyard field at Ridgeview (which is within the SDNP) and the appeal site. Views of the scarp slope can be obtained from parts of the appeal site to the south of the tree belt.
40. The Council was concerned that the proposal would extend the built-up area of Burgess Hill south of the tree belt, bringing development up to the boundary of the SDNP and removing the 'buffer' which the site currently provides. The Council also argued that Ridgeview demonstrates the special qualities found in the SDNP and that these qualities would be impacted by the appeal scheme. The SDNP Authority objected to the application, making similar points to the Council and also drawing attention to the designation of the SDNP as an International Dark Skies Reserve (IDSR).
41. As noted above, the tree belt is a strong landscape feature which has hitherto marked the southern extent of this part of Burgess Hill. However, the landscape and visual effects of the appeal scheme would be localised. Moreover, the Framework does not support the concept of an 'in principle' objection to development close to, but outside, a National Park. Rather, the emphasis is on the landscape and scenic beauty of the designated landscape.
42. It is important to note that this is not a scheme which proposes intensive development close up to the boundary. Those houses facing the boundary of the SDNP would be in small groups separated by landscaped spaces. There would be a broad landscape buffer between them and the boundary with the SDNP and the illustrative landscape proposals indicate scope for both woodland planting and more open amenity planting in this area.
43. Although the appeal scheme would be visible from the areas around the existing and proposed winery buildings, these are not in the SDNP. The western vineyard, which adjoins the site, is in the SDNP. The opportunities to see the

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<sup>10</sup> National Parks and Access to the Countryside Act 1949, s11A(2)



proposed houses from within the SDNP would be largely confined to this single field. The SHLAA review noted that the special qualities of the SDNP are not greatly in evidence in the small area of the park which is adjacent to the site. In my view that is a reasonable assessment. The vineyard is part of the diverse landscape of the Low Weald and is no doubt appreciated by visitors. However, it could not be described as an inspirational landscape nor could it be regarded as a particularly tranquil area. In any event, the impact of the appeal scheme on the western vineyard would be minor for the reasons given above.

44. The impact on the IDSR was raised in the written representations from the SDNP Authority and was pursued in the Council's evidence. However, at the Inquiry it was agreed that this designation does not carry any formal status in terms of planning policy. Moreover, the IDSR application document shows that the core area and buffer zone would be at a considerable distance from the appeal site. The Council's closing submissions did not rely on the IDSR designation. Instead, the general point was made that the effect on the landscape at night should form part of an overall assessment of effects on the landscape of the SDNP. I agree with that approach. I note that the site is relatively well contained by landscape features and is close to the urban area of Burgess Hill. Moreover, there is the opportunity to secure an appropriate lighting scheme by a planning condition. In my view the effect on the night sky is not a matter which weighs materially against the appeal.
45. There may be a degree of conflict with emerging MSDP Policy DP16 which refers to development in the setting of the SDNP. At the Inquiry the Council and the appellant agreed that the main thrust of the policy is to protect the designated landscape. However, one interpretation of the policy is that it seeks to protect '*transitional open green spaces*' outside the designated area. The wording is unclear but it could be said that the appeal scheme does not accord with that element of the policy. For the purposes of this appeal little turns on this point because I attach little weight to Policy DP16 for the reasons given above.
46. In summary, I conclude that the appeal scheme would have no appreciable effect on the purposes for which the SDNP was designated. There would be no material harm to the landscape and scenic beauty of the SDNP and no conflict with the policies of the Framework insofar as they relate to National Parks.

*Conclusion on the main issue*

47. The proposals would result in the loss of a site which has moderate landscape value. Significant mitigation would be included in the design and layout of the scheme and most of the important landscape features of the site would be retained. The most significant visual effects would be those experienced from a relatively short length of the public footpath where it passes through the south east corner of the site. Views from locations outside the site would be very limited. There would be no material harm to the landscape and scenic beauty of the SDNP. My overall assessment is that moderate weight should be attached to the landscape and visual impacts of the appeal scheme.
48. The design represents a considered and coherent response to the site context. It would create an attractive residential environment which would accord with the design principles set out in MSDP Policy DP24. There would be no conflict with NP Policy H3.

## **Other matters**

### *Social and economic benefits*

49. The proposal would make a significant contribution to the delivery of housing land in Mid Sussex. The Council has no objection to the design of the houses or the mix of unit types. Moreover, 30% of the units would be affordable housing. Having regard to the current position on housing land supply, I attach significant weight to these social benefits. There would also be some economic benefits during the construction process and through increased spending in the local economy by the new residents.

### *Ridgeview Wine Estate*

50. The Council's second reason for refusal referred to the effect of winery operations on the living conditions of future occupiers of the appeal site and the potential for economic harm due to future restrictions on the winery as a result of complaints from new residents. That reason for refusal was not pursued by the Council but it was maintained by Ridgeview and others.
51. Ridgeview was established in 1995 and is one of the pioneers of the English sparkling wine industry. Its business includes processing its own grapes and those of other growers. It is also a visitor attraction. Production is currently in excess of 200,000 bottles per year and in future Ridgeview intends to expand that figure to over 500,000. Ridgeview is a significant employer and contributor to the local economy. There are a number of noise sources including disgorging and bottling operations, delivery vehicles, frost protection, bird scaring and the use of machinery such as tractors and defoliators.
52. The application was supported by a noise assessment. Both the Council's Environmental Health Officer and consultants instructed by Ridgeview had concerns about that assessment. Following discussions, a further noise assessment was submitted which sought to take account of the points raised. By the time of the Inquiry the Council had decided, on the basis of the further noise assessment, that the impact of noise on future occupiers could be controlled by a planning condition. Ridgeview's noise consultants suggested, and the appellant agreed, that the design target for internal noise levels in living rooms and bedrooms should be stricter than the targets in BS 8223 to take account of the intermittent and/or tonal character of some of the noise. This was reflected in the schedule of suggested conditions which was before the Inquiry.
53. Winery operations are seasonal and the need for particular operations is dependent on weather conditions. During the harvest 24 hour working is needed. Some of the noisier operations take place for a relatively short proportion of the year. For example, the defoliator is used for a few days in June/July and then again in October. A frost drain is typically used on around 8 nights in April and May. Other noise sources are intermittent, such as the bird scarer which is typically fired once in the period 0630 to 0700 during September/October. The Council is satisfied that the updated noise assessment and the suggested condition would address this inherent variability. Having regard to all the evidence before the Inquiry, I agree with that view.
54. Achieving acceptable internal noise levels is likely to require windows to be closed at night, for example at certain times during April/May and

September/October. This would require alternative means of ventilation to be provided. At the Inquiry local residents suggested that this would be inherently unsustainable. However, insulating new houses against external noise sources in this way is a recognised approach to meeting the need for housing whilst achieving acceptable living conditions for new residents.

55. Other factors which may impact on new residents include the use of frost protection bougies (which generate smoke), the need for deer and rabbit culling and fruit fly infestations. The Council has not identified any public health issues arising from these factors and did not pursue an objection on these grounds. I accept that there would be some impact on the amenity of new residents from these sources but they would be intermittent. The evidence does not show that the effect on living conditions would be so severe as to amount to a reason for withholding planning permission.
56. I turn to the potential for economic harm due to complaints from new residents. The new winery has planning permission and is not subject to limits on hours of operation. Ridgeview's concern is that in the future restrictions may be placed on operations following complaints to the Environmental Health Officer. The potential for such complaints exists now and may increase if the appeal scheme goes ahead. However, if there were to be proceedings under the Environmental Protection Act the winery operator would be able to mount a defence on the basis that best practicable means were being employed to avoid the nuisance. I have no reason to doubt that the winery would indeed employ best practicable means.
57. It is understandable that Ridgeview would prefer to avoid or minimise the risk of being in that position. However, planning decisions are made in the public interest. In determining the appeal, it is reasonable for me to assume that the pollution control regime would operate in a fair and proportionate way. Looked at in that way, in the light of the evidence, I do not think that the risk of significant economic harm is such that it should be regarded as a factor weighing against the appeal.

#### *Highways and transport*

58. The site is on the edge of the built-up area of Burgess Hill, around 1.9km south east of the town centre and railway station. The Council and the appellant agree that it is within walking and cycling distance of shops, schools, recreational and other facilities. The Agreement includes provision for local transport improvements.
59. The application was supported by a transport assessment which considered the impact of the appeal scheme on various junctions in the local highway network, having regard to the cumulative effect of committed schemes and the highway improvements that would be associated with those schemes. This assessment has been considered by the highway authority and by the Council and no objections have been raised in terms of impacts on the road network. The proposed site access would have a right turn lane into the site to avoid queueing on Folders Lane. I saw on site that adequate visibility splays could be provided. The access design has been subject to a Stage 1 Safety Audit.

### *Ecology*

60. The application was supported by ecological reports and surveys to establish the presence/absence of protected species including bats and great crested newts. The layout has been designed to minimise the loss of mature trees. It includes open space which would include wetland basins and landscape buffer strips which would benefit wildlife. No designated or scarce habitats would be lost. Any potential impacts on protected species could be mitigated through appropriate measures which could be secured by conditions.

### *Other matters raised by local residents*

61. A large number of written representations were made to the Council when it considered the application. Many of the points raised have been covered above. In addition, the representations expressed concerns about impacts on the living conditions of neighbouring residents, pressures on local services and risk of flooding.

62. The layout would ensure a good degree of separation between the proposed houses and existing properties, thereby avoiding any instances of harmful overlooking or loss of outlook. The site is reasonably accessible to the shops and services available within Burgess Hill, which is one of the main settlements in Mid Sussex. The Agreement would make provision for proportionate contributions to community buildings, formal and informal sports facilities, health facilities, libraries, play space and primary, secondary and sixth form education. The application was supported by a flood risk assessment and drainage details could be controlled by a planning condition.

### *Conclusions on other matters*

63. The matters discussed in this section have been addressed within the application documents and the evidence before the Inquiry. There are no outstanding objections from the Council or other relevant bodies. Subject to appropriate conditions being imposed, I am satisfied that none of these matters add materially to the case against the appeal.

### **Conclusion**

64. The proposal would conflict with LP Policies C1 and C3. It would accord with other policies of the LP, including those dealing with residential amenity, noise, infrastructure, transport and affordable housing. It would also accord with NP Policy H3. Nevertheless, I consider that the conflict with Policies C1 and C3 is such that the proposal should be regarded as being in conflict with the development plan as a whole. It is therefore necessary to consider whether there are material considerations which indicate that permission should be granted, notwithstanding this conflict.

65. For the reasons given above, I consider that LP Policies C1 and C3 are out-of-date and I attach limited weight to the conflict with these policies.

66. With regard to emerging policies, the proposal would accord with MSDP Policy DP24 (character and design). Taking a balanced view of the social, economic and environmental consequences of the scheme, I consider that it would accord with Policy DP1 (sustainable development). However, the proposal would conflict with Policy DP10 (protection of the countryside) and there would be some degree of conflict with Policy DP16 (setting of the SDNP). I attach limited

weight to the conflict with Policy DP10 because the geographic extent of this policy is related to a housing requirement which has yet to be settled through the local plan process. I attach limited weight to the conflict with Policy DP16 because this is an emerging policy which is subject to unresolved objections.

67. Turning to paragraph 14 of the Framework, it is important to note that I have not identified any conflict with the policies of the Framework in relation to National Parks. This is not a case where there are specific policies in the Framework which indicate that development should be restricted.
68. The adverse effects of the proposal are the conflicts with the policies referred to above, to which I attach limited weight for the reasons given above, and the landscape and visual effects of the scheme, to which I attach moderate weight. On the other hand, I attach significant weight to the social benefits of additional housing (including affordable housing) and some weight to the associated economic benefits.
69. The proposal would not accord with the development plan. However, this is a case where application of the Framework leads me to conclude that the adverse impacts would not significantly and demonstrably outweigh the benefits. I therefore consider that the proposal would represent sustainable development, as that term is used in the Framework. This is a material consideration which indicates that the appeal should be allowed, notwithstanding the conflict with the development plan.

### **Conditions**

70. The Council has suggested conditions which I have considered in the light of Planning Practice Guidance. The Council and the appellant were in agreement on these matters. I have merged some suggested conditions to avoid duplication and made some adjustments to detailed wording in the interests of clarity. However, the substance of the conditions is as discussed at the Inquiry.
71. Condition 2 requires development to be in accordance with the plans, to reflect the advice in Planning Practice Guidance. Conditions 3, 4 and 5 require details of materials, boundary treatments and landscaping in the interests of the character and appearance of the area. Details of boundary treatments are also needed in the interests of the living conditions of future occupiers. Conditions 6 and 7 require details of foul and surface water drainage to be approved in the interests of managing risks of flooding and pollution. Condition 8 requires submission of a scheme of archaeological investigation in order to protect the archaeological potential of the site.
72. Condition 9 seeks a Construction Management Plan in the interests of highway safety, the living conditions of nearby residents and managing risks of flooding and pollution. Condition 10 requires submission of a Construction Environmental Management Plan, an external lighting scheme and habitat enhancement measures in the interests of biodiversity both during and after the construction phase. The lighting scheme is also needed in the interests of protecting the landscape of the SDNP.
73. Condition 11 requires details of noise mitigation to protect the living conditions of future occupiers. Condition 12 requires a contamination study to be approved in the interests of managing risks of pollution. Condition 13 requires details of visibility zones at the site access in the interests of highway safety.

Conditions 14 and 15 require car and cycle parking to be provided and retained in order to accommodate the travel needs of the scheme.

74. Some conditions require matters to be approved before development commences. This is necessary in the case of conditions 4 to 7, 10 and 11 because these conditions may affect the design of the scheme. It is necessary in the case of conditions 8 to 10 and 12 because these conditions mitigate impacts during construction.

*David Prentis*

Inspector

Richborough Estates

**APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:

Richard Turney	of Counsel, instructed by the Solicitor to Mid Sussex District Council
He called	
Stuart Ryder	Director, Ryder Landscape Consultants
BA(Hons) DipLA CMLI	
Stephen Clarke	ASP Planning
BA(Hons) DipUPI MRTPI	

FOR THE APPELLANT:

Paul Tucker	Queens Counsel, instructed by John Escott
He called	
Jon Etchells	Jon Etchells Consultancy
MA BPhil CMLI	
Peter Moore	Peter Moore Acoustics
MA(Cantab) CEng	
MIMechE MIOA	
John Escott	Senior Partner, Robinson Escott Planning
BA(Hons) DipTP MRTPI	

INTERESTED PERSONS:

Tamara Roberts	CEO, Ridgeview Wine Estate
Jerry Batte	Chairman, South of Folders Lane Action Group
Conor Patterson	Local resident

Richborough Estates

## DOCUMENTS

### *Inquiry documents*

- ID1 Statement of common ground – planning
- ID2 Statement of common ground – noise
- ID3 Mid Sussex District Plan Examination – Inspector’s interim findings
- ID4 Proposals Map – Inset 30 Burgess Hill
- ID5 Proposals Map - MSDP
- ID6 Statement of common ground – landscape
- ID7 Burgess Hill NP – area designation
- ID8 Delegated report - planning application for winery at Ridgeview
- ID9 MSDP extract – Policy DP11
- ID10 S106 Agreement dated 15 March 2017

### *Documents submitted by the appellant*

- JH1 Appearances
- JH2 Housing land supply tables – Barton Willmore
- JH3 International Dark Skies Reserve Application
- JH4 Appeal Decision APP/A2280/W/16/3143600 – Gibraltar Farm
- JH5 Opening submissions
- JH6 SDNP – Special Qualities
- JH7 Map showing appeal decisions at Storrington
- JH8 Revised housing land supply tables – Barton Willmore
- JH9 Closing submissions

### *Documents submitted by the Council*

- MS1 Opening submissions
- MS2 LUC report – page 77
- MS3 Bundle of documents relating to planning obligations
- MS4 Correspondence with the MSDP Examination Inspector
- MS5 Closing submissions

### *Other documents submitted at the Inquiry*

- Statement of Tamara Roberts
- Statement of Conor Patterson

### *Documents submitted after the Inquiry*

- Email from the Council dated 17 March 2017 enclosing responses to Inspector’s questions about planning obligations
- Email from the appellant dated 17 March 2017 confirming no further comments to these responses



## Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the attached schedule.
- 3) No development shall take place until a schedule and/or samples of materials and finishes to be used for the external walls and roofs of the proposed buildings has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until details of proposed boundary screen walls/fences/hedges for the proposed dwellings have been submitted to and approved in writing by the local planning authority and no dwelling hereby permitted shall be occupied until such boundary screen walls/fences/hedges associated with them have been erected or planted. The development shall be carried out in accordance with the approved details and shall thereafter be permanently retained as such.
- 5) No development shall take place until full details of both hard and soft landscaping have been submitted to and approved in writing by the local planning authority. The details shall include indications of all existing trees and hedgerows on the land and details of those to be retained, together with measures for their protection in the course of development.

Hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme approved in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the local planning authority has given written consent to any variation.

- 6) No development shall take place until details of foul water drainage and means of disposal have been submitted to and approved in writing by the local planning authority. No building shall be occupied until all approved drainage works have been carried out in accordance with the approved details.
- 7) No development shall take place until details of surface water drainage and means of disposal have been submitted to and approved in writing by the local planning authority. The details shall include a timetable for implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. No building shall be occupied until all drainage works have been carried out in accordance with the approved details. Maintenance and management during the lifetime of the development shall be in accordance with the approved details.
- 8) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance

with a Written Scheme of Investigation which has been submitted by the applicant and approved in writing by the local planning authority.

- 9) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. Thereafter the approved Construction Management Plan shall be implemented and adhered to throughout the construction period. The Construction Management Plan shall include:
- hours of working, including hours for deliveries or collection of plant, equipment or materials
  - a timetable for the commencement, construction, occupation and completion of the development
  - the anticipated number, frequency and types of vehicles used during construction
  - the method of access and routing of vehicles during construction and directional signage
  - the siting and layout of site compounds and welfare facilities for construction workers
  - provision for parking of vehicles by site operatives and visitors
  - provision for the loading and unloading of plant, materials and removal of waste
  - provision for the storage of plant and materials
  - the design, erection and maintenance of security hoardings and other measures related to site health and safety
  - measures to control noise and vibration affecting nearby residents (in accordance with BS5228:2014 *Code of practice for noise and vibration control on construction and open sites* - with particular regard to the noisiest activities, typically piling, earthmoving, concreting, vibrational rollers and concrete breaking)
  - air quality management plan
  - complaints procedure and site contact details in case of complaints from nearby residents
  - the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway, including the provision of temporary Traffic Regulation Orders
  - measures to deal with surface water run-off from the site during construction
- 10) No development shall take place until the following has been submitted to and approved in writing by the local planning authority:
- a Construction Environmental Management Plan setting out the steps to be taken to avoid impacts on wildlife and habitats during site preparation and construction

- an external lighting scheme including measures to be used to minimise light spill into the surrounding area and impacts on wildlife
- habitat enhancement and management measures

The Construction Environmental Management Plan shall be adhered to throughout the construction phase. Development shall be carried out in accordance with the approved external lighting scheme and the approved habitat enhancement and management measures and shall thereafter be permanently retained as such.

- 11) No development shall take place until details of noise mitigation measures have been submitted to and approved in writing by the local planning authority. The details shall ensure that:
- i) in any unoccupied bedroom the indoor ambient night time (23:00 to 07:00 hrs) noise level caused by noise emanating from Ridgeview Vineyard, as identified and measured in report reference number 160602/1 by Peter Moore Acoustics (dated 15 December 2016) shall not exceed 22dB LAeq 8hr and typical individual night time (23:00 to 07:00 hrs) noise events identified in the same report shall not exceed 45dB LAFmax
  - ii) in any unoccupied bedroom the indoor ambient night time (23:00 to 07:00 hrs) noise level caused by all noise sources shall not exceed 30dB LAeq 8hr and typical individual night time (23:00 to 07:00 hrs) noise events shall not exceed 45dB LAFmax
  - iii) in any unoccupied living room or bedroom the indoor ambient day time (07:00 to 23:00 hrs) noise level caused by noise emanating from Ridgeview Vineyard, as identified and measured in report reference number 160602/1 by Peter Moore Acoustics, dated 15 December 2016, shall not exceed 27dB LAeq 16hr
  - iv) in any unoccupied living room or bedroom the indoor ambient day time (07:00 to 23:00 hrs) noise level caused by all noise sources shall not exceed 35dB LAeq 16hr

The submitted details shall include measures to provide adequate ventilation with windows closed, for any living room or bedroom in which these internal noise level requirements would not be achieved with a window open. The internal ambient noise level through an open window shall be assumed to be 15 dB less than the façade noise level outside the window.

No dwelling shall be occupied until the approved measures relevant to that dwelling have been implemented. Thereafter, the measures shall be permanently retained as approved.

- 12) No development shall take place until a Phase 1 desktop contamination study for the site has been submitted to and approved in writing by the local planning authority. The study shall include a site history and site walk over, shall identify potential contaminants and receptors and shall include a conceptual site model. The study shall be undertaken by a competent person. The study shall provide the necessary information to assess whether an intrusive investigation is required. In the event that

the approved study identifies any measures to be taken, the approved measures shall be implemented before the development is occupied.

- 13) No dwelling shall be occupied until a scheme to provide visibility zones at the vehicular access to Folders Lane has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before the occupation of any dwelling and thereafter the visibility zones shall be kept permanently clear of any obstruction above a height of 600mm.
- 14) No dwelling shall be occupied until the car parking spaces serving that dwelling have been constructed in accordance with the approved planning drawings. Thereafter, these spaces shall be kept permanently available for vehicle parking.
- 15) No dwelling shall be occupied until the cycle parking spaces serving that dwelling have been constructed in accordance with details which have been submitted to and approved in writing by the local planning authority. Thereafter, these spaces shall be kept permanently available for cycle parking.

### Schedule of approved plans referred to in Condition 2

Plans 2B/4P/LTH	3631/2.11	E
Elevations 2B/4P LTH	3631/2.11/1	
Holborn Regent Plans Plot 44 handed	3631/2.15	F
Holborn Regent Elevations Plot 44	3631/2/15/1	
Knightsbridge 2 attached Plan Plot 70 handed	3631/2.16	F
Knightsbridge 2 Elevations Plot 70 handed	3631/2/16/1	
Knightsbridge Plans Plot 73	3631/2.18	E
Knightsbridge Elevations Plot 73	3631/2.18/1	
Latchford Plans Plots 46, 69 as, 51, 53, 61, 72	3621/2.19	F
Latchford Elevations	3621/2.19/1	
Streetscape	2.22	B
Streetscape	2.23	B
Streetscape	2.25	B
Streetscape	2.24	B
Streetscape	2.26	B
Holborn Regent Modified Plans Plot 46 as	3631/2.27	F
Holborn Regent Modified Elevations Plot 46 as	3631/2.27/1	
Apartments & Coach House Plan Plots 11-19	3631/2.29	E
Apartments & Coach House Elevations Plots 11-19	3631/2.29/1	
3B/5P Semi Type 1 Plots 47, 48 as Affordable Housing Tenure Plan Affordable Housing Location Plan Affordable Housing Site Plan	3631/2.36	D
2B/4P Semi Type 2 Plots 58, 59	3631/2.37	B
3B/5P Semi Type 2 Plots 9, 10, 23, 24, 26, 27, 49, 50 as, Plots 20, 21, 24, 25 handed	3631/2.38	C
3B/5P Mews Type 1 Plans Plots 1-4 as, 5-8 handed	3631/2.39	C
	3631/2.41	C

3B/5P Mews Type 1 Elevations Plots 1-4 as, 5-8 handed	3631/2.42	B
Connaught Side Entry Plans Plots 28, 32, 36, 60, 65 as, 34, 40 handed	3631/2.43	A
Connaught Side Entry Elevations Plots 28, 32, 36, 60, 65 as, 34, 40 handed	3631/2.43/1	
Pump Station	3631/2.44	
Bin/Cycle Store	3631/2.45	
Knightsbridge 2 detached plans Plot 67 handed	3631/2.46	B
Knightsbridge 2 detached Elevations Plot 67 handed	3631/2.46/1	
Holborn Regents Elevations	3631/2.47/1	
Holborn Regents Modified Plans Plot 39, 66 as	3631/2.48	A
Holborn Regents Modified Elevations Plot 39, 66 as	3631/2.48/1	
Latchford Plans Plots 31, 33, 37 ,63 as, 38, 41, 52, 62, 68, 71 handed	3631/2.49	A
Latchford Elevations Plots 31, 33, 37, 63 as, 29, 38, 41, 52, 62, 68, 71 handed	3631/2.49/1	
Knightsbridge 2 attached plans Plot 45 as	3631/2.50	A
Knightsbridge 2 attached elevations Plot 45 as	3631/2.50/1	
Knightsbridge 2 detached plans Plot 43 as	3631/2.51	A
Knightsbridge 2 detached elevations Plot 43 as	3631/2.51/1	
Site Plan	3631/3.00	N
Location Plan	3631/3.01	G
Parking Plan		
Accommodation Schedule		
Perspectives 1 – 4		
Site Layout Plan	22499A/SK	A
Site Sections Elevations AA & BB	22499A/SK	A
Site Section Elevations CC & DD	22499A/SK	A

*End of conditions*