



Department for  
Communities and  
Local Government

Our ref: APP/C3810/V/16/3143095  
Your ref: WA/22/15/OUT

Mr John Richards  
Fontwell Estates Ltd  
C.O Dandara Ltd  
KD Tower  
Cotterells  
Hemel Hempstead  
Herts HP1 1FW

13 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY FONTWELL ESTATES LIMITED & GLOBAL TECHNOLOGY  
RACING  
LAND EAST OF FONTWELL AVENUE, FONTWELL, WEST SUSSEX BN18 0SB  
APPLICATION REF: WA/22/15/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, S R G Baird BA (Hons) MRTPI, who carried out an Inquiry between 1-3 November 2016 into your client's application for outline planning permission for up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage, in accordance with application ref: WA/22/15/OUT, dated 5 May 2015.
2. On 20 January 2016, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, Arun District Council.

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

3. The Inspector recommended that planning permission be granted, subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to grant planning permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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

5. On 8 March 2017, the Walberton Neighbourhood Development Plan (WNDP) was made. The Secretary of State has taken account of the Inspector's comments at IR11.26 that a post-examination version of the WNDP was published after the close of the inquiry and that this post-examination version could proceed to referendum in February 2017. Given the plan had reached post-examination stage and was close to referendum at the time of the Inquiry, the Secretary of State is satisfied that the making of the WNDP does not necessitate additional referrals back to parties on this matter.
6. On 10 April 2017 Arun District Council published the proposed modifications to the Local Plan for public consultation.
7. On 17 May 2017 the Secretary of State referred back to the parties to invite representations on the implications, if any, of the Supreme Court judgment in the cases of *Suffolk Coastal District Council v Hopkins Ltd & Secretary of State for Communities and Local Government*; and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2017] UKSC 36. He circulated the representations he had received.
8. The Secretary of State has also received a number of other representations which were submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has given careful consideration to these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties.
9. In reaching his decision, the Secretary of State has taken account of all the representations received. Details of these representations are at Annex B. Copies are not enclosed with his letter but will be provided on application to the address at the foot of the first page of this letter.

## **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of saved policies of the Arun District Local Plan (ALP) adopted in 2003; the Barnham and Eastergate Neighbourhood Development Plan 2014-2029 (BENP), made on 16 July 2014; and the WNDP, made on 8 March 2017. The Secretary of State considers that the development plan policies of most relevance to this case include ALP Policies GEN 2, GEN3, as set out by the Inspector at IR4.2 and WNDP Policy HP 1 as set out at IR4.11 and IR4.22.
12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement (WMS) of 12 December 2016 on Neighbourhood Plans and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

### *Emerging plan*

13. The emerging plan comprises the Arun Local Plan 2011-2031 (eALP). The Secretary of State considers that the emerging policies of most relevance to this case include Policy H SP 1 as set out by the Inspector at IR4.11.

### **Main issues**

14. The Secretary of State agrees with the Inspector that the main issues are those set out at IR11.1.

#### *The need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs*

15. The Secretary of State has given careful consideration to the Inspector's reasoning at IR11.3-11.8 and agrees with his analysis. As part of the reference back exercise, representations were made by parties on the position of the housing land supply. The Secretary of State has taken the evidence into account, and in light of the Council's representation that the position of the housing land supply is 1.92 years, and adopting a 'policy off' position until the adoption of the emerging Local Plan, he concludes, for the reasons set out by the Inspector, that the HLS is less than two years.

#### *The effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park*

16. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.9-11.12. For the reasons given at IR11.11, he agrees with the Inspector that during the construction period and establishment of the landscape structure, the scheme would have a moderate adverse effect on the landscape, and in terms of visual impact, there would be slight to substantial effects to short distance views.

17. For the reasons given at IR11.9-11.11, the Secretary of State agrees with the Inspector's conclusion at IR11.12 that whilst residents would experience a change to the character and appearance of the area, the landscape and visual impact of the application would not be materially adverse and would conserve the landscape and scenic beauty of the South Downs National Park.

#### *The effects of the traffic generated by the proposal on highway safety and traffic conditions*

18. For the reasons given at IR11.13 the Secretary of State agrees that there is no reason to disagree with the conclusions in the Transport Assessment (TA) which accompanied the application which concludes that there would be no unacceptable highway effects.

#### *Whether the proposal would maximise sustainable transport solutions*

19. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.14-11.15 and he agrees with the Inspector that he has no reason to disagree with the parties that Fontwell is a sustainable location for development.

#### *Whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park*

20. The Secretary of State has given consideration to the Inspector's analysis at IR11.16-11.18. Like the Inspector, the Secretary of State observes that the provision of adequate

separation between the proposed unit for GTR, the other commercial units and nearby dwellings are matters that could be addressed as part of a reserved matters submission. The Secretary of State acknowledges that the proposed conditions include those to ensure that the operation of the commercial/retail units would be controlled in terms of their operating hours, visual impact and noise to ensure that their effect on residents' living conditions were acceptably mitigated.

21. Turning to the impact of the operation of Fontwell Racecourse, the Secretary of State agrees with the Inspector at IR11.17 that based on the evidence provided, there is no reason to conclude that the racing activities associated with the course would have an adverse effect on prospective residents' living conditions.
22. In regard to the one-off event, a Monster Truck Rally, the Secretary of State has considered the Inspector's analysis at IR 11.18 and agrees with his conclusion that whilst there would be noise issues for prospective residents from on-off activities of this nature, given their limited duration it would not, on its own, be a reason to dismiss the application.

*The effect of the proposal on biodiversity*

23. The Secretary of State has considered the Inspector's analysis at IR11.19–11.22 and agrees with his conclusion that the applicants have carried out appropriate and robust assessments of the potential impact of the development on the local ecology and biodiversity. All trees subject to a Tree Preservation Order would be maintained. For the reasons set out at IR11.19-11.22 the Secretary of State agrees with the Inspector's conclusion that the proposal would not have an unacceptable effect on local biodiversity.

*Whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development*

24. The Secretary of State has carefully considered the Inspector's analysis at IR11.23-11.25, and like the Inspector, he has had specific regard to paragraph 204 of the Framework and Regulations 112/123 of the CIL Regulations. The Secretary of State agrees with the Inspector that all the obligations, bar the NHS contribution, are necessary to make the development acceptable in planning terms. The Secretary of State agrees with the Inspector's assessment, for the reasons given, not to attach weight to this part of the S106 agreement. Therefore, like the Inspector, the Secretary of State concludes that the proposal would appropriately contribute to the provision of infrastructure requirements directly related to it (IR11.25).

*Whether the proposal would prejudice the preparation of the WNDP and/or whether it would accord with that plan*

*Prejudice to Preparation*

25. The Secretary of State has had regard to the fact that the WNDP has now been made and forms part of the development plan and is given due weight. For the reasons given in IR11.26-11.27, the Secretary of State agrees with the Inspector's conclusion that the application has not prejudiced its preparation.

*Conflict with Relevant WNDP Policies*

26. For the reasons given by the Inspector at IR11.29 the Secretary of State agrees that a grant of planning permission would not authorise the removal of the building Old Smithy.

The Secretary of State agrees that if the building makes it on to the Local list, its demolition or retention would be a matter for the reserved matters application. He further agrees that there is no conflict with WNDP Policy VE 5.

27. For the reasons given by the Inspector at IR11.29, the Secretary of State agrees with the Inspector that there is no conflict with WNDP Policy HP 2.
28. The Secretary of State has considered the Inspector's comments at IR11.31-IR11.32 and he agrees, for the reasons given, that the supporting text in the WNDP is not reflected in how Policy HP 1 is constructed or read on its face, and that the WNDP does not make specific provision for the application. As such the Secretary of State agrees with the Inspector that the application would conflict with the wording of WNDP Policy HP 1 as the application site is outside the BUAB of Fontwell and the Plan.

*Whether the proposal accords with the BENP*

29. For the reasons given at IR11.34 the Secretary of State agrees that the application is not in an area defined in BENP Policy ES3, and thus finds no conflict with that policy. He further notes that the EPC no longer relies on conflict with Policy ES4, and he concludes there is no such conflict.
30. The Secretary of State agrees with the Inspector (IR11.36) that there is nothing in the evidence to suggest that, subject to careful consideration at the reserved matters stage, the application would result in a form of development that would conflict with BENP Policies ES5 or ES6.
31. For the reasons set out by the Inspector at IR11.36, the Secretary of State agrees that, subject to the imposition of appropriate conditions, the development of this part of the site would not have a materially adverse effect on development within the EPC area, and as such concludes that there would be no conflict with BENP Policy EE3.
32. The Secretary of State agrees (IR11.37) that the application site is identified under eALP Policy H SP1 which deals with strategic housing. He further agrees that the proposal could not be defined as small residential development, infill or a redevelopment site. As such he concludes, in agreement with the Inspector, that there is no conflict with BENP Policy HP2.
33. He agrees that the BENP and Policy H1 – Specific Site Allocation have to be read in the context of the respective roles of Neighbourhood Plans which deal with local, non-strategic needs and Local Plans which deal with strategically assessed needs across the whole district.
34. The Secretary of State has considered the Inspector's comments at IR11.40 that Policy HP 1 (the bold text) refers only to a site allocated to meet local need. The Secretary of State agrees with the Inspector's conclusion that in light of this and when viewed in the context of the respective roles of Neighbourhood Plans and Local Plans, the application cannot be held in conflict with Policy HP 1. He further agrees with the Inspector's reasoning at IR11.40 that there is no other specific provision in the BENP that would restrict development on the application site.
35. Like the Inspector, the Secretary of State has had regard to the submissions made about the relevance of the Crane v SSCLG [2015] EWHC 425 (Admin) and his decision in the Yapton appeal. For the reasons set out in IR11.41, the Secretary of State agrees that the positions in those cases are materially different. The Secretary of State agrees that unlike

in the case of Crane, the BENP has not considered all of the sites and this judgement did not take account of the relative roles of Neighbourhood Plans and Local Plans in allocating development. He further agrees that at Yapton, a BUAB has been defined and the plan makes specific provision for further local allocations should the local planning authority require it. The Secretary of State agrees with the Inspector that this is not the case with the BENP.

36. As such the Secretary of State agrees with the Inspector's conclusion at IR11.42 for the reasons given that there would be no conflict with the relevant policies of the BENP and the plan as a whole

*Whether the proposal would accord with any other relevant adopted or emerging development plan policies*

#### *Arun Local Plan*

37. For the reasons given by the Inspector at IR11.43-IR11.44, the Secretary of State agrees with the Inspector's conclusion that there would be no conflict with Policy GEN 7; Policy GEN 8; Policy GEN28; Policy GEN29 and Policy DEV17. He further agrees with the Inspector's conclusion that as the site lies outside the BUAB it is categorised as countryside and the scheme would conflict with ALP Policies GEN 2 and GEN 3.

#### *Emerging Arun Local Plan*

38. The Secretary of State has carefully considered the Inspector's analysis at IR11.45-11.47. The Secretary of State notes that since the Inquiry, the Council has published proposed modifications to the emerging Local Plan and he has taken into account those modifications and representations received on this matter in reaching his decision. The Secretary of State notes that the proposed modifications are yet to be finally examined and adopted. Given that there has been an almost doubling of the OAN to 919 dpa and a housing land supply that currently stands at around 1.92 years, the Secretary of State considers that limited weight can be attached to the eALP.

*Any significant social, economic or environmental impacts not covered above*

39. The Secretary of State agrees with the Inspector that no other material issues relating to social, economic or environmental issues were raised at the Inquiry.

#### *Prematurity*

40. The Secretary of State has given careful consideration to the Inspector's analysis in respect of prematurity at IR11:53-11:55. For the reasons given at IR11.54, the Secretary of State agrees that against a housing requirement over the plan period of 18,000 units, the application does not come close to the threshold of being significant or in closing off other options in terms of spatial strategy when the revised eALP is published. He also concludes, in agreement with the Inspector at IR11.55 that the eALP can no longer be considered as being at an advanced stage as there is no indication as to when a revised plan will be published, examined or adopted. As such the Secretary of State considers that little weight should be attached to the potential for this application to undermine the plan making process.

## **Planning conditions**

41. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.6 and IR11.58-11.60, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex A should form part of his decision.

## **Planning obligations**

42. Having had regard to the Inspector's analysis at IR10.8-10.15 and IR11.61, the planning obligation dated 2 December 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.61 that all the obligations, bar the NHS contribution which has not been substantiated and fails the CIL tests, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.

43. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application (IR10.8-10.15 and IR11.61). The Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

## **Planning balance and overall conclusion**

44. For the reasons given above, the Secretary of State considers that the application is not in accordance with ALP Policies GEN 2 and GEN 3 and WNDP Policy HP 1 and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

45. Given the absence of a 5 year supply of deliverable housing sites, the Secretary of State considers that paragraph 14 of the Framework is engaged. The Secretary of State considers that as the Council cannot demonstrate a 3 year supply, the Written Ministerial Statement on Neighbourhood Planning does not apply.

46. He therefore considers that planning permission should be granted unless (a) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted.

47. Given the significant shortfall, the Secretary of State considers that only limited weight can be attached to the conflict with ALP Policies GEN 2 and GEN 3 and WNDP Policy HP 1. Given the significant shortfall in the HLS position and the fact that the spatial strategy of the eALP is likely to be subject to major change, to service an OAN that has almost doubled in the last 3 years, the Secretary of State considers the relevant policies within the publication version of the eALP should be given little weight.

48. The Secretary of State considers that little weight should be attached to the potential for this application to undermine the plan making process for the reasons set out above.
49. The Secretary of State considers that this application would: make a substantial contribution to housing and affordable housing in the district; make a valuable contribution to the local economy; boost the sustainability of Fontwell and give the local community a substantial area of public open space. These are benefits to which the Secretary of State attaches significant weight to in the planning balance.
50. There are no specific policies in the Framework that indicate that this development should be restricted. For the reasons set out above, the Secretary of State concludes that the adverse impacts do not significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
51. The Secretary of State therefore concludes that outline planning permission should be granted, subject to conditions.

### **Formal decision**

52. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants outline planning permission, subject to the conditions set out in Annex A of this decision letter, for up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage, in accordance with application ref: WA/22/15/OUT, dated 5 May 2015.
53. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

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

54. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
55. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
56. A copy of this letter has been sent to Arun District Council, Eastergate Parish Council and Walberton Parish Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Philip Barber* Authorised by Secretary of State to sign in that behalf



## Annex A

### PLANNING CONDITIONS

1. Details of the layout, scale, appearance, and landscaping (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby approved shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development hereby permitted shall be carried out in accordance with the approved plans:  
57631-101 Rev P2 – Site Location Plan;  
1186-02 Rev D - Access to Arundel Road;  
1186-03 Rev G - Access to A29, Fontwell Avenue;  
1186-05 Rev A – Proposed Roundabout Improvement;  
6233-A-08 Rev C - Tree Retention Plan - Detailed Access Junction.
5. No development shall take place until a detailed scheme of phasing for the construction of the dwellings and associated highways and public areas has been submitted to and approved in writing by the local planning authority. The scheme shall include a schedule identifying the order of commencement and completion within each phase of construction. This scheme shall identify the curtilage of the main commercial area of the development as referred to in condition 20. Development shall be carried out in accordance with the approved details.
6. Prior to the commencement of construction works on each phase of the development a schedule of materials and finishes to be used for external walls and roofs of the proposed buildings shall be submitted to and approved in writing by the local planning authority. The development shall be carried put in accordance with the approved details.
7. Prior to the commencement of any residential development, a Design Code Masterplan shall be submitted to and approved in writing by the local planning authority. Development shall be carried put in accordance with the approved Design Code Masterplan.
8. The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned domestic gardens. The landscape management plan shall be implemented in accordance with the approved details.
9. No residential development shall take place until details of the laying out of and a timetable for the provision and future maintenance of Public Open Spaces has been

submitted to and approved in writing by the local planning authority. The layout details submitted in compliance with Condition 1 shall define the boundaries of such areas, their proposed use, equipment, and their means of enclosure and all other structures to be installed. Development shall be carried out in accordance with the approved details.

10. Prior to the commencement of construction works on each phase of the development, details of hard and soft landscaping and details of existing trees and hedgerows to be retained, shall be submitted to, and approved in writing by the local planning authority. The approved landscaping details shall be carried out in the first planting and seeding season, following the occupation of the buildings or the completion of the development of that phase, whichever is the sooner, and any trees or plants which, within a period of 5 years from the completion of 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 gives written consent to any variation.
11.
  - (a) Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 (Trees in relation to design, demolition and construction: Recommendations), which provides for the retention and protection of trees, shrubs and hedges to be retained on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved protection scheme;
  - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place;
  - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme;
  - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.
12. Prior to the commencement of construction works on each phase of the development, full details of the proposed surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations and the recommendations of the SUDS Manual produced by the Construction Industry Research and Information Association. Winter groundwater monitoring to establish highest annual ground water levels and Percolation testing to BRE Digest 365 standards, or similar approved standards, will be required to support the design of any Infiltration Drainage. No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the implemented scheme shall be maintained in good working order in perpetuity.

13. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. Development shall be carried out in accordance with the approval details.
14. Prior to the commencement of construction works on each phase of the development full details of the maintenance and management of the SUDs system shall be set out in a site-specific maintenance manual and submitted to, and approved in writing, by the local planning authority. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturers recommended design life. Upon completed construction of the SUDs System, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
15. Prior to the commencement of construction works on each phase of the development details of a proposed foul drainage system shall be submitted to and approved in writing by the local planning authority including details of its siting, design and subsequent management/maintenance, if appropriate. No dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
16. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. Development shall be carried out in accordance with the approved details.
17. Prior to the commencement of construction works on each phase of the development or any preparatory works, a detailed ecological enhancement scheme based on the recommendations within the supporting ecological statement, which shall include the installation of bat boxes throughout the site, shall be submitted to and approved in writing by the local planning. All approved details shall then be implemented in full and in accordance with the agreed timings and details.
18. No demolition, ground clearance or vegetation clearance works shall take place within the bird nesting season (between 1 March and 31 August inclusive in any year). If such works cannot be undertaken outside of the nesting season, a nesting bird check shall be required, which should be undertaken by a suitably qualified ecologist immediately prior to the works taking place. Subsequently if any active nest sites are identified, these nests should remain undisturbed until all the young have fledged naturally.
19. No development shall take place, including any works of demolition, until a Construction Management Plan (to include a Construction Traffic 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 entire construction period. The Construction Management Plan shall provide details as appropriate but not necessarily be restricted to the following matters:
  - a). the anticipated number, frequency and types of vehicles used during construction;

- b). the parking of vehicles by site operatives and visitors;
- c). the loading and unloading of plant, materials and waste;
- d). the storage of plant and materials used in construction of the development;
- e). the erection and maintenance of security hoarding;
- f). 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);
- g). details of public engagement both prior to and during construction works.

Construction of the development shall then be carried out in accordance with the agreed Construction Management Plan.

20. The following applies to the commercial area of the development as identified in the phasing plan submitted under condition 5 above:
- a.) No commercial vehicles (not including private vehicles solely in use for the private use of staff or visitors) shall be operated within the commercial area of the development except between the hours of: 07.00 and 19.00 hours on Mondays to Fridays inclusive; 07.00 and 13.00 hours on Saturday, not at any time on Sundays or Public Holidays;
  - b.) deliveries and dispatches by commercial vehicles to and from the commercial area of the development shall only be made to or from the site between the hours of 07.00 - 19.00 hours Monday to Friday, 08.00 - 13.00 hours on Saturday and at no time on Sundays, Bank or other Public Holidays;
  - c.) no raw materials, finished or unfinished products or parts, crates, packing materials or waste shall be stacked or stored on the commercial area of the development except within the buildings or storage areas approved by the local planning authority.
  - d.) prior to construction of the commercial area of the development, details of the forecourt layout and drainage and the position and intensity of all lighting fittings for the commercial uses within this area shall be submitted to and approved in writing by the local planning authority. When in operation all lighting shall be operated in accordance with the approved details. The approved drainage provision shall be implemented prior to the commercial area of the development coming into operation.
21. Prior to the commencement of development of the commercial area of the development, a scheme shall be submitted to and approved in writing by the local planning authority which specifies the provisions to be made for the control of noise emanating from the commercial area of the development. Prior to the commercial area of the development coming into operation, all agreed physical measures for the control of noise will be implemented. The use of the commercial area will be operated in accordance with any agreed continuing requirements for the control of noise from the site.
22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources or equivalent fabric first standards that would secure a 10% reduction in energy use. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority as a part of the reserved matters submissions required by condition 2. The approved details shall be

implemented in accordance with the approved timetable and retained as operational thereafter.

23. No development shall take place until details for the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been submitted and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
24. No part of the development hereby permitted shall be occupied until the completion of the improvements to the A27/A29 Fontwell Roundabout shown on Drawing Number 1186-05 Rev A - Proposed Roundabout Improvements.
25. Prior to the commencement of construction works on each phase of the development a Travel Plan shall be submitted to and approved in writing by the local planning authority and implemented. The Travel Plan shall include arrangements for monitoring and effective enforcement.
26. Prior to the commencement of development a Non-Motorised Users Audit shall be undertaken for the construction stage of the development, and its findings shall be reflected in the Construction Management Plan required under condition 19. Prior to the commencement of each phase of the development Non-Motorised Users Audits shall be undertaken and their findings taken into account.
27. Prior to the commencement of development, details shall be submitted to and approved in writing by the local planning authority regarding the provision of an emergency access from the site onto Arundel Road. Prior to occupation of no more than 100 dwellings, the emergency access shall be provided in accordance with the approved details.

## Annex B – Schedule of representations

### SCHEDULE OF REPRESENTATIONS

#### General representations

| Party   | Date  |
|---|---|
| Jon D Cann  | 11 February 2017, 4 February 2017, 3 December 2016, 30 October 2016 |
| Walberton Parish Council  | 4 February 2017   |
| John Richards<br>Dandara  | 7 February 2017   |
| Luke Simpson<br>Adams Hendry (on behalf of the Eastergate Parish Council) | 7 February 2017   |

#### Representations received in response to the Secretary of State's letter of 17 May 2017

|   |              |
|---|--------------|
| Charles Mills, Daniel Watney LLP (on behalf of the applicants)        | 25 May 2017  |
| Gordon Bell   | 31 May 2017  |
| Luke Simpson<br>Adams Hendry (on behalf of Eastergate Parish Council) | 31 May 2017  |
| Neil Crowther, Arun DC  | 9 June 2017  |
| Gordon Bell   | 15 June 2017 |
| Luke Simpson<br>Adams Hendry (on behalf of Eastergate Parish Council) | 15 June 2017 |

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

by S R G Baird BA (Hons) MRTPI

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

Date: 1 March 2017

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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION BY

FONTWELL ESTATES LIMITED

&

GLOBAL TECHNOLOGY RACING

ARUN DISTRICT COUNCIL

Inquiry held on 1 November 2016

Land East of Fontwell Avenue, Fontwell, West Sussex BN18 0SB

File Ref: APP/C3810/V/16/3143095

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## GLOSSARY

|           |   |
|-----------|---|
| AH        | Affordable Housing                      |
| ALP       | Arun Local Plan                         |
| BENP      | Barnham & Eastergate Neighbourhood Plan |
| BUAB      | Built Up Area Boundary                  |
| CD        | Core Document                           |
| eWNDP     | Emerging Walberton Neighbourhood Plan   |
| EI        | Examining Inspector                     |
| EPC       | Eastergate Parish Council               |
| Framework | National Planning Policy Framework      |
| ha        | Hectare(s)                              |
| HA        | Highway Authority                       |
| HE        | Highways England                        |
| HLS       | Housing Land Supply                     |
| IM        | Illustrative Masterplan                 |
| LGA       | Local Green Space                       |
| LP        | Local Plan                              |
| lpa       | Local Planning Authority                |
| NP        | Neighbourhood Plan                      |
| OAN       | Objectively Assessed Need               |
| PPG       | Planning Practice Guidance              |
| SoCG      | Statement of Common Ground              |
| SoS       | Secretary of State                      |
| TA        | Transport Assessment                    |
| WMS       | Written Ministerial Statement           |
| WSCC      | West Sussex County Council              |
| WPC       | Walberton Parish Council                |

Richborough Estates

**File Ref: APP/C3810/V/16/3143095**

**Land East of Fontwell Avenue, Fontwell, West Sussex BN18 0SB**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990 on 20 January 2016.
- The application is made by Fontwell Estates Limited & Global Technology Racing.
- The application Ref WA22/15/OUT is dated 5 May 2015.
- The development proposed is up to 400 new dwellings, up to 500 sq. m of non-residential floor space (A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace (B1 (b)/(c) and associated works including access, an internal road network, highway works, landscaping, selected tree removal informal and formal open space and play areas, pedestrian and cyclist infrastructure, utilities, drainage infrastructure, car and cycle parking and waste storage.
- The reason given for making the direction was consistency with policy on calling-in planning applications.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application are: the conflict with the made Barnham and Eastergate Neighbourhood Plan and any other matters the Inspector considers relevant.

**Summary of Recommendation: The application be approved.**

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**1. Preliminary Matters**

- 1.1 This is an outline application with all matters other than access reserved. Plans submitted with the application are listed at Annex A. At the opening of the inquiry, the applicants requested that the application be considered on the basis of revised illustrative plans; Annex B, Plans 13 to 19. There were no objections and no party would be prejudiced by the application being considered on the basis of the revised illustrative plans. The recommendation is based on the principles contained in revised plans.
- 1.2 The Secretary of State (SoS) confirmed<sup>1</sup> that in exercise of the powers conferred on him by Regulations 12(1) and 6(4) the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824) the development is not Environmental Impact Assessment development
- 1.3 A Pre-Inquiry Note was issued identifying matters to be addressed (CD 1). These are:
- whether the proposal would accord with the Barnham and Eastergate Neighbourhood Development Plan (BENP);
  - whether the proposal would prejudice the preparation of the Walberton Neighbourhood Development Plan and/or whether it would accord with that plan (WNDP);
  - whether the proposal would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies;

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<sup>1</sup> 5 October 2016

- the need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs;
  - the effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park;
  - the effect of the traffic generated by the proposal on highway safety and traffic conditions;
  - whether the proposal would maximise sustainable transport solutions;
  - whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park;
  - the effect of the proposal on biodiversity;
  - whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development;
  - any other significant social, economic or environmental impacts not covered above.
- 1.4 The local planning authority (lpa) considered the application on the 25 November 2015 and resolved to grant planning permission subject to conditions and a S106 Agreement (CD 24). The applicants submit an engrossed S106 Agreement dealing with the provision of financial contributions relating to: education; libraries; the fire service; highways and transport; police infrastructure; primary healthcare facilities; leisure facilities and the provision of affordable housing and public open space (CD 37). The applicants, the lpa and West Sussex County Council (WSCC) submitted notes on CIL R122 compliance (CDs 49, 55 & 52).
- 1.5 Walberton Parish Council (WPC) signed an Addendum Statement of Common Ground (aSoCG) with the applicants and the lpa (CD 5). WPC no longer wished to proceed as a joint Rule 6 Party with Eastergate Parish Council (EPC). WPC became a Rule 6 Party in its own right.
- 1.6 By close of the inquiry agreement was reached between WPC and the lpa on modifications to the Walberton Neighbourhood Development Plan 2015-2035, Regulation 15 Submission – Autumn 2015 (CD 8). WPC confirmed that an amended plan, the Walberton Neighbourhood Development Plan 2015-2035 – Post Examination Version would be published on 9 November 2016 and that a Referendum would be held on 1 February 2017 (CD 56, WPC 6 & WPC 7).
- 1.7 The amended WNDP was submitted after the close of the inquiry and the parties were given the opportunity to comment. Representations were received from the applicants, the lpa and EPC (APP 16, LPA 7 & EPC 6). These submissions raise matters of substance, on which, in the interests of fairness, the applicants, the lpa and WPC were given an opportunity to comment (APP 17, LPA 8 & WPC 8). The position of the parties on the modified version of the WNDP is reported within their cases.
- 1.8 On 12 December 2016 a Written Ministerial Statement (WMS) concerning Neighbourhood Planning was published (INSP 1). The WMS sets out a change to Government policy with regard to the circumstances under which relevant policies for the supply of housing within Neighbourhood Plans (NP)

are automatically deemed to be out of date where there is a lack of a housing land supply (HLS).

- 1.9 By the close of the inquiry, the lpa had not published an up-to-date HLS statement. Then, the most recent statement on HLS was contained at paragraph 3.17 of an Inspector's report to the SoS on the Yapton Appeal held in July 2015 (CD 10).
- 1.10 Before offering the parties an opportunity to comment on the implications of the WMS, I sought an update from the lpa on the 5-year HLS position (INSP 2). The Local Plan Sub-Committee on the 6 December 2016 received a report setting out the current HLS for a "Policy Off" position (LPA 9). On 15 December 2016, the lpa report was circulated to the other parties with an invitation to submit comments on the WMS and the weight that should now be attached to relevant policies for the supply of housing. In January 2017 the HLS was updated by the lpa (LPA 10). The responses of the parties are included within their cases.
- 1.11 Unaccompanied site visits were made to the site and its surroundings prior to the inquiry on 31 October 2016 and following the close of the inquiry on 4 November 2016. The list of documents includes opening and closing submissions and proofs of evidence from the main parties. The proofs of evidence are as originally submitted and do not take account of how that evidence may have been affected by cross-examination or subsequent discussions and agreement between the parties. In reporting the cases for the main parties, I have used the opening and closing submissions as the basis for their cases.

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## **2. The Proposal**

- 2.1 The application is for residential development of up to 400 dwellings, up to 500 sq. m of non-residential floor space (Use Classes A1, A2, A3, D1 and/or D2), 5,000 sq. m of light industrial floorspace [Use Classes B1 (b)/(c)] and associated works including off-site highway works, landscaping and public open space (Plan 15).
- 2.2 The residential component would have a net development area of some 11.4ha with a maximum density of 35 dwellings per hectare (dph). Building heights would be mostly 2-storey with some 2.5 and 3-storey buildings as design features (Plan 19). Some 30% of the dwellings would be affordable homes (AH). The industrial site extends to some 0.85ha and is located in the north-west corner of the site. The industrial unit, which would have a maximum height of some 12m, is intended for use by a local firm, Global Technology Racing (GTR), as a headquarters building. GTR would retain its existing nearby premises at Denmans Lane. Some 4.5ha of public open space would be located in the northern part of the site and comprise a sports pitch, a pavilion, play areas of various sizes and informal open space.
- 2.3 Vehicular access to the residential scheme would be from Fontwell Avenue (A29) via a ghost island priority junction (Plan 4). Vehicular access to the industrial unit would be from Arundel Road via a ghost island priority junction staggered with the entrance to the petrol filling station/services on the northern side of Arundel Road (Plan 3). A pedestrian and an emergency only vehicular access would be provided off Arundel Road. Pedestrian and cycle only accesses would be provided off Fontwell Avenue, Arundel Road and Wandleys Lane (Plans 18 & 15). Off-site highway works include improvements to the A27/A27 roundabout to the north-west of the site and reducing the speed limit on Fontwell Avenue to 40 mph.

### **3. The Site and Surroundings**

- 3.1 The site extends to some 17.8ha of open land adjoining the settlement boundary of Fontwell (Plan 1). The land comprises a series of irregularly sized paddocks and fields primarily used for stock and equestrian grazing with associated boundary hedgerows, trees and vegetation. Several of the trees are covered by Tree Preservation Orders. Although the land is generally flat, it falls gently to the south, west and south-east. The western part of the site is located within the EPC administrative area and the eastern part is within the WPC administrative area.
- 3.2 To the north are residential properties fronting on to Arundel Road. Beyond Arundel Road, is the main residential area of Fontwell and beyond that is the South Downs National Park. Located at the junction of Arundel Road and the A27 is a service area consisting of a petrol filling station, motel and fast food restaurant (APP 10 VP4). Located on Arundel Road to the east is a row of 4 shops, which include a village store. The eastern boundary is formed by mature trees and hedgerows and Wandleys Lane. Here, Barn Farm and its associated buildings project into the site. The southern boundary of the site is formed by dense trees and hedgerows. Here, the site adjoins a Care Home and residential properties. The western boundary is formed by Fontwell Avenue. This boundary is planted with mature trees with high canopies offering views into the site (APP VP5). To the west of Fontwell Avenue is Fontwell Racecourse set back behind an open area used for car parking on race and event days and for some events. To the north of the racecourse and located at the junction of Fontwell Avenue and the A27 are a hotel and a public house/restaurant.

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#### 4. Planning Policy and Other Relevant Guidance

##### Development Plan

- 4.1 The relevant parts of the development plan are, the saved policies of the Arun District Local Plan 2003 (ALP) and the made BENP 2014-2029.
- Arun Local Plan 2003 (CD 6)
- 4.2 The majority of the application site is outside the built-up area boundary (BUAB) for Fontwell identified by *Policy GEN 2 – Built-up Area Boundary*. Outside the BUAB, development will not be permitted unless it is consistent with other ALP policies. *Policy GEN 3 - Protection of the Countryside* states that except for several categories of development, none of which relate to the application proposal, development will not be permitted outside the BUAB.
- 4.3 *Policy GEN 7 – The Form of New Development* sets out design requirements for new development. Permission will only be granted for schemes displaying a high quality design and layout. *Policy GEN 8 – Development and the Provision of Infrastructure* requires development to be provided with adequate and appropriate infrastructure. *Policy GEN 28 – Trees and Woodlands* says that development will not be permitted if it would result in damage to or the loss of trees protected by a Tree Preservation Order unless the benefits of the development would outweigh the amenity value of the trees. *Policy GEN 29 – Nature Conservation across the District* says that development will only be permitted on sites which contain semi-natural habitats or features of nature conservation interest where these can be largely retained. *Policy DEV 17 – Affordable Housing* requires AH to be provided when a proposal is for 25 or more dwellings. The scale and type of AH will be dependent on identified local housing need, character of the area, suitability of the site and market conditions at the time of the application.
- Barnham and Eastergate Neighbourhood Development Plan 2014-29 (CD 7)
- 4.4 *Policy ES3- The Local Gap/Green Infrastructure Corridor*, broadly precludes development within these gaps/corridors. The BENP refers back to the ALP Proposals Map for a definition of Local Gaps. Within the BENP area, the only designated green gap is between Barnham and Eastergate (ALP Policy Area 11(iv)). The application site is not within this area.
- 4.5 *Policy ES4 – Protection of Open Views* says that open views towards the countryside or across open spaces will be maintained if possible. The supporting text to this policy identifies that residents' value the connection with the open countryside. The policy notes that the creation of public space within new developments does not make up for the loss of open countryside.
- 4.6 *Policy ES5 – Quality of Design* requires a high standard of design. *Policy ES6 – Contribution to Local Character* requires new development to contribute positively to the character of the 2 villages.
- 4.7 *Policy H1 – Specific Site Allocation* allocates a site for at least 60 dwellings in Eastergate. The supporting text notes that this allocation is in addition to any strategic allocation that may be made in the Local Plan (LP) for housing on the larger site to the south of Barnham and Eastergate. *Policy H2 -*

*Windfall Sites* provides for permission to be granted for small residential developments on infill and redevelopment sites.

- 4.8 *Policy EE3 – Support for New Commercial Uses* states that new development for Class B1 uses, including light industry, will be supported where the impact on surrounding residential and community amenity is acceptable and other policy considerations are complied with.

#### **Emerging Development Plans**

- 4.9 These include the emerging Arun Local Plan 2011-2031, Publication Version, October 2014 (eALP) and the eWNDP 2015-2035.

Arun Local Plan 2011-2031 - Publication Version October 2014 (CD 9).

- 4.10 The eALP was submitted for examination in February 2015. Following a material increase in the Objectively Assessed Need (OAN) for housing (CD 23) the eALP examination has been suspended to allow the Ipa to review potential locations for development.
- 4.11 *Policy H SP1 – Strategic Housing, Parish and Town Council Allocations* proposes to accommodate strategic housing in 6 ways, one of which is described as Site Specific Allocations Development Plan Document for Ford and Fontwell. Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. The eALP recognises that both Ford and Fontwell lack some key services and growth may enable the creation of settlements that are more sustainable. The eALP notes that there is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared to establish if sites can be allocated to improve the sustainability of these settlements.
- 4.12 The eALP also seeks to provide for strategic housing through Parish and Town Allocations. The parishes of Eastergate and Walberton are allocated 100 and 50 dwellings respectively. The policy states, that all NPs shall provide for the stated number of housing units within their area. The 100 and 50 dwellings are noted in the eALP as minimum allocations and are in addition to the strategic allocations.
- 4.13 *Policy SD SP2 – Built-up Area Boundary* states that outside the BUAB apart from Strategic, Site Specific and Broad Allocations, development will not be permitted unless consistent with other plan policies. *Policy C SP1 – Countryside* states that outside the BUAB as well as outside the Strategic, Site Specific and Broad Allocations the countryside will be safeguarded for its own sake. Development will not be permitted unless it falls with several identified categories, none of which apply to this application.

Walberton Neighbourhood Development Plan (WPC 7)

- 4.14 The WNDP was submitted to the Ipa in October 2015 (CD 8), was the subject of examination in March 2016 and the Examiner's Report was published in July 2016 (CD 27).



- 4.15 In the October 2015 version, *Policy VE1 – Designation of Local Green Space* sought to designate part of the application site (Fontwell Meadows) as a Local Green Space (LGS). Whilst the Examiner recommended that Fontwell Meadows was suitable to be designated as LGS he concluded overall that the plan did not comply with the basic conditions that would enable it to proceed to Referendum (CD 27 page 81).
- 4.16 The Ipa issued a Decision Notice on the October 2015 version disagreeing with the recommendation for the Fontwell Meadows LGS designation on the grounds it did not satisfy the requirements of Framework paragraph 77 (CD 34). The Ipa's position was that for the WNDP to proceed to a Referendum, it should be revised so that Fontwell Meadows was not designated as LGS.
- 4.17 WPC has published a modified WNDP 2015-2015 Post-Examination Version (WPC 7). In the Post Examination Version, the Fontwell Meadows LGS is deleted. The Ipa confirms that the Post Examination Version, complies with the legal requirements and basic conditions of the Localism Act 2011, and that it can proceed to Referendum (LPA 7 & WPC 6).
- 4.18 In the October 2015 and Post-Examination Versions of the WNDP, *Policy VE 3- Protection of Trees and Hedgerows* states that development that damages or results in the loss of ancient trees, trees of arboricultural and amenity value, hedgerows or significant ground cover will be resisted.
- 4.19 In the October 2015 and Post-Examination Versions of the WNDP, *Policy VE 5 - Buildings and Structures of Character*, requires that "*proposals relating to them will be expected to retain their local distinctiveness and removal of part or all of them will not be permitted unless it can be demonstrated that they cannot be put to alternative beneficial or viable use*". Schedule 5A identifies buildings and structures "Locally Listed" by the Ipa, none of which are in Fontwell. Schedule 5B identifies the Old Smithy, which is within the application site as a building which should be added to the Local List. *Policy HP 2 - Land to the east of The Old Police House Fontwell*, both the October 2015 and Post-Examination Versions of the WNDP identify this site for residential development. This site includes the Old Smithy and is part of the application site. The October WNDP allocates the site for 6 dwellings and the Post-Examination version allocates the site for a minimum of 6 dwellings.
- 4.20 Both the October 2015 and Post-Examination Versions of the WNDP provide for the minimum 50 dwellings allocated under eALP Policy H SP1. Section 5.4 - Key Housing Aims of both versions of the NP provide for a strategy of dispersing housing and avoiding development on large sites. However there are material differences in the text and supporting text of *Policy HP 1 – Spatial Plan of the Parish* between the October 2015 and Post-Examination Versions of the plan.
- 4.21 The October 2015 version of the WNDP Policy HP 1 supports development on sites allocated in the plan, and precludes development outside the BUAB unless the plan makes specific provision for development (CD 8).
- 4.22 In the Post-Examination version, the text of Policy HP 1 says "*By reference to Emerging Policies SD SP2 – Built-up Area Boundary, CSP1 – Countryside, GI*

*SP 1- Green infrastructure and development, SD SP3 – Gaps between Settlements, Policy H SP1 – Strategic housing, parish and town council allocations and other relevant policies... Development proposals for other new dwellings outside the Built-up areas will be resisted unless the Plan has made specific provision for these proposals". A note has been added to the supporting text indicating that Policies HP 1 and HP 2 "...are to be read in conjunction with noting that PC supports the grant of planning permission at Fontwell Meadows with the revised proposals and the transfer of 4.5ha of Open Public Space to the Parish" (WPC 7).*

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

- 4.23 National planning policy is set out in the National Planning Policy Framework (Framework) and planning guidance is contained in Planning Practice Guidance (PPG). I have had regard to relevant sections of the Framework including paragraphs 11 to 17; 47 to 50; Section 11; paragraphs 150 to 162; 182 to 185; 196 to 198 and paragraphs 204 and 216 and relevant sections of PPG including ID 41. Regard has been had to the WMS on Neighbourhood Planning published on the 12 December 2016 (INSP 1)

Richborough Estates

## 5. The Case for Fontwell Estates Limited & Global Technologies Racing

The material points are: -

### Introduction

- 5.1 This is a mixed-use scheme to include: up to 400 market and affordable homes; new headquarters premises for a successful local business; several small shops/services and community facilities and the provision of a substantial amount of public open space. Whilst much of the dispute centres on housing and policy, the benefits of the scheme as a whole must not be lost sight of.
- 5.2 The application is in outline apart from access and the lpa would have granted planning permission (CD 24). The lpa's position is significant given the recent revision to the Illustrative Masterplan (IM - Plan 15), which is the subject of an aSoCG (CD 5). As part of the applicants' engagement with the local community, the revised IM shows the relocation and significant enlargement of the public open space (POS) to some 4.5ha. The S106 Agreement would transfer the POS to WPC (CD 37). WPC has withdrawn its opposition to the application, provided that any permission it is conditioned to the revised IM and accompanied by a S106 Agreement.

### The Development Plan

- 5.3 As the site lies outside the BUAB and is categorised as countryside the scheme would conflict with ALP Policies GEN 2 and GEN 3. The BUABs are set to accommodate perceived development needs up until 2011. These policies are out-of-date in terms of the Framework paragraph 14 presumption in favour of sustainable development. These policies are also out-of-date because the lpa cannot show a 5-year HLS (Framework paragraph 49). EPC concedes<sup>2</sup> this double reason for out-datedness.
- 5.4 BENP Policy ES3 - The Local Gap/Green Infrastructure Corridor is not relevant to this application and EPC no longer argues that the application conflicts with BENP Policy ES4 - Open Views. EPC's case on conflict solely relates to BENP Policy H1, which allocates a site for 60 homes and Policy H2 - Small Windfall Sites. EPC's case proceeds on the basis of a misunderstanding both of the meaning and effect of these policies. When properly construed having regard to the role of NPs (local, non-strategic, needs) when compared with LPs (strategic, objectively assessed needs across the whole district) these BENP policies are not breached. A development that includes some 400 homes is plainly strategic and that is how the eALP regards it.
- 5.5 There is no conflict with the BENP and Policies H1 and H2 are neutral in so far as the application is concerned<sup>3</sup>. The starting point is the text of Policy H1 and much is made by EPC of the wording of paragraph 9.1.4, second bullet point (CD 7 page 36). Although EPC suggest<sup>4</sup> that this reference relates only

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<sup>2</sup> X-Examination of Mr Simpson.

<sup>3</sup> Mr Mills Evidence-in-Chief.

<sup>4</sup> X-Examination of Mr Redwood.

to a future strategic allocation "*on the larger site to the south of Barnham and Eastergate*", (not the application site) it concedes<sup>5</sup> that the Policy H1 allocation is additional to the eALP strategic allocations. EPC's concession is based on the history and chronology which led to paragraph 9.1.4. This was:

- (a) the BENP was made in July 2014, before the publication version of the eALP in October 2014;
- (b) the Examiner's report in May 2014 indicates that the BENP was working from the Summer 2013 version of the eALP (CD 38 paragraph 13.10). In the 2013 version of the eALP, the list of strategic housing allocations, Policy SP11, made no reference to Fontwell;
- (c) the list of strategic housing allocations did mention what later became BENP paragraph 9.1.4, second bullet point, which was inserted on the Examiner's recommendation because it was "*highly misleading*" for the supporting text to Policy H1 not to mention of the then known eALP strategic allocation;
- (d) the obvious conclusion is: that had Fontwell been included in the eALP before the examination of the BENP, there would a reference to Fontwell in paragraph. 9.1.4;
- (e) EPC concedes, that it makes sense to read paragraph 9.1.4, as referencing future strategic allocations more generally. This would recognise the different roles of NPs (local needs) and LPs (strategic, district-wide needs).

5.6 Stepping beyond the BENP text, an error of approach in EPC's evidence<sup>6</sup> is to suggest that the ALP BUABs are implicitly carried over into the BENP. This is wrong; nowhere in the BENP is there a policy setting a BUAB for Barnham and Eastergate. EPC accepts<sup>7</sup> that nowhere in the BENP does it say that the ALP BUAB boundaries are to be taken as still applicable so far as the BENP is concerned. Indeed, quite the opposite, Policy H1 contains 2 clear contradictions of such an intention. First, there is a site allocation for 60 units outside the BUAB and second, paragraph 9.1.4 refers to additional strategic allocations, which inevitably will be outside the BUAB. Although EPC accepts<sup>8</sup> both points it persists with this misinterpretation of the BENP.

5.7 There is a fundamental point of principle to be noted, which explains why the application has nothing to do with, and therefore does not conflict with, BENP Policies H1 and H2. This goes back to the fundamental distinction in national policy between LPs, which deal with strategic objectively assessed needs across the whole district and NPs, which deal with local non-strategic needs (Framework paragraphs 183-185). The point is most clearly made by Holgate J in *Crownhall Estates v Chichester DC* [2016] EWHC 73 (Admin) paragraph 29 (iv)-(v):

*"iv) Paragraphs 14, 47 and 156 to 159 of the NPPF deal with the preparation of local plans. Thus local planning authorities responsible for preparing local*

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<sup>5</sup> X-Examination of Mr Simpson.

<sup>6</sup> Mr Simpson Evidence-in-Chief.

<sup>7</sup> X-Examination of Mr Simpson.

<sup>8</sup> X-Examination of Mr Simpson.

*plans are required to carry out a strategic housing market assessment to assess the full housing needs for the relevant market area (which may include areas of neighbouring local planning authorities). They must then ensure that the local plan meets the full, objectively assessed needs for the housing market area, unless, and only to the extent that, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole, or specific policies in the NPPF indicate that development should be restricted (St Albans City Council v Hunston Properties [2013] EWCA Civ 1610; Solihull Metropolitan B.C. v Gallagher Estates Ltd [2014] EWCA Civ 1610).*

*v) Those policies in the NPPF (and hence the principles laid down in Hunston and Gallagher in the interpretation of those policies) do not apply to the preparation by a qualifying body of a neighbourhood plan. Although a neighbourhood plan may include policies on the use of land for housing and on locations for housing development, and may address local needs within its area, the qualifying body is not responsible for preparing strategic policies in its neighbourhood plan to meet objectively assessed development needs across a local plan area. Moreover, where the examination of a neighbourhood plan precedes the adoption of a local plan, there is no requirement to consider whether it has been based upon a strategy to meet objectively assessed housing needs." (CD 54)*

- 5.8 EPC accepts<sup>9</sup> the distinction that there cannot be a conflict between a proposal and a policy where the purpose of each is to address an entirely different type of need. BENP Policy H1 is necessarily and expressly additional to strategic allocations because it must recognise that the NP process runs separate to but cannot undermine a District-wide LP process, and cannot be considered in isolation. This is a proposal located in an area, Fontwell, where there is an eALP allocation. Thus, the application site is not addressing "local" need alone rather it addresses the wider needs of the district as a whole. This distinction is made particularly clearly in Framework paragraph 16, second bullet point, which mandates NPs to *"plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan"*.
- 5.9 A further key error of principle at the heart of EPC's case regarding BENP Policies H1 and H2 is to conflate genuine conflict between a policy and a proposal, with a mere lack of positive support in a policy for a proposal. The applicants accept they cannot claim the benefit of positive support in BENP Policies H1 and H2. Policy H1 allocates a site for housing and this application is not that site. Thus, it cannot be said that the application conflicts with Policy H1 in the sense alleged by EPC. Similar logic applies to Policy H2 which supports small windfall development. The application site is not a small windfall site thus it cannot claim the support of this policy. But this does not mean that it conflicts with it. Neither Policy H1 nor Policy H2 has anything to do with strategic schemes such as the application site. There is nothing in

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<sup>9</sup> X-Examination of Mrs Chaffe & EPC 4 paragraph 5.1.

either policy, or in the rest of the BENP, to actually restrict development on the application site, such as BUAB or LGS policies.

- 5.10 BENP Policies H1 and H2, as with the rest of the NP, because they neither support nor restrict, are entirely neutral as regards the application. EPC is reluctant<sup>10</sup> to accept this word, despite conceding the logically identical proposition that there is "*no specific policy in the BENP restricting the development proposed on the application site*". The oft-repeated refrain of EPC is to "*read the plan as a whole*". But such a reading does not entitle EPC to introduce words into the policies that do not exist. The question of identifying a conflict necessarily involves looking at the specific policies, the words on the page, not relying on something vague and abstract.
- 5.11 EPC submit that the applicants' approach is contrary to the decision of Lindblom J in Crane v SCLG [2015] EWHC 425 (Admin), in which a proposal was held to be in conflict with a NP with a similar but not the same pair of housing policies to those in the BENP: i.e. specific allocations, together with a windfall policy (CD 28). On this the applicants submit that:
- (a) there is a critical difference between Crane and the present case. In Crane, the parish council in making its NP considered all of the relevant sites, including sites put forward by Mr Crane, when formulating the NP's housing policies (CD 28 paragraph 45). By contrast, EPC's evidence<sup>11</sup> highlights that the Fontwell site was not considered in the process of making the BENP. Had the application site been included and rejected, it might have lent greater support to the argument as to conflict;
  - (b) the Court did not hear argument as to the critical distinction between LPs (strategic) and NPs (non-strategic), and therefore did not grapple with this issue. This is important given the differences between the NP housing policies in Crane and the supporting text to BENP Policy H1;
  - (c) in any event, the applicants submit that Crane was wrongly decided on this point. The statutory duty is to make the determination "*in accordance with*" the development plan unless material considerations indicate otherwise. Where a NP neither supports a determination to grant permission nor a determination to refuse permission then it says nothing about what determination would be in accordance with the NP. It is truly "neutral" in this regard; it does not say grant permission or refuse permission;
  - (d) even if the applicants are wrong on the question of conflict, and the application does not accord with an array of made and emerging NP policies, then Framework paragraphs 14 and 49 apply. This is the conventional approach: housing supply policies in all plans are out-of-date and the Framework paragraph 14 presumption applies.
- 5.12 Although EPC seeks to rely on the SoS's decision in the Yapton appeal, this decision is currently under legal challenge (CD 26). EPC submits that the cases are very similar, and that permission should be refused on a similar basis to the Yapton decision. There are 2 relevant policies in the Yapton

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<sup>10</sup> X-Examination of Mr Simpson.

<sup>11</sup> EPC 4 paragraph 4.7.

Neighbourhood Plan (YNP) (APP 6 Appendix K). Policy BB1: Built-Up Area Boundary says that proposals outside the BUAB will not be permitted save in certain prescribed circumstances. Policy H1: Housing Requirement indicates that a minimum housing requirement "*will be established by the emerging Arun Local Plan*", subject to a 20% buffer. The policy notes that the YNP identifies allocations and, critically for the SoS's reasoning in the Yapton decision, provides that "*additional allocations will be made if the emerging Arun Local Plan requires such action*". Thus, there is an in-built mechanism for more housing allocations if the need to do so arises through the eALP.

- 5.13 In the Yapton case, the SoS decided that Policy H1 has "*flexibility to allow any shortfall in housing supply to be met*, thereby giving it "*significant*" weight despite being "*underpinned by an outdated OAN*" (CD 26 paragraphs 15 & 16). The SoS, while finding no breach of Policy H1, gave "*very substantial negative weight*" to the conflict between the proposal and Policy BB1 on BUABs (CD 26 paragraph 18).
- 5.14 EPC concedes<sup>12</sup> that the BENP neither contains a BUAB policy nor a pledge to make additional allocations if the need arises. However EPC refuses to acknowledge that the differences are significant, despite the presence of a BUAB policy being the basis for refusal of permission in Yapton. The policies in Yapton and the present case are so different that it is impossible to rely on the SoS's line of reasoning to justify a refusal of permission here<sup>13</sup>.
- 5.15 If the applicants are wrong and the conclusion is reached that the application does conflict with BENP policies then these policies would also, by reason of Framework paragraph 49 and the WMS<sup>14</sup>, be out of date. This is because the lpa cannot show either a 5 or a 3-year supply of deliverable housing sites (APP 18 & LPA 10). Whilst EPC acknowledges that the lpa cannot show a 5-year HLS it submits that the lpa has a 3.01-year HLS (EPC 7).
- 5.16 There is a considerable difference between the HLS the lpa says it has (1.92-years) and that claimed by EPC (3.01-years). Given the quantitative approach of the WMS it is unsurprising that EPC would want to demonstrate that a HLS of over 3 years exists in order for relevant housing supply policies within the BENP to be considered up-to-date. However, such a claim must be based on robust evidence and EPC's evidence is fundamentally flawed. As the responsible Authority for both housing delivery and auditing of data, greater weight should be given to the evidence supplied by the lpa supported by WSCC. Unlike EPC there is no advantage for the lpa to present the HLS figure as anything other than what it factually is.
- 5.17 All parties agree that the lpa has a 5-year HLS requirement over the period 2016-21 of 7,372 units. A housing supply of 4,423 units is required for the lpa to be able to demonstrate a 3-year HLS.

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<sup>12</sup> X-Examination of Mr Simpson.

<sup>13</sup> Evidence-in-Chief of Mr Mills.

<sup>14</sup> INSP 1.

### Source of Supply

- 5.18 The lpa concludes that it has a HLS of 1.92 years based on up-to-date commitment data provided by WSCC, projected completion data and an associated summary table. The lpa includes a further 695 projected completions over the requisite 5-year period to include figures in made NPs; windfalls; small sites with planning permission of less than 6 units; and Housing & Economic Land Availability Assessments (HELAA) sites within the BUAB alongside a discount of 10% for non-implementation. In contrast, EPC relies on Appendix 4.2 of the 2016 HELAA when establishing projected completions from commitments. The individual site proformas set out in HELAA Appendix 4.2, including the projected potential yearly yields, would appear to be derived from an identical earlier data set compiled by WSCC. The lpa confirms that the information it provides is the most up-to-date and will be used to inform the forthcoming AMR (LPA 10). In this context, it is unclear why EPC have not used the most up-to-date WSCC data and have relied on the 2016 HELAA. The superseded WSCC projected commitment data from the 2016 HELAA relied upon by EPC is considered to deliver a total of 2,600 units over the period 2016-2021 which reduces to 2,340 applying the 10% discount. This can be compared with a total of 2,444 units contained within the updated WSCC projected commitment data which reduces to 2,200 applying the 10% discount. EPC has overestimated projected commitment data in Table 6.1 of their report by 140 units which should be subtracted from the total (EPC 7).
- 5.19 EPC's calculation of deliverable sites includes every non-strategic site within Appendices 1.1 and 1.2 of the 2016 HELAA which are assessed as being "deliverable". EPC has simply taken each of the 45 sites (assuming exclusion of NEWA14 and RU8), and totalled the number of homes that the HELAA assesses could be delivered on these sites within the period 2016-2021 and added this into the 5-year HLS calculation. EPC concludes that this adds a further 1,851 deliverable units within the next 5 years, discounted to 1,666 to include 10% non-implementation. The WMS requires a definitive 3-year HLS to be in place in order for a particular NPs housing policies not to be considered out-of-date. However, it is clear that EPC, by relying on the entirety of the sites within HELAA Appendices 1.1 and 1.2, has sought to consciously construct a contrived HLS calculation that is neither in accordance with the Framework, PPG nor follows best practice.
- 5.20 Framework paragraph 47 requires the lpa to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing against their housing requirements. Framework Footnote 11 makes it clear that in order to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until a permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, e.g. they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.



- 5.21 Framework paragraphs 150 to 185 deal with "Plan Making" and paragraph 158 says that each lpa should ensure that their LP is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Framework Paragraph 159 then explains that this evidence base should include, for housing, a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the Plan period. PPG recognises that, *"the assessment of land availability is an important step in the preparation of Local Plans"*. PPG supports the Framework by explaining that *"the assessment forms a key component of the evidence base to underpin policies in development plans for housing and economic development, including supporting the delivery of land to meet identified need for these uses. From the assessment, plan makers will then be able to plan proactively by choosing sites to go forward into their development plan documents to meet objectively assessed needs"*. Crucially, PPG then goes on to state that *"the assessment is an important evidence source to inform plan making but does not in itself determine whether a site should be allocated for development. This is because not all sites considered in the assessment will be suitable for development (e.g. because of policy constraints or if they are unviable). It is the role of the assessment to provide information on the range of sites which are available to meet need, but it is for the development plan itself to determine which of those sites are the most suitable to meet those needs"* .
- 5.22 The HELAA is prepared by the lpa, as required by the Framework, to specifically inform the production of the eALP. As per the PPG, the purpose of the document is not to suggest that particular sites should be allocated for development or that planning permission should be granted, but rather to identify a range of spatial development options that, subject to more detailed assessment, may be deliverable and/or developable in order to assist the lpa with meeting its housing target.
- 5.23 EPC's report contains fundamental errors derived from reliance on an eALP evidence base document, the HELAA, which was never prepared with intention to inform a 5-year HLS calculation (EPC 7).
- Neighbourhood Plan Conflict
- 5.24 HELAA Appendices 1.1 and 1.2 contain a total of 29 sites which are currently located outside any BUAB defined by the ALP or a constituent NP. EPC's case is based on the argument that this application should be refused planning permission solely due to a perceived conflict with the made BENP. This is in direct contrast to EPC's approach to calculating a 5-year HLS. EPC suggests that no less than 25 sites which are currently located outside the BUAB, covered by a made or emerging NP but are not allocated by those NPs, will definitively be granted planning permission and delivered within the next 5 years i.e. a total of 1,401 units. However, if a planning application did come forward on any of these 25 sites and the lpa does have a HLS of over 3 years as claimed by EPC, then the interpretation of the WMS would mean that full weight would be given to the NPs for the areas in which they are located. Lying outside the BUAB and not being allocated for development within a NP which has full weight by application of WMS would mean development would

likely be refused. Clearly such sites cannot be considered to be deliverable and thus fall out of the supply calculation.

- 5.25 The necessary exclusion of these sites would mean that the HLS would fall below 3 years and BENP policies would remain out-of-date. This is an entirely cyclical argument and it is evident that good planning practice dictates that any sites located outside the BUAB and covered by, but not allocated for development within, a made NP should be removed from the supply calculation. This would remove 1,401 units from EPC's calculation. There is also the obvious and inherent contradiction within EPC's 5-year HLS calculation. EPC includes various sites within HELAA Appendices 1.1 and 1.2 that fall outside the BUAB within Eastergate and Barnham Parishes, as defined by the ALP, and are not allocated for development within the BENP. EPC's report considers these sites to be deliverable within 5 years. To be deliverable there is therefore an acceptance they are policy compliant i.e. no conflict with the NP and/or are supported by the Parish Council. It is difficult to reconcile this position given the case that EPC presents to justify a refusal of the application. If these sites are considered to be deliverable then by the same reasoning, the application site has to be too, especially given the accepted absence of any technical or infrastructure grounds for refusal.

#### Yapton

- 5.26 PPG clearly states that the HELAA does not in itself determine whether a site should be allocated for development because not all sites considered will be suitable including those where policy constraints apply. There are 2 examples of where the "Policy Off" approach to calculating the 5-year HLS position taken by EPC results in the inclusion of sites which conflict with the Framework and PPG as there is clearly not a realistic prospect they will be developed within 5 years. HELAA Appendix 1.2 includes site ref. Y6014OUT at Yapton which is considered able to deliver 100 units over the next 5-year period. This is the site that was dismissed by the SoS in September 2016 (CD 26). This is a clear example of a site which from a HELAA perspective is suitable, available, achievable and developable but due to existing policy conflicts, has been dismissed by the SoS. Therefore, it is not realistic to expect that the site would contribute 100 units to the 5-year HLS. HELAA Appendix 1.2 also includes Site Y1916OUT at Yapton which, similar to the one above, has been recovered for determination by the SoS. Given that the SoS dismissed a very similar application in the same village, applying identical policies, it is not realistic to consider that the site will deliver 88 units over the next 5-year period. 180 units should be removed from EPC's Table 6.1.

#### Arundel

- 5.27 EPC's Table 6.1 includes 2 sites which do not fall within Ipa area but are controlled by the South Downs National Park Authority. These are AB10 in HELAA Appendix 1.2 for 6 units and a NP allocation for the Former Castle Stables for 14 units. This would remove 20 units from EPC's Table 6.1.

#### Repetition

- 5.28 Site 74 is included twice within HELAA Appendices 1.1 and 1.2. This would remove 56 dwellings from EPC's Table 6.1.

#### Extant Planning Permissions

- 5.29 Site PS14 has an extant planning permission for 9 new dwellings but is included in the HELAA for 17. This removes a further 8 units EPC's Table 6.1.

#### Viability

- 5.30 Framework Footnote 11 is explicit that in order to be considered "deliverable" it is imperative that "...development of the site is viable". The Arun Viability Appraisal does not consider Site HP3 for 8 units to be viable. This site cannot be considered deliverable having regard to Framework Footnote 11 and a further 8 units should be deleted from EPC's Table 6.1.

#### 10% Discount

- 5.31 The applicants agree that it is reasonable to apply a 10% non-implementation discount to commitment sites. However, it does not agree that this would automatically apply to HELAA Appendix 1.1 and 1.2 sites. The vast majority of these sites do not benefit from planning permission and there is a much higher degree of uncertainty not only in respect of eventual non-implementation but also whether a planning application will be submitted, approved, implemented and dwellings completed within the next 5-year period. The vast majority of HELAA Appendix 1.1 and 1.2 sites should not be considered as deliverable in the HLS calculation. If sites are included, then, given the much greater degree of uncertainty, a much higher discount should be applied. For example, a number of the sites that were included in the 2012 SHLAA remain undeveloped.

#### Timescales

- 5.32 Several sites included within HELAA Appendices 1.1 and 1.2 do not have planning permission. For these sites to deliver over the next 5-year period, would require applications to be prepared; submitted; determined; reserved matters and/or condition applications to be made; site preparation works undertaken; construction and completion all within a very short timescale. For example, the 25 sites located outside the BUAB and within, but not allocated by, a made NP, should be expected to have timescales that would be significantly elongated. The planning application for the Yapton site (Y6014OUT) was submitted in June 2014 and did not receive a decision until September 2016 some 2.5 years into the planning process. Such sites should not be considered as deliverable in relation to the HLS calculation, however if an element is to be included then an additional 2.5 year determination period should be factored into the timescales for delivery. This would impact on the overall amount of housing deliverable over any 5-year period.

#### Windfalls

- 5.33 EPC applies a 75 dpa windfall figure to each year over the period 2016-2021. The applicants suggest that this is likely to double-count commitments where planning permission has already been granted on sites of less than 6 units. Windfalls are only applied to the latter years of the 5-year HLS calculation.

## Deliverability

- 5.34 There are numerous examples of sites within HELAA Appendix 1.2 where the assessment identifies that additional work is required to ensure that these sites are deliverable. There are several such sites that fail the Framework paragraph 47 test of representing a "realistic" prospect that housing will be delivered within 5 years. These include the following categories.
- a. Non-Residential Use: Site NEWA15 is included within HELAA Appendix 1.2 for 35 units but has recently been proposed for an alternative use, with a planning application being refused in March 2016 for a commercial car showroom. The HELAA entry recognises that the site may be suitable for residential or commercial uses but it would appear that commercial use is the most likely future use for the site. Thus, it is not "realistic" to assume that 35 units would be delivered in 2017-2018. Site 5 is listed for residential development or as a camp site. It is certainly not "realistic" to assume that the site would be brought forward for new housing in preference to the potential camp site use.
  - b. Comprehensive Development: There are examples of sites that are not deliverable in isolation and require other land to come forward in parallel. Site 103 for 35 units specifically states that "*... the site has future potential on its own. However, the site could be considered as part of a comprehensive development including adjacent land*". This is a recommendation made within a HELAA to inform future eALP making. Thus, in isolation this site does not have a realistic prospect that housing will be delivered within 5 years.
  - c. Availability: There are examples where the availability of a site for development appears to be uncertain. The entry for Site FP1 clearly states that "*attempts to contact agent February/March 2012 unsuccessful. Availability unknown*". Therefore, it is not "realistic" to assume that the site would deliver 110 units over the next 5-year period and certainly not with development commencing during the next monitoring year as currently projected. Site FP1 appears to have been granted planning permission for use as an Engineering and Technology Park associated with the University of Chichester (BR/54/16/PL) and is not therefore available for residential development. A further example is Site 99 for 20 units where the HELAA reports that the agents have suggested the site may be available "soon" but would not provide any specific timescales.
  - d. Relocation of Existing Uses: Site NEWFG2 considered able to deliver 25 units is reliant on the relocation of an existing allotment use which covers approximately half the site. Thus, it is not "realistic" to assume that the site would deliver 25 units over the next 5-year period as there is specific uncertainty regarding the re-provision of the existing allotments.
  - e. Site Constraints: There are several examples of sites within HELAA Appendices 1.1 and 1.2 that have specific constraints identified. Site LU12 comprises a former landfill site with the recommendation that further investigation needs to be undertaken. Sites 5 and 14 are located on Flood Zone 2/3 land. Whilst the HELAA considers that development could be achievable, clearly these are significant potential constraints to delivery within 5-years;

- f. Strategic Planning: There are examples of individual HELAA entries which are intended to form part of much larger strategic development options to be considered through the eALP. Sites 74, 74a and NEWY23 are being considered together as a comprehensive development option. This would impact on potential deliverability timescales and it is not "realistic" to assume that the 3 sites would deliver 138 units within the next 5-years.
- g. Cumulative Impact: EPC's methodology fundamentally disregards any cumulative infrastructure or service impacts that could arise should every single site identified within HELAA Appendices 1.1 and 1.2 come forward within 5 years. In such a scenario, the impact of each site would not be assessed individually, as the HELAA currently does, but would need to be considered cumulatively especially in respect of highway, utility and social and community facility impacts.
- 5.35 EPC<sup>15</sup> seeks to rely on the Yapton decision to show how, even if the BENP policies are considered out-of-date, they can still be given significant weight. The considerable differences in the policies at play in Yapton and in the present case undermine EPC's case. Two recent NP plan decisions of the SoS on sites in Cheshire are relevant (CDs 53 & 54). In both decisions the SoS followed the conventional approach of finding the NP housing policies, although the proposals conflicted with them, to be out-of-date in terms of Framework paragraph 49, leading to an application of the presumption at Framework paragraph 14, second bullet, limb one.
- 5.36 In the first decision (CD 53), the NP was made in April 2016 and the SoS, "*whilst sharing [the Inspector's] appreciation of the frustration which the [local] community will feel if this appeal is allowed*", goes on to attach "*limited weight*" to conflict with the NP policies (CD 53 paragraphs 5, 10 & 11). The overall tilted Framework paragraph 14 planning balance at paragraphs 16 to 18 of the decision letter concludes by saying: "*the Secretary of State concludes that the sustainability of the appeal scheme along with the fact that the relevant policies for the supply of housing land in Cheshire East are out of date outweigh the fact that the NP has only relatively recently been made [together with other harms]*".
- 5.37 In the second decision, the NP was also made in April 2016, but the housing policies are held to be "*out-of-date*" (CD 54 paragraphs 15 & 18). The conventional Framework paragraph 14 tilted balance is then applied at paragraphs 27 to 32. Although the SoS at paragraph 30 acknowledges, in the context of assessing the social component of sustainability, "*the important role of neighbourhood planning*" and "*the role which the community have played in preparing the [NP] and that it is a matter of circumstance that the plan already contains policies which are out-of-date as a result of the housing situation of the authority*". However, even within the social element, before turning to the balance as a whole, the SoS finds the benefits – "*much needed homes, including affordable homes*", with community facilities – "*weigh in favour of the appeal proposal*".

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<sup>15</sup> X-Examination of Mr Simpson.

- 5.38 Here, if it is concluded that granting permission would not be in accordance with the made BENP, the same conventional approach of applying Framework paragraph 14 in a straightforward manner must be followed, rather than according some special or pre-eminent status to neighbourhood planning over and above everything else. There is no basis for giving special, extra, status to made NPs in law or policy.

### **Material Considerations**

- 5.39 Turning to other material considerations: there are 2 emerging development plans. First in time is the October 2014 Publication Version of the eALP (CD 9). The eALP must be approached with caution because it is based on an OAN of 580 dpa. The lpa now confirms<sup>16</sup> that the OAN is significantly higher at 919 dpa (CD 10). Thus, the way in which the balance is struck in the 2014 version of the eALP between allocations, their timing, and land protected from development is fundamentally out-of-step with the up-to-date evidence and needs to be overhauled.
- 5.40 The applicants do not accept that the application conflicts with various policies in the 2014 eALP once the meaning and effect of the draft policies in question are properly understood. However, if the applicants are wrong about that, then no weight should be given to conflicts with any draft policies which restrict the supply of housing because the 2014 eALP is fundamentally out-of-step with the up-to-date evidence on the OAN and does not seek to meet it and the lpa cannot show a 5-year HLS.
- 5.41 Conversely to the extent that the 2014 eALP points to Fontwell as a potential location for a strategic site allocation for housing this should be given some weight and more so given the significant increase in the OAN since draft Policy H SP1 concerning Fontwell was written. As to this latter point, one should not get too hung up on the exact wording of the 2014 eALP in this regard e.g. in relation to timing, as the acknowledged need for new homes is so much more pressing now when compared to 2 years ago. Since then the lpa has included 400 homes on the application site in all the scenarios it wishes to consider as a means of addressing the increase in the OAN (APP 6 Appendices A & B).
- 5.42 EPC concedes<sup>17</sup> that the balance struck in the eALP between where housing should and should not go is "*hopelessly out-of-date*", thereby giving rise to the same double out-datedness as the policies in the 2003 ALP in that it does not grapple with up-to-date OAN nor is there a 5-year HLS. This applies to both Policy SD SP 2 Built-Up Area Boundary and Policy C SP1 Countryside both of which are subject to the strategic allocations (CD 9 pages 46 & 47).
- 5.43 Strategic housing in Fontwell is envisaged in the eALP October 2014 Publication Version. EPC's case relies heavily on what is said about Fontwell, which is of course a snap-shot in time and indeed at an early stage in the lpa's interest in Fontwell for housing. Things have moved on very significantly since then. Not only has the OAN risen dramatically, but the lpa's approach to

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<sup>16</sup> Mr Redwood Evidence-in-Chief.

<sup>17</sup> X-Examination Mr Simpson.

Fontwell has evolved considerably. The lpa resolved in June 2015, in response to the higher OAN, to work out the location of additional homes through an updating of the sustainability appraisal. The lpa openly acknowledged its preferences for a location at the time, which included 400 homes at Fontwell (APP 5 paragraph 5.4).

- 5.44 EPC makes much of the eALP Inspector's letter dated 28 July 2015, which at notes the lpa's preferences and cautions against a "*risky pre-determination*" and "*prematurely closing off other options*" (CD 50 paragraphs 11 & 12). The applicants' response is four-fold.
- 5.45 First, it is important to place the Fontwell preference in the context of the wider search for locations to meet the OAN. At 919 dpa, the total number required over the 20-year plan period will be over 18,000 dwellings and 400 dwellings at Fontwell would be some 2% of this wider figure. Therefore, the selection of Fontwell is not significant enough to result in the "*closing off*" of other options. As such the understandable concern of the Inspector is more theoretical than real when applied to Fontwell specifically. It might make a good deal more sense when thinking of the 2,000 now 3,000 homes allocation at Barnham-Eastergate-Westergate.
- 5.46 Second, as EPC concedes<sup>18</sup>, the inquiry has seen no evidence of any such potential options for other and/or additional locations in a mix that does not include Fontwell. Third, EPC suggests that the July letter shows that the lpa's approach to Fontwell is out-of-favour with the Inspector. This is a misinterpretation. The letter does no more than caution the lpa against pre-determination, without expressing a view as to the merits or otherwise of the preference for housing at Fontwell.
- 5.47 Fourth, the lpa responded appropriately to the July letter and had a considered look at the options on an open-minded basis (APP 6 Appendix A). All 4 of the options assessed in March 2016 envisage 400 homes at Fontwell. The lpa again reviewed the location of sites in September 2016 (APP 6 Appendix B). The lpa has not just cut and pasted all the previous sites and done nothing more. Instead, it has thought carefully about where the sites should go, listing 15 allocations, including the application site. Several had changed over time, some removed, some reduced, some added to. It is wrong to see any pre-determination in this. The lpa has considered all the options and concluded that 400 dwellings at Fontwell is a must-have.
- 5.48 The other and more recent, emerging development plan is the eWNDP which is to be the subject of a Referendum in February 2017 (WPC 7). WPC does not object to the application on any basis, including conflict with the eWNDP. The eWNDP confirms that it is, "*...consistent with the current Local Plan but is prepared in anticipation of a new "emerging" Local Plan*" (WPC 7 paragraph 2.3). In relation to the application site, the key change to the eWNDP is that Policy VE 1 and Schedule 4 have been revised to remove the application site from the list of areas proposed to be designated as LGS.

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<sup>18</sup> X-Examination Mr Simpson.

- 5.49 EPC's submission that the proposed development conflicts with various policies in the eW NDP is based on a misunderstanding of the meaning and effect of the policies in question and/or of the role of NPs. If the applicants are wrong about that then the policies in question should be given little if any weight because the eW NDP would, if these policies are read and applied as EPC contend, serve to frustrate and inhibit meeting the current assessment of the OAN, and because the lpa cannot demonstrate a 3-year HLS.
- 5.50 As to conflict with eW NDP policies, EPC highlights Policy VE 5 and Schedule 5B on Buildings of Special Character (WPC 7 pages 28 & 47). EPC suggest that the proposal seeks the demolition of the Old Smithy, a building recommended to become a Locally Listed building. EPC concedes<sup>19</sup> that: the power to add buildings to the Local List belongs to the lpa, not WPC. Policy VE 5, if the W NDP is made, does not have the effect of designating the building in question. It is plain from the wording of Policy VE 5 and Schedule 5B, that it would be up to the lpa to designate the building. Moreover, the application is far from wedded to a demolition of the Old Smithy. An outline planning permission would not authorise the demolition of the building. Whether the building should be demolished or retained is for the reserved matters stage. There is no conflict with Policy VE 5 and Schedule 5 of the modified W NDP.
- 5.51 Conflict with Policy HP 2 is also alleged. This policy allocates a small part of the application site for a minimum of 6 dwellings. EPC concedes<sup>20</sup> that the lack of conflict is evident from the wording of the policy itself i.e. the allocation is only activated "*if that permission [the application] is refused*".
- 5.52 Various sections of the post-examination W NDP refer to maintaining gaps, separating villages and protecting green spaces which bring the countryside (WPC 7 paragraphs. 4.1, 4.2 and 5.3). Such policies and ambitions should be understood in the context of the eW NDP as a whole, which explicitly supports the strategic residential allocation and subsequent development of the application site. In respect of the eW NDP as a whole, it is considered that the modified plan supports the application.
- 5.53 EPC's concern regarding the processes followed by the lpa and WPC regarding the preparation of the W NDP are not specifically relevant to the application site (EPC 6). The Policy HP 1 note simply represents a factual statement on WPC's publicly stated position of support for the application and its intention is to ensure that this support is reflected through the eW NDP (WPC 7 page 30). It is not the role of this inquiry to consider legal issues surrounding the preparation of the W NDP.
- 5.54 Even were the W NDP to proceed to Referendum without the Policy HP 1 note, it would be wrong as a matter of first principle to read the W NDP without acknowledging that WPC supports the grant of planning permission on this site. The most important points are ones which go to weight, whatever the W NDP ends up saying or not saying. WPC explicitly supports the grant of planning permission. This position puts all the technical and legal arguments

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<sup>19</sup> X-Examination Mr Simpson.

<sup>20</sup> X-Examination Mr Simpson.



- raised by EPC into their proper context. If the WNDP proceeds to Referendum with the note in it, and in due course is "made" then it will be lawful and must be treated as such unless it is quashed in whole or part following any legal proceedings that may be brought.
- 5.55 If the WNDP stalls as a result of the issues raised by EPC, then it should be given less weight and would not form part of the Section 38(6) Development Plan in any event. Weight should however still be afforded to evidence provided by WPC that it supports the granting of planning permission on the application site.
- 5.56 EPC's reference to *Cherkley Campaign Ltd v Mole Valley District Council (2014) EWCA Civ. 567* is surprising and contradictory given the weight that EPC gives to the acknowledgement within the BENP that Policy H1 recognises that a strategic allocation may be made in the eALP for housing on the larger site to the south of Barnham and Eastergate. This reference is not contained in the wording to Policy H1, but within the supporting text at paragraph 9.1.4. If the SoS agrees with EPC's argument in respect of the weight to be afforded to the note when reading WNDP Policy HP 1, this would equally apply to BENP Policy H1 and accompanying paragraph 9.1.4.
- 5.57 Here, the primary material consideration is that the application should be determined by applying the relevant part of the presumption in favour of sustainable development in Framework paragraph 14. This is that unless material considerations indicate otherwise permission should be granted "*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*".
- 5.58 EPC contends that Framework paragraph 198, which says, "*Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted*" falls within the words at the end of Framework paragraph 14 (limb 2) which says "*specific policies in this Framework indicate development should be restricted*" so that the presumption in favour of sustainable development does not apply. If the applicants' case is accepted that the proposals do not conflict with the made BENP then the point does not arise.
- 5.59 If it is concluded that there is inconsistency with the BENP, then EPC's case is wrong in law as it is based on an incorrect interpretation of the meaning and effect of Framework paragraphs 198 and 14. EPC's case is inconsistent with the SoS's approach in the Yapton decision (CD 26 paragraph 33), and with the approach set out in PPG.
- 5.60 EPC's argument is wrong in law because:
- (a) in Framework paragraph 14, the first bullet of "decision-taking" applies where the proposal accords with the development plan. The second bullet applies where the proposal does not accord. Accordingly, before either limb of the second bullet is even considered, it is crucial to note that in all such cases the proposal is established to not accord with the development plan;

- (b) in Framework paragraph 198, the second sentence is a re-statement of the statutory position, i.e. the word "*normally*" accounts for where material considerations indicate otherwise;
- (c) there are various such re-statements of the statutory position in the Framework at paragraphs 2, 11, 12 and 196;
- (d) if EPC is correct that Framework paragraph 198 is a policy restricting development within the meaning of Framework paragraph 14, second bullet point, second limb, then the same must apply to policies such as Framework paragraph 12;
- (e) since the second bullet point is always concerned with proposals not in accordance with the development plan, then policies such as Framework paragraph 12 would always apply, and the second limb would always be engaged;
- (f) EPC's interpretation would make a nonsense of Framework paragraph 14 and the Framework as a whole, and would render the second bullet point, first limb wholly redundant. This cannot be the correct interpretation of the policies as a matter of law.
- (g) EPC draws attention to what is said in the Framework concerning the importance the Government attaches to the spatial vision of local communities articulated in the NP "as distinct from other parts of the development plan". This misunderstands the Framework which contains similar sentiments about the LP too i.e. the Government attaches significance to empowering local people to make LPs and NPs equally: see Framework paragraphs 1, 17 - first bullet point, 150 and 155.

5.61 Thus, if the policy in Framework paragraph 198 is that where there is conflict with a NP permission should normally be refused is a "*specific policy*" which indicates "*development should be restricted*" within the terms of limb 2 of Framework paragraph 14 and operates so as to dis-apply the presumption in favour of sustainable development, so too by similar logic would the policies in the Framework which make the same point about the development plan more generally, which of course includes NPs i.e. Framework paragraphs 2, 11, 12 and 196. This would mean that limb 1 of Framework paragraph 14, which sets out the tilted balance, i.e. whether adverse impacts significantly and demonstrably outweigh the benefits, would always be dis-applied even though it only ever arises where the proposal does not accord with the development plan. This is nonsense; the Cheshire and Yapton decisions by the SoS apply the conventional approach via Framework paragraph 14, second bullet point, limb 1, rather than opting for EPC's perverse reading of Framework paragraphs 198 and 14.

5.62 Returning to the part of Framework paragraph 14 which does apply; the only adverse effect which EPC relies on is inconsistency with the made BENP and the eW NDP. EPC's point depends upon Framework paragraphs 183 to 185 and in particular 198 which concern NPs and what is said to be some form of special or elevated status for NPs. This argument does not arise if the applicants' case that the proposals do not conflict with the BENP is accepted. However, if the argument is engaged then the applicants say that it is fundamentally misplaced as it does not properly understand the meaning and effect of the Framework. Framework paragraphs 183 to 185 simply stress

the local, non-strategic role of NPs as opposed to the strategic role of LPs and Framework paragraph 198 neither gives enhanced status to NPs as compared with other statutory development plans, nor modifies the application of section 38(6) of the Act. The passage in Framework paragraph 198 simply reflects what is said about the development plan, which of course includes made NPs, in Framework paragraphs 2, 11, 12 and 196. To the extent that it is thought that the Yapton decision and/or the Framework and/or guidance on neighbourhood planning suggests or implies otherwise then this would be wrong in law for the reasons above.

### **Character and Appearance (APP 9, 10 & 11)**

- 5.63 It is common ground that there would be no adverse impacts on landscape character and on views from the South Downs National Park as determined by the Landscape and Visual Appraisal (CD 5 paragraph 11; APP 9 & APP 11). The proposed Public Open Space would not constitute an *"anti-local demarcation zone between the current settlement and their apparently unwelcome new residents"* (IP 2). There would be green movement corridors connecting the existing with the new, and distinguishing between open space that "separates", e.g. woodland, and open space that "integrates" like recreational land. Based on the revised IM, the open space is firmly in the latter camp. Given that the application is for "up to" 400 homes, concern regarding a higher residential density following the enlargement of the public open space, would be addressed fully at the reserved matters stage.
- 5.64 In respect of landscape effects, the scheme would create:
- moderate adverse effect to the local Landscape Character Type 16 (Fontwell-Eastergate Mosaic) during construction, a slight adverse effect at completion and a not-significant and neutral effect after a 15 year establishment period;
  - a not-significant neutral effect to the character of the South Downs National Park (SD1 Western Downs), during construction, at completion and following a 15-year period;
  - a moderate adverse effect on the site-specific landscape resource during construction and slight adverse effect at completion due to the loss of open fields with the new grassland with new woodland not fully established. This is would reduce to not significant and neutral after 15 years establishment.
- 5.65 In respect of the visual effects the scheme would create:
- slight to substantial effects to short distance views during construction and completion, reducing to not-significant to moderate after 15 years establishment;
  - not significant and neutral effect on medium distance views from the west, south and east during construction, upon completion, and after a 15 year establishment period;
  - a not significant and neutral effect on local and distant views from the National Park during construction, upon completion, and post mitigation.

- 5.66 Whilst the application would result in adverse effects of varying degrees to visual amenity, this is only experienced from locations along the immediate boundaries of the site. Beyond, the site is well contained and the application would have a not significant neutral effect on the visual amenity.
- 5.67 The site is also viewed in the context of the peri-urban<sup>21</sup> landscape which surrounds it and the post-war built up areas of Fontwell; the A47 and its service station, hotel and fast food restaurant; Fontwell Racecourse and its associated buildings, stadia and parking areas; and the public house all within a landscape that is dominated by glasshouses and equestrian use. The site is not a "valued landscape" as set out at Framework paragraph 109 and has medium value in GLVIA3 terms. The site is not an international, national or locally designated landscape (Framework paragraph 113). The scheme would have a not-significant and neutral effect on the South Downs National Park, and therefore conserves its landscape and scenic beauty (Framework paragraph 115).
- 5.68 The scheme takes the opportunity to improve the character and quality of an area and the way it functions. It places community facilities at its centre, and structures residential and employment development appropriately around a landscape led concept, providing green facilities and movement routes within and beyond the site boundary.
- 5.69 In respect of the ALP, the landscape effects of the application on the local landscape character are modest, and should be considered in accordance with the Framework in weighing up the scheme's benefits and effects (Policy GEN 3). The application has a high quality design strategy, which is deliverable and would evolve further at reserved matters stage to deliver a high quality scheme (Policy GEN 7). The application also places existing trees and woodland as a key feature, only removing vegetation to facilitate access, and where no other alternative exists (Policy GEN 28).
- 5.70 In respect of the eWNDP, the application is designed to minimise damage to ancient trees/trees of amenity value (Policy VE 3); street lighting and lighting generally would be dealt with at reserved matters design stage (Policy VE 8); the scheme provides an appropriate average density of 35 dph (Policy HP 11); the design approach is of high quality and would contribute positively to local character (Policy HP 13); the application proposes several new public footpath and cycle connections (Policy GA 1); significant recreational facilities are placed centrally and an appropriate design, scale and character (Policy CL 7), and although the application does not provide allotments, it provides much needed neighbourhood outdoor sports, children's play and a pavilion to serve these facilities (Policy CL 8).
- 5.71 With regard to the BENP, the application does not affect the Local Gap/Green Infrastructure Corridor between Eastergate and Barnham (Policy ES3); a Landscape and Visual Appraisal was submitted with the planning application (Policy ES4); the detailed design of the scheme is expected to be in accordance with the Barnham and Eastergate Design Guide if it is adopted as

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<sup>21</sup> Land immediately adjoining an urban area; between the suburbs and the countryside.

a Supplementary Planning Document by the time of any reserved matters submission (Policy ES5). An Arboricultural Impact Assessment was submitted with the application and the scheme has taken care to retain and protect all possible trees, hedgerows and woodlands (Policy ES10); the scheme promotes an extended internal cycleway and pedestrian network that function logically within the site, but also connects desired routes off site (Policy GA2). The scheme intentionally places recreational facilities at its centre, within a well-connected and overlooked location, at an appropriate scale and without causing neighbouring amenity issues (Policy CLW3). The site does not include LGSs (Policy CLW6), or existing open space (Policy CWL7) and has no existing public access; the scheme has a high quality, design led concept, an approach that would be continued through reserved matters stages to provide an appropriate and high quality form of development (Policies H4, H5 and H6).

### **Highway Safety and Sustainable Transport (APP 12 & 13)**

- 5.72 It is common ground that Fontwell is a sustainable location for development and that traffic generated by the application would not result in a severe residual impact following the delivery of identified mitigation measures, which include sustainable transport solutions (CD 5 paragraph 14; APP 13 & CD 55). A local resident raised concerns about the sustainability of the location, given the lack of transport infrastructure and lack of proximity to schools. Framework, paragraphs 29, 32 and 34, recognise there is a difference in national sustainable transport policy between urban and rural areas. This is borne out in the very different average distances to schools and means of transport to schools set out in the 2014 National Travel Survey. The application site constitutes a sustainable rural location. The proposal also has the support of the WSCC as Highway Authority, provided that agreed mitigation is secured. The agreed mitigation is critical to assessing sustainability from a transport perspective. The application would deliver, amongst other things: a new bus service linking the site to both Barnham Station and the local schools; a new cycle path from the site to the existing cycle path at Walberton Green or other cycle improvements and a new footpath around the perimeter of Walberton Playing Field (CD 49, section 6.1-2, and the CD 37). These are in addition to the linkages that would integrate the application site and its residents with Fontwell.

### **Living Conditions for Future Residents**

- 5.73 The Ipa Committee Report addresses this issue in the noise section (CD 24 pages 77 to 79). This issue arose from an initial concern expressed by the EHO, in relation to "Monster Trucks" events at Fontwell Racecourse. The normal events at the race course were never in issue. The concern is robustly rejected in the Committee Report for the simple reason that the "Monster Trucks" event was a one-off 2-hour occasion in June 2015. This therefore cannot be of any significance in making the decision here.

### **Biodiversity**

- 5.74 There are no ecology or biodiversity issues in relation to the application (CD 5 paragraph 10 & APP 15). The application would not affect the conservation status of any international, national and non-statutory designated site.

- 5.75 The habitats identified are of no more than site level or local level ecological value. The key habitat including the majority of the hedgerows, mature trees and areas of broadleaved woodland would mostly be retained. All TPO trees would be retained.
- 5.76 Loss of habitats including the improved and species poor semi-improved grassland, small lengths of hedgerows and tall ruderal habitats would only result in minor negative effect to receptors of local level importance. The mitigation package comprises the creation and long term management of: species rich grassland, species rich neutral grassland, new hedgerows/areas of native species scrub planting, new native species trees, wetland habitats in drainage swales. The provision of such habitats would provide minor positive effects to biodiversity.
- 5.77 Great crested newts, dormice, badger or bat roosts were not identified. Thus these ecological receptors are not a statutory ecological constraint to the development. The provision of new roost sites for bats throughout the site would provide long term minor positive effects for the local population.
- 5.78 The majority of the bat activity was identified along hedgerows and the main foraging areas/commuting routes are along the eastern and western site boundaries. Mitigation for the removal of short lengths of hedgerows is provided and a sensitive lighting scheme would be used throughout the development. This mitigation would result in minor positive effects.
- 5.79 Detailed studies confirm the application site is not used by the Barbastelle Bat colonies at the Slindon/Goodwood Estates. Only occasional Barbastelle Bat activity was identified across the site in 2014 and 2016 survey periods. Given the survey results, the application would not adversely affect the Barbastelle Bat colonies at the Slindon/Goodwood Estates and the proposed mitigation would ensure the potential effects to Barbastelle Bat locally are negligible.
- 5.80 The breeding bird assemblage is common and the majority of the species identified would readily adapt to residential situations. The mitigation would provide minor positive effects to breeding birds.
- 5.81 The application of appropriate working methods during construction and the mitigation outlined above would ensure the killing/injury of grass snakes is avoided and long term minor positive effects are likely.
- 5.82 The evidence shows that the application retains the majority of primary habitats of ecological interest and where a loss of local level receptors has been anticipated mitigation would be provided to ensure no significant loss to biodiversity. The application is in accordance with all national/local planning policies and relevant wildlife requirements. The application complies with the Framework, Wildlife and Countryside Act 1981 (WCA) (*as amended*), the NERC Act 2006; Circular 06/2005; ALP Policies GEN 28, GEN 29 and GEN 30 and eALP Policy ENV DM5 and ENV SP1.

**Provision of infrastructure requirements directly related to the proposed development.**

- 5.83 This matter is fully covered in the S106 Agreement, in the CIL Compliance Analysis, and in the CIL Justification Statement (CD 37, CD 55, & CD 52).

**Any significant social, economic or environmental impacts not covered**

5.84 There are no such impacts.

**Sustainable Development and Prematurity**

- 5.85 Interested persons submit that to apply the presumption in favour of sustainable development it must first be established that the proposal is sustainable. Residents say that that sustainability has not been properly established. The applicants draw attention to the judgment of Jay J in *Cheshire East BC v SSCLG & Renew Land Developments* [2016] EWHC 571 (Admin) at paragraphs 19 to 26. At paragraph 23, Jay J explains: *"In my judgment, this is not, and cannot be, a question of assessing whether the proposal amounts to sustainable development before applying the presumption within paragraph 14. This is not what paragraph 14 says, and in my view would be unworkable. Rather, paragraph 14 teaches decision-makers how to decide whether the proposal, if approved, would constitute sustainable development."* Paragraph 19 of the judgment says: *"In my judgment, the answer is to be found in the language of paragraph 14 of the NPPF. Where the second bullet point applies, because the development plan is absent, silent or relevant policies are out of date, the proposal under scrutiny will be sustainable development, and therefore should be approved, unless any adverse impacts significantly and demonstrably outweigh the benefits"*. In other words, the test of sustainability is Framework paragraph 14, rather than something logically prior to it.
- 5.86 In any event, even if the decision-taker has to decide whether the proposal constitutes sustainable development in its own right as a separate exercise to the application of Framework paragraph 14, it is the applicants' case that the proposal scores positively and very well in relation to each of the 3 roles (economic, social and environmental) of sustainable development set out in Framework paragraph 7 and elaborated throughout the Framework.
- 5.87 As to prematurity, it is suggested that this is a case in which both limbs of the PPG test for refusal are satisfied: *"(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area"*.
- 5.88 Interested persons do not accept that the decision in this case does not concern development that is central to the eALP, despite it being a housing figure of 400, which is some 2% of the overall housing need for the district over the plan period. Instead, it is submitted that any strategic housing would satisfy the test in limb (a). This is not what the guidance says, and would if correct lead to many more refusals on prematurity grounds than is intended by the understandably high threshold set in national policy. It would mean that permissions for much needed large housing developments would be refused and one would have to wait a number of years until the LP

was adopted before one could do anything of substance to meet pressing and ever-increasing housing needs. This would be a very poor outcome.

- 5.89 As to Limb (b), interested persons do not accept the significance of the 18-month suspension of the eALP, due to the OAN being hugely under-shot, and the fact that a new eALP is some months away. This means that the eALP is not at an advanced stage. Whilst EPC notes that the eALP is not at an advanced stage, it was acknowledged however that the lpa, who are the party entitled to make a prematurity objection according to the guidance, do not do so in this case (EPC 2 paragraph 43c).
- 5.90 Accordingly, there is little if anything to put into the adverse impacts side of the Framework paragraph 14 equation. There are several major benefits amongst which are:
- (a) the provision of 400 new homes would make a substantial contribution to the pressing and growing need for housing in the district, the lpa cannot demonstrate a 5-year HLS and there is a significant shortfall of housing land (LPA 10). This is accepted<sup>22</sup> by EPC as carrying significant weight. The applicants suggest the weight to be attached to this benefit should be very significant. Attaching very significant weight is more appropriate given the ever increasing OAN and the significant shortfall in the 5-year HLS which EPC acknowledges<sup>23</sup> as massive;
  - (b) 30% (120) of the units would be AH making a substantial contribution to the significant need in the district. EPC accepts<sup>24</sup> that this provision should attract significant weight. Given that the amount of AH proposed constitutes over 6 months of the need across the district, it is more appropriate to attach very significant weight to this benefit;
  - (c) the proposed B1 development would make a valuable contribution to the local, regional and national economy. Whilst EPC attributes<sup>25</sup> significant weight to this benefit attaching very significant weight is more fitting;
  - (d) the A1/A2/A3/D1/D2 (small shops/services/facilities) floorspace would boost the sustainability of Fontwell. EPC gives some weight to this<sup>26</sup>. However, the lack of some facilities in Fontwell means that the proposed new community facilities warrant very significant weight;
  - (e) the proposed POS would be a substantial asset for the community. Through the S106 Agreement, a large (4.5ha) area of public open space would be transferred to WPC, who would hold the land in perpetuity for the benefit of local people. This amount of public open space significantly exceeds the policy requirement for a scheme such as this. EPC gives<sup>27</sup> some weight to this benefit. However, Fontwell currently has nothing like this amount of proposed public open space, and given that it would be held by WPC it is a benefit that should attract very significant weight.

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<sup>22</sup> X-Examination of Mr Simpson.

<sup>23</sup> Mr Simpson Evidence-in Chief.

<sup>24</sup> X-Examination of Mr Simpson.

<sup>25</sup> X-Examination of Mr Simpson.

<sup>26</sup> X-Examination of Mr Simpson.

<sup>27</sup> X-Examination of Mr Simpson.



- 5.91 These worthwhile benefits align well with the policies in the Framework taken as a whole. When applying Framework paragraph 14 it is readily apparent that the adverse impacts, if any and such as they are, of granting planning permission would not "*significantly and demonstrably*" outweigh the benefits of doing so. Indeed, the adverse impacts do not come anywhere near to significantly and demonstrably outweighing the benefits, and even if it is concluded that there are various breaches of adopted, made and emerging plans, these adverse impacts would certainly not significantly and demonstrably outweigh the benefits of granting permission.
- 5.92 It is acknowledged that determining the application in accordance with the development plan would point to a refusal of the application because of Policies GEN 2 and 3 in the ALP. If EPC's case on the made BENP is accepted, then Policies H1 and H2 of the BENP would also point to a refusal of the application. The applicants' case depends upon the second limb of S38 (6) namely where material considerations indicate otherwise than determining the application in accordance with the Plan. It is here under the heading material considerations that the combination of the very significant benefits of the application, coupled with the fact that all the policies relied on by EPC in the ALP and the made BENP are out-of-date, and in view of the ever-increasing and ever-increasingly unmet OAN and a significant shortfall in HLS, points overwhelmingly and decisively to granting permission for this highly commendable scheme, applying the presumption in favour of sustainable development in the relevant part of Framework paragraph 14.

Richborough Estates

## 6. The Case for Arun District Council

The material points are: -

### Introduction

- 6.1 The Ipa resolved to approve the application subject to conditions and S106 Obligations.

### The Development Plan

Arun Local Plan 2003 (CD 6)

- 6.2 The application site immediately adjoins and is outside the BUAB as defined by Policy GEN 2. Policy GEN 3 presumes against development outside the BUAB. However, the BUAB is out-of-date as it was defined on the basis of housing need for the plan period 2003-2011 and because the Ipa is unable to show a 5-year HLS.

- 6.3 The emphasis on good design in Policy GEN 7 is consistent with the Framework and is not out-of-date. The requirement in Policy GEN 8 to provide appropriate infrastructure complies with the Framework and is not out-of-date. Consistent with the emphasis in Framework paragraph 50 on creating inclusive and mixed communities, Policy DEV 17 requires AH to be provided for sites of 25 or more dwellings and is not out-of-date.

Barnham & Eastergate Neighbourhood Development Plan (CD 7)

- 6.4 BENP Policy ES3 broadly precludes development within the Local Gap/Green Infrastructure Corridor. The BENP refers back to the ALP Proposals Map for a definition of Local Gaps. Within the BENP area, the only local gap is between Barnham and Eastergate (LP Policy Area 11(iv)). The application site is not within this area. Thus, whilst BENP Policy ES3 is not strictly engaged by this application, it is relevant to note that the site is outside the part of the BENP area where development is most strictly controlled.

- 6.5 BENP Policy ES4 states that "*Open views towards the countryside or across open spaces will be maintained if possible...*" Given that this policy recognises that there is a balance to be struck where open views may be affected, it is not a policy restraining housing such that, in the absence of a 3-year<sup>28</sup> HLS, it should be considered out-of-date. BENP Policy ES5 requires a high standard of design and is consistent with the Framework emphasis on good design. BENP Policy ES6 requires new development to contribute positively to the character of the 2 villages with new development being "*... designed to respond to the specific character of the site and its local surroundings and to create a sense of place*". This policy accords with the emphasis in the Framework on ensuring that policies and decisions respond to local character.

- 6.6 BENP Policy H1 allocates a site for "*at least*" 60 dwellings in Eastergate "*provided that the development meets the requirements of the policies set out in this Plan and the Arun District Local Plan*". The supporting text states

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<sup>28</sup> December 2016 WMS on Neighbourhood Planning.

that the allocation is "*in addition to*" inter alia "*any strategic allocation that may be made in the Local Plan for housing on the larger site to the south of Barnham and Eastergate*". EPC points out that there is no reference here to the specific allocation being "*in addition to*" any other strategic allocation in the LP. However, when the BENP was being made, the lpa had not published the 2014 version of the eALP, which identified, for the first time, Ford and Fontwell as a location for strategic housing in Policy H SP1. This eALP allocation was to take account of the lpa's large and increasing OAN for housing. Instead, the BENP was predicated on a 2013 version of the eALP, which made no reference to land at Ford and Fontwell. Paragraph 9.14 of the supporting text to BENP Policy H1 must therefore be read in that context. If that is done, it can be properly inferred that the policy intention in BENP paragraph 9.1.4 is to make clear that the specific site allocation in Policy H1 is to be "*...in addition to...*" any strategic allocation that may be made in a LP that includes the BENP area.

- 6.7 BENP Policy H2 provides for permission to be granted for small residential developments on infill and redevelopment sites. The application is a strategic scheme and this policy is not engaged.

### **The Emerging Development Plan**

The Emerging Arun Local Plan

- 6.8 Examination of the eALP 2011-2031 started in June 2015 and was suspended in February 2016 to enable the lpa to review the plan in the light of a materially higher OAN (CD 23).
- 6.9 Policy H SP1 - Strategic Housing, Parish and Town Council Allocations proposes to accommodate strategic housing requirements in several ways, one of which is through a "*Site Specific Allocations Development Plan Document for Ford and Fontwell*". Under the heading "*Ford and Fontwell*", the draft policy states, "*Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. Both these areas lack some key services and growth may enable the creation of settlements that are more sustainable. There is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared for the Local Plan to establish if sites can be allocated to improve the sustainability of these settlements.*"
- 6.10 Policy H SP1 also provides for strategic housing through "*Parish and Town Allocations*". The parishes of Eastergate and Walberton are allocated 100 and 50 dwellings respectively. Policy H SP1 states: "*All Neighbourhood Development Plans shall provide for the stated number of housing units with respect to their Parish and Town Council areas. It should be noted that these are minimum allocations. [...] Parish and town council allocations are in addition to the strategic allocations.*"
- 6.11 Applying the criteria in Framework paragraph 216, moderate weight can be given to eALP Policy H SP1 due to the relatively advanced stage of preparation of the eALP. It is accepted that the policy is still subject to unresolved objection, which reduces the weight that could otherwise be given

to it, but a moderate degree of weight is still significant. Updating the emerging spatial housing strategy to take account of the up-to-date position on the OAN, will require the identification of more, not fewer, strategic locations for housing, and the eALP will comply fully with the Framework.

Emerging Walberton Neighbourhood Development Plan (WPC 7)

- 6.12 Following examination of the WNDP and objections by the lpa, WPC has published a revised eWNDP (CD 27, CD 25, WPC 6 & 7). The lpa is satisfied that the revised WNDP complies with the legal requirements and basic conditions of the Localism Act 2011 and can proceed to Referendum (LPA 7).
- 6.13 Emerging WNDP, Policy VE 5 refers to buildings and structures of character, and requires that *"proposals relating to them will be expected to retain their local distinctiveness and removal of part or all of them will not be permitted unless it can be demonstrated that they cannot be put to alternative beneficial or viable use"*. Schedule 5B identifies the Old Smithy, located within the application site as a building that should be added to the lpa's Local List. The application, which is in outline only, would not lead to the removal of this building. The scheme could be developed in a manner which allows this building to be retained, whether as a matter of the developer's preference or because policy requires it. This is an issue for the reserved matters stage. The application is not in conflict with Policy VE 5. Moreover, eWNDP Policy HP 2 identifies part of the application site for residential development (minimum of 6 dwellings), thereby accepting the principle of residential development.
- 6.14 Emerging WNDP Policy HP 1 supports development on sites allocated in the plan and precludes development outside the BUAB (WPC 7). The key housing aims, Section 5.4, provide for a strategy of dispersing housing, and avoiding development on large sites. Whilst the application conflicts with these aims, the aims are inconsistent with the strategic allocation in the eALP. Policy HP 1 and section 5.4 of the eWNDP have not been amended, but it does now make clear that the housing policies are to be read in conjunction with noting that WPC supports the grant of planning permission at Fontwell Meadows.
- 6.15 The lpa is satisfied that the modification needs to be made to ensure that the draft Order meets the basic conditions set out in Schedule 4B paragraph 8(2) of the 1990 Act (LPA 8). PPG advises<sup>29</sup>: *"A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. Although a draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan the reasoning and evidence informing the Local Plan process is likely to be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested. For example, up-to-date housing needs evidence is relevant to the question of whether a housing supply policy in a neighbourhood plan or Order contributes to the achievement of sustainable development."* and *"The local planning authority should work with the qualifying body to produce complementary neighbourhood and Local Plans. It*

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<sup>29</sup> Paragraph 009 Reference ID: 41-009-20160211.

*is important to minimise any conflicts between policies in the neighbourhood plan and those in the emerging Local Plan, including housing supply policies."* The lpa considers the note is necessary to comply with the basic conditions as it puts beyond doubt that Policy HP 1 cannot prejudice the identification of Fontwell Meadows as a strategic housing allocation under eALP Policy H SP1.

- 6.16 EPC accepts that the lpa is entitled to make modifications that are needed to secure that the draft Order meets the basic conditions mentioned in the 1990 Act. The lpa rejects EPC's submissions that the addition of the note is unlawful and that residents would be unfairly deprived of an opportunity to express a view on it. Residents will have the opportunity to express a view on the eWNDP in its final form when it is put to a Referendum. In light of the revisions to the eWNDP to reflect that WPC no longer objects to the application, any alleged issue in relation to this Policy HP 1 falls away.

#### **Whether the proposal would accord with the BENP**

- 6.17 EPC no longer relies<sup>30</sup> on a conflict with BENP Policy ES4 - Protection of Open Views. Whilst BENP Policy ES5 requires a high standard of design, this is an outline application supported by a comprehensive Design and Access Statement, with opportunity to refine aspects of the design at the reserved matters stage. Thus, it cannot be argued that the application breaches BENP Policy ES5. The lpa is satisfied that the application does not breach BENP Policy ES6 which requires new development to contribute positively to the character of the 2 villages.

- 6.18 Whilst BENP Policy H1 allocates a site for at least 60 dwellings, it is, of necessity, neutral in relation to the application because the strategic level of housing proposed in the application is far beyond anything that is, or ever could, be delivered by a NP. Therefore, it can properly be inferred from BENP paragraph 9.1.4 supporting Policy H1 that the specific allocation is not only "*in addition to*" the strategic allocation that was being contemplated at the time that policy was prepared; but also the clear policy intention is that is "*in addition to*" any strategic allocation identified in the eALP process. This reflects the proper relationship between strategic plan-making at the LP level, and non-strategic plan-making at the NP level, in accordance with the Framework. The contention that this strategic proposal breaches a housing policy that only deals, and can only deal, with non-strategic housing, is unarguable. BENP Policy H2 provides for permission to be granted for small residential developments on infill and redevelopment sites. As the application proposes a strategic level of housing, this policy is neutral in relation to it.

- 6.19 It follows that the application does not breach any policy in the made BENP.

#### **Whether the proposal would prejudice the preparation of the WNDP and/or whether it would accord with that plan**

- 6.20 Any argument about the proposal prejudicing the preparation of the eWNDP by being promoted in advance of the potential designation of part of the site as LGS in the eWNDP has now fallen away. WPC also confirmed that it no

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<sup>30</sup> X-Examination of Mr Simpson.

longer objects to the application proposal, in principle. Therefore any issue in relation to eWNDP Policy HP1 falls away.

- 6.21 The application is in outline and as such there is no issue of concern in relation to eWNDP Policy VE 5 and Policy HP 2 already accepts, in any event, the principle of residential development on a part of the site. It follows that the application would not breach any policy in the modified eWNDP.

**Whether the proposal would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies**

ALP

- 6.22 As the application site is outside the BUAB identified in Policy GEN 2, it does not comply with Policy GEN 3. However, Policies GEN 2 and GEN 3 are out-of-date and any breach of those policies should be given little weight.
- 6.23 As an outline application with a comprehensive Design and Access Statement, it is consistent with the requirements of Policy GEN 7 to provide a high standard of design. The application, by virtue of the obligations secured in the S106 Agreement, would also provide adequate and appropriate infrastructure, and accord with Policy GEN 8. The application provides for 30% AH, and so accords with Policy DEV 17. The application complies with all other relevant ALP policies that are not out-of-date. Insofar as it breaches relevant out-of-date policies, those breaches should be given little weight.

eALP

- 6.24 Specific provision is made for strategic housing in Ford and Fontwell in Policy H SP1, and the application is not inconsistent with that policy as drafted. Policy H SP1 proposes a site-specific DPD for the site, with an emphasis on improving the sustainability of the settlement. Such improvements would be secured by the application in the form of sustainable transport measures, recreational facilities and a neighbourhood centre. Fontwell is already served by a reasonable range of shops and services within easy walking distance of the site including an off-licence, newsagent, convenience store, café/restaurant and public house (CD 24). The application accords with the spatial strategy for housing in the eALP, and in particular Policy H SP1, and there is no breach of any other relevant eALP policy. Compliance with the eALP should be given moderate weight in the planning balance.

**The need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs**

- 6.25 The SoCG noted that the lpa cannot demonstrate a 5-year HLS to reflect the OAN position of 845 dwellings per annum. It is common ground that a review of the HLS is highly likely to show that the HLS remains significantly less than 5 years. Since then, based on an assessment by GL Hearn, the lpa is working to an OAN of 919 dpa (CD 10). The lpa has updated the HLS as of 31 March 2016 which shows a HLS of 1.92 years (LPA 10). The WMS on Neighbourhood Planning sets out that relevant policy for the supply of housing in a made NP should not be considered out-of-date under Framework paragraph 49 where the lpa cannot demonstrate a 3-year HLS.

- 6.26 The HLS position is at a point in time i.e. 31 March 2016. As EPC relies on permissions granted since that date to demonstrate a 3-year land supply then a full and proper assessment of, amongst other things, completions and lapsed permissions is also required over that same period (EPC 7 paragraph 6.7). That is the reason why a full HLS assessment is done at a point in time with complete data, thus the permissions EPC refers to are not included in the lpa's assessment.
- 6.27 The HELAA is not a policy document and sites are identified in accordance with the methodology in the PPG. The lpa only includes within the HLS, HELAA sites within the BUAB as these accord with extant planning policies. Those sites identified as deliverable outside the BUAB are simply sites with potential. As the HELAA explains, it does not follow that planning permission will be granted as they are currently contrary to policy. It is bizarre that these sites are relied upon by EPC as, in areas where there are made NPs, these sites could all be contrary to the development plan and at significant risk of call-in. There are sites listed in the HELAA as deliverable outside the BUAB in both Walberton and Eastergate. These sites have not been included within the lpa's HLS calculation but EPC rely on them to make its HLS case, whilst at the same time objecting to the application. However, the reasons why these sites are now considered to be acceptable and deliverable and not the application site are not explained.
- 6.28 The Appendix 1.1 HELAA sites are those considered to be deliverable. Appendix 1.2 HELAA sites are included by EPC within the HLS as commitments. However, these are sites with "potential" and only those sites (some 76 units) that would accord with current policy are included in the supply. HELAA sites outside BUABs were not included within the December 2016 calculation of supply and contrary to EPC's suggestion have not been "excluded" between December and January as they were not there to start with. No strategic sites are contained within the HLS because, at this time, on the basis that the lpa has to produce a "Policy Off" position.
- 6.29 The lpa takes a pragmatic approach to windfalls. No inclusion is made within the first 3 years because none of the windfalls have planning permission. Next year, those small sites with planning permission that have been completed will be classed as windfall completions. Windfalls and small scale sites are included alongside each other and an average of 75 per year is included in the HLS to avoid any double counting.
- 6.30 NP allocations are already included within the commitments. Furthermore, the site EPC identified at Arundel is within the South Downs National Park and not in Arun District. The Littlehampton Academy site has been included within the supply for 70 dwellings as a made NP site as it did not benefit from planning permission at 31 March 2016. Subsequently this site has been granted permission for 68 dwellings. An additional 10 cannot therefore be added. Made NP sites included within the 5-year supply have been increased by 9 dwellings over that included in LPA 10. This is as a result of a further review of the data being assessed for completion of the AMR.
- 6.31 The lpa has prepared a robust, Framework compliant, "Policy Off" HLS position as of 31 March 2016. After a non-implementation rate has been

applied, the HLS stands at 1.92 years. Thus, the lpa's position that there is a substantial and long-standing shortfall in the HLS is maintained. The lpa cannot show a 5-year HLS such that relevant housing supply policies in the ALP cannot be considered up-to-date. Moreover, the lpa cannot show a 3-year HLS and having regard to the criteria set out in the WMS, the relevant housing supply policies in the BENP cannot be considered up-to-date. This application would make a significant contribution to reducing this shortfall in the delivery of housing and should be given very substantial weight in the planning balance.

**The effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park**

- 6.32 It is common ground that the application would have no adverse impact on the landscape or visual character of the area or on views from the South Downs National Park.

**The effects of the traffic generated by the proposal on highway safety and traffic conditions**

- 6.33 It is common ground that traffic generated by the application would not result in a severe residual cumulative impact.

**Whether the proposal would maximise sustainable transport solutions**

- 6.34 The lpa is satisfied that the application would maximise opportunities for sustainable transport through the relevant S106 Obligations, in particular, bus transport (CD 37).

**Whether the proposal would provide satisfactory living conditions for future residents, having regard, among other matters, to the proximity of events at Fontwell Park**

- 6.35 The EHO's concern arose from the impact of a single event which lasted for a short period and is a matter that was considered fully by the Members (CD 24 page 78). PPG refers<sup>31</sup> to factors which influence whether or not noise should be considered a basis for objecting on planning grounds, including "*non-continuous sources of noise, the number of noise events and the frequency and pattern of occurrence of the noise*". The lpa is satisfied that concern about the noise generated by a single short event does not provide a basis for refusing permission.

**The effect of the proposal on biodiversity**

- 6.36 No party objects to the scheme on ecological or biodiversity grounds. The lpa's ecologist, the Sussex Wildlife Trust and Natural England do not object to the application on ecological grounds.

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<sup>31</sup> Paragraph. 006; Ref ID: 30-06-2014 1224



**Whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development**

- 6.37 The lpa is satisfied that the application would contribute adequately to infrastructure requirements. The S106 contributions would comply with the tests in CIL regulation R122 (2) (CD 55).

**Any significant social, economic or environmental impacts not covered above**

- 6.38 The lpa is satisfied that there are no other planning impacts that need to be considered in determining this application.

**Planning Balance**

- 6.39 Given the lack of a 3 and 5-year HLS, relevant housing supply policies in the development plan are out-of-date and the weighted planning balance in Framework paragraph 14 must be applied. Planning permission should be granted unless the adverse impacts of the application significantly and demonstrably outweigh the benefits.

- 6.40 The adverse impacts of the application are very limited: there is a breach of relevant HLS policies in the ALP, but those policies are of such vintage that any breach can only be given little weight. Taking a generous approach, it might be said that the application would have some adverse visual impact in close views of the site, but this would not come close to providing a basis for a refusal.

- 6.41 Set against this, the application would:

- accord with the BENP (substantial weight), eALP (moderate weight) and the eWNDP (moderate weight);
- make a significant contribution to meeting the lpa's substantial and long-standing HLS deficit (very substantial weight);
- provide much-needed AH in a District where there is a long-standing shortfall of provision (very substantial weight);
- deliver a sizeable area of commercial floorspace with all the positive economic impacts that this entails (substantial weight);
- make a significant contribution to meeting local infrastructure requirements, including investment in the much-needed improvements to the A29 (substantial weight);
- secure a sizeable area of public open space for the local community in perpetuity (moderate weight).

- 6.42 In the planning balance, it is plain that the adverse effects of the application do not come close to significantly and demonstrably outweighing this series of extensive benefits. Accordingly, the lpa invites the SoS to grant planning permission for the application.

## 7. The Case For Eastergate Parish Council

The material points are: -

### INTRODUCTION

- 7.1 EPC seek to assist in the determination of the first 3 issues identified in the Pre-Inquiry Advice Note (CD 1). These are:
- (a) whether the application would accord with the BENP;
  - (b) whether the application would prejudice the preparation of the WNDP and/or whether it would accord with that Plan;
  - (c) whether the application would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies.
- 7.2 The correct and lawful approach to the planning balance is to decide the application in accordance with the policies of the development plan unless material considerations indicate otherwise.<sup>32</sup> The consequence of Framework paragraph 49 being engaged is that the SoS must also consider Framework paragraph 14. Framework paragraph 14 creates a policy presumption in favour of the grant of planning permission unless the adverse consequences significantly and demonstrably outweigh the benefits (limb 1) or specific Framework policies indicate development should be restricted (limb 2).
- 7.3 In carrying out the planning balance, it is sensible to deal with limb 2 first. A breach of Framework paragraph 198 is a situation in which the Framework indicates that development should be restricted within the scope of Footnote 9 to Framework paragraph 14 and limb 2 is engaged. This is clearly the case as Footnote 9 is non-exhaustive,<sup>33</sup> and Framework paragraph 198 plainly directs refusal as the normal response to a breach of a NP. That goes further than some other Footnote 9 policies, such as heritage coasts, which do not<sup>34</sup>. Framework paragraph 198 is clearly a situation where *“development should be restricted”* and says so in those terms. The concession by the Defendant in *Woodcock Holdings v SSCLG* [2015] EWHC 1173 (Admin) that Framework paragraph 198 does not *“give enhanced status to neighbourhood plans as compared with other statutory development plans ...”* is not determinative of the point (CD 29 paragraph 24).
- 7.4 Framework paragraph 198 does not simply re-state the statutory presumption in favour of the development plan. That position is clearly set out at Framework paragraph 196 within the same “Decision Taking” section with footnotes referencing the legislation. Framework paragraph 198 must be communicating something additional about the status of NPs as an important and, necessarily, post-Framework part of the development plan.
- 7.5 It is not the case, that Framework paragraph 14 would be “circular” in such a situation. Framework Paragraph 198 is a consideration to be taken into

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<sup>32</sup> S.38(6) Planning and Compulsory Purchase Act 2004 read with s.70(2) Town and Country Planning Act 1990.

<sup>33</sup> *Forest of Dean DC v SSCLG* [2016] EWHC 421 (Admin.) per Coulson J at [20] (CD 43).

<sup>34</sup> Framework paragraph 114.

account when determining how to weigh the harm flowing from a breach of NP policies in situations where the development plan may be absent, silent or out-of-date, as a recognition of the importance the Government attaches to the spatial vision of local communities articulated in the NP, as distinct from other parts of the development plan, in such a situation. The consequence of Framework paragraph 198 being engaged and breached is that the Framework paragraph 14 tilted balance in favour of permission is disengaged, and replaced by a policy presumption in favour of the "shared vision" within the NP unless material considerations outweigh that presumption.

- 7.6 As Lindblom LJ held of Footnote 9 policies in *Suffolk Coastal DC v Hopkins Homes Ltd* [2016] EWCA Civ. 168, he says<sup>35</sup>: *"The purpose of the footnote, we believe, is to underscore the continuing relevance and importance of these NPPF policies where they apply. In the context of decision-taking, such policies will continue to be relevant even "where the development plan is absent, silent or relevant policies are out-of-date". This does not mean that development plan policies that are out-of-date are rendered up-to-date by the continuing relevance of the restrictive policies to which the footnote refers. Both the restrictive policies of the NPPF, where they are relevant to a development control decision, and out-of-date policies in the development plan will continue to command such weight as the decision-maker reasonably finds they should have in the making of the decision. There is nothing illogical or difficult about this, as a matter of principle."*
- 7.7 It is not however a "knockout blow" as the applicants characterise it. Both inherent within Framework paragraph 198 and Footnote 10 is a recognition that other material considerations may indicate that the application should be determined otherwise than in accordance with that policy presumption. Even if EPC is wrong about that, and the policy presumption operates in the reverse, EPC has gone on to perform the limb 1 balance, carefully assessing the scheme benefits and the harms and considering whether the latter significantly and demonstrably outweighs the benefits.

#### **ACCORD OR CONFLICT WITH THE BENP**

- 7.8 The application conflicts with Policy H1 and derives no support from Policy H2, and accordingly conflicts with the BENP as a whole. Policy H1 explains that the BENP seeks to deliver 200 units over the plan period, and as 158 units had already been granted planning permission the plan sought to allocate the remaining 42 units. However, Policy H1 goes further, and allocates land for 60 units at a strategic site shown on the Proposals Map.
- 7.9 Recognising that the place of NPs is not to *"promote less development than set out in the Local Plan or undermine its strategic policies"*,<sup>36</sup> the BENP notes within the reasoned justification that the 60 unit allocation is in addition to implementable planning permissions and *"any strategic allocation that may be made in the Local Plan for housing on the larger site to the south of Barnham and Eastergate"*. Whilst the reasoned justification cannot provide additional policy hurdles, it serves as an aid to interpretation of the policy:

<sup>35</sup> (CD 42 paragraph 39)

<sup>36</sup> Framework paragraph 184.

see: R(Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ. 567 per Richards LJ at paragraph 21.

- 7.10 Accordingly, the strategy within this most recently adopted part of the development plan provides for 60 new dwellings over and above any committed permissions and a strategic allocation made in the eALP on land south of Barnham and Eastergate. This is to deliver the shared vision recorded within the plan as follows: *"The Plan gives local people the power to decide where new housing should go and how the villages could change. Without the Plan Arun District Council would make these decisions on behalf of the people of Barnham and Eastergate."* and *"This entire document forms the Neighbourhood Development Plan for the area to which it relates - the villages of Barnham and Eastergate. If to any extent a policy in the Neighbourhood Development Plan conflicts with any other statement or information in the plan, the policy is to prevail."*<sup>37</sup>
- 7.11 There is no mention of any other strategic site, and certainly no mention of ad-hoc large-scale development coming forward outside the plan making process and, as acknowledged by the applicants<sup>38</sup>, Policy H2, is plainly not engaged by this scheme. Accordingly, the only rational conclusion is that the application conflicts with BENP Policies H1 and H2 and therefore the development plan taken as a whole.
- 7.12 The above conclusion was also the original evidence of the applicants.<sup>39</sup> However, in an unusual turn of events, the applicants' planning witness made a radical about-turn in oral evidence, and gave evidence that there was no conflict with the BENP. This was on the sole basis that he was persuaded of an alternative construction of the BENP, put in cross-examination to EPC's planning witness by the applicants' advocate. Such a fundamental change of position on such a central issue cannot but affect the weight to attach to the applicants' planning evidence. At the very least, it means that, until mid-way through the inquiry, the balance of professional opinion was that there was conflict with the BENP. That puts to bed the suggestion made by the lpa in opening that identifying a conflict with the BENP was *"unarguable"*.
- 7.13 The applicants' latest position that there is no conflict with the BENP because there is no BUAB policy or no specific policy restricting development on this site is wrong. There are notable parallels with the Broughton Astley Neighbourhood Plan which was the subject of consideration by the High Court in *Crane v SSCLG* [2015] EWHC 425 (Admin.) (CD 28). There, Lindblom J rejected the submission that a conflict with the NP could not be identified in a situation where it lacked BUAB policies or a policy restricting development on the appeal site (CDs 37 & 38).
- 7.14 He explained in general terms that: *"the neighbourhood plan embodies the "shared vision" of the community in Broughton Astley for their neighbourhood. It displays a comprehensive approach to planning at the neighbourhood level in the period from 2013 to 2028. It is the means by*

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<sup>37</sup> Paragraphs 1.2.3-1.2.4 on page4 BENDP.

<sup>38</sup> X-Examination of Mr Redwood.

<sup>39</sup> Mr. Mills Proof of Evidence, paragraph 4.40.

*which the parish council has chosen – as paragraph 185 of the NPPF puts it – “to shape and direct sustainable development in [its] area” in that period (CD 28 paragraph 41). And, in common to the BENP strategy, Lindblom J found that: “... it is in my view significant that housing development on sites other than the allocations in policy H1 is deliberately provided for in the way that it is in policy H3. Apart from “windfall” proposals coming forward under that policy, the plan does not provide for, or envisage, any housing development in excess of the 528 dwellings on the sites allocated under policy H1. Policy H3 goes no further than to allow for development “on sites of less than 5 dwellings on previously developed land”. If the intention had been to accept the development of housing on larger, unallocated sites, a policy drafted in this way would not have been included in the plan.” (CD 28 paragraph 43).*

7.15 Lindblom J concluded that: *“It follows from my understanding of the relevant provisions of the neighbourhood plan that a proposal for housing on a site other than those allocated in policy H1 will only accord with the plan if it finds support in policy H3 as a “windfall” proposal, and is consistent with other relevant policies. Larger proposals for housing on unallocated sites will not accord with the plan. They will be contrary to its strategy for housing development in policies H1 and H3. They will therefore be in conflict both with the neighbourhood plan itself and with the development plan as a whole.” (CD 28 paragraph 46).*

7.16 Lindblom J made the important point, equally applicable here and to which the applicants have no real answer, that: *“... If the interpretation of the plan urged on me by [the Claimant] were right, there would have been no point in the parish council going through the exercise of selecting the sites it allocated for housing development and formulating the policies and text which support those allocations. That, I think, is beyond any sensible dispute”. (CD 28 paragraph 48). It is therefore inescapable that there is a conflict with the BENP taken as a whole. Any other conclusion is clearly wrong (CD 28 paragraph 49).*

*What is the weight to attach to that conflict?*

7.17 As the lpa cannot demonstrate a 5-year supply of deliverable housing sites, Framework paragraph 49 operates to render policies for the supply of housing as being not-up-to-date. The December WMS modifies that position saying that relevant policies for the supply of housing in a made NP should not be deemed to be out-of-date under Framework paragraph 49 where the lpa can demonstrate a 3-year supply of deliverable housing sites (INSP 1). EPC do not dispute the OAN, the level of completions, the extent of the shortfall or the requirement figures provided by the lpa. The only matter of contention relates to the sources of supply used in coming to an overall HLS figure.

7.18 PPG provides guidance on identifying a future supply of land which is suitable, available and achievable within the plan period. Lpas should: identify sites and broad locations with potential for development; assess their development potential, and; assess their suitability for development and the likelihood of

development coming forward (availability and achievability)<sup>40</sup>. Aside from using this assessment as an evidence base to underpin policies in the eALP the guidance suggests that it is to be used to identify sites to go forward into development plan documents to meet OAN.

- 7.19 PPG<sup>41</sup> states that when identifying sites and broad locations to be included within the assessment, that as wide a range as possible of potential sites for development should be identified. PPG also says that sites which have particular policy constraints should be included for the sake of comprehensiveness and that the constraints must clearly be set within the assessment. This relates to the Framework paragraph 17 core principle to proactively drive and support sustainable economic development to deliver homes. Framework paragraph 17 also says that every effort should be made to objectively identify and then meet the housing needs of the area, responding positively to wider opportunities for growth. PPG<sup>42</sup> says that constraints identified such as those relating to physical and policy constraints on sites identified within the assessment may need to be revisited in the event that there are insufficient sites to meet the objectively assessed need.
- 7.20 PPG<sup>43</sup> advises on what constitutes "deliverable" i.e. *"Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years. However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (e.g. infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe."*
- 7.21 In November 2016, the lpa produced an updated version of its HELAA (LPA 11). This document, aims to assist in the identification of suitable sites for development to enable it to maintain an adequate supply of land to meet its OAN. In December 2016, the lpa, considered an update on the 5-year HLS, identified at that time as 2.21 years, and options for increasing the HLS. In January 2017, the lpa provided a further update in response to a request for further information from EPC (EPC 7 Table 3.2).
- 7.22 The January 2017 update outlines that the HLS is 1.92 years and is informed by sites contained within made NPs, windfalls, and HELAA sites within the BUAB. The lpa verified that this supply figure should be subject to a 10% discount to account for the level of certainty in bringing these sites forward. The lpa states that this figure amounts to 685 which includes a reduction of 10%. The figure for projected 5-year supply is confirmed as 2,827 dwellings.

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<sup>40</sup> Reference ID: 3-001-20140306.

<sup>41</sup> Reference ID: 3-011-20140306.

<sup>42</sup> Reference ID: 3-026-20140306.

<sup>43</sup> Reference ID: 31-031-20140306.

The lpa also provides the projected gross completions as part of the West Sussex Housing Land Supply Study (April 2016). Projected gross completions between 2016/2017 and 2020/2021 totalled 2,444 dwellings.

- 7.23 There is a clear difference between the HLS in December 2016 and that in January 2017 despite only being 2 months apart (EPC 7 Tables 3.1 & 3.2). The main difference is the projected supply which, on the basis of the lpa figures, appears to have dropped by 285 dwellings over this 2-month period. The lpa has not provided sufficient information to EPC to enable the sources of projected supply to be disseminated from the supply calculations provided.

#### Land Availability Assessment (HELAA)

- 7.24 The HELAA aims to assess sites which could potentially contribute towards the future supply of housing. The HELAA includes sites identified within previous versions in 2010 and 2012 as well as further sites identified as a result of the Call for Sites between May and June 2016.
- 7.25 The HELAA identifies land outside of the BUAB to be a potential constraint due to conflict with eALP policies which seek to make optimal use of land within the existing settlement boundaries. However, the HELAA does acknowledge that it would not be possible to accommodate all future development including housing need within the BUAB. The HELAA refers to Framework paragraph 47 which requires lpas to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of housing against their housing requirements and a supply of developable sites or broad locations for growth for housing over the longer term. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within the first 5 years reflecting the Framework definition.
- 7.26 The HELAA outlines all deliverable sites in a summary table at Appendix 1.1 – Deliverable Sites. The HELAA concludes that there are 45 (general) sites considered to be deliverable. However, some of these sites are only partly deliverable within the next 5 years. The trajectory shows that of the 2,195 units in total, 1,851 are deliverable between 2016/2017 and 2020/2021. HELAA Appendix 4.1 provides details of specific commitment sites, i.e. those with extant planning permissions. Appendix 4.2 provides a trajectory for these sites and demonstrates that out of a total of 3,641 units some 2,600 units will be delivered within the 5 years to 2021.
- 7.27 The HELAA shows that, within the next 5 years, a total of 4,451 units could be delivered from identified deliverable (general) sites and commitment sites alone. Applying a 10% discount to account for non-implementation, the HELAA can show a realistic prospect that 4,006 units can be delivered within the next 5 years. This is significantly higher than the projected supply of 2,827 units provided by the lpa in January 2017. The difference between the projected supply value provided by the lpa in January 2017 and the HELAA can be primarily attributed to the fact that the lpa have excluded all the HELAA sites located outside the BUAB (LPA 10).
- 7.28 Eighteen sites listed in HELAA Appendix 1.1 are outside the BUAB. These 18 sites, referred to as deliverable, contribute an additional 849 units within the

next 5 years. The HELAA also identifies 20 deliverable (Strategic) Sites alongside the 45 deliverable (General) Sites. Although the HELAA does state that these strategic sites are additional to the level of supply since they are being assessed through the Sustainability Appraisal process, despite demonstrating their projected potential yields and trajectory throughout the plan period, a significant number of which lie within the period 2016–2021.

#### Options for Boosting Short-Term Housing Supply

- 7.29 In December 2016 on the basis a HLS of 2.21-years the Ipa adopted the following options to boosting the HLS (LPA 9). These are:
- (a) Option 1 (a) - invite planning applications on sites identified as being deliverable within the HELAA where they are considered sustainable and will not prejudice the plan or infrastructure delivery;
  - (b) Option 1 (b) - invite planning applications on first phases of sites being investigated for potential strategic allocations. Planning applications would only be granted if the proposed development is able to demonstrate that it does not adversely affect the delivery of the whole allocation and that infrastructure can be delivered as a proportion of the whole allocation;
  - (c) Option 2 (b) - remove all current parish/town allocation numbers from the eALP. The Ipa would instead use the HELAA evidence to identify a target for small sites to be allocated through a Small Sites DPD (EPC 7 Appendix 3).

#### EPC's 5-year Housing Land Supply

- 7.30 Taking into account the requirements of Framework paragraph 17 and the guidance at Framework Footnote 11, EPC 7 Table 6.1 uses information contained within the HELAA to show a HLS of more than 3 years.

#### Deliverable (General Sites)

- 7.31 The HELAA states that there are 2,195 units identified as Deliverable (General). The trajectories contained within HELAA Appendix 1.2 demonstrate that 1,851 units on General Sites will be provided over the next 5 years. In EPC Table 6.1 a 10% discount has been applied to deliverable HELAA sites.

#### Commitment Sites

- 7.32 The HELAA states that 3,641 units will come forward as part of commitment sites from extant permissions for residential development. Of these, based on trajectories in HELAA Appendix 4.2, some 2,600 units are deliverable within the next 5 years. At EPC 7 Table 6.1 a 10% discount has been applied to commitments to cater for lapses.

#### Windfalls

- 7.33 Although there is no requirement to include a windfall allowance in either the 5-year HLS or housing supply trajectory, in the context of the Framework and the emphasis on boosting housing supply, the housing requirement figure for an area is not a ceiling and therefore the numbers of new dwellings provided by windfall sites can be treated as additional supply over and above that



provided by extant planning permissions and LP housing allocations. Reliance on windfalls to achieve the housing requirements of the area clearly does not provide the same level of certainty and commitment in achieving the objectively assessed need as would be secured through planned allocated sites. However, where windfalls have historically been a major component of housing supply and where there is evidence available that indicates they will continue to provide a reliable supply source, it is logical to make an allowance for them in housing supply calculations.

- 7.34 The HELAA demonstrates that the average number of windfall completions over the last 10 years have been at a rate of 75 dpa. To avoid double counting, the first 3 years of the 5-year period often do not include windfalls, as they should already be accounted for within commitment sites. However, here, the commitment sites within the HELAA do not account for sites providing fewer than 5 dwellings. Thus, the risk of double counting is limited and an assumption has been made that in accordance with past trends of windfall delivery, 75 dwellings will be completed per annum over the next 5 years. No discount has been applied to windfall figures as these already represent an average figure based on past annual trends.

Sites granted planning permission since 1st April 2016

- 7.35 Since 1 April 2016, 2 planning applications have been permitted which propose 27 units of residential development. These are not included as commitment sites within the HELAA. EPC considers that there may be other planning permissions for residential development granted since 1 April 2016, which have not been included in the Ipa's January 2017 HLS. However, for the purposes of this calculation, only 2 additional sites have been identified and these 2 sites have been discounted by 10%.

Sites allocated within Made NP's

- 7.36 Here, there are a high number of made NPs. The Ipa confirms that the January 2017 HLS position includes NP allocations (LPA 10). However, very few of the NP's provide a trajectory for allocated sites. EPC has reviewed the NP sites and identified those that are not included in the HELAA but have been shown to be deliverable within the 5 years to 2021 within a NP. In addition, where there are discrepancies between the number of dwellings detailed in the HELAA and the NPs the NP figures have taken precedence.

Deliverable HELAA (Strategic Sites)

- 7.37 There are a significant number of deliverable (Strategic) HELAA sites which could contribute towards the 5-year HLS. The Ipa has elected to invite planning applications for the first phases of development on some of the Strategic Sites identified in the HELAA. It is likely that at least some of these strategic sites would contribute towards the 5-year HLS. However, at this stage Strategic HELAA sites have not been included in EPC 7 Table 6.1.

Conclusion on HLS

- 7.38 EPC calculates the HLS as being at least 3.01 years and as such all of the WMS criteria are met. Therefore, the housing policies within the BENP should

be given full weight in the consideration of this application as they can no longer be considered to be out-of-date. Conflict between the application and the BENP should be afforded very substantial weight. However, if it is concluded that the WMS criteria are not met there should be no change in the weight to be applied to BENP or other development plan policies i.e. the weight to attach to the conflict with out-of-date policies is substantial.

- 7.39 The above conclusion is supported by Lindblom LJ who held in *Suffolk Coastal DC v Hopkins Homes Ltd* [2016] EWCA Civ. 168 at paragraphs 46 and 47:

*"We must emphasize here that the policies in paras 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal<sup>44</sup>. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ... Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect."*

*One may, of course, infer from para.49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy—such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in para.49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment".*

- 7.40 The SoS has recently explained in the Yapton decision how a conflict with a made NP is to be weighed in balance (CD 26). Whilst the applicants have submitted 2 recent decisions where the SoS allowed appeals in breach of a NP, the Yapton decision is the most helpful (CDs 53 & 54). Yapton, whilst being very recent, was decided against the same emerging eALP and the same substantial uplift in the OAN as this application is to be. The interaction between the NP and the eALP in the Yapton case is therefore the most useful to the determination of an application in this District.

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<sup>44</sup> Emphasis added by EPC.

- 7.41 Like the BENP, the Yapton NP has passed examination, and it also *“complies with the Framework”*.<sup>45</sup> Like Yapton, the BENP expressly acknowledges an additional strategic allocation, over and above its allocations, to be made through the LP making process.<sup>46</sup> Whilst there is not the same “promise” to revise the NP to “make” those allocations, in reality that distinction is meaningless, because there is no ability to review a NP, merely make a new one, and strategic allocations made in the LP would, in any event, supersede the NP by virtue of S38(5) Planning and Compulsory Purchase Act 2004.
- 7.42 As the BENP has in substance the same flexibility, the SoS’s conclusions are properly read across: *“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 whilst the YNP is currently underpinned by an outdated OAN (IR 11.9), 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”*.<sup>47</sup>
- 7.43 Having regard to Framework paragraph 198, the SoS afforded *“substantial weight”* to the conflict with the NP,<sup>48</sup> and accordingly found the proposal would not to comply with the social limb of sustainability.<sup>49</sup> The BENP was the product of extensive local engagement, with a very high endorsement at Referendum<sup>50</sup>. In this context and the SoS’s decision in Yapton, very substantial weight should be attached to any conflict with the BENP.
- 7.44 The applicants seeks to distinguish Yapton by pointing out that, unlike Yapton, BENP has no BUAB polices. This argument goes nowhere because: either, taken as a whole, the absence of an allocation for the application site in the BENP can only mean there is a conflict with the plan as a whole (see *Crane* above), or alternatively, the agreed conflict with the saved BUAB policies of the ALP (Policies GEN 2 and GEN 3) carry significant weight in this instance because, like the BUAB policies in the Yapton Plan, they are performing the current spatial function of upholding an *“effective means to shape and direct development in the neighbourhood planning area in question”*.<sup>51</sup> As such, whilst out-of-date, they still should carry substantial weight because they are performing a current and important spatial function, supporting the BENP in this particular location see: Suffolk Coastal DC above at paragraph 47 and the BENP plainly envisaged the boundary policies would remain, aside from the allocation in Policy H1 and the spatial allocations made via the eALP, which will result in a revision to the BUAB policies in any event.

#### **PREJUDICE TO THE EMERGING WALBERTON NEIGHBOURHOOD PLAN**

- 7.45 Following Examination, the Regulation 15 Submission Autumn 2015 Walberton Neighbourhood Plan was recommended to proceed to Referendum

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<sup>45</sup> CD 26 DL,15.

<sup>46</sup> CD 7 Policy H1.

<sup>47</sup> CD 26 D 15.

<sup>48</sup> CD 26 DL 36.

<sup>49</sup> CD 26 DL 36.

<sup>50</sup> Evidence-in-Chief Mrs Chaffe.

<sup>51</sup> CD 26 DL 16.

(CD 8). However, the lpa sought a modification to the Plan, to delete Policy VE 1, which allocates some of the application site as a LGS (CD 25). The remainder of the policies are proceeding to Referendum and should therefore carry significant weight in line with Framework paragraph 216 as they are now not subject to any unresolved objection.

- 7.46 There is conflict with the spatial vision of the 2015 version WNDP as set out within Policies HP 1 and HP 2. This is a view shared by the lpa in its proof of evidence.<sup>52</sup> In particular:
- (a) Policy HP 1 explicitly prevents development *“in the gaps and countryside within the plan boundary and separating the three villages in the parish ...”*. As the application site is not within the exceptions at Schedule 7 there is an unavoidable conflict;
  - (b) Policy HP 2 allocated land to the east of the Old Police House in Fontwell for 6 dwellings on previously developed land. The application would frustrate delivery of this allocation at the planned scale;
  - (c) Policy VE 5 protects “Buildings of Special Character” by resisting their removal unless it can be demonstrated that they cannot be put to an alternative beneficial viable use. It also recommends that the Old Smithy is Locally Listed by the lpa through the eALP. The Old Smithy is proposed to be demolished<sup>53</sup>. There is no evidence before the inquiry of its inability to be used for a beneficial viable use. The identification of this building through the WNDP as meeting the criteria of being a building of special character, the acceptance of that proposition by the Examiner, in-spite of the applicant’s objections, means there is an unavoidable conflict with Policy VE 5.
- 7.47 Taken as a whole, the application would wholly undermine the spatial vision within the 2015 WNDP as amended by the schedule of modifications contained within the lpa’s decision statement.<sup>54</sup> That conflict would cause demonstrable harm to a building of special character. The only rational conclusion is that the application would conflict with the emerging WNDP as it was before the inquiry, and should attract substantial negative weight.
- 7.48 WPC has published a modified version of the WNDP and the lpa has produced a revised Decision Statement which indicates that the plan should proceed to Referendum with the exception of some of the Examiners recommendations (WPC 6 & 7). This is a common process in the making of NPs and is enabled by Paragraph 12(6) of Schedule 4B to the Town and Country Planning Act 1990. However, the Decision Statement also sets out a number of additional amendments agreed between WPC and the lpa (WPC 6). The Table at pages 15 to 23 outlines the proposed modifications associated with these discussions, although no minutes of this meeting are available. The preamble at paragraph 3.2 of the Decision Statement states that the associated Table outlines the alterations made to the draft plan under paragraph 12(6) of Schedule 4B to the 1990 Act (as applied by S38A of 2004 Act) in response to

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<sup>52</sup> LPA 5, paragraph 86.

<sup>53</sup> APP 6 Appendix E, paragraph.5.

<sup>54</sup> CD 25.

each of the Examiner's recommendations and the justification for this as well as outlining any further modifications agreed by the Ipa and WPC.

- 7.49 The only provision within Schedule 4B of the 1990 Act for the Ipa to make post-examination modifications to the WNDP is at Paragraph 12(6), which sets out the circumstances under which they may do so. These are:
- a) modifications that the authority consider need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2);
  - (b) modifications that the authority consider need to be made to secure that the draft order is compatible with the Convention rights;
  - (c) modifications that the authority consider need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L;
  - (d) modifications specifying a period under section 61L(2)(b) or (5); and
  - (e) modifications for the purpose of correcting errors.
- 7.50 The modifications at pages 15 to 23 of the Decision Statement do not fall within the terms of these criteria. Given the significance of the modifications, it is important that those who "*live, work or carry on business in the neighbourhood area*" have the opportunity to make representations on the latest modifications as these could have a bearing upon the application of policies within the plan. The process described in the November Decision Statement suggests that with the exception of the discussions with WPC there has been no consultation on the latest modifications. This is particularly important given that 611 responses were received by WPC during the initial consultation process, many of which related to the application site. Whilst there is an opportunity for residents to have a final say on the modifications through the Referendum, the Regulations are clear that the plan should be publicised for consultation prior to submission to the Ipa.
- 7.51 The modification to Policy VE 1, removing the Fontwell Meadows LGS Designation is not an area of contention given that EPC accepts that WPC is not progressing the LGS designation.
- 7.52 A note has been added to the supporting text to Policy HP 1, which states: "*Policies HP 1 and HP 2 are to be read in conjunction with noting that the PC supports the grant of planning permission at Fontwell Meadows with the revised Dandara proposals and the transfer of 4.5 hectares of Open Public Space to the Parish. See page 23 paragraph 2.*" The note does not alter the conflict between the applicants' scheme and Policy HP 1 or Policy HP 2. This amendment is not an amendment to the wording of Policy HP 1 and it refers only to the opinion of WPC. Whilst the note confirms that WPC supports the application it does not outline that the application complies with Policy HP 1 or HP 2 of the WNDP. In *Cherkley Campaign Ltd v Mole Valley District Council* [2014] EWCA Civ. 567, the Judge held that the policy is the wording in the policy box and the text is an aid to the interpretation of that policy but cannot add extra policy tests. EPC submits that the application still conflicts with Policy HP 1 and HP 2 for the reasons set out above.
- 7.53 The note added to Policy HP 1 has not been subject to independent examination. If it is determined that this note has a significant bearing on

- how Policy HP 1 and HP 2 should be interpreted and applied, then the change would have the effect of altering the policies which have been subject to consultation and examination. The Examiner has not had the opportunity to determine whether or not the addition of the reference to the application scheme meets the basic conditions set out at Schedule 4B of the 1990 Act.
- 7.54 EPC submits that the note is merely a reference to the application and that it does not have a bearing on the policies contained within the plan. This would not impinge on the Examiner's assessment and specifically the conclusions as to whether or not the WNDP meets the basic conditions set out at Schedule 4B. The proposed amendment is an addition to the WNDP, as opposed to the removal of a draft policy which may be expected at the post examination stage e.g. as is the case in respect of the LGS designations.
- 7.55 Paragraph 15(d) of the Neighbourhood Planning (General) Regulations 2012 requires the qualifying body to submit a statement explaining how the proposed NP meets the requirements of paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990. As far as EPC is aware, no such statement has been prepared and submitted relating to the latest amendments.
- 7.56 The Policy HP 1 note and other post-examination modifications do not appear to have been subject to consultation. Whilst WPC has indicated that it now supports the application on the basis of the revised scheme, there does not appear to be any evidence available to demonstrate that parishioners have had a chance to comment on this proposed post-examination amendment to the WNDP or indeed other amendments relating to the application site.
- 7.57 It is noted that the foreword to the WNDP states in part: "*Walberton Parish Council set up a steering group to do this. The steering group ensured that parishioners had a real say in the preparation of this Walberton Neighbourhood Development Plan (the Plan). It is a plan for the future of the Parish that reflects parishioners' views about what changes should occur in their area, rather than leaving such decisions to the local planning authorities – Arun District Council and the South Downs National Park Authority.*" If it is considered that the note has the effect of altering the application of Policies HP 1 and HP 2, then this would seem to be at odds with the statement that the plan reflects the parishioners' views because at this point the parishioners do not appear to have been consulted on the amendments. Whilst it may be the case that they have been consulted there is no evidence available to demonstrate this.
- 7.58 Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 sets out the detailed steps that a qualifying body must take to ensure that pre-submission consultation and publicity takes place prior to the submission of a plan proposal to the lpa. These steps were undertaken by WPC and the NP Steering Group prior to submission to the Examiner and lpa, and a significant volume of responses were received in response to this consultation. Given the number of responses which referred to the application site during the NP consultation, it is reasonable to assume that a significant number of people who "*live, work or carry on business in the neighbourhood area*" may want to make representations to the recent post

examination changes and specifically the note at Policy HP 1 made by WPC. There is no evidence available to demonstrate that they have been given the opportunity to do so. These changes have not been recommended by the Examiner and have not been subject of Independent Examination.

- 7.59 It is EPC's submission that the lpa does not have the ability afforded to make modifications under Paragraph 12 (5) of Schedule 4B of the 1990 Act. Firstly, the modification to the Policy HP 1 subtext is not proposed by the lpa, it is proposed by the WPC and should therefore be subject to Regulations 14 and 15 of the Neighbourhood Planning (General) Regulations 2012. Secondly, even if it is argued that the lpa is recommending the modifications, Paragraph 12 (6) as highlighted in paragraph 7.49 above, sets out the circumstances under which they may do so.
- 7.60 EPC submits that none of these criteria apply in relation to the Policy HP 1 note referring to the application. Indeed, in the September 2016 Decision Statement, there is no objection to the Examiner's recommendations on Policy HP 1 (CD 25). The Examiner found that Policy HP 1 accorded with the basic conditions subject to modifications. None of these modifications related to making reference to the application scheme. Thus if the lpa were altering the subtext to Policy HP 1 for the reasons outlined at Paragraph 12(6) then they would have proposed this modification in the September Decision Statement as they did so with regard to Policy VE 1 on the basis that it did not meet the basic conditions.
- 7.61 The proposed modifications that have arisen outside of and after the Examination process, do not currently comply with the Neighbourhood Planning (General) Regulations 2012. The extent to which they can be relied upon as part of the decision making process for this inquiry is questioned. Notwithstanding this point, if the SoS concludes that the modifications can be relied upon, then EPC submit that they do not alter the effect of Policy HP 1 or HP 2. On this basis the application is still in conflict with the WNDP.

*Does the proposal accord with the eALP?*

- 7.62 The applicants' contention that the application site is an emerging allocation in the eALP is wrong. Policy H SP1 in the eALP provides that: *"Strategic housing growth shall be accommodated as follows ...Site specific Allocations Development Plan Document for Ford and Fontwell..."*. The reasoned justification provides: *"Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. Both these areas lack some key services and growth may enable the creation of settlements that are more sustainable. There is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared for the Local Plan to establish if sites can be allocated to improve the sustainability of these settlements."*
- 7.63 The eALP "Housing Trajectory" envisages that development at Fontwell would come forward after 2025.<sup>55</sup> Nowhere within the draft housing strategy or

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<sup>55</sup> CD 9 page 386.

anywhere within the eALP is there mention of which site in Fontwell is envisaged. The applicants' assertion that: "... *there can be no doubt that when Members resolved to proceed with the Publication Version published in October 2014 that their agreement to development at Fontwell was on the basis of the Inquiry Site – the only site in Fontwell that had been presented to them*"<sup>56</sup> is a highly misleading statement. First, the map which informed the Members' workshop<sup>57</sup> shows at least 2 sites within Fontwell (FON3 & FON5). Second, that fact is reinforced by the notes of the meeting<sup>58</sup> which records that "*not all groups mentioned sites. One group specified FON5, another all sites.*" Third, an attempt by a Member to include the application site within the publication version of the eALP was expressly rejected<sup>59 60</sup>.

- 7.64 The lpa confirms<sup>61</sup> that (a) no DPD has yet been adopted for Fontwell, or is even in gestation, and (b) that no main modifications have been made to the publication version of the eALP. Applying Framework paragraph 216, the weight to attach to the eALP is limited because: (a) the published plan contains no reference to the application site, there are others in the minds of Members, an attempt to add this site was rejected and a site at Fontwell is only intended to come forward after 2025; (b) the distribution strategy is subject to a significant number of unresolved objections and (c) the plan is not at an advanced stage. However, the applicants rely upon a resolution of the Council on 17 June 2015 to consider an option of at least 400 homes at Fontwell "*tested through the evidence base and SA*". The LP Inspector expressed his significant concern about the lpa's resolution to pursue land at Fontwell (CD 50). He says: "*In my view this approach amounts to a risky pre-determination of 'the most appropriate strategy when considered against the reasonable alternatives' in catering for an OAN of 641pa. Proceeding in that way could prematurely close off other options for meeting any annualised OAN, whether 641, 758 or any other figure, and may create potential for legal challenge. Since 641pa is well short of the Hearn report figure it cannot be assumed that the above options would necessarily play the same roles (or perhaps even figure) within a spatial strategy setting out to provide for a full OAN*"
- 7.65 The applicants note that, following this "warning shot" about pre-determination, the lpa has still plumped for 400 units at Fontwell in all its preferred options to meet the new OAN in a March 2016 note.<sup>62</sup> There has however been no expression by the LP Inspector as to the soundness of this strategy or whether this, still, amounts to a "*risky pre-determination*" of the distribution strategy to meet the uplifted OAN. Again, the lpa may have fallen into the same trap.
- 7.66 The applicants' characterisation of this site as an emerging strategic allocation, inevitably coming forward through the emerging LP is therefore

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<sup>56</sup> APP 7 Rebuttal proof, paragraph 4.4.

<sup>57</sup> APP 8 Appendix C.

<sup>58</sup> APP 8 Appendix B page 6

<sup>59</sup> APP 8 Appendix D.

<sup>60</sup> CD 48.

<sup>61</sup> X-Examination of Mr Redwood.

<sup>62</sup> APP 6 Appendix A.



simply wrong. EPC submits<sup>63</sup> *“strategic suggests it is part of a strategy”*. The only sensible conclusion is that the application site is not an emerging strategic allocation in the eALP, and the application derives no material support from it. This is simply an ad-hoc application, of a strategic scale, coming forward outside the eALP process on a site which has no certainty of being allocated in the eALP<sup>64</sup>, which serves to undermine the shared spatial vision of local people in the BENP and conflicts with the BUAB of the eALP. No material support from the eALP should weigh against a conflict with the development plan.

- 7.67 Even if it is accepted that the application site is an emerging allocation, it is subject to objections and the LP Inspector has not expressed any view on the soundness of Fontwell as accommodating housing development. The weight to attach to that material consideration as against a conflict with the BENP, in accordance with Framework paragraph 216, is very limited. In the Yapton decision, the SoS noted the unresolved objections and agreed that *“there is no certainty as to where future housing allocations will be made ...”*<sup>65</sup>.

### CONCLUSION

- 7.68 This application conflicts with central policies of the ALP and the BENP, and therefore the development plan taken as a whole. Pursuant to S38 (6), that conflict must be recorded and substantial weight must be attached to it. That position is entirely consistent with the SoS's recent practice in this District, to give effect to the shared spatial vision of local people through the NP process and articulated within Framework paragraphs 184, 185 and 198.
- 7.69 EPC acknowledges there are other material considerations in play which need to be carefully considered to determine whether the application should be determined otherwise than in accordance with the development plan. EPC acknowledge these and the weight to attach to them. However, there is also the harm flowing from conflict with the eWNDP and BUAB policies of the ALP.
- 7.70 The applicants' proposal derives no support from the eALP as it is not a draft strategic allocation, and attempts to make it into one have, so far, been met with concern from the LP Inspector. However, even if EPC is wrong the weight to attach to that emerging allocation is very limited, in light of the unresolved objections to the distribution strategy in general, the stage of preparation and the SoS's accurate conclusion in the Yapton appeal that *“...there is no certainty as to where future housing allocations will be made...”*.<sup>66</sup> EPC submits that the benefits of the application are significantly and demonstrably outweighed by the harm, and specific policies in the Framework indicate development should be restricted and planning permission should be refused.

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<sup>63</sup> X-Examination of Mr Simpson.

<sup>64</sup> X-Examination of Mr. Redwood.

<sup>65</sup> CD 26, DL14.

<sup>66</sup> CD 26 DL 14.

## 8. The Case for Walberton Parish Council

The material points are:

- 8.1 Following discussions with the applicants and the lpa based on a revised IM, a S106 Agreement and modifications to the eW NDP, WPC and the NP Steering Group support the grant of planning permission on Fontwell Meadows (Plan 15, CD 37 & WPC 7). The lpa has made clear its intention to include the application site as a Strategic Allocation in the eALP. In these circumstances, WPC believes that if the SoS refuses the application, it would be a pyrrhic victory for parishioners and a fresh application on this site would more than likely be successful. Whilst the grant of planning permission would result in more houses on one site than residents would have wanted it would result in the transfer of some 4.5ha of open space to WPC to be retained in perpetuity and secures other substantial benefits (CD 37).

Background to the W NDP

- 8.2 Following public consultation, the W NDP was published in October 2015 and the Examiner's Report issued in July 2016 (CDs 8 & 27). Other than one point of substantial difference, the majority of the Examiner's recommendations were accepted by the lpa and WPC. As part of the public consultation, residents made clear that, although they accepted the need for further development, they opposed any large developments that would substantially alter the character of our villages. Although the Examiner's Report supported the designation of Fontwell Meadows as LGS, the lpa did not. The lpa indicated that unless the LGS allocation was deleted, the W NDP could not proceed to a Referendum (CD 34).
- 8.3 WPC could have challenged the lpa's Decision Statement. However, the facts have changed and this has 2 related consequences. As the eALP has changed, this prompted a modification to the W NDP, which in turn encouraged discussions on a compromise. WPC must act in the best interests of its residents and secure as far as is possible an outcome on this site in accordance with the views of the residents. WPC recognises that there is a need in the District for more housing and it has sought to be proactive.
- 8.4 Given the evolving situation, WPC is sure residents' wishes have been carefully identified and acted on at every stage. The purpose of the Referendum is to approve the outcomes of a legally choreographed process, one that involves not only capturing a fluid situation but also accommodating the Examiner's recommendations and the lpa. Those changes necessitated consequential modifications to the W NDP. Both actions were properly achieved under the legislation as confirmed by the revised Decision Statement and NP (WPCs 6 & 7).
- 8.5 EPC focuses on the note to Policy HP 1 but does not mention that, as the note states, it is to be read in conjunction with paragraph 4.1.2, Vision and Core Objectives. This paragraph says "*In order to achieve certainty on Fontwell Meadows, the PC has signed a section 106 agreement under which, if planning permission is given and exercised for development on Fontwell Meadows, 4.5 hectares of Open Space will be gifted by the developer to the PC and other benefits will be provided for the Parish. Although the decision*

*has not yet been made and is not covered by the policies of the NP this is noted here so that the policies can be read in conjunction with the making of the decision [See policies HP 1 and HP 2]."* Policies HP 1 and HP 2 are clearly targeted by the note and worded to cover a situation in which no planning decision has yet been made. This note is simply a statement of fact to reflect WPC's position and evidence to the inquiry.

- 8.6 WPC contends that the changes embodied by the note and its reference were consequential on the rejection by the lpa of the Examiner's recommendation. The changes allow for approximately half of the site to be Public Open Space. WPC considers that it has a clear view of local opinion as to green gaps and Public Open Space, achieved through its Parish Survey and Open Days and has imported that element of consultation into the revised NP.
- 8.7 The above is supported by considering the outcome if no change to the Plan had been made. In the absence of the note and its reference, no open space would be referenced and secured; something clearly contrary to local opinion. WPC submit that it is hard to maintain on one hand that the note has no effect at all on Plan policies and on the other that local opinion has not been considered in WPC policy making. This is contradictory to EPC's view whereby it maintains that the BENP should be read as a whole.

#### Response on the WMS and EPC's Submissions

- 8.8 EPC's approach appears to be that the HELAA - Deliverable General Sites inside and outside the BUAB should be included in calculating whether a 3-year HLS exists. WPC submits that these sites cannot be included, given that the HELAA adopts a non-cumulative approach and although a listing in HELAA is a material consideration, it is a long way short of a grant of consent.
- 8.9 The evidence base shows that Walberton Parish currently has 875 houses. The WNDP includes an agreement for some 150 houses on the application site. Subject to the outcome of this inquiry, this would allow for a further 200 houses on the parish boundary to go ahead. Thus, including its own allocations, the WNDP is supporting applications for 210 houses, a 24% increase, and is enabling a further 200 houses, as above, a 47% increase in the parish housing stock.
- 8.10 The lpa proposes, via the HELAA, that a further 341 houses are built in the WPC area, as Deliverable General Sites, over the next 5 years as opposed to 3 years. This increase, along with what the WNDP is already accepting, adds 751 houses, 86%, to current stock. WPC suggests that for a rural parish this cannot be a practically sustainable figure and timescale. It is unlikely that all relevant infrastructure, facilities and services used now by its parishioners have the requisite 46% spare capacity.
- 8.11 Whereas a developer's contribution to expanding for example social care and medical services or pre-school, primary and secondary schools, or transport would normally be acceptable this is unworkable over a period as short as 3 or 5 years since. Without question, physical implementation by the various agencies involved will be necessary.

- 8.12 EPC proposes that the HELAA Deliverable General Sites inside and outside the BUAB be included in the WMS 3-year HLS calculation. Conversely, WPC believes that inclusion of sites that have not been promoted in a NP is contrary to the concept of Localism. Indeed, WPC had believed that it was exactly this point, i.e. the resolution for the grant of permission on a site not in its NP, on which the EPC case against the application was predicated.
- 8.13 If the sites for the 86% housing stock increase over 5 years in this Parish cannot evidentially be justified as sustainable, whether ranked sequentially or taken as an indivisible whole, then the LP Inspector may very well question the allocation approach that the lpa has adopted for this and other parishes. This may lead the LP Inspector to query the entirety of the lpa's parish allocation procedure. WPC does not accept that the HELAA figures for Deliverable General Sites can usefully be included for the purpose of meeting the WMS conditions without undermining the integrity of the planning process.

Richborough Estates

## 9. The Cases for Interested Persons

The material points are:

- 9.1 *Mr. N Smith (IP 1)*. In 1997 a proposal here for a large scale residential development was rejected by the SoS<sup>67</sup> on the grounds of its scale. The current application would quadruple the size of the village and build in the gap between Eastergate and Walberton and should be refused for the same reason. The actions of the lpa, the evidence it has produced and the potential designation of the site as a Strategic Allocation suggests that it has pre-determined this application and it appears hopeless to fight it.
- 9.2 In terms of drainage, health and education facilities, Fontwell cannot support a development of this scale. Housing development should be limited to a more sympathetic sustainable level. Fontwell is home to a number of vulnerable adults who are content with the village at its current scale. This development would introduce a significant number of teenagers to the area who may not understand or know how to relate to these groups.
- 9.3 *Mr. Truin (IP2)*. The Government's offer of Localism to local residents of Barnham and Eastergate to shape our communities and create a document that would form a key part of the development plan was taken up. This was done in consultation with residents and the plan was backed by an overwhelming vote. EPC had precisely defined where it found development acceptable and implicitly, where it was not.
- 9.4 Following the making of the plan, the BENP Plan Team went further. Having identified a specific site in Policy H1 it met with a prospective developer. A site layout that accommodated the developer's need and the requirements of the BENP was devised. Residents understand the locality; they live there. The bi-partite defence of the 2 NPs, by Barnham and Eastergate and Walberton, against this speculative development gave residents a chance to fight for the vision and Localism.
- 9.5 The application is unsustainable, primarily because of its location and unsupportive infrastructure. The appellants' evidence does not convince residents that it takes only 10-15 minutes to walk to Barnham Station from the site. Bing Maps confirms that journey at 42 minutes and Google Maps at 45 minutes along footpaths adjoining busy main roads where traffic travels at 60 mph. Most people will drive it as they will to supermarkets in Chichester, Littlehampton and Bognor. They will not be strolling to the shop in Barnham or the Surgery in Eastergate or walking to a primary school. The absence of pavements and well-lit roads on almost every route will make cars the only way to travel, contributing even more traffic onto our clogging local roads.
- 9.6 Members of the BENP team met with the applicants and were presented with a fait accompli. This is because WPC, who are without a made NP, had accepted developer incentives and signed up to a done deal that beggared Eastergate. Whilst various incentives were suggested that might influence

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<sup>67</sup> APP/C3810/A/95/260308.

EPC's view of the application there was no agreement to follow Walberton's understandable but unfortunate lead.

- 9.7 The BENP team does not support the new IM. It is a bad plan for the residents of Eastergate Parish, both current and future, because it disproportionately absorbs many of the buildings displaced by the new Walberton open space and it does not fit in with the aspirations of the BENP. Similarly it is a bad plan for the new residents of Fontwell in Walberton Parish, because the LGS has been translated into an anti-local demarcation zone between the current settlement and their apparently unwelcome new fellow residents. There is no real attempt to build a community, just mitigation to avoid a worse option.
- 9.8 The IM agreed between the applicants and WPC is only for outline planning permission. Any amended site plan needs to be put out for public viewing and consultation. This is because WPC's newly acquired green space, the GTR building and the road accesses are fixed elements. The design is unable to deliver similar housing densities on both parishes unless a similar commitment to open space is incorporated in the Eastergate section. This is a material change and has a major negative effect on the scheme.
- 9.9 The open space may make a positive contribution to the character of the existing settlement at Fontwell, as perceived by its current residents, but it undermines the character of the new dwellings by their exclusion. The applicants contend that NPs are not able to have legal weight over potential, so called strategic developments in Eastergate Parish, if they would amount to more than the current largest ADC's Parish allocation of 300 dwellings. However, the BENP is actually precluding a development of up to say, 299 dwellings, on Eastergate land that in itself does not have the capacity to be a strategic site. This number assumes that WPC do accept at least some housing and densities are consistent with the wider area. That fits perfectly with the strategy of the BENP.
- 9.10 *Mr. Bell (IP 3)*. The application constitutes pre-determination of potential strategic housing locations within the eALP and allows for a refusal on the grounds of prematurity. When the application was originally considered, the Fontwell site was recorded as having potential to be considered as a suitable location for strategic housing as part of a separate DPD after the eALP had been adopted. Now, it appears that the eALP will clearly identify Fontwell as a potential strategic location that will need equal comparative evaluation through the Sustainability Appraisal (SA) process to determine its suitability. This increases the risk of pre-determination of the outcome of that SA by allowing the application in isolation.
- 9.11 The circumstances here match the view expressed at paragraph 63 of the judgment in *Truro City Council v Cornwall City Council* 120131 EWHC 2525 (Admin): "*It is quite impossible to divorce the issue of prematurity from the local plan process: after all, the impugned decision is premature to what? The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the Development Plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so.*"

- 9.12 The application is an attempt to gain approval for a large development, at a location with poor sustainability and a high risk of poor future settlement sustainability, without the proper scrutiny that would be applied, and then independently examined, as part of the eALP. The lpa has already been shown to be very weak regarding the soundness of the sustainability appraisal, within the eALP.
- 9.13 To apply the presumption in favour of sustainable development it must first be established that the proposal is sustainable. Here, this has not been properly established. The sustainability of Fontwell has been assessed within the Arun Settlement Sustainability Study (ASSS) (2007) and by the SA within the eALP. Both studies conclude that Fontwell was unsatisfactory for large scale development. Indeed consultation responses on the application included over 30 adverse comments about its sustainability.
- 9.14 There are many sustainability factors that do not have completely satisfactory solutions, e.g. cycleway access to Eastergate /Aldingbourne /Ormiston schools, access to shopping and leisure services by sustainable means, access to employment opportunities in Chichester and Arundel by sustainable means and the absence of a long term commitment to the special bus service and the consequences of the planned reduction in bus frequency to Chichester and Arundel. These factors lead to the substantial risk that most household journeys will be made by car. This factor was sufficient for an Inspector to confirm the lpa's refusal of the Woodgate application on sustainability grounds<sup>68</sup>.
- 9.15 The ASSS confirms that Fontwell has poorer sustainability than Westergate/Woodgate. PPG<sup>69</sup> identifies what circumstances might it be justifiable to refuse planning permission on the grounds of prematurity. These are: *"Annex 1 of the Framework explains how weight may be given to policies in emerging plans. However, in the context of the Framework and in particular the presumption in favour of sustainable development arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to*

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<sup>68</sup> APP/C3810/N11/2163208

<sup>69</sup> 014 Reference ID: 21b-014-20140306

*indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process."* All the required grounds for a refusal of planning permission as set out above are satisfied in this case.

- 9.16 *Mrs. Wallsgrove.* Development of this scale would erode the gap between Fontwell and Eastergate. If houses are to be developed, the scale of the development should be reduced to be in sympathy with this small village.

Written Representations following the Call-In

- 9.17 Written representations were received from 14 individuals and organisations. These included a final response from Highways England and a CIL Justification Statement from West Sussex County Council (CD 49).
- 9.18 The comments/concerns reiterate those made at the time the application particularly in relation to the potential adverse effects to scheme would have on: highway safety and congestion on the local and strategic road network; flora and fauna, particularly protected species including the Barbastelle Bat; the character and appearance of the area by eroding the open gap between settlements; potential archaeological remains; water quality and flooding.
- 9.19 Concern is expressed regarding the sustainability of the site and the availability of public transport and educational and medical services to meet the demands of new residents. Several express their concern that allowing the application would undermine the aims and objectives of the BENP and the WNDP. Doubt is expressed over the Ipa's decision not to require an Environmental Statement as part of the planning application.
- 9.20 The Environmental Health Officer (EHO) reiterates concerns regarding the impact of noise from activities at Fontwell Racecourse, particularly events on the car park fronting Fontwell Avenue. The EHO recommends that the application is refused until potential noise impacts have been assessed and mitigation measures agreed.

Written Representations at the time of the Application

- 9.21 The Planning Officer's report to Development Control Committee recorded that 183 letters of objection from 123 properties and 4 letters of support had been received (CD 24 page 58). Concerns relate to:
- a lack of sustainability in terms of the site's location and the ability of future residents to access jobs and services;
  - an adverse impact additional traffic would have on safety and congestion on the strategic and local road network;
  - an adverse impact the proposal would have on ground water supplies and the potential for flooding;
  - an adverse effect on local flora and fauna;
  - an adverse effect on the rural setting of surrounding settlements and the South Downs National Park through the scale of the development and a loss of open, agricultural land;
  - concern that existing local infrastructure/services are under pressure and extra demand would exacerbate this;



- noise from the light industrial development would adversely affect existing and future residents; and
- future residents would be adversely affected by noise from events at Fontwell Racecourse.

9.22 Supporting representations identify GTR as a good neighbour and agreement in principle to the proposal subject to conditions regarding drainage, sustainability, landscaping/ecology and infrastructure.

#### Consultation Responses

9.23 EPC and Slindon Parish Councils objected citing traffic, environmental and infrastructure concerns. Other responses included:

- Natural England – referred to notifications by local residents regarding the value of the site's flora and fauna;
- Portsmouth Water – no objection in principle subject to imposition of planning conditions to prevent pollution of the aquifer;
- Southern Water – no objection subject to the imposition of planning conditions;
- Environment Agency – no objection subject to the imposition of planning conditions;
- Highways England – no objection subject to the imposition of planning conditions;
- National Trust – drew attention to potential value of site as a feeding route for breeding Barbastelle bats;
- West Sussex County Council (WSSCC) - no objections subject to the imposition of planning conditions and infrastructure contributions;
- Sussex Wildlife Trust – noted results of ecological surveys;
- ADC Ecologist – general comment;
- ADC Economic Development – welcomes continued growth of local firm;
- ADC Leisure Services – financial contributions;
- ADC Engineers – comments regarding protection of ground water;
- ADC Archaeology – likely to be limited archaeological interest, suggests an evaluation condition;
- ADC Arboriculturalist – no objection subject to the imposition of planning conditions;
- ADC Environmental Health Officer - objects given the risk of disturbance from events at Fontwell Racecourse;
- ADC Housing – no objection – affordable housing schedule agreed
- Sussex Police – sought financial contribution towards the provision, maintenance and operation of Police infrastructure.

## 10. Conditions & S106 Unilateral Undertakings

(CD 19 contains the suggested conditions discussed at the inquiry.)

### Conditions

- 10.1 SCs 1 and 2 relate to the timing for the submission of reserved matters and the implementation of the permission. SC1 requires reserved matters to be submitted within 2 years of the date of permission whereas the model condition specifies 3 years. SC 2 requires that the development is begun either before the expiration of 3 years from the date of permission or before the expiration of 2 years from the approval of the last of the reserved matters. The model condition requires that development is begun either before the expiration of 5 years from the date of permission or before the expiration of 2 years from the approval of the last of the reserved matters. The lpa seek a shorter period for implementation and the submission of reserved matter to reflect the shortage of housing land within the District.
- 10.2 In line with PPG<sup>70</sup> and to provide certainty, SC 3 lists the plans for which approval is sought now. SC 4 provides for the submission of a phasing plan and the identification of the curtilage of the proposed commercial area. SC 5 provides for the submission of details of external finishing materials before the start of each phase. SC 6 provides for the submission of a Design Code Masterplan. Earlier drafts of these conditions included a requirement for the submitted details to include such matters as: details of doors and windows; depth of reveals; sills and lintels; brick detailing/bonding and rain water goods. Following a query as to whether this requirement was unnecessarily prescriptive, the lpa revised the condition and suggested the inclusion of an "informative" that indicated that the submission of such details was an "expectation".
- 10.3 SCs 7 and 8 provide for the submission of hard and soft landscape details, including details of trees/hedgerows to be retained for each phase and the details of protection measures for those trees/hedgerows to be retained. SCs 9, 10, 11, 12 and 13 relate to surface and foul water drainage and measures to protect existing ground water resources. SC 14 provides for the submission of an ecological enhancement scheme. SC 15 provides for the submission of a Construction and Traffic Management Plan to mitigate the impact of construction traffic and construction activity.
- 10.4 SC 16 is a suite of requirements relating to the proposed commercial area, identified as part of the Phasing Plan required by SC 4. To mitigate the impact of this part of the development the condition controls: the timing of commercial traffic movements; deliveries to and from the site; external storage; drainage; external lighting and provides for the mitigation of noise. SC 17 provides for the submission of a landscape management plan. SC 18 provides the provision and maintenance of the proposed public open space.

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<sup>70</sup> ID 21a-022-20140306

SC 19 restricts the period when ground and vegetation clearance can take place so as to mitigate the impact on nesting birds.

- 10.5 SC 20 seeks to mitigate the impact of the development on energy use. SC 21 provides for a programme of archaeological investigations. SC 22 provides for the off-site highway improvements to the A27/A29 roundabout to be implemented before construction starts. SCs 23 and 24 provide for the submission of a travel plan and the submission of a Non-Motorised Users Audit. SC 25 provides for the submission of details and provision of an emergency vehicular access onto Arundel Road.
- 10.6 As part of the discussion on planning conditions attention was drawn to PPG on the drafting and ordering of conditions. Submissions were made that SCs 9, 11, 12, 14, 15, 21, 22 and 25<sup>71</sup> do not comply with national guidance on conditions in terms of their enforceability and precision (IP 4). It is highlighted that an important element of enforceability is the ability to record whether a condition has been discharged. It is noted that applications for the discharge of pre-commencement conditions come early in the development process. However, it is suggested that if they are discharged without separately enumerated paragraphs it is impossible to record that the non-precommencement elements have not been discharged. On precision, the concern is that without separately enumerated paragraphs in conditions where the "when" element is not a single moment in time but 2 more widely separated moments it is impossible to precisely determine and record compliance for each element of the condition.

#### Section 106 Agreement

- 10.7 Copies of the S106 Agreement between the landowners, the Ipa, WSCC and WPC are contained at CD 37. The applicant, WSCC and the Ipa submitted CIL compliance/justification statements (CDs 49, 52 & 55).

#### Education

- 10.8 WSCC identify that local primary, secondary and sixth-form schools would be over capacity. As the exact housing mix of the scheme is unknown a formula has been inserted to ensure that the school infrastructure contribution can be calculated at a later stage. The primary school contribution would be used towards a half a form entry expansion at the Aldingbourne, Eastergate or Walberton and Binstead schools. The secondary and sixth-form education contributions would be used for the expansion of either the Ormiston or St Philip Howard RC secondary schools. WSCC confirms that no more than 5 planning obligations to provide for these specific schemes have been entered into.

#### Highways and Transportation

- 10.9 Off-site highway works include provision for the signalisation of the Fontwell Roundabout and a contribution of £5,000 per dwelling (minus the costs of the

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<sup>71</sup> The conditions contained in Annex C have been reordered and renumbered as 10 (9), 14 (11), 15 (12), 17 (14), 19 (15), 23 (21), 24 (22) & 27 (25). The number in brackets relates to the list in CD 19.

Fontwell roundabout signalisation) towards the implementation of the A29 improvement scheme.

10.10 The Agreement provides for the provision of:

- the residential access onto Fontwell Avenue and the commercial access onto Arundel Road;
- a bus service schedule to provide links to Barnham Station and local schools will be agreed with WSCC;
- the sum of £180,000 would be paid to WPC for the provision of a cycle path from the development to the existing cycle path at Walberton Green or for other improvements for cyclists.

WSCC has confirmed that no more than 5 planning obligations to provide for these specific schemes have been entered into.

Fire Service

10.11 The application site falls within the southern service division of the West Sussex Fire Service. New development places additional demands on the existing service. As the exact housing mix of the scheme is not known a formula has been inserted to ensure that the Fire Service infrastructure contribution can be calculated at a later stage. The contribution would be used towards the redevelopment or relocation of fire stations, vehicles and equipment in the southern service area and the installation of up to 7 fire hydrants on the application site.

Libraries

10.12 In general library provision is provided for by a main library in larger town centres. Bognor Regis is the nearest library to the application site. Based on a space standards promoted by the International Federation of Library Associations and Institutions the Bognor Regis library requires to be expanded to meet the extra demand. As the exact housing mix of the scheme is not known a formulae has been inserted to ensure that the library infrastructure contribution can be calculated at a later stage. The contribution would be used for the provision of library facilities within a community facility in the vicinity of the land in the Bognor or Littlehampton areas. WSCC has confirmed that no more than 5 planning obligations to provide for these specific schemes have been entered into.

Affordable Housing

10.13 Schedule 2 of the S106 Agreement provides for the AH and the transfer to a Registered Provider.

Public Open Space and Recreational Provision.

10.14 The Agreement provides for:

- a payment of £16,426 towards the maintenance of the 3G artificial turf pitches at Arun Leisure Centre;
- a communities building with an internal floor area of 5,000 sq. m and or community asset retail uses to be delivered as part of an Other Public Open Space Delivery Plan to be agreed with the Ipa;

- a payment of £139,163 to be paid to ADC towards upgrading the Bramber Studio at Arun Leisure Centre or a reduced amount proportionate to the amount of Class D1/D2 floorspace provided as part of the development. This includes;
- a payment of £119,279 to ADC towards upgrading and improving wet side changing rooms at Arun Leisure Centre;
- the sum of £80,433 to be used for funding and providing a Multiple Use Games Area within the WPC area;
- a payment of £35,000 to WPC for the resurfacing of the Walberton Play Area;
- a payment of £33,617 to WPC towards the provision of a path around the perimeter of the Walberton Playing Field;
- a public open space delivery plan to be agreed with WPC, to provide and lay out the WPC open space and to transfer the open space to WPC including a commuted sum for maintenance .

#### Community Services

##### 10.15 The payment of:

- £70,000 towards the provision mobile IT kit / speed awareness kits and towards the re-provision of Littlehampton Police Station. CD 55 Appendix A1.7 provides a detailed justification by Sussex Police for the principal of a contribution. Whilst the Sussex Police request was originally for £109,714 the sum subsequently agreed is £70,000 (LPA 3);
- £250,000 to be used towards the recruitment of one whole time equivalent GP and associate staff and redesign of the surgery layout to create additional consulting rooms primarily but not exclusively at Eastergate Croft Surgery. ADC's Infrastructure Delivery Plan January 2015, which the Ipa confirmed was not adopted and is to be updated makes reference to: *"...a need for secondary and community healthcare services throughout the Plan period but that it is unclear what exactly will be necessary although it will likely need to be funded through the NHS and CIL"*. The applicants indicate that the inclusion of a sum within the S106 Agreement is based on discussions with the Croft Surgery, which has plans for a surgery extension, and the Health Authority.

## 11. Inspector's Conclusions

*The numbers in [ ] brackets refer to earlier paragraphs in this report or relevant documents.*

- 11.1 The main considerations remain unchanged from those identified in the Pre-Inquiry Note [1.4]. These are:
- whether the proposal would accord with the BENP;
  - whether the proposal would prejudice the preparation of the WNDP and/or whether it would accord with that plan;
  - whether the proposal would accord with any other relevant adopted or emerging development plan policies and the weight to be attached to such policies;
  - the need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs;
  - the effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park;
  - the effect of the traffic generated by the proposal on highway safety and traffic conditions;
  - whether the proposal would maximise sustainable transport solutions;
  - whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park;
  - the effect of the proposal on biodiversity;
  - whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development;
  - any significant social, economic or environmental impacts not covered above.
- 11.2 The first 3 considerations are dealt with last.
- The need for housing and employment sites in Arun District and the supply of deliverable sites to meet those needs*
- 11.3 The August 2016 SoCG records that the Ipa does not have a 5-year HLS [CD 5 page 12]. Regarding economic development, the August 2016 SoCG notes that economic development is not a matter of contention between the parties. These positions remain unchanged.
- 11.4 The publication of the WMS on Neighbourhood Planning sets out a change to policy regarding the circumstances under which relevant policies for the supply of housing within NPs are deemed to be out-of-date where there is a lack of a HLS. The WMS says that relevant policies for the supply of housing in a made NP should not be deemed to be out-of-date under Framework paragraph 49 where, amongst other things, the Ipa can demonstrate a 3-year supply of deliverable housing sites [INSP 1].
- 11.5 As of January 2017, EPC submits that the HLS stands at 3.01-years [7.39 & EPC 7]. The Ipa, working to a base date of 31 March 2016, indicates that the HLS stands at 1.92-years [6.20, LPA 9, 10 & 11]. The appellants support the contention that a 3-year HLS does not exist [5.17–5.38].

- 11.6 Given the difference in base dates, it is not a simple matter of comparing the EPC and lpa HLS figures. In adopting a base date of March 2016, the lpa has produced something akin to an Annual Monitoring Report. In adopting a January 2017 base date and including housing data for the period March to January, EPC has produced what is effectively an Interim 5-Year HLS calculation. Whilst PPG guidance does not preclude updates of the AMR, it does indicate that the basis on which the update exercise is done should be clear, full and robust. Here, whilst EPC's interim position does include some planning permissions since March 2016 it is not clear to me that it is a full exercise comparable with the AMR approach in that it also includes an assessment of losses during the same period [6.30]. In these circumstances, I consider EPC's HLS position needs to be treated with caution.
- 11.7 Taking out the double-counting of units [5.32], sites not within the ADC area [5.31 & 6.34], discounting the permissions included since March 2016 and discounting the Yapton sites which have been and currently are the subject of appeals [5.29], would reduce the number of housing units by some 290 and reduce the HLS to around 2.8-years. Thus, even before considering whether it is appropriate to include HELAA sites located outside the BUAB within the assessment, the position is that the lpa cannot show a 3-year HLS. As a matter of principle and given the potential conflict with extant planning policy, I agree with the lpa and the applicants that sites outside the BUAB, in particular those sites covered by made NPs cannot at this stage be considered as deliverable within the terms of Framework and PPG advice, [5.27 & 6.31]. This would remove a substantial number of units from the potential supply reducing the HLS to below 2-years [5.28].
- 11.8 In light of the above, I consider that the lpa cannot show either a 5 or 3-year HLS as required by the Framework and the WMS. Accordingly, in undertaking the planning balance, the provisions of Framework paragraph 49 apply i.e. "*relevant policies for the supply of housing should not be considered up-to-date...*"
- The effect of the proposal on the character and appearance of the area, including any effects on the South Downs National Park*
- 11.9 The August 2015 SoCG, based on an IM that showed a significantly smaller amount of public open space in the southern part of the site [Plan 7], records that the effect on the landscape character and visual amenity is not a matter of contention between the parties [5.63].
- 11.10 The application was accompanied by a comprehensive and robust Landscape and Visual Appraisal (LVA) and the applicants' evidence fully addresses the changes to the IM. The site is not a valued landscape (Framework paragraph 109) and is not an international, national or locally designated landscape (Framework paragraph 113). The site is located on the fringe of the built-up area with residential development on its northern and southern boundaries, scattered development on the eastern edge and Fontwell Racecourse to the west. In landscape and visual amenity terms, I agree with the LVA conclusion that the site is of medium value.
- 11.11 During the construction period and establishment of the landscape structure, the scheme would have a moderate adverse effect on the landscape

character of the site and the wider local Landscape Character Type 16 - Fontwell-Eastergate Mosaic mainly through the loss of open land. Once the landscape structure of the development has established, the local and wider landscape impact would be neutral. During construction and establishment of the landscape structure there would, in terms of visual impact, be slight to substantial effects to short distance views. However, once landscaping is established the visual impact would be neutral. The site is divorced from the South Downs National Park by urban development. In this context, the landscape and visual impact of the development would not be significant and would be neutral [5.64-5.67; 6.35].

- 11.12 Whilst residents would experience a change to the character and appearance of the area, the landscape and visual impact of the application would not be materially adverse and would conserve the landscape and scenic beauty of the South Downs National Park.

*The effect of the traffic generated by the proposal on highway safety and traffic conditions.*

- 11.13 The application was accompanied by a robust Transport Assessment (TA), which concludes that there would be no unacceptable highway effects. The August 2016 SoCG records that it is common ground that following the delivery of identified mitigation measures traffic generated by the scheme would not result in a severe residual impact [6.34, CD 5 page 19]. I have no reason to disagree with these conclusions. WSCC as Highway Authority has no objection subject to the implementation of highway mitigation including signalisation of the A27/A29 roundabout and a financial contribution towards implementation of the A29 Improvement Scheme. Both mitigation schemes are included within the S106 Agreement [10.9]. Works to the A27/A29 roundabout is also the subject of a suggested planning condition that provides that no part of the development is to be occupied before completion of the approved roundabout improvement works [Annex C, SC No. 25; 5.72].

*Whether the proposal would maximise sustainable transport solutions.*

- 11.14 Whilst the overarching objective of the Framework is to maximise the use of sustainable transport solutions, it recognises that, "*different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas*". Similarly Framework paragraph 32, 2<sup>nd</sup> bullet point recognises that account should be had to whether "*opportunities for sustainable transport modes have been taken up depending on the nature and location of the site.*"
- 11.15 I have no reason to disagree with the parties that Fontwell is a sustainable location for development [5.72 & 6.30]. Thus, it is a question of whether the proposal, given the nature and location of the site, has taken up the opportunities for sustainable transport modes and if so have they reduced the need for major transport infrastructure? This is a rural area where, in my view, it is a first principle that such sites will not minimise the need to travel and make maximum use of sustainable transport modes to the same extent as a town centre or edge-of-centre site would. In this context, the delivery of: a new bus service linking the site to both Barnham Station and the local



schools; a new cycle path from the site to the existing cycle path at Walberton Green or other cycle improvements and a new footpath around the perimeter of Walberton Playing Field would, given the nature of the development and its location, maximise sustainable transport solutions [CD 49, section 6.1-2 & CD 37]. These improvements are in addition to the linkages that would integrate the application site and its residents with Fontwell. The proposal does not generate a need for major transport infrastructure.

*Whether the proposal would provide satisfactory living conditions for future residents, having regard, amongst other matters, to the proximity of events at Fontwell Park.*

- 11.16 There are 2 matters to be addressed under this topic. These are (a) the effect of the proposed commercial uses and (b) the proximity of the site to Fontwell Racecourse. I deal first with the proposed commercial uses. Whilst the unit for GTR would be located in the north-east corner of the site, the location of the other commercial units has yet to be determined [Plan 15]. Given the proposal is in outline, the provision of adequate separation between the proposed unit for GTR, the other commercial units and nearby dwellings are matters that could be addressed as part of a reserved matters submission. The proposed conditions include several to ensure that the operation of the various commercial/retail units in terms of operating hours, visual impact and noise would be controlled to ensure that their effect on residents' living conditions were acceptably mitigated.
- 11.17 Turning to the impact of the operation of Fontwell Racecourse. On the evidence before me I have no reason to conclude that the racing activities associated with the course would have an adverse effect on prospective residents' living conditions [CD 24 page 78]. The Racecourse hosts other activities that are ancillary to its main function and which fall into 2 categories. The first category is those contained within the main buildings (weddings or conferences) where any noise would generally be contained within the building envelope and be a significant distance away from the application site. In this context these types of activities would not materially affect the living conditions of prospective residents. The second category is those activities that are temporary in nature or one-off events including car boot sales, fireworks displays or circuses. These are events common to many open spaces across the country in close proximity to existing housing and would not materially affect future residents.
- 11.18 The one-off event that has caused concern was a Monster Truck Rally. Whilst there is the potential for significant noise disturbance from such an event, given the external area is not floodlit it is not something that could take place late into the evening which would be the most sensitive time in respect of noise disturbance. PPG<sup>72</sup> identifies the factors that influence whether or not noise should be treated as a concern from a planning perspective. This includes taking into account non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise. Thus

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<sup>72</sup> Paragraph 006, Ref ID: 30-006-20141224

whilst there would be noise issues for prospective residents from one-off activities of this nature, given their limited duration it would not, on its own, be a reason to dismiss the application.

*The effect of the proposal on biodiversity;*

- 11.19 The applicants have carried appropriate and robust assessments of the potential impact of the development on the local ecology and biodiversity. The application would not affect the conservation status of any international, national and non-statutory designated site [5.74]. The habitats identified are of no more than site or local level ecological value [5.75]. The key habitat including the majority of the hedgerows, mature trees and areas of broadleaved woodland would mostly be retained; all TPO trees would be retained. Loss of habitats through the development would result in a minor negative effect to receptors of local level importance. However, the overall mitigation package comprising the creation and long term management of: species rich grassland, species rich neutral grassland, new hedgerows/areas of native species scrub planting, new native species trees, wetland habitats in drainage swales would provide minor positive effects to biodiversity.
- 11.20 In terms of fauna, the assessments do not identify populations of great crested newts, dormice, and badger or bat roosts [5.77]. The breeding bird survey assemblage identified is common and the majority of the species would adapt to residential situations. The proposed mitigation would provide minor positive effects to breeding birds.
- 11.21 In terms of bat activity, the surveys indicate that the majority activity was identified along hedgerows and the main foraging areas/commuting routes were along the eastern and western site boundaries [5.78]. Mitigation for the removal of short lengths of hedgerows would be provided and a sensitive lighting scheme could be used throughout the development. Particular concern was identified about the potential impact of the development on the foraging areas and commuting routes used by the Barbastelle Bat colonies at the Slindon/Goodwood Estates. Evidence from surveys in 2015 and 2016 indicate very limited Barbastelle Bat activity associated with the site. Moreover, studies of the Slindon/Goodwood Estates Barbastelle Bat colonies confirm that the site is not used as a foraging resource or commuting area. It is clear that the site does not provide a significant resource for local populations of or the Slindon/Goodwood colonies of the Barbastelle bat and any impact would be negligible [5.79].
- 11.22 The proposed scheme would retain the majority of primary habitats of ecological interest and where there would be loss, mitigation would ensure no material loss to biodiversity. The proposal would not have an unacceptable effect on local biodiversity [5.82 & 6.37].

*Whether the proposal would appropriately contribute to the provision of infrastructure requirements directly related to the proposed development;*

- 11.23 The S106 Agreement obligations have been reviewed against the requirements of Framework paragraph 204, CIL Regulations 122/123 and the submissions made by the applicants, the lpa and WSCC [CDs 49, 52 & 55]. All the obligations, bar the NHS contribution, are necessary to make the

development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, the S106 Agreement is consistent with the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations and where appropriate, I have attached weight to it in coming to my conclusion.

11.24 Very limited information has been provided in relation to the need for the NHS contribution or how it has been calculated. In these circumstances and having regard to context provided by the Infrastructure Delivery Plan 2015, which is the latest information provided, the justification provide for the NHS contribution has not been substantiated and as such fails to satisfy the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations [10.15]. Accordingly, I have not attached weight to this part of the S106 Agreement in coming to my conclusion.

11.25 In light of the above, the proposal would appropriately contribute to the provision of infrastructure requirements directly related to it.

*Whether the proposal would prejudice the preparation of the WNDP and/or whether it would accord with that plan.*

*Prejudice to Preparation*

11.26 Following examination of the draft WNDP – October 2015 version and an objection by the Ipa, WPC revised its NP to remove reference to the LGS designation at Fontwell [4.15, 4.16 & 8.3]. A Post-Examination version of the eNP was published after the close of the inquiry and the Ipa confirms that this version of the eNP complies with the legal requirements and the conditions set out in the Localism Act 2011 and that the Post-Examination version of the WNDP could proceed to referendum in February 2017 [4.17 & WPC 7].

11.27 EPC made extensive submissions relating to The Town and Country Planning Act 1990 and the Neighbourhood Planning (General) Regulations 2012 in relation to the proposed changes by WPC to its NP and the finding by the Ipa that the Post-Examination version of the plan complies with the necessary legal requirements. I have carefully noted the submissions made by EPC regarding the processes followed by WPC and the Ipa regarding the preparation of the Post-Examination version of the WNDP and the intention to put that plan forward for a Referendum in February 2017. However, it is not part of my role or that of this inquiry to consider and conclude on legal issues surrounding the preparation of this plan. As far as I am aware, the decision of the Ipa to permit the Post-Examination version of the WNDP to go forward to a referendum and the decision of the WPC to promote that plan to its parishioners has not been the subject of a legal challenge. Accordingly, given that a draft plan has been published and is proceeding to a Referendum, the application has not prejudiced its preparation.

*Conflict with Relevant Policies*

11.28 In light of the above, the following assessment and conclusion is based on the Post-Examination version of the WNDP [WPC 7]. The Ipa maintains a Local List of Buildings or Structures of Character. Although the buildings on this

Local List do not have any additional statutory protections their inclusion and the reasons for identifying it are regarded as material considerations in the determination of a planning application. WNDP Policy VE 5 refers to the Local List and indicates that development proposals relating to Locally Listed Buildings will be expected to retain their local distinctiveness and removal of part or all of them will generally not be permitted.

- 11.29 The northern part of the application site includes the Old Smithy. Schedule 5B of the eWNDP recommends that the Old Smithy should be added to the Local List [WPC 7 page 47]. It is the sole responsibility of the lpa, in consultation with stakeholders, to add or remove building to or from the Local List. Thus, if the WNDP is made, the recommendation does not have the effect of designating the building. Although the IM shows residential development over that part of the site, the application is in outline and a grant planning permission would not authorise the removal of the building [Plan 15]. If the building makes it on to the Local List, its demolition or retention would be a matter for the reserved matters application. There is no conflict with eWNDP Policy VE 5.
- 11.30 WNDP Policy HP 2 allocates the land to the east of the Old Police House, which also includes the Old Smithy, as a site for the development of a minimum of 6 dwellings and establishes the principle of residential development on this site, which is also included within the application site. Given that the eWNDP refers to a minimum of 6 dwellings, it does not, in my view, preclude the development of more than 6 dwellings. This is in contrast to other HP Policies i.e. HP 4, HP 5, HP 7 and HP 8 where the policy refers to a specific number of dwellings. There is no conflict with Policy H 2.
- 11.31 I deal first with the note attached to Policy HP 1 which sets out WPC's conditional support for the planning application. In my view, the note does not form part of the policy, rather it is a simple statement of WPC's position on the application. However, when read in conjunction with eWNDP paragraphs 2.4.2, 2.4.3 and 4.1 (2) it serves to give a steer how Policy HP 1 is to be applied. Similarly, Policy HP 1 has to be read in the context of the relative purposes of NPs in dealing with non-strategic plan making and LPs that deal with strategic/district wide plan making [Framework paragraphs 184 & 185: 5.4, 5.7, 5.8 & 6.20].
- 11.32 Notwithstanding my comments above, the steer that the supporting text in the WNDP gives regarding the application site is not, in my view, reflected in how Policy HP 1 is constructed or is read on its face. Policy HP 1 has changed materially since the Regulation 15 Submission (Autumn 2015) version of the plan was published [CD 8]. Whilst the policy has been modified to include reference to the eALP and relevant policies, I consider those references all relate to the subsequent 7 allocated sites, Policies HP 2 to HP 8. Separately, Policy HP 1 goes on to say that development proposals for new dwellings outside the Built-Up Areas will be resisted unless the plan has made specific provision for those proposals. The eWNDP shows a BUAB, which reflects the boundary shown in the eALP at Map 2 (WPC 7 and CD 9). The application site is outside the BUAB of Fontwell and the Plan, which I take to mean the WNDP, albeit it makes various references to the application, does not make

specific provision for it. In this context, the application would conflict with the wording of Policy HP 1 [6.15].

*Whether the proposal accords with the BENP [CD 7].*

- 11.33 The BENP 2014-29 was made in July 2014 on the basis of saved policies in the ALP and draft policies in the 2013 version (summer) of the eALP [5.5].
- 11.34 Policy ES3–The Local Gap/Green Infrastructure Corridor relates to an area identified in the ALP between Barnham and Eastergate. The application site is not within this gap and this policy is not relevant to the consideration of the application [6.4]. EPC no longer relies on conflict with Policy ES4–Protection of Open Views [5.4 & 5.7 & 5.8].
- 11.35 The application is in outline with all matters other than access reserved. As such layout and design are for a reserved matters application. There is nothing in the evidence to suggest that, subject to careful consideration of layout, dwelling design and their finish at the reserved matters stage, the application, would result in a form of development that would conflict with BENP Policies ES5 5–Quality of Design and ES6–Contribution to Local Character.
- 11.36 That part of the application site identified as the light industrial unit for GTR falls within the WPC boundary. BENP Policy EE3–Support for New Commercial Uses indicates that new development for Class B1 uses including light industry will be supported where the impact on surrounding residential and community amenity is acceptable. Here, subject to the imposition of appropriate planning conditions, the development of this part of the application site would not have a materially adverse effect on development within the EPC area.
- 11.37 In terms of the relevant housing policies, BENP Policy H2–Windfall Sites permits “*small residential development on infill and redevelopment sites...*” In this case, the application site is identified under eALP Policy H SP1 which deals with strategic housing and Fontwell is one of the 6 areas listed under the heading “*Strategic housing shall be accommodated as follows:...*” [6.21 & CD 9 page 145]. Moreover, the application proposal could neither be defined as “*small residential development*” or could not be said to be an “*infill*” or a “*redevelopment*” site. Accordingly, I find no conflict with BENP Policy HP2.
- 11.38 The BENP and Policy H1–Specific Site Allocation have to be read in the context of the respective roles of NPs and LPs. These are that NPs deal with local, non-strategic needs and LPs deal with strategically assessed needs across the whole district [5.4 & 5.7 & 5.8]. Framework paragraph 184 is clear that NPs should not promote less development than set out in a LP or undermine its strategic objectives. NPs should align with the strategic needs and priorities of the wider local area and be in general conformity with the LP’s strategic objectives. The BENP was made in the context of the 2013 version of the eALP [6.6]. Then Policy SP11 identified the strategic housing allocations as urban extensions to Littlehampton and Bognor Regis; site specific allocations at Barnham/Eastergate and Angmering; broad allocations at Westbank, and parish allocations. The 2013 version of the eALP did not make reference to Fontwell under the heading of strategic allocations. It is in

this context that BENP Policy H1 and specifically paragraph 9.1.4 was written and has to be read.

- 11.39 Paragraph 9.1.4 states that the Policy H1 site allocation is "*...in addition to; ...any strategic allocation that might be made in the Local Plan for housing on the larger site to the south of Barnham and Eastergate*". As the 2013 version of the ALP was an emerging plan and the allocation of land and the scale of the putative development at Barnham/Eastergate had not been examined or fixed it was appropriate that the BENP referred to it in the context of a strategic allocation "*...that might be made...*". Similarly, if Fontwell had been identified in the 2013 version of the eALP and whether it was an allocation to come forward in the early years of the plan or in the later stage of the plan period it would, given the timescale of the BENP (2104 to 2029), be a relevant strategic allocation. Thus, by the same logic that the Policy H1 site allocation is to be read in the context of the Barnham/Eastergate strategic allocation it is, in my view, also to be read in referencing strategic allocations more generally and strategic allocations that come forward as part of the eALP process [5.5 & 6.6].
- 11.40 BENP Policy HP1 (the bold text) refers only to a site allocated to meet local need. In light of this and when viewed in the context of the respective roles of NPs and LPs and even though the NP was made prior to the latest version of the eALP, I consider the application cannot be held to be in conflict with Policy HP1. There is no other specific provision in the BENP that would, in my view, restrict development on the application site. Unlike the WNDP and the Yapton NP, the BENP does not refer to or delineate a BUAB or identify a Local Greenspace policy [5.10]. Moreover, given that it makes no reference to the BUAB referred to in the eALP, those boundaries cannot be used to suggest a policy conflict in relation to the BENP.
- 11.41 In coming to the above conclusion, I have had regard to the submissions made about the relevance of Crane v SSCLG [2015] EWHC 425 (Admin) [CD 28] and the SoS's decision in the Yapton appeal [CD 26]. I consider the positions in those cases are materially different. Unlike in the case of Crane, the BENP had not considered all of the sites, albeit it was consideration pre-dated the Fontwell strategic proposal. Moreover, it would appear that this judgement did not take account of the relative roles of NPs and LPs in allocating development. Whilst the Yapton site falls within ADC, I consider there are material differences between that plan and the BENP. At Yapton, a BUAB has been defined and the plan makes specific provision for further local allocations should the LP require it. That is not the case with the BENP [5.15].
- 11.42 In light of the above I conclude that there would be no conflict with the relevant policies of the BENP and the plan as a whole.
- Whether the proposal would accord with any other relevant adopted or emerging development plan policies.*
- Arun Local Plan
- 11.43 There would be no conflict with Policy GEN 7 – The Form of New Development; Policy GEN 8 – Development and the Provision of

Infrastructure; Policy GEN28 – Trees and Woodlands; Policy GEN29 – Nature Conservation across the District and Policy DEV17 – Affordable Housing.

- 11.44 The majority of the application site is outside the BUAB for Fontwell identified by Policy GEN 2. Outside the BUAB, development will not be permitted unless it is consistent with other ALP policies. Policy GEN 3 - Protection of the Countryside states that except for several categories of development, none of which relate to the application proposal, development will not be permitted [4.2]. As the site lies outside the BUAB it is categorised as countryside and the scheme would conflict with ALP Policies GEN 2 and GEN 3.

#### Emerging Arun Local Plan

- 11.45 The eALP was published in October 2014, and examination of the eALP commenced in June 2015 but has been suspended. Whilst the lpa has been working on modifications to the eALP, as things stand, no revisions to the eALP were published at the time of the inquiry and I have not been advised of any proposed changes that are material to the inquiry.
- 11.46 Policy H SP1 proposes to accommodate strategic housing in 6 ways, one of which is described as a Site Specific Allocations Development Plan Document for Ford and Fontwell. The policy goes on to state that Ford and Fontwell have been identified as potential locations for housing growth in the later part of the plan period. The eALP acknowledges that both Ford and Fontwell lack some key services but growth may enable the creation of settlements that are more sustainable. The eALP notes that there is currently insufficient evidence to establish a quantum of housing growth in Ford and Fontwell, therefore Site Specific Development Plan Document(s) will be prepared to establish if sites can be allocated to improve the sustainability of these settlements. The Housing Trajectory section of the plan envisages that development at Fontwell would come forward after 2025.<sup>73</sup>
- 11.47 On a straightforward reading of the eALP, I agree with EPC that the published version of the eALP offers little in support of the application [7.65]. The emerging plan does no more than commit the lpa to the preparation of a DPD to examine the potential for delivering housing in the Ford and Fontwell areas post 2025 [7.67]. Indeed, given the almost doubling of the OAN to 919 dpa and a HLS that currently stands at around 1.92 years the submissions that the eALP is "*hopelessly out-of-date*" and should be "*treated with caution*" are, in my view, an understatement [5.47].

*Any significant social, economic or environmental impacts not covered above.*

- 11.48 No other material issues relating to social, economic or environmental issues were raised at the inquiry.

#### Planning Balance and Overall Conclusions

- 11.49 Currently the best evidence demonstrates a pressing need to identify and bring forward deliverable sites for housing. The lpa cannot demonstrate a 5 or a 3-year supply of deliverable housing sites. In this context Framework

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<sup>73</sup> CD 9 page.386.

paragraphs 49 and 14 are engaged. Framework paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date if the lpa cannot demonstrate a 5-year supply of housing. Framework paragraph 14 indicates that relevant development plan policies are out-of-date planning permission should be granted unless (a) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole or (b) specific policies in the Framework indicate development should be restricted. Given my conclusion that the application does not conflict with relevant policies of the BENP or the plan when taken as a whole, there are no policies in the Framework that indicate that this development should be restricted.

- 11.50 Notwithstanding the above, the application site is located outside the BUAB of Fontwell and as such conflicts with Policies GEN 2 and GEN 3 of the ALP. Similarly for the reasons I set out above, I consider the application, given its location outside the BUAB for Fontwell would conflict with eWNDP Policy HP 1. ALP Policies GEN 2 and GEN 3 and eWNDP Policy HP 1 are relevant policies for the supply of housing and as the lpa does not have a 5-year supply of deliverable housing sites and, in the case of the eWNDP, a 3-year supply of deliverable housing sites these policies are out-of-date.
- 11.51 The most recent and, in my view, reliable assessment of the HLS position is that provided by the lpa which stands at some 1.92 years. Given the significant shortfall, whilst Framework paragraphs 14 and 49 do not dis-apply the above policies or render them irrelevant, I consider that only limited weight can be attached to the conflict with ALP Policies GEN 2 and GEN 3 and eWNDP Policy HP 1. Given the significant shortfall in the HLS position and the fact that the spatial strategy of the eALP is likely to be subject to major change, to service an OAN that has almost doubled in the last 3 years, I consider the publication version of the eALP is similarly out-of-date and little weight should be attached to relevant policies within that emerging plan.
- 11.52 Given the eALP is in a state of flux, I consider part of this balancing equation must include an assessment of whether, if the application is allowed, this would materially pre-determine the spatial strategy of the eALP. I can understand the concern expressed by the Examining Inspector in July 2015. However, it strikes me that the concern was predicated on the lpa bringing forward within the existing spatial strategy of the eALP the potential allocations at Ford/Fontwell and the more substantial increase in units allocated at Barnham and Westergate. In total these 3 allocations amount to some 4,300 units i.e. 3,000 at Barnham and Westergate and 1,300 at Ford/Fontwell [5.50 & APP 6 Appendix A]. However, what is before the inquiry is an application for up to 400 units and the question to answer is whether this number of units would result in unacceptable pre-determination.
- 11.53 PPG<sup>74</sup> gives advice on assessing prematurity. This indicates that: "*arguments that an application is premature are unlikely to justify a refusal of planning permissions other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits,*

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<sup>74</sup> ID: 21b-014-20140306.



*taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both: (a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area".*

- 11.54 Based on an OAN of 919 dpa, the lpa has a housing requirement over the plan period of some 18,000 units. The 400 units at Fontwell would amount to some 2% of the plan period requirement. There is evidence to suggest that the lpa has, since the Examining Inspector published his general concerns, been assessing the spatial options open to it but that in all the exercises carried out development at Fontwell of the scale envisaged by this application is an integral part of its emerging spatial strategy [(APP 6 Appendices A & B)]. Thus, in terms of what the plan requires to be provided and what this site could provide, the application does not, in my view come anywhere close to the threshold of being significant or would result in closing off other options in terms of a spatial strategy pursued when a revised eALP is published.
- 11.55 In 2014, the publication version of the eALP was an emerging plan at an advanced stage. However, circumstances have changed materially since and currently there is no indication as to when a revised plan will be published, examined and potentially move to adoption. Accordingly, the eALP can no longer be considered as being at an advanced stage [5.93]. I acknowledge that allowing this application now would remove it from the options to be considered at the forthcoming examination of the spatial strategy. However, given the circumstances outlined above, I attach little weight to the potential for this application to undermine the plan making process.
- 11.56 This application would: make a substantial contribution to the need for housing and affordable housing in the district; make a valuable contribution to the local economy; boost the sustainability of Fontwell and give the local community a substantial area of public open space. These are benefits which I attach significant weight to in the planning balance [5.94 & 6.44].
- 11.57 In light of the above, I conclude that the harm that arises from (a) conflict with ALP Policies GEN 2 and GEN 3; (b) eWNDP Policy HP 1 and (c) removing this site from the spatial strategy options to be considered at the examination of a revised eALP are significantly and demonstrably outweighed by the benefits of this application. Accordingly, I conclude that planning permission should be granted.

## **Conditions & S106 Agreement**

### Planning Conditions

- 11.58 Should the SoS decide to grant planning permission, the list of conditions attached at Annex C reflects the suite of conditions agreed between the applicant and the lpa and discussed at the inquiry. These conditions should be imposed for the reasons set out in CD 19 and paragraphs 10.1 to 10.5

above. I have assessed the suggested conditions in light of advice contained in PPG and where necessary in the interests of precision and enforceability, reworded several of the conditions.

- 11.59 The lpa seeks shorter periods for the submission of reserved matters and implementation of the permission to reflect the pressing shortage of the housing land within the District. However, this is a large development and there are several conditions precedent relating to major highway and drainage works that require to be discharged. In these circumstances, I consider it would be inappropriate to diverge from the timescales set out in the model outline planning conditions. Given that Condition 7 requires the submission of a Design Code Masterplan, which would be the subject of pre-submissions discussions, it is unnecessary to include an informative relating to the lpa's expectations [11.3].
- 11.60 The submissions made by an interested person about the precision and enforceability of various conditions particularly where development works would be carried out over several phases has been carefully noted [10.6]. Each of the conditions referred to indicate when the details of the works required by the condition are to be submitted i.e. either before the start of each phase of development or before the commencement of development and when those works are intended to be implemented i.e. the occupation of dwellings or a programme of implementation agreed with the lpa. Moreover, SC 5 which requires the submission of an overall phasing scheme provides for a schedule identifying the order of commencement and completion of each phase. Having assessed each of the conditions referred to, I am confident that the lpa would have sufficient information, particularly on timings of development, to achieve the implementation of the required works. The mechanism of recording the discharge of pre-commencement conditions and monitoring of the implementation of the condition is a matter for the lpa. In submitting the conditions, the lpa did not identify any misgivings or concerns regarding its ability to monitor implementation.

S106 Agreement

- 11.61 All the obligations, bar the NHS contribution which has not been substantiated and fails the CIL tests, are necessary to make the development acceptable in planning terms, directly related to the development and fair and reasonably related in scale and kind to the development. Accordingly, the S106 Agreement is consistent with the guidance at Framework paragraph 204 and Regulations 122/123 of the CIL Regulations and where appropriate, I have attached weight to it in coming to my conclusion.

### **Recommendation**

- 11.62 I recommend that planning permission be granted subject to the planning conditions attached at Annex C

*George Baird*

Inspector

## ANNEX A

### PLANS SUBMITTED WITH THE APPLICATION

|        |   |  |
|--------|---|--|
| Plan 1 | - | 57631-101 Rev P1, Site Location Plan.*                   |
| Plan 2 | - | 57631-109 Rev P1, Site Survey Plan.                      |
| Plan 3 | - | 1186-02 Rev D, Proposed Access onto Arundel Road.        |
| Plan 4 | - | 1186-03 Rev G, Proposed Access onto A29 Fontwell Avenue. |
| Plan 5 | - | 1186-05 Rev A, Proposed Roundabout Improvement.          |
| Plan 6 | - | 6233-A-08 Rev A, Tree Retention Plan.                    |

### ILLUSTRATIVE PLANS

|         |   |   |
|---------|---|---|
| Plan 7  | - | Figure 22 Illustrative Landscape Masterplan.  |
| Plan 8  | - | Figure 23 Illustrative Landscape Sections.  |
| Plan 9  | - | LHG57631-106 Rev P1, Land Use Parameter Plan.   |
| Plan 10 | - | LHG57631-107 Rev P1, Access & Movement Parameter Plan.                                |
| Plan 11 | - | LHG57631-108 Rev P1, Building Heights Parameter Plan.                                 |
| Plan 12 | - | 63926-01-101-D Rev F, Fontwell-Walberton Link Cycle Scheme, Eastergate to Dukes Road. |

## ANNEX B

### REVISED PLANS SUBMITTED AT THE INQUIRY

|         |   |  |
|---------|---|--|
| Plan 13 | - | 57631-101 Rev P2, Site Location Plan.                          |
| Plan 14 | - | 6233-A-08 Rev C, Tree Retention Plan Detailed Access Junction. |

### ILLUSTRATIVE PLANS

|         |   |  |
|---------|---|--|
| Plan 15 | - | Illustrative Landscape Masterplan Rev A.               |
| Plan 16 | - | Illustrative Landscape Sections Rev A.                 |
| Plan 17 | - | LHG57631-106 Rev P4, Land Use Parameter Plan.          |
| Plan 18 | - | LHG57631-107 Rev P3, Access & Movement Parameter Plan. |
| Plan 19 | - | LHG57631-108 Rev P3, Building Heights Parameter Plan.  |

\* Superseded Plans.

## ANNEX C

### SUGGESTED PLANNING CONDITIONS

1. Details of the layout, scale, appearance, and landscaping (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby approved shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
4. The development hereby permitted shall be carried out in accordance with the approved plans:  
57631-101 Rev P2 – Site Location Plan;  
1186-02 Rev D - Access to Arundel Road;  
1186-03 Rev G - Access to A29, Fontwell Avenue;  
1186-05 Rev A – Proposed Roundabout Improvement;  
6233-A-08 Rev C - Tree Retention Plan - Detailed Access Junction.
5. No development shall take place until a detailed scheme of phasing for the construction of the dwellings and associated highways and public areas has been submitted to and approved in writing by the local planning authority. The scheme shall include a schedule identifying the order of commencement and completion within each phase of construction. This scheme shall identify the curtilage of the main commercial area of the development as referred to in condition 20. Development shall be carried out in accordance with the approved details.
6. Prior to the commencement of construction works on each phase of the development a schedule of materials and finishes to be used for external walls and roofs of the proposed buildings shall be submitted to and approved in writing by the local planning authority. The development shall be carried put in accordance with the approved details.
7. Prior to the commencement of any residential development, a Design Code Masterplan shall be submitted to and approved in writing by the local planning authority. Development shall be carried put in accordance with the approved Design Code Masterplan.
8. The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than

privately owned domestic gardens. The landscape management plan shall be implemented in accordance with the approved details.

9. No residential development shall take place until details of the laying out of and a timetable for the provision and future maintenance of Public Open Spaces has been submitted to and approved in writing by the local planning authority. The layout details submitted in compliance with Condition 1 shall define the boundaries of such areas, their proposed use, equipment, and their means of enclosure and all other structures to be installed. Development shall be carried out in accordance with the approved details.
10. Prior to the commencement of construction works on each phase of the development, details of hard and soft landscaping and details of existing trees and hedgerows to be retained, shall be submitted to, and approved in writing by the local planning authority. The approved landscaping details shall be carried out in the first planting and seeding season, following the occupation of the buildings or the completion of the development of that phase, whichever is the sooner, and any trees or plants which, within a period of 5 years from the completion of 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 gives written consent to any variation.
11.
  - (a) Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 (Trees in relation to design, demolition and construction: Recommendations), which provides for the retention and protection of trees, shrubs and hedges to be retained on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved protection scheme;
  - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place;
  - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme;
  - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.
12. Prior to the commencement of construction works on each phase of the development, full details of the proposed surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The design should follow the hierarchy of preference for different types of surface

water drainage disposal systems as set out in Approved Document H of the Building Regulations and the recommendations of the SUDS Manual produced by the Construction Industry Research and Information Association. Winter groundwater monitoring to establish highest annual ground water levels and Percolation testing to BRE Digest 365 standards, or similar approved standards, will be required to support the design of any Infiltration Drainage. No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the implemented scheme shall be maintained in good working order in perpetuity.

13. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. Development shall be carried out in accordance with the approval details.
14. Prior to the commencement of construction works on each phase of the development full details of the maintenance and management of the SUDs system shall be set out in a site-specific maintenance manual and submitted to, and approved in writing, by the local planning authority. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturers recommended design life. Upon completed construction of the SUDs System, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
15. Prior to the commencement of construction works on each phase of the development details of a proposed foul drainage system shall be submitted to and approved in writing by the local planning authority including details of its siting, design and subsequent management/maintenance, if appropriate. No dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
16. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. Development shall be carried out in accordance with the approved details.
17. Prior to the commencement of construction works on each phase of the development or any preparatory works, a detailed ecological enhancement scheme based on the recommendations within the supporting ecological statement, which shall include the installation of bat boxes throughout the site, shall be submitted to and approved in writing by the local planning. All approved details shall then be implemented in full and in accordance with the agreed timings and details.
18. No demolition, ground clearance or vegetation clearance works shall take place within the bird nesting season (between 1 March and 31 August inclusive in any year). If such works cannot be undertaken outside of the nesting season,

a nesting bird check shall be required, which should be undertaken by a suitably qualified ecologist immediately prior to the works taking place. Subsequently if any active nest sites are identified, these nests should remain undisturbed until all the young have fledged naturally.

19. No development shall take place, including any works of demolition, until a Construction Management Plan (to include a Construction Traffic 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 entire construction period. The Construction Management Plan shall provide details as appropriate but not necessarily be restricted to the following matters:
- a). the anticipated number, frequency and types of vehicles used during construction;
  - b). the parking of vehicles by site operatives and visitors;
  - c). the loading and unloading of plant, materials and waste;
  - d). the storage of plant and materials used in construction of the development;
  - e). the erection and maintenance of security hoarding;
  - f). 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);
  - g). details of public engagement both prior to and during construction works.

Construction of the development shall then be carried out in accordance with the agreed Construction Management Plan.

20. The following applies to the commercial area of the development as identified in the phasing plan submitted under condition 5 above:
- a.) No commercial vehicles (not including private vehicles solely in use for the private use of staff or visitors) shall be operated within the commercial area of the development except between the hours of: 07.00 and 19.00 hours on Mondays to Fridays inclusive; 07.00 and 13.00 hours on Saturday, not at any time on Sundays or Public Holidays;
  - b.) deliveries and dispatches by commercial vehicles to and from the commercial area of the development shall only be made to or from the site between the hours of 07.00 - 19.00 hours Monday to Friday, 08.00 - 13.00 hours on Saturday and at no time on Sundays, Bank or other Public Holidays;
  - c.) no raw materials, finished or unfinished products or parts, crates, packing materials or waste shall be stacked or stored on the commercial area of the development except within the buildings or storage areas approved by the local planning authority.
  - d.) prior to construction of the commercial area of the development, details of the forecourt layout and drainage and the position and intensity of all lighting fitments for the commercial uses within this area shall be

submitted to and approved in writing by the local planning authority. When in operation all lighting shall be operated in accordance with the approved details. The approved drainage provision shall be implemented prior to the commercial area of the development coming into operation.

21. Prior to the commencement of development of the commercial area of the development, a scheme shall be submitted to and approved in writing by the local planning authority which specifies the provisions to be made for the control of noise emanating from the commercial area of the development. Prior to the commercial area of the development coming into operation, all agreed physical measures for the control of noise will be implemented. The use of the commercial area will be operated in accordance with any agreed continuing requirements for the control of noise from the site.
22. At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low-carbon energy sources or equivalent fabric first standards that would secure a 10% reduction in energy use. Details and a timetable of how this is to be achieved, including details of physical works on site, shall be submitted to and approved in writing by the local planning authority as a part of the reserved matters submissions required by condition 2. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.
23. No development shall take place until details for the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been submitted and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
24. No part of the development hereby permitted shall be occupied until the completion of the improvements to the A27/A29 Fontwell Roundabout shown on Drawing Number 1186-05 Rev A - Proposed Roundabout Improvements.
25. Prior to the commencement of construction works on each phase of the development a Travel Plan shall be submitted to and approved in writing by the local planning authority and implemented. The Travel Plan shall include arrangements for monitoring and effective enforcement.
26. Prior to the commencement of development a Non-Motorised Users Audit shall be undertaken for the construction stage of the development, and its findings shall be reflected in the Construction Management Plan required under condition 19. Prior to the commencement of each phase of the development Non-Motorised Users Audits shall be undertaken and their findings taken into account.
27. Prior to the commencement of development, details shall be submitted to and approved in writing by the local planning authority regarding the provision of an emergency access from the site onto Arundel Road. Prior to occupation of no more than 100 dwellings, the emergency access shall be provided in accordance with the approved details.



## **ANNEX D**

### **APPEARANCES**

#### **FOR THE APPLICANTS**

Christopher Katkowski QC and Matthew Fraser of Counsel, instructed by Fontwell Estates Ltd & Global Technologies Racing.

He called:

Charles Mills MRICS ARTPI  
Daniel Watney LLP

Andrew Williams BA (Hons) DipLA DipUD CMLI  
Define

Cullan Riley BSc (Hons) PhD MIEEM  
Phil Jones Associates Limited

#### **FOR THE LOCAL PLANNING AUTHORITY**

Gwion Lewes of Counsel, instructed by Delwyn Jones Planning Solicitor and Deputy Monitoring Officer, Legal Services, Arun District Council

He called:

Jim Redwood BSc MSc DipTP MRTPI  
Planning consultant

#### **FOR EASTERGATE PARISH COUNCIL**

Ashley Bowes of Counsel, instructed by the Clerk to Eastergate Parish Council

He called:

Luke Simpson BSc MSc MRTPI  
Adams Hendry Consulting Limited

Maureen Chaffe  
Process Matters2

#### **FOR WALBERTON PARISH COUNCIL**

Suzanne Clark  
Chairman of Walberton Parish Council and Chairman the Walberton Neighbourhood Plan Steering Group.

#### **INTERESTED PERSONS**

Mr N Smith  
Mrs S Wallsgrove  
Mr I Truin  
Mr Bell

## ANNEX D

### DOCUMENTS

#### INSPECTOR DOCUMENTS

- INSP 1 - Written Ministerial Statement – Neighbourhood Planning, 12 December 2016.
- INSP 2 - Inspector's request for an up-date on 5-year Housing Land Supply.
- INSP 3 - Inspector's request for comment on WMS Neighbourhood Planning.

#### DOCUMENTS SUBMITTED BY THE APPLICANT

- APP 1 - Opening Submissions.
- APP 2 - Closing Submissions.

##### *Mr Mills - Planning*

- APP 4 - Summary Proof of Evidence.
- APP 5 - Proof of Evidence.
- APP 6 - Appendices A to K.
- APP 7 - Rebuttal Proof of Evidence.
- APP 8 - Rebuttal Appendices A to D.

##### *Mr Williams - Landscape*

- APP 9 - Proof of Evidence & Appendices A1 to A3.
- APP 10 - Appendices B & C.
- APP 11 - Rebuttal Proof of Evidence & Appendices A & B.

##### *Mr Riley – Transport*

- APP 12 - Summary Proof of Evidence.
- APP 13 - Proof of Evidence & Appendices A to C.

##### *Mr Goodman – Ecology & Nature Conservation (Written Statement)*

- APP 14 - Summary Proof of Evidence.
- APP 15 - Proof of Evidence & Appendices A to J.

#### DOCUMENTS SUBMITTED BY THE APPLICANT AFTER THE CLOSE OF THE INQUIRY

- APP 16 - Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- APP 17 - Response to EPC letter dated 18 November 2016 (EPC 6) re Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- APP 18 - Response re WMS on Neighbourhood Planning 12 December 2016.

#### DOCUMENTS SUBMITTED BY THE LOCAL PLANNING AUTHORITY

- LPA 1 - Opening Submissions.
- LPA 2 - Closing Submissions.
- LPA 3 - Letter dated from Sussex Police 16/12/2015 re S106 contribution.
- LPA 4 - Mr Redwood – Summary Proof of Evidence.
- LPA 5 - Mr Redwood – Proof of Evidence.
- LPA 6 - Mr Redwood – Supplementary Proof of Evidence.

*DOCUMENTS SUBMITTED BY THE LPA AFTER THE CLOSE OF THE INQUIRY*

- LPA 7 - Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- LPA 8 - Response to EPC letter dated 18 November 2016 (EPC 6) re Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- LPA 9 - Report to the Local Plans Sub-Committee 6 December 2016 – Housing Land Supply.
- LPA 10 - Email dated 9 January Updating Housing land Supply position.
- LPA 11 - Final response regarding WMS on Neighbourhood Planning 12 December 2016.

DOCUMENTS SUBMITTED BY EASTERGATE PARISH COUNCIL

- EPC 1 - Opening Submissions.
- EPC 2 - Closing Submissions.
- EPC 3 - Mr Simpson – Proof of Evidence.
- EPC 4 - Mrs Chaffe – Proof of Evidence.
- EPC 5 - Mrs Chaffe – Appendix A.

DOCUMENTS SUBMITTED BY EASTERGATE PARISH COUNCIL AFTER THE CLOSE OF THE INQUIRY

- EPC 6 - Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- EPC 7 - Response on the WMS on Neighbourhood Planning 12 December 2016.

DOCUMENTS SUBMITTED BY WALBERTON PARISH COUNCIL

- WPC 1 - Opening Statement.
- WPC 2 - Closing Statement.
- WPC 3 - Mrs Clark – Statement.
- WPC 4 - Mrs Clark – Proof of Evidence.
- WPC 5 - Mrs Clark – Appendix 1.

DOCUMENTS SUBMITTED BY WALBERTON PARISH COUNCIL AFTER THE CLOSE OF THE INQUIRY

- WPC 6 - Walberton Neighbourhood Development Plan 2015-2035 – Decision Statement, Revisions A – November 2016.
- WPC 7 - Walberton Neighbourhood Development Plan 2015-2035, Post Examination Version.
- WPC 8 - WPC response to EPC letter dated 18 November 2016 (EPC 6) re Comments on Walberton Neighbourhood Plan – Post-Examination Version.
- WPC 9 - WPC response to the WMS on Neighbourhood Planning 12 December 2016.

DOCUMENTS SUBMITTED BY INTERESTED PERSONS

- IP 1 - Statement by Mr N Smith.
- IP 2 - Statement by Mr Truin.
- IP 3 - Statement by Mr Bell.
- IP 4 - Mr Bell - Submission on suggested conditions

**CORE DOCUMENTS**

- CD1 Inspector's Pre-Inquiry note dated 13 April 2016
- CD2 LPA Statement of Case
- CD3 Applicants' Statement of Case
- CD4 Rule 6 parties' Statement of Case

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|------|--|
| CD5  | Statement of Common Ground & Addendum Statement of Common Ground                                       |
| CD6  | Arun District Local Plan (2003) Saved Policies   |
| CD7  | Barnham and Eastergate Neighbourhood Plan (2014)   |
| CD8  | Regulation 15 Version of the Walberton Neighbourhood Plan  |
| CD9  | Publication Version of the Local Plan -October 2014  |
| CD10 | Arun DC 5 Year Housing Land Supply Report 2016   |
| CD11 | Appeal Decision APP/C3810/A/14/2220943 Hook Lane, Westergate   |
| CD12 | Appeal Decision APP/C3810/A/14/2217385 Nyton Road, Westergate  |
| CD13 | Arun Open Space and Recreational Standards Supplementary Planning Guidance - October 2000              |
| CD14 | Arun Landscape Study 2006  |
| CD15 | SoS Decision, Earls Barton APP/H2835/A/14/221617   |
| CD16 | SoS Decision, Bryning-with-Warton APP/M2325/A/14/2217060   |
| CD17 | SoS Decision, West Haddon APP/Y2810/W/14/3000977   |
| CD18 | Local Green Space Designation report to LPSC 30 July 2015  |
| CD19 | Planning Conditions  |
| CD20 | (Intentionally blank)  |
| CD21 | Sustainability Appraisal Main Report   |
| CD22 | Arun Local Plan SCI October 2014   |
| CD23 | Letter from Arun LP examination inspector 2 February 2016  |
| CD24 | Report to ADC Development Control Committee 25 November 2015   |
| CD25 | Walberton Neighbourhood Plan Decision Notice dated 12 September 2016                                   |
| CD26 | SoS Decision, Land to the south of Ford Lane, East of North End Road, Yapton APP/C3810/A/14/2228260    |
| CD27 | Walberton Neighbourhood Plan Examiners report 19 August 2016   |
| CD28 | Court of Appeal - Crane v SSCLG [2015]   |
| CD29 | Court of Appeal - Woodcock Holdings Ltd v SSCLG [2015]   |
| CD30 | SoS Decision, Birchen Lane APP/D3830/W/15/3137838  |
| CD31 | Aldingbourne Neighbourhood Plan Examination Decision   |
| CD32 | DEFRA, Transport and Travel in Urban Areas, 2014   |
| CD33 | West Sussex County Council, Consultation Response 24 November 2015                                     |
| CD34 | ADC reg16 comments on Walberton Neighbourhood Plan   |
| CD35 | ADC statement for WNP public hearing - February 2016   |
| CD36 | ADC SHLAA Update 2012  |
| CD37 | S106 Agreement   |
| CD38 | Barnham and Eastergate Neighbourhood Plan Examiners Report   |
| CD39 | SoS Decision, Broughton Astley APP/F2415/A/12/2183653  |
| CD40 | (Intentionally blank)  |
| CD41 | Walberton Neighbourhood Development Plan 2015-2035 Consultation Statement                              |
| CD42 | Court of Appeal- Suffolk Coastal DC v Hopkins Homes Limited [2016] C1/2015/0583 and C1/2015/0894       |
| CD43 | Planning Court - Forest of Dean DC v SSCLG & Gladman Developments Ltd [2016]                           |
| CD44 | Secretary of State Decision, Land at Broyle Gate Farm, East Sussex APP/P1425/W/15/3133436              |
| CD45 | Walberton Neighbourhood Development Plan Public Hearing Statement Dandara Ltd 16 March 2016            |
| CD46 | Minutes of Local Plan Subcommittee 16 May 2013   |
| CD47 | Local Plan Sub Committee minutes 27 March 2014   |
| CD48 | Full Council meeting minute 30/4/14  |
| CD49 | WSSC S106 obligations statement  |
| CD50 | Arun Local Plan Examination. Note of Inspector's Conclusions after the Procedural Meeting 28 July 2015 |
| CD51 | Planning Court, Crownhall Estates Limited CO/1812/2015 & CO/2669/2015                                  |
| CD52 | CIL Justification Statement – Contributions to Walberton Parish Council                                |

- CD53 SoS Decision - London Road, Holmes Chapel APP/R0660/W/15/3100555
- CD53 SoS Decision – Abbey Road, Sandbach APP/R0660/W/15/3128707
- CD55 CIL Compliance Analysis – submitted by the lpa.
- CD56 Note of meeting Walberton Parish Council & Arun District Council - Changes to Walberton Neighbourhood Plan

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.