Department for Communities and Local Government

Our ref: APP/D3830/A/12/2189451RD
Your ref: 12/01540/OUT

Mr T Rodway
Rodway Planning Consultancy
9 Riverside
Shoreham-by-Sea
West Sussex
BN43 5RU

7 December 2017

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WOODCOCK HOLDINGS LIMITED
LAND AT KINGSLAND LAINES, REEDS LANE/ LONDON ROAD, SAYERS COMMON, WEST SUSSEX
APPLICATION REF: 12/01540/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report of Clive Hughes BA (Hons) MA DMS MRTPI, who held a public local inquiry on 11 May 2017 for 2 days into your client's appeal against the decision of Mid Sussex District Council ("the Council") to refuse your client's application for planning permission for 120 dwellings, community facility/ office space, care home and retail units, with primary access off the B2118 (London Road), in accordance with application ref: 12/01540/OUT, dated 27 April 2012.

2. On 1 November 2013, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 4 September 2014. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 1 May 2015. The appeal was therefore redetermined by the Secretary of State who issued his decision in respect of the above appeal by way of his letter dated 10 February 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 10 June 2016. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 4 September 2014 and 10 February 2016 decision letters.

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Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed, and planning permission granted.

5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

6. The Secretary of State notes at IR1.5 that prior to the opening of the first Inquiry, and as a result of discussions between the appellant and Mid Sussex District Council (MSDC), a slightly revised layout was produced. This was the subject of local consultation and was submitted with the appeal. Like the Inspector, the Secretary of State is satisfied that the appeal can be determined on the basis of the amended plans without prejudice to anyone's interests.

7. The Secretary of State notes at IR13.17 that the appellant submitted an updated heritage assessment to the re-opened inquiry which concluded that the heritage impact of the appeal scheme remained unchanged from the original Inquiry. He also notes at IR13.21 that an Addendum to the original Flood Risk Assessment (FRA) (Wood2) was submitted to the re-opened Inquiry, based upon the Alternative Drainage Scheme which had been submitted to the 2013 Inquiry. He further notes at IR13.25 that the appellant submitted a Transport Update Report for the re-opened Inquiry which confirmed that the conclusions of the previously submitted Transport Statement remain valid.

8. Following the quashing of his 10 February 2016 decision letter, the Secretary of State issued a letter on 29 June 2016 under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties. This set out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeal. These matters were:

    a) The current state of play with regard to the preparation of Local Plans in the Mid Sussex District Council's area and the relevance of policies for the purposes of this appeal;
    b) Any relevant policies in the Hurstpierpoint and Sayers Common Neighbourhood Plan made in March 2015;
    c) Whether there is a demonstrable five year supply of deliverable housing sites;
    d) Any other material change in circumstances, fact or policy, that may have arisen since his decision of 4 September 2014 and which the parties consider to be material to the Secretary of State's further consideration of this appeal.

9. Alternatively, interested parties could ask for the inquiry to be reopened. The Secretary of State carefully considered all the responses received. On 14 October 2016 the Secretary of State issued a letter under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties setting out a written statement of his decision to reopen the inquiry.

Matters arising since the close of the inquiry

10. On 17 October 2017 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the recently published document titled 'Consideration of

Options to Strengthen the Five Year Housing Supply' for the public consultation on the Main Modifications of the emerging Mid Sussex District Plan. A list of representations received in response to this letter is at Annex B. These representations were circulated to the main parties on 8 November 2017. Copies of the representations received may be obtained on written request to the address at the foot of the first page of this letter.

11. The Secretary of State has had regard to these representations in reaching his decision. His conclusions are at paragraph 26-27 below.

Policy and statutory considerations

12. 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.

13. In this case the development plan consists of the saved policies of the Mid Sussex Local Plan 2004 (MSLP), adopted in May 2004 and the Husrtpierpoint and Sayers Common Parish 2031 Neighbourhood Plan (HSCNP), made in March 2015. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR5.2-5.6 and IR5.8-5.12.

14. 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 on Neighbourhood Planning of 12 December 2016.

15. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

16. The emerging plan comprises the Mid Sussex District Plan (2014-2031) (MSDP). The Secretary of State agrees with the Inspector that the emerging policies of most relevance to this case include those set out at IR5.13-5.14. The Secretary of State notes that the current form of the emerging MSDP is undergoing the examination in public and it has yet to be finally examined and adopted.

17. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given that while the MSDP is broadly consistent with the Framework, has advanced through consultation on the Main Modifications to it, no longer has substantial unresolved objections to it, but is yet to be subject to a published Inspector's report, the Secretary of State considers that it carries significant weight.

Main issues

18. The Secretary of State has taken into account the Inspector's analysis of the conclusions of the original Inspector and of his previous Decisions at IR13.11-13.12, IR13.14-13.16, IR13.18-13.20, IR13.22-13.24 and IR13.26-13.27.

Character and appearance

19. The Secretary of State has carefully considered the Inspector's analysis at IR13.13 and agrees that the recent planning permission for 40 units and an extra care home on part of the site represents a fall-back position that did not exist when the appeal was previously considered. He also agrees with the Inspector at IR13.13 that the principle of building houses on much of the current appeal site has now been established. For the reasons given at IR13.13, the Secretary of State agrees with the Inspector's conclusion that the impact on the character of the area would now be significantly less than would have been the case at the time of the previous decisions. This favours the development. As such the Secretary of State considers that harm to the character and appearance carries only limited weight against the proposal, in agreement with the Inspector at IR15.8.

Listed building

20. For the reasons given at IR13.17, the Secretary of State agrees with the Inspector that the 40 dwelling scheme on part of the appeal site would provide the same vehicular access as this appeal scheme to the south of the listed building, Aymers and Sayers, so this change to its setting has already been approved and can be considered to be a fall-back position. For the reasons given at IR13.17, the Secretary of State agrees with the Inspector's conclusion that the changed circumstances favour the appeal proposals. The Secretary of State agrees with the Inspector at IR15.13 that there would be 'less than substantial' harm to the setting of Aymers and Sayers and that this harm carries considerable weight. In accordance with paragraph 134 of the Framework, he has weighed that harm against the public benefits of the proposal at paragraphs 45-46 below.

Drainage and flooding

21. For the reasons set out at IR13.18-13.19, the Secretary of State concludes that drainage and flooding risks could be adequately managed by way of condition and Unilateral Undertaking. He has further had regard to the lack of any objection from the Environment Agency. He has also taken into account that the Council has withdrawn its objection on drainage grounds (IR13.21). For the reasons given at IR13.21, the Secretary of State agrees with the Inspector's conclusion that the Addendum to the original Flood Risk Assessment confirms his conclusion that the risk of groundwater flooding to the site is negligible, in line with the understanding of the previous Inspector at IR13.20. As such he finds the issue neutral in the planning balance.

Highway safety

22. The Secretary of State agrees with the Inspector at IR13.25 for the reasons given that there have been no changes to the proposals or access arrangements and the previous Inspector's conclusions remain valid. As such he concludes, in agreement with the earlier Inspector at IR13.22-13.23, that there is no reason to refuse permission on transport grounds, or that there would be any material increase in danger to highway users. He thus finds no conflict with MSLP or the Framework.

Accessibility/sustainability

23. Like the Inspector at IR13.28, the Secretary of State is not aware of any material changes in circumstances other than the grant of planning permission for 40 dwellings and an extra care home on part of the site, which indicates that MSDC considers it to be a sustainable location.

Matters identified by the Secretary of State

Having regard to the terms of the Consent Order quashing the Secretary of State's decision (Woodcock Holdings Ltd v Secretary of State for Communities and Local Government & Mid Sussex District Council) and the implications of this on the evidence that was before the Inspector and before the Secretary of State

24. The Secretary of State has carefully considered the Inspector's analysis at IR13.30-13.31 and agrees that the factors listed in IR13.30 (character and appearance, a listed building, drainage and flooding, highway safety and access/sustainability) remain unchanged in principle, albeit subject to the updates identified at IR13.13, IR13.17, IR13.21, IR13.25 and 13.28. The Secretary of State further agrees with the Inspector at IR13.31 that these updates tend to weigh in the appellant's favour. He further agrees that his previous conclusion in his second Decision that the scheme would represent a sustainable form of development in economic, social and environmental terms also weighs in the appellant's favour (IR13.31).

The current state of play with regard to the preparation of Local Plans in the MSDC area and any implications for the further consideration of this appeal, and five-year housing land supply

25. The Secretary of State has carefully considered the Inspector's analysis at IR13.32-13.36 and IR13.47-13.48. For the reasons given at IR13.32-13.34, he agrees with the Inspector at IR13.35 that the position at the time of the Inquiry was that the position concerning the OAHN and MSDC's housing requirement remained unresolved. He also agrees at IR13.35 that it is accepted by all parties that MSDC does not have an agreed OAHN or requirement figure and so there is no figure against which supply can be assessed or judged.

26. For the reasons given at IR13.47, the Secretary of State agrees that at the time of the inquiry the Council could not demonstrate a five year supply of housing sites. As stated above (paragraph 10-11), the Secretary of State has had regard to representations on the implications of the publication of the document titled 'Consideration of Options to Strengthen the Five Year Housing Supply'. He has given consideration to representations on behalf of the Parish Council that this document makes clear that the Council has an acknowledged 5.2 year housing land supply, that this has been strengthened since the Examination Hearing in July 2017, and that the document sets out how this figure would be strengthened (Paragraphs 5.1-5.3 of the Parish Council's representation 'Further Comments' of November 2017.)

27. However, he has also had regard to the Council's acceptance (6 November 2016) that the housing supply position remains subject to the Inspector's Final Report. As such he has concluded that the Council will not be able to rely on the housing figures in the MSDP evidence base at present. As such he concludes the publication of the consultation document is not a material consideration sufficient to alter his conclusions on housing land supply above.

Local Plan policies

28. The Secretary of State has given careful consideration to the Inspector's analysis at IR13.37-13.45 regarding the HSCNP. For the reasons given at IR13.38, the Secretary of State agrees that concerning Policy HurstC1, the appeal site lies in the countryside and this policy restricts the types of development that are permissible in the countryside; housing is not identified as a permissible land use. However, for the reasons given at IR13.38-13.39, the Secretary of State agrees with the Inspector that in giving weight to Policy HurstC1, account must be taken of the fact that some housing will have to be accommodated outside the settlement boundary it defines. He further agrees (IR15.7) that there is conflict with MSLP Policy C1, but that this policy dates from the 2004 MSLP, and relies on a settlement boundary that does not reflect current housing requirements.

29. For the reasons given at IR13.43, the Secretary of State agrees with the Inspector's conclusion regarding Policy HurstH3 that the proposal for 120 dwellings considerably exceeds the anticipated figure for Sayers Common. However, he agrees that without a cap on dwellings, there cannot realistically be any breach in terms of numbers.

The WMS of 2016

30. For the reasons given at IR13.50, the Secretary of State agrees that as the WMS is less than 2 years old, the first bullet point of paragraph 5 of the WMS on Neighbourhood Planning is engaged. However, given his conclusions on housing land supply, for the reasons given at IR13.51, he also agrees that the third bullet point of paragraph 5 is not engaged, and as such the WMS is not a relevant material change in circumstances since the 2016 Decision.

The planning permission for the 40 unit scheme

31. The Secretary of State accepts, for the reasons given at IR13.52-13.53, that the principle of residential development on the appeal site has been established. He further agrees that the principle of new residential development outside the settlement boundary has been established. For the same reasons he accepts that the principle of providing a new vehicular access through the curtilage of Aymers and Sayers has been established. For the reasons set out at IR13.54, he also agrees that the scheme now proposed would be a sustainable form of development in accordance with the provisions of the Framework. For the reasons given at IR15.8, the Secretary of State agrees with the Inspector that any conflict with the Framework or the development plan arising from the 120 dwelling scheme would result in very limited harm and so carries only limited weight against the development.

Hopkins in the Supreme Court

32. For the reasons given at IR13.55, the Secretary of Stage agrees that MSLP Policy C1 and HSCNP Policy HurstC1 are no longer relevant policies for the supply of housing for the purposes of paragraph 49 of the Framework, but that HSCNP Policies HurstH1 and HurstH3 remain relevant policies for the supply of housing. However, for the reasons given at IR13.56-13.57, the Secretary of State concludes that all these policies will have to be considered in the context of the tilted balance as set out in the second limb of paragraph 14 of the Framework.

Benefits of the proposal

33. The Secretary of State agrees with the Inspector, for the reasons given at IR15.14, that the proposal would produce economic benefits in terms of employment opportunities during construction, expenditure by the occupants of the dwellings and the New Homes Bonus. He gives these benefits significant weight.

34. He agrees with the Inspector that there are the social benefits to the proposal, identified at IR15.15, including the provision of housing, including affordable housing, in an area without a five year housing land supply, and the provision of a care home, retail and community facilities and office floorspace. He finds that these are of significant weight.

Planning conditions

35. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.8, 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

36. Having had regard to the Inspector's analysis at IR12.1-12.11, the planning obligations dated 10 October 2013 and 11 October 2013, 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 IR12.4-12.11 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development.

Planning balance and overall conclusion

37. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies MSLP Policy C1, HSCNP Policy HurstC1 and HSCNP Policy HurstH3 of the development plan, 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. In doing so, he has had regard to paragraph 198 of the Framework, which states that planning permission should not normally be granted where there is conflict with a made Neighbourhood Plan.

38. In the absence of a 5-year supply of housing land paragraph 14 of the Framework states that planning permission should be granted unless (a) any adverse impacts of doing so 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.

39. Against the proposal, the Secretary of State finds conflict with MSLP Policy C1 and with HSCNP Policy HurstC1. However, given that these are based on out of date development boundaries, and the tension with Policy HurstH3, and taking into account the fact that the principle of development on the site has now been established, he gives this conflict moderate weight.

40. He also weighs the conflict with HSCNP Policy HurstH3, but given that this policy is not a cap, and that the housing figures of the policy do not provide for today's needs, in the absence of a five year housing land supply, and without any identifiable planning harm, he affords this conflict moderate weight.

41. He further weighs the 'less then substantial' harm to the listed Aymers and Sayers, which he affords considerable weight.

42. Against this he weighs the economic benefits in terms of employment opportunities during construction, expenditure by the occupants of the dwellings and the New Homes Bonus. He gives these benefits significant weight.

43. He gives further significant weight to the social benefits of the proposal, including the provision of housing, including affordable housing, in an area without a five year housing land supply, and the provision of a care home, retail and community facilities and office floorspace.

44. The Secretary of State concludes that there is environmental harm by way of encroachment into the countryside, but also environmental benefits arising from improved drainage and landscaping, and as such finds the environmental impact neutral in the planning balance.

45. Paragraph 134 of the Framework is a 'specific policy' for the purposes of paragraph 14 of the Framework, and the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of Aymers and Sayers is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. Against this he weighs the benefits he finds above, in particular the provision of market and social housing in an area of acknowledged shortfall.

46. As such, the Secretary of State agrees with the Inspector at IR15.13 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of Aymers and Sayers. He considers that the balancing exercise under paragraph 134 of the Framework is therefore favourable to the proposal.

47. For the reasons given above, the Secretary of State concludes that the adverse impacts arising from the proposal do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The Secretary of State therefore concludes that the appeal should be allowed and planning permission granted.

Formal decision

48. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex A of this decision letter for 120 dwellings, community facility/ office space, care home and retail units, with primary access off the B2118 (London Road), in accordance with application ref: 12/01540/OUT, dated 27 April 2012.

49. 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

50. 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.

51. 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.

52. A copy of this letter has been sent to Mid Sussex District Council and Hurstpierpoint and Sayers Common 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 – Conditions

PHASING

1) Development shall not begin until a phasing strategy has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

RESERVED MATTERS

2) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for any phase shall be submitted to and approved in writing by the local planning authority before any development begins on that phase. Development shall be carried out in accordance with the approved details.

3) Application for approval of the reserved matters for any phase shall be made to the local planning authority not later than three years from the date of this permission.

4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for that phase.

5) The reserved matters to be submitted pursuant to condition 1 above shall accord with the following parameters:

The retail element of the scheme shall not exceed 120 square metres gross internal floor area.

Houses shall not exceed 2.5 storeys in height.

Buildings containing flats shall not exceed three storeys in height.

The nursing/care home shall not exceed two storeys in height and shall not provide more than 70 bedrooms, with a gross external area of not more than 500 square metres.

The community/office building shall not exceed two storeys in height.

PLANS

6) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos SK20924-02, 55027-107B and MBC17819-10E, but only in respect of those matters not reserved for later approval.

EXTERNAL LIGHTING

7) With the exception of individual domestic curtilages, no external lighting, including security lighting, is to be installed other than in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority.

BOUNDARY TREATMENT

8) Development shall not begin until details, including the position, design, materials, finish and type of all boundary treatments, and a timetable for implementation, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

TREE PROTECTION

9) Development shall not begin, including any works of site clearance, until the tree protection measures and exclusion zones shown on drawing No MBC17819-03a, are in place. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the local planning authority. The protective fencing and exclusion zones shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.

DRAINAGE

10) No building hereby permitted shall be occupied until surface water drainage works for the site as a whole have been implemented in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The submitted details shall:

provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

include a timetable for its implementation in relation to each phase of the development; and,

provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker, or any other arrangements to secure the operation of the scheme throughout its lifetime.

11) No building hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

CONSTRUCTION

12) No development shall begin, including any works of site preparation, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The approved CMP shall be adhered to throughout the construction period.

13) Works of demolition, site clearance, or construction, including the use of plant and machinery on the site, shall not take place outside 08.00-18.00 hours Monday to Friday and 09.00-13.00 hours on a Saturday, nor at any time on Sundays or bank/public holidays.

ACCESS/HIGHWAYS/TRAVEL PLAN

14) Development shall not begin until full details of the junction of the site access with the B2118 London Road, shown on Plan No 55027-107B, have been submitted to and approved in writing by the local planning authority.

15) No building hereby permitted shall be occupied until the junction of the site access with the B2118 London Road, including the visibility splays shown on Plan No 55027-107B, has been constructed in accordance with the details to be approved pursuant to condition 14 above and is fully operational.

16) Once formed, the visibility splays associated with the junction of the vehicular/pedestrian/cycle access with the B2118 London Road shall thereafter be retained and kept free of all permanent obstructions exceeding 0.6 metres above ground level.

17) No building hereby permitted shall be occupied until the pedestrian accesses onto Dunlop Close and Reeds Lane, as shown on Plan No 55027-107B, have been constructed in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include measures for future maintenance. The accesses provided shall be retained thereafter.

18) No part of the development hereby permitted shall be brought into use until a detailed Travel Plan, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be developed in accordance with the principles set out in the Framework Travel Plan appended to the proof of Mr Kitching and shall be implemented as approved.

NURSING/CARE HOME

19) Any unit within the care/nursing home hereby permitted shall be occupied only by 'elderly' persons, or any person with a 'specific care requirement', and their partners. For the purposes of this condition, a person shall be regarded as 'elderly' if they are 65 years or over or, in the case of a couple, where one of the occupants is aged 65 years or more and the other is aged 55 years or more. A person shall be regarded as having a 'specific care requirement' if a suitably qualified medical practitioner has diagnosed the illness or disability. In respect of a couple, where one person qualifies as either having a 'specific care requirement 'or being aged 65 years or over, and that person then leaves the home, or is deceased, the other person will be required to vacate the home within six months of their partners last day at the home, unless they themselves are aged 65 or over.

20) Any external plant and machinery on the nursing/care home hereby permitted shall be enclosed with soundproofing materials, and shall be mounted so as to minimise the transmission of structure-borne and airborne sound to neighbouring residential properties, in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority.

COMMUNITY BUILDING

21) The community building hereby permitted shall not be open to the public outside of the following times: 07.30-22.30 hours Monday to Saturday; 10.00-18.00 hours on Sundays and on bank/public holidays.

RETAIL UNITS

22) No deliveries shall be taken at the retail units on the site outside of the following times: 07.00-18.00 hours Monday to Saturday; 07.00-13.00 hours on Sundays and on bank/public holidays.

23) The retail units on the site shall not be open for business other than between 07.30-22.30 hours on any day.

CONTAMINATED LAND

24) Other than as may be required by an approved scheme of remediation, no development shall take place until a full contaminated land assessment of the site has been carried out and a remediation strategy to deal with any contamination has been submitted to and approved in writing by the local planning authority for the relevant part. The contaminated land assessment shall identify the extent of any contamination and the measures to be taken to avoid risk to the environment, the general public and the proposed development. It shall include a timetable of works. Any necessary remediation strategy shall be implemented in accordance with the approved details and timetable. No part of the development shall be occupied until a Completion Report, confirming that the remediation has been carried out as approved, has been submitted to and approved in writing by the Local Planning Authority.

25) If, during development, contamination not previously identified, is found to be present at the site, then no further development on that part of the site (unless otherwise agreed in writing by the local planning authority) shall be carried out until remediation works in accordance with a Method Statement for remediation, including a timetable, that has previously been submitted to and approved in writing by the local planning authority, have been completed and a verification report demonstrating completion of the works set out in the Method Statement has been submitted to and approved in writing by the local planning authority. The Method Statement shall detail how the unsuspected contamination shall be dealt with. The verification report demonstrating completion of the works set out in the Method Statement shall include results of any sampling and monitoring. It shall also include any plan for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the local planning authority.

ARCHAEOLOGY

26) No development shall take place, including any works of site preparation, until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the local planning authority.

ENERGY SUPPLY

27) At least 10% of the energy supply of the development hereby permitted shall be secured from decentralised and renewable or low-carbon energy sources (as described in the glossary of the National Planning Policy Framework). 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 before development begins. Development shall be carried out in accordance with the approved details and retained as operational thereafter.

Annex B – Schedule of Representations

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

Party	Date
Mid Sussex District Council	6 November 2017
Tim Rodway	7 November 2017, 14 November 2017
Dale Mayhew	7 November 2017

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Clive Hughes BA(Hons) MA DMS MRTPI

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

Date: 31 July 2017

TOWN AND COUNTRY PLANNING ACT 1990

MID SUSSEX DISTRICT COUNCIL

APPEAL BY

WOODCOCK HOLDINGS LIMITED

Inquiry opened 8 October 2013 and reopened on 11 May 2017

Land at Kingsland Laines, Reeds Lane/ London Road, Sayers Common, West Sussex

File Ref: APP/D3830/A/12/2189451

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List of abbreviations used in this Report

CIL Regs	Community Infrastructure Levy Regulations 2010 (as amended)
DCLG	Department for Communities and Local Government
dpa	Dwellings per annum
DPD	Development Plan Document
dpha	Dwellings per hectare
EA	Environment Agency
EIA	Environmental Impact Assessment
EiP	Examination in Public
FRA	Flood Risk Assessment
Framework	National Planning Policy Framework
ha	Hectares
HEDNA	Housing and Economic Development Needs Assessment
Hopkins	*Suffolk Coastal District Council v Hopkins Homes Ltd and another: Richborough Estates Partnership LLP and another v Cheshire East Borough Council* [2017] UKSC 37 (10 May 2017)
HSCNP	Hurstpierpoint and Sayers Common Neighbourhood Plan 2015
HSCPC	Hurstpierpoint and Sayers Common Parish Council
LPA	Local Planning Authority
MSDC	Mid Sussex District Council
MSDP	Emerging Mid Sussex District Plan 2014-2031
MSLP	Mid Sussex Local Plan 2004
NP	Neighbourhood Plan
OAHN	Objectively Assessed Housing Need
PPG	Planning Practice Guidance
SDNPA	South Downs National Park Authority
SHLAA	Strategic Housing Land Availability Assessment 2016
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SPD	Supplementary Planning Document
UU	Unilateral Undertaking
WMS	Written Ministerial Statement (12 December 2016) “Neighbourhood Planning”
WSCC	West Sussex County Council

File Ref: APP/D3830/A/12/2189451RD
Land at Kingsland Laines, Reeds Lane/ London Road, Sayers Common, West Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Woodcock Holdings Limited against the decision of Mid Sussex District Council.
- The application Ref 12/01540/OUT, dated 27 April 2012, was refused by notice dated 9 October 2012.
- The development proposed comprises 120 dwellings, community facility/ office space, care home and retail units, with primary access off the B2118 (London Road).
- The re-opened inquiry sat for 2 days on 11 and 12 May 2017.

Summary of Recommendation: That the appeal be allowed.

1. Procedural Matters

Procedural background to Inquiry

1.1 An Inquiry into this appeal was held by Inspector Jennifer Vyse DipTP DipPBM MRTPI between 8 and 11 October 2013. By letter dated 1 November 2013 the appeal was recovered for determination by the Secretary of State (SOS), the reason for that direction being "*that the appeal involves proposals which raise important or novel issues of development control, and/ or legal difficulties*".

1.2 The Inspector, in her Report dated 6 January 2014[1], recommended that the appeal be allowed and that planning permission be granted subject to conditions. The SoS disagreed with his Inspector and dismissed the appeal by letter dated 4 September 2014[2]. That Decision was successfully challenged in the High Court and was quashed on 1 May 2015[3].

1.3 The SoS then invited further representations[4] from interested parties on matters arising from that High Court judgement and issued a fresh Decision on 10 February 2016[5], again dismissing the appeal. That second Decision was then challenged by the appellant by way of Judicial Review; this was not contested by the SoS and it was quashed on 10 June 2016[6].

1.4 The SoS subsequently advised the parties, by letter dated 14 October 2016, that in accordance with Rule 19(1)(c) of the Inquiry Procedure Rules the Inquiry would be re-opened to consider certain, specified, matters. The Inquiry re-opened on 11 May 2017.

Other procedural matters

1.5 The application is in outline form with all matters other than access into the site reserved for future determination. Prior to the opening of the first Inquiry, and as a result of discussions between the appellant and Mid Sussex District Council (MSDC), a slightly revised site layout was produced. This was the subject of local consultation and was submitted with the appeal. The previous Inspector,

[1] CD8
[2] CD9
[3] CD10
[4] CD11
[5] CD12
[6] CD13

taking account of the Wheatcroft principles and that fact that the layout plan is only illustrative, considered that the appeal could be determined on the basis of the amended plans without prejudice to anyone's interests. I have looked at the original and amended plans and agree with her conclusions.

1.6 The relevant plans for this Report, therefore, are Drawings No 55027-101A (site location plan); 55027-107B (indicative site layout); MBC17819-10E (landscape masterplan) and SK20924-02 (proposed road junction).

1.7 MSDC refused planning permission[7] on five grounds relating to (1) the effect of the proposals on the setting of a Grade II listed building (semi-detached houses known as Aymers and Sayers); (2) surface water drainage and flooding; (3) the sustainability of the location in terms of modes of transport; (4) the suitability of the access and its impact on highway safety; and (5) the effect of the proposals on local infrastructure including the need to provide affordable housing. Reasons (3), (4) and (5) were withdrawn before the Inquiry opened.

1.8 At the Inquiry MSDC presented expert evidence in support of the remaining two reasons for refusal (Reasons (1) historic heritage; and (2) drainage and flooding). However, during the course of the Inquiry, and following cross-examination of the expert witnesses by the advocate for the appellant, MSDC confirmed that it was no longer pursuing its objections in respect of either of these matters. MSDC's evidence concerning drainage and flooding was withdrawn in its entirety. Its evidence concerning historic heritage was withdrawn insofar as it related to the setting of the listed building but some of that witness's evidence, concerning the planning Obligations, was retained. By the close of the Inquiry, therefore, MSDC was no longer maintaining any objections to the proposed development.

1.9 Hurstpierpoint and Sayers Common Parish Council (HSCPC) were afforded Rule 6(6) party status and adduced evidence accordingly at both the original Inquiry in October 2013 and the re-opened Inquiry in May 2017.

1.10 During the course of the October 2013 Inquiry, two Planning Obligations[8] were submitted by the appellant. One is a Unilateral Undertaking (UU), the other an Agreement under s106. They overcome MSDC's fifth reason for refusal and are considered in greater detail later in this Report.

1.11 By letter dated 14 October 2016 the SoS identified that he needed to re-open the Inquiry to consider further the following matters:

a) Having regard to the terms of the Consent Order quashing the SoS's decision (*Woodcock Holdings Ltd v Secretary of State for Communities and Local Government & Mid Sussex District Council*) the implications of this on the evidence that was before the Inspector and before the SoS;

b) The current state of play with regard to the preparation of Local Plans in the MSDC area and any implications for the further consideration of this appeal;

c) The Hurstpierpoint and Sayers Common Neighbourhood Plan (HSCNP) and relevant policies therein; and

[7] CD3
[8] CD25 & CD26

d) Any other material change in circumstances, fact or policy, that may have arisen since his Decision of 10 February 2016 was issued and which the parties consider to be material to his further consideration of this appeal.

1.12 The Supreme Court Judgement in respect of *Suffolk Coastal District Council v Hopkins Homes Ltd and another: Richborough Estates Partnership LLP and another v Cheshire East Borough Council* [2017] UKSC 37 (10 May 2017) (*Hopkins*)[9] was given the day before the Inquiry re-opened. All parties were given the opportunity to comment on the Judgement and I have taken it, and the comments on it, into account in this Report.

2. The Site and Surroundings

2.1 The appeal site and its surroundings are described in some detail in the Design and Access Statement[10], the Statement of Common Ground (SoCG)[11] and more briefly in the Officers' Report to MSDC's Development and Transport Area Planning Committee (South West)[12]. There are further descriptions in the proofs of evidence to the first Inquiry of Messrs Mascall and Mayhew. There is a detailed description and analysis of the landscape of the area in the Landscape and Visual Impact Assessment[13].

2.2 The site abuts the western edge of Sayers Common, a small village some 18km north of Brighton. The main road through the village, London Road (B2118), runs parallel with the dual carriageway of the main London to Brighton road (A23) which by-passes the village and separates it from the larger settlement of Hurstpierpoint, a little way to the east. The village is quite linear in form, either side of London Road, albeit with pockets of greater depth at The Acorns and Berrylands Farm, and culs-de-sac that run parallel to the main road (Dunlop Close and Furzeland Way). London Road runs north/ south through the village; there is a further spur of development to the west along Reeds Lane.

2.3 The village, with 300-400 dwellings including properties in the immediately surrounding countryside, has a number of facilities. These include a church, with church hall, community-run shop (open every day), Parish hall, a public house and a number of other businesses including the King Business Centre, with a mix of offices, industrial and warehousing units, and an industrial park at Whiteoaks Farm and Valley Farm, both to the west of the village and located on the northern side of Reeds Lane.

2.4 The site itself has an area of about 5.85ha and is relatively flat. It is occupied by a house, Kingsland Laines, with associated outbuildings and stables that are accessed via a private drive from Reeds Lane. Another part of the site, fronting London Road, is part of the curtilage of Aymers and Sayers, a pair of semi-detached houses that together comprise a Grade II listed building. This land, to the south of these houses, is occupied by a large pitched roof garage building that provides parking spaces for the two dwellings and a surfaced frontage parking/ manoeuvring area.

[9] ID1
[10] CD1: 1.2 Section 2
[11] CD7 Section 2
[12] CD2
[13] CD1: 1.15

2.5 Aside from this land, the site is set back from London Road to the east behind frontage dwellings and a short residential cul-de-sac (Dunlop Close). It is set off Reeds Lane to the south behind a Recreation Ground, owned by the Parish Council, and terraced housing (Kingsland Cottages). To the west lies some woodland, formerly brick and tile works and open fields. To the north the land is generally open with, further north, the former Priory of our Lady now in use as a specialist education centre for children with learning difficulties.

2.6 The rest of the site comprises paddocks subdivided by hedges, streams/ ditches and trees. There are only limited public views into the site as it is mostly screened by dwellings and vegetation.

3. The Proposals

3.1 The application was made in outline form with all matters other than the means of access into the site reserved for future consideration[14]. The appeal proposals seek planning permission for 120 dwellings, of which 30% would be affordable units (36 dwellings). The supporting information identifies that, in addition to the dwellings, planning permission is being sought for a 2-storey care home (70 beds); a community facility with the ground floor to be available for events and functions and the upper floor to be used as Class B1 office space; two retail units; a new vehicular access to London Road; a new pedestrian access to Dunlop Close; retention of the access to Reeds Lane, which would be available for use by pedestrians only; garaging and car parking; extensive landscaping; and the replacement of the garaging and parking for Aymers and Sayers.

3.2 Full details of the proposed access have been submitted. It would be located immediately to the south of Aymers and Sayers, through what is currently the garaging and parking for those properties. Illustrative layout plans show how the proposed development could be accommodated within the site. The SoCG[15] provides greater detail of the proposals including details of the revised mix of dwelling sizes and other changes from the original planning application.

4. Planning History

4.1 Before the submission of the application the subject of this appeal, planning permission was sought in 2011 for the erection of 120 dwellings, a primary school, community facility and retail units on this site with access from London Road. Before the application was determined, West Sussex County Council (WSCC) withdrew its support for the primary school. It was also identified that further work was necessary in respect of some matters, in particular ecology, drainage and transport/ highways. This application was withdrawn.

4.2 Subsequent to the application the subject of this appeal there have been two further planning applications for the site. The first of these was made in December 2012 and is similar to this appeal proposal albeit that some of the illustrative details had been changed and further information provided in respect of heritage, highways and drainage matters. This application was refused by MSDC in April 2014 on grounds relating to heritage, flooding, the sustainability of the location and the absence of a completed s106 Agreement concerning infrastructure and affordable housing.

[14] CD1: 1.1
[15] CD7 – Chapter 3

4.3 The second application, which relates to only part of the site, was submitted in May 2015 and was an outline application for the "approval of access details for 40 houses, extra care facility with access from London Road/ B2118"[16]. Although the Decision Notice describes the location as Kingsland Laines, Reeds Lane, the approved site plan (57860 – 101 Rev E) indicates that the site is wholly to the north of that property and that there would be no access from Reeds Lane. The site also omits much of the northern end of the appeal site. The application was approved by MSDC on 18 January 2018; a condition limits the size of the extra care facility to a maximum of 40 beds.

5. Planning Policy

5.1 The development plan comprises the Mid Sussex Local Plan 2004 (MSLP) and the HSCNP 2015.The emerging plans include the Mid Sussex District Plan (MSDP) for which the Examination in Public (EiP) is ongoing.

Mid Sussex Local Plan 2004 (MSLP)

5.2 The relevant policies in the MSLP[17] are set out in the SoCG at paragraph 4.6. The previous Inspector summarised the policies succinctly and I have repeated that summary. Together, Policies B1 and B2 seek to secure high standards of design and layout in new development. Policy B3 looks to protect the amenities of existing residents and Policy B4 promotes energy efficiency, efficient use of water and the use of natural drainage. Policy B7 resists the loss of trees with significant amenity value.

5.3 Policy B10(d) reflects the statutory duty set out at Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the setting of listed buildings. Among other things, Policy B23 requires that particular attention is given to the impact of noise generating development on listed buildings.

5.4 Within Countryside Areas of Development Restraint, Policy C1 resists new development other than in particular circumstances, in order to protect the countryside for its own sake. Together, Policies G1, G2 and G3 seek to protect the existing environment and ensure that efficient use is made of land, whilst meeting high standards of design, layout and landscaping. Development should also be accessible by a choice of means of transport and should be supported by appropriate infrastructure.

5.5 Policy H2 requires that new housing developments include a mix of dwelling types, sizes and affordability, with Policy H4 seeking to secure 30% provision of affordable units on sites proposing more than 15 dwellings. Policy T4 is generally supportive of development in sustainable locations that minimises reliance on the private car. Policy CS12 is only permissive of development where, among other things, adequate provision is made for the treatment of waste water and where adequate sewerage capacity is available. Policy CS13 requires that sites be adequately drained in order to reduce the risk of flooding.

5.6 Paragraphs 36.1- 36.6 of the MSLP relate specifically to Sayers Common. They set out a summary of the physical setting of the village, the facilities available

[16] Ref - DM/15/1467: approved 18 January 2017
[17] CD15

there, and confirm that a built-up area boundary is defined for the village to protect the surrounding countryside from unnecessary development.

Hurstpierpoint and Sayers Common Neighbourhood Plan 2015 (HSCNP)[18]

5.7 The HSCNP was made by the South Downs National Park Authority (SDNPA) on 14 March 2015 and by MSDC on 18 March 2015; it covers the period 2014 to 2031. The Examiner's Report[19] was published in September 2014 and the recommended minor changes were approved by MSDC in December 2014. The public referendum took place on 12 February 2015 with 92.4% of those who voted being supportive of the Plan. It was "made" in the following month and now forms part of the development plan.

5.8 The appeal site lies within an area subject to Countryside Policy HurstC1 where, outside the National Park, development will be permitted where it comprises an appropriate countryside use and maintains or enhances the quality of the rural and landscape character of the Parish area.

5.9 Chapter 5 of the HSCNP, *Housing*, identifies how housing need has been calculated, taking account of household formation, demographic and economic changes. The Plan assumes that the proposed Burgess Hill Townwide Strategy Northern Arc, and other allocations to the east of Burgess Hill, will absorb a significant part of the demographic and economic growth in the southern part of the District. It calculates that to meet the needs of future populations of the Parish, the number of new homes in the period 2014-2031 would be within the range 140 to 395 dwellings. It adds that in order to allow for additional economic growth generated from demands outside the Parish, a target in the higher end would be appropriate.

5.10 The HSCNP identifies that the two villages have limited capacity for new housing. New infrastructure would be required; new housing development that had a major impact on the character of the settlements could not be accommodated without a significant upgrade in infrastructure. The existing "village feel" of the communities is strongly supported by local people. The Plan identifies that the main constraints in Sayers Common relate to the lack of existing infrastructure (school, shops, doctors' surgery); the lack of transport connections and distance from rail transport; surface water flooding issues; and the requirement to maintain the settlement pattern and avoid coalescence with neighbouring settlements.

5.11 Policy HurstH1 supports housing in areas which enhance the existing settlement pattern and, in Sayers Common, can enhance the flood and drainage management in the village. Policy HurstH3 relates specifically to Sayers Common housing sites and says that, subject to resolving the water drainage issues, new housing will be permitted and it is anticipated that the village will accommodate around 30-40 new dwellings during the Plan period. It says that a review and appraisal of deliverable housing sites will be undertaken at an early stage in the Plan period.

5.12 Policy HurstH5 relates to house designs and layouts which shall respond to the village character and follow the Village Design Statement 2004. Policy HurstH6

[18] CD17
[19] CD16

sets out eight criteria that need to be met for new housing developments to be supported. Policy HurstH7 identifies that for developments of 4 or more dwellings there will normally be a 30% affordable housing content. Policy HurstH8 says that housing development which meets the requirement of the HSCNP and provides small homes with ground floor accommodation designed for people with access and movement difficulties will be supported.

Emerging plan: The Mid Sussex District Plan (2014-2031) *(MSDP).*

5.13 The Pre-Submission Draft of the emerging MSDP was published in June 2015 and Focussed Amendments were published for consultation in November 2015. A Submission Version was published and submitted to the SoS in August 2016. Policy DP1 sets out the presumption in favour of sustainable development. The Plan says that there is an Objectively Assessed Housing Need (OAHN) of 754 dwellings per annum (dpa) giving a housing provision figure of 800 dpa. Policy DP6 sets out a settlement hierarchy. The expansion of settlements outside defined built-up areas will be supported where the site is allocated in the MSDP, a NP or subsequent Development Plan Document (DPD) or where the proposal is for fewer than 10 dwellings; where the site adjoins a settlement edge; and the development is demonstrated to be sustainable. Sayers Common is identified as a Category 3 settlement (on a scale of 1-5).

5.14 Policies DP10 and DP24 seek to protect the countryside and the distinctive character of villages while being sensitive to the countryside. Policy DP32 seeks to protect listed buildings and their settings. Policy DP41 relates to flooding.

5.15 The EiP for the emerging plan commenced in late 2016 and is ongoing. In a recent letter[20] the Examining Inspector said that he considered the OAHN to be 876 dpa and that the District should accommodate a further 150 dpa towards Crawley Borough's unmet need. The timing of this is still a matter of dispute. MSDC considers that it will be able to demonstrate a five-year housing land supply based on an OAHN of 876 dpa[21], but acknowledges that this cannot be demonstrated in advance of an agreed OAHN.

Written Ministerial Statement (12 December 2016) "Neighbourhood Planning" (WMS)

5.16 This WMS sets out that relevant policies for the supply of housing in a NP that is part of the development plan should not be deemed to be "out-of-date" under paragraph 49 of the Framework where all the following circumstances arise at the time the decision is made:

- The WMS is less than 2 years old, or the NP has been part of the development plan for 2 years or less;
- The NP allocates sites for housing; and
- The LPA can demonstrate a three-year supply of deliverable housing sites.

5.17 It was agreed by MSDC and the appellant that as MSDC cannot identify a reliable housing requirement figure, it is not possible for it to identify any

[20] CD19e: 20 February 2017
[21] Document MSDC1

housing land supply, whether 5 years or 3 years. For this reason the provisions of the WMS are not triggered by this appeal.

6. Other Agreed Facts

6.1 An extensive list of agreed matters between MSDC and the appellant was submitted prior to the first Inquiry and set out in the original SoCG[22]. While MSDC is no longer raising any objections to the proposals, I consider it relevant to set out these points. I have, however, omitted reference to the five-year housing land supply and harm to heritage assets as MSDC's position on these points has now changed. At the May 2017 Inquiry the parties agreed that all the other matters remain common ground between them. Amongst other things, the SoCG confirms agreement in respect of:

- There is a demonstrable housing need within the Parish;
- The site can be drained satisfactorily and will not be at risk from flooding or increase the risk of flooding elsewhere;
- The maintenance of the watercourses running through the site will be secured by planning obligation, which will allow MSDC to adopt the on-site areas of open space and watercourses;
- The site is in a sustainable location for housing, with good access to a range of local facilities and services. Subject to a planning obligation to secure an agreed package of highway works and other transport related measures and financial contributions, MSDC's original objection in relation to this is addressed;
- Although the development would encroach into countryside on the edge of the village, the site is well contained with only close-up viewpoints immediately to the north and so there would be no unacceptable landscape or visual impacts;
- The proposed residential density of 25 dwellings per hectare is appropriate, given the surrounding pattern of development. Housing mix can be dealt with at reserved matters stage;
- Taking account of the community and retail facilities proposed, the level of development is appropriate in the context of the village of Sayers Common;
- The on-site provision of 30% affordable dwelling units, to an agreed mix of sizes and tenures, accords with Policy H4 of the MSLP and with Policy Hurst7 of the HSCNP;
- Satisfactory residential amenity could be provided for existing and future occupiers;
- The creation of a shared pedestrian/cycle link between the development and Dunlop Close will not cause a significant increase in noise and disturbance to the detriment of existing residents;

[22] SoCG

- Adequate foul drainage can be funded and provided;
- There is an agreed need for an elderly person care facility in the area;
- The retail facilities would benefit existing and future residents;
- The site is of low overall ecological value and, subject to conditions, there would be no significant ecological impact;
- There would be no unacceptable impact on trees and hedgerows;
- The loss of Kingsland Laines and its associated outbuildings is acceptable;
- Other than Aymers and Sayers, there will be no impact on the setting or significance of any other heritage asset;
- The site is not affected by contamination and the development will not affect any site of archaeological importance;
- Subject to a planning obligation, the appeal scheme will deliver all necessary infrastructure;
- This is not EIA development; and
- The New Homes Bonus that would be generated by the development is a material planning consideration in favour of the proposals.

7. The Case for Woodcock Holdings Limited

Introduction

7.1 The site lies immediately adjacent to the adopted settlement boundary for Sayers Common. It has the benefit of a recent planning permission for 40 dwellings and an extra care home. It is identified in the 2016 SHLAA as being a "three-tick" site, ie it is suitable, available and deliverable. Now that the appellant has overcome the flooding and heritage objections, MSDC support the grant of permission.

7.2 The appeal is subject to a favourable Inspector's Report but was dismissed by the SoS by reference to alleged conflict with first the draft and then the made HSCNP. Both Decisions were quashed by the High Court, one by Holgate J and one by Consent. In re-opening the Inquiry, the SoS wished to be informed of the following matters (in summary and as amplified by the Inspector at the Inquiry):

- The implications of the Consent Order;
- The current state of play with the emerging MSDP;
- The HSCNP; and
- Any other material changes since February 2016 and in particular:
  - (i) Five-year housing land supply;
  - (ii) The WMS of 2016;
  - (iii) The permission for the 40 unit scheme; and

(iv) *Hopkins* in the Supreme Court.

7.3 The appellant's case is directed, at the request of the Inspector, to the consequences of the Judgement in the Supreme Court (*Hopkins*) handed down the day before the Inquiry re-opened, overturning the "wide" application of paragraph 49 of the Framework and adopting a "narrow" interpretation. The written evidence to the Inquiry, understandably, followed the Court of Appeal definition. In this context, *Hopkins* requires the re-categorisation of two policies (MSLP Policy C1 and HSCNP Policy HurstC1) as not being subject to the "deeming" provision in Framework paragraph 49. However, for reasons set out below, these policies were in any event out-of-date by reference to changes in circumstances since they were formulated as reflected by paragraph 215 of the Framework. The "HurstH" policies of the HSCNP remain subject to paragraph 49. *Hopkins*, therefore, does not alter the process or the outcome of the process for this Decision.

Implications of the Consent Order

7.4 The Consent Order quashed the Decision dated 10 February 2016 as the SoS accepted that he had been erroneous in attaching importance to the breach of MSLP Policy C1, a matter he had not found objectionable in his 2014 Decision. It left legally unresolved the challenges to the SoS's approach to the HSCNP. What are unchanged, however, are the "merits" findings of the SoS as to the performance of the proposals in respect of several material considerations. In particular the second Decision established the SoS's view that the site and scheme are acceptable in terms of, amongst other things:

- Accessibility to services and facilities by sustainable mode;
- Flooding and drainage;
- Heritage;
- Character and appearance; and
- As representing a sustainable form of development in economic, social and environmental terms.

7.5 These findings echo the 2014 Decision which led Holgate J to say that the findings of the Inspector on matters such as density and scale of development were undisputed. These factors, therefore, remain a constant. It could be said that the 2016 quashed Decision was even clearer in the acceptability of the scheme than the 2014 Decision before Holgate J in that it expressly found the scheme to be sustainable development across all three dimensions as set out in paragraph 7 of the Framework.

Current state of play with the emerging MSDP

7.6 This emerging plan has been the subject of a number of hearing sessions. The Inspector's Interim Findings letter (20 February 2017[23]) says, amongst other things, that (i) the OAHN is likely to be about 1026 dpa (to include 150 dpa from outside the District); and (ii) that neighbourhood planning needed a strategic indication within the Plan of the distribution of housing numbers by

[23] Appended to MSDC1

settlement. MSDC are trying to persuade the Inspector that it should start at 876 dpa and move up; that remains the subject of objection and further consideration. The uncertainty is such that MSDC remains unable to even calculate a supply of housing as it does not have confidence in the figure against which to measure it. The final figure will exceed the 650 dpa on which HSCNP is based.

7.7 Work has commenced on distributing the additional units to settlements but this work is not complete. MSDC has indicated to forums that emerging NPs should be delayed until strategic numbers have been established; existing NPs will need to be reviewed.

7.8 The result, as agreed by all parties, is that MSDC cannot demonstrate a five-year housing land supply; it does not know the requirement against which to judge the calculation. The housing provision in HSCNP, albeit not subject to a cap, no longer reflects up-to-date housing needs. This situation is not likely to be resolved in the short term; there is no timetable for its resolution. At present MSDC cannot demonstrate a five-year or even a three-year housing land supply and the HSCNP is founded on out-of-date housing figures.

The HSCNP

7.9 For this Inquiry the relevant policies are HurstC1, HurstH1 and HurstH3. Concerning HurstC1, in his previous two Decisions the SoS did not allege any conflict with HurstC1. This is not surprising as the quantum of housing envisaged in the HSCNP cannot possibly be accommodated within the adopted settlement boundary. The part of the policy that refers to the quality of the rural and landscape character of the area is fulfilled by the SoS's finding that there would not be any unacceptable landscape harm and that any impact would be more than compensated for by the improvements brought about by the scheme. In accordance with the SoS's 2016 findings there is no conflict with Policy HurstC1.

7.10 HurstH1 supports new housing. It is subject to two relevant criteria; (a) "enhance the existing settlement pattern" and (c) "in Sayers Common…enhance the flood and drainage management in the village". There is no doubt that criterion (c) is fulfilled as the SoS has twice indicated agreement with his Inspector, the Environment Agency (EA) and MSDC. The flooding situation would be improved.

7.11 Concerning HurstH1(a), in his second Decision the SoS included a conflict with this policy by reference to the "size" of the scheme being larger than that "anticipated" by HurstH3. That conclusion fell into the same error of law identified as fatal within Ground 2 of the earlier challenge upheld by Holgate J. In that Judgement the Court found that the SoS had erred in law by failing to consider his objection to the numerical increase (120 vs 30-40) against his positive findings that the 120 dwelling scheme would give rise to no harm as regards, amongst other things, scale and its effect on the character of the village. There is no new evidence to disturb these positive findings.

7.12 Policy HurstH3 (originally HurstH4) was subject to amendment by the NP Examiner to remove what had been a cap of 30-40 dwellings. Such a cap was found not to accord with national policy and so was replaced by an "anticipated" figure. So there is no policy breach by exceeding it. While 120 dwellings is in

excess of the figure "anticipated" by HurstH3, that policy does not prohibit more. In addition, it is now known that the Parish does not intend to review and identify sites to meet HurstH3. This is, in part, because housing numbers have altered such that a wholesale review would be necessary which would not be appropriate in advance of identifying strategic numbers and distribution.

7.13 The question, therefore, is what harm would arise from exceeding expectations. The answer is "none". Indeed none is articulated by the Parish. The factors (accessibility, flooding, character and coalescence) identified in the HSCNP as presumably leading to the anticipation of 30-40 dwellings have all been concluded by the SoS not to be matters that raise objections to 120 dwellings. The scheme is even more sustainable than the 40 dwelling scheme permitted as it would bring additional benefits. The community would be more sustainable with the development than without it. There is therefore no conflict with HurstH3. No harm would arise; there would be additional benefits.

7.14 The strategic housing requirement has increased since the HSCNP was formulated. No reliance can be placed on an indication (not a cap) where no harm arises from exceeding it. There is no conflict with the HSCNP but there would be benefits from the proposals.

Any other material changes since February 2016

(i) Five-year housing land supply

7.15 MSDC accept that it cannot demonstrate a five-year housing land supply. This is because it does not yet have a reliable Framework-compliant assessment of its housing needs. Paragraph 49 of the Framework is therefore engaged and "policies for the supply of housing" are deemed to be not up-to-date. The positive weight to be given to the provision of market and affordable housing is emphasised where the Council is failing to deliver the Government's imperative to boost the supply of housing. Substantial positive weight should be given to the provision of 120 dwellings (with 30% affordable).

(ii) The WMS of 2016

7.16 This does not apply in this case as (i) the HSCNP is more than 2 years old and matters have moved on since it was made; and (ii) MSDC is unable to identify a reliable requirement figure as it is agreed that it is unable to demonstrate *any* housing land supply, be it 5 or 3 years. So the WMS is not a material consideration in this appeal.

(iii) The permission for the 40 unit scheme

7.17 The SoS initially issued a holding direction but subsequently decided that he was content for it to be determined locally; permission has now been granted. It establishes the principle of housing development on the site. It necessarily goes outside the 2004 settlement boundary, as provided for by HSCNP Policies HurstC1, HurstH1 and HurstH3. It does so without causing unacceptable harm to landscape or amenity and establishes the access works in the curtilage of the listed building. The 120 dwelling scheme brings no more impact but gives greater social and economic benefits. The three dimensions of sustainability, set out in the Framework, are more fully served by the 120 dwelling scheme than by the 40 dwelling scheme.

(iv) Hopkins in the Supreme Court

7.18 Pursuant to *Hopkins* in the Court of Appeal, all parties had proceeded on the basis that MSLP Policy C1 and HSCNP Policies HurstC1, HurstH1 and HurstH3 were "policies for the supply of housing" within the meaning of paragraph 49 of the Framework. The presumption in favour of sustainable development in paragraph 14(2) was therefore triggered. The Supreme Court has disagreed with the Court of Appeal and has adopted a "narrow" interpretation of "policies for the supply of housing". It is therefore now agreed that MSLP Policy C1 and HSCNP Policy HurstC1 are not to be classed in that category and so are not subject to the paragraph 49 deeming provision.

7.19 HSCNP Policies HurstH1 and HurstH3 are agreed to be "policies for the supply of housing" and so are subject to paragraph 49. Given that MSDC cannot demonstrate a five-year housing land supply it is agreed that they are deemed to be out-of-date and paragraph 14(2) is engaged. The tilted balance applies.

7.20 While, following *Hopkins*, MSLP Policy C1 and HSCNP Policy HurstC1 are not deemed to be out-of-date by paragraph 49 that does not prevent them from actually being out-of-date by reason of changed circumstances or planning policy. Thus, as exemplified by the Willaston appeal being considered there, a development plan and its policies may be out-of-date in that they provide for a period pre-dating the Framework and not representing an up-to-date framework-compliant assessment of today's development needs. That is precisely the situation here.

7.21 MSLP Policy C1 derives from settlement boundaries adopted in 2004, in a pre-Framework world, to accommodate development needs to 2006. This situation is anticipated by paragraph 215 of the Framework. As such, quite apart from paragraph 49, they are out-of-date and paragraph 14 is engaged even though paragraph 49 has no purchase on MSLP Policy C1.

7.22 The same may be said for HSCNP Policy HurstC1 as the settlement boundaries it attaches to are the same as MSLP Policy C1 dating from 2004. HSCNP anticipates that they will be breached, as they have been, if development needs are to be met. As such there is no argument that the HurstC1 boundaries are not up-to-date "quite apart from paragraph 49". So paragraph 14(2) is again engaged and paragraph 215 directs that weight should be reduced.

7.23 This does not mean that these policies cease to be s.38(6) policies nor that they are to be ignored. But the approach to them has to be in the context of the tilted balance in paragraph 14(2) and the "unmistakable message[24]" that the Framework is intended to send to decision makers.

7.24 The Supreme Court emphasises that one can find oneself in paragraph 14(2) by a whole host of routes unrelated to paragraph 49 and that policies can be out-of-date for a variety of reasons despite not being "policies for the supply of housing". It emphasises the really important paragraph is not paragraph 49 but paragraph 14(2) and that the really important factor is not whether a policy is or is not out-of-date, but, rather, whether the harms significantly and demonstrably outweigh the benefits in the context of the overriding objective of

[24] ID1: paragraph 77

the Framework as a piece of policy, namely to meet OAHN and "to boost significantly the supply of housing".

7.25 The Judgement emphasises the proper approach to the presumption in favour of sustainable development once paragraph 14(2) is engaged. It is not confined to environmental or amenity considerations but to the planning objective that the Framework seeks to achieve. MSLP Policy C1 and HSCNP Policy HurstC1 were deemed to be out-of-date due to non-compliance with the Framework and paragraph 49; following the Supreme Court Judgement they are recognised as being out-of-date for the first reason alone. The overall effect is that they are still out-of-date. Paragraph 14(2) is engaged.

7.26 HSCNP Policies HurstH1 and HurstH3 are untouched by *Hopkins* and are out-of-date by reason of non-compliance with the Framework and paragraph 49. They remain so and paragraph 14(2) is engaged.

7.27 Permission should only be refused if the adverse impacts significantly and demonstrably outweigh the benefits. The benefits are not disputed. The *only* harm alleged is a numerical exceedance of a number in a policy which is expressly not a cap or ceiling. It is within a policy which is acknowledged to be out-of-date both by not providing for today's needs (paragraph 215) and because of the absence of a five-year housing land supply (paragraph 49) and which manifests no identifiable planning harm. It is not possible to conclude that this policy conflict, if it can be characterised in such terms, significantly and demonstrably outweighs the sum of the undisputed benefits of the scheme.

Conclusion

7.28 Planning permission should be granted for a scheme that the SoS has already concluded amounts to sustainable development across all three dimensions of sustainability as defined in paragraph 7 of the Framework.

8. The Case for Hurstpierpoint and Sayers Common Parish Council

The Development Plan

8.1 For the purposes of this appeal the development plan comprises the saved policies of the MSLP and the policies in the made HSCNP.

Paragraph 49 of the Framework/ Policies for the supply of housing

8.2 Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of deliverable housing sites. The courts have sought to interpret and clarify the scope of this paragraph. The Supreme Court Judgement in *Hopkins* makes clear that in determining what are relevant policies for the supply of housing a "narrow" interpretation should be followed, limiting the paragraph to just those policies that deal with the numbers and distribution of new housing[25]. In view of this it is clear that MDLP Policy C1 and HSCNP Policy HurstC1 are no longer to be considered as being "relevant policies for the supply of housing" within paragraph 49.

[25] ID1: paragraphs 48(i) and 59

Five-year housing land supply

8.3 The MSDC has long been unable to demonstrate a five-year housing land supply. This is inextricably linked to the progress of the emerging MSDP. The EiP Inspector considers that the OAHN for the District is 876 dpa with a further 150 dpa required to meet the needs of Crawley Borough. MSDC are minded to accept the figure of 876 dpa for now with the need for Crawley to be provided later. The EiP Inspector has noted this as a potential way forward. MSDC's letter of 7 April 2017[26] to the EiP Inspector shows that this figure can be achieved. While awaiting feedback from that Inspector, MSDC confirmed to the Inquiry that it does not seek to rely upon either a five-year housing land supply or a three-year housing land supply.

Paragraph 14 of the Framework

8.4 In the light of the above, paragraph 14 is engaged. This triggers the second bullet point of the second part of paragraph 14, often referred to as the "tilted balance". Lord Gill, in paragraph 85 of *Hopkins*, said *"whether adverse impacts of granting permission will have that effect is a matter to be "assessed against the policies in the Framework taken as a whole". That clearly implies that the assessment is not confined to environmental or amenity considerations… "specific policies in the Framework" cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers"*.

Countryside policies

8.5 The site is located within a defined countryside location within the terms of both the MSLP and the HSCNP. The appellant accepted that there is conflict with MSLP Policy C1. The appellant, however, sought to argue that the scheme is in accordance with HSCNP Policy HurstC1, despite the clear similarities between that policy and Policy C1. Notwithstanding the appellant's assertions, it is submitted that the scheme cannot realistically be considered to "comprise an appropriate countryside use" or "maintain or… enhance the quality of the rural and landscape character of the area".

HSCNP spatial strategy and housing policies

8.6 The housing policies in the HSCNP build upon its vision and strategic objectives. The overall strategy is set out in Policy HurstH1 and it identifies land in and around Hurstpierpoint for the significant majority of housing growth. This is shown through the housing allocations in Policy HurstH2.

8.7 Concerning Sayers Common, Policy HurstH3 says that the intent is for the village to accommodate around 30-40 dwellings during the Plan period. The appellant has argued that the inclusion of the word "anticipated" by the NP Examiner changes the thrust of this policy; this is disputed. While the word adds flexibility it does not fundamentally alter the quantum of housing envisaged for Sayers Common. The submitted Table[27] shows that the village has delivered, or is committed to delivering, 40-50 dwellings over the Plan period (a figure that includes 40 dwellings approved for the appeal site).

[26] Appended to MSDC1
[27] ID2

8.8 The spatial strategy and housing allocations in the HSCNP are legitimate and justified. They satisfied the Basic Conditions Test at the Examination and have been overwhelmingly supported at referendum.

Harm arising from conflict with HSCNP

8.9 Paragraph 198 of the Framework is an important consideration. It says that "where a planning application conflicts with a [*made*] NP… planning permission should not normally be granted". The SoS's decision in respect of land south of Ford Lane, Yapton, made clear that even in the absence of a five-year housing land supply, where an appeal proposal conflicts with a made NP this can amount to substantial weight against the proposal. This is as a result of a scheme's failure to comply with the social element of sustainability.

8.10 This proposal, in combination with other completions and commitments, would amount to at least a 3-fold increase in housing beyond that envisaged in the HSCNP and harms the social limb of sustainable development.

Overall planning balance

8.11 The proposals conflict with the spatial strategy and relevant policies of the HSCNP. This undermines the purpose of plan-making and the power given to communities to shape their local area.

8.12 It is acknowledged that there are economic benefits from the proposals and some social benefits. However, these must be considered against the fall-back position of the approved scheme for 40 dwellings. In respect of the social limb, harm would arise from conflict with the HSCNP and this should be given substantial weight. In environmental terms the proposals would harm the character of the area, including, but not limited to, harm to the setting of Aymers/ Sayers. It is noted, however, that the 40-unit scheme would deliver comparable harm to the heritage assets and is a fall-back position.

8.13 Overall, the harm that would arise is sufficient to significantly and demonstrably outweigh the scheme's benefits. This brings it into conflict with the Framework when taken as a whole. It cannot be regarded as sustainable development and as such does not enjoy the presumption in favour of sustainable development.

9. The position of Mid Sussex District Council at the Inquiry

9.1 When the planning application was considered by the Council, it refused the application on five grounds. Three of these fell away before the original Inquiry opened; the remaining two reasons fell away during that Inquiry and by the end the Council was no longer raising any objections to the development.

9.2 As MSDC is not raising objections to the proposals it did not give any formal evidence to the re-opened Inquiry. Nonetheless, it signed a SoCG[28] with the appellant and provided an Officer who was able to set out its position and answer my questions. The Officer was able to confirm that MSDC had not received any response from the EiP Inspector to its most recent letter.

9.3 The current position, therefore, is that the Council is unable to demonstrate a five-year or even a three-year housing land supply. MSLP Policy C1 remains

[28] GEN1 SoCG (10 May 2017)

extant and is not a policy for the supply of housing. Nonetheless, the agreed absence of a five-year or three year housing land supply means that the tilted balance in paragraph 14 of the Framework is triggered. The weight to be given to Policy C1 is for the decision-maker to determine.

10. Written Representations

10.1 The written representations submitted in respect of the planning application are summarised in the Officers' report to Committee. The representations made in respect of the 2013 Inquiry are summarised in the Inspector's report dated 6 January 2014. Further representations were received in advance of the re-opening of the Inquiry in 2017 and the gist of these representations is set out below. All 7 representations raised objections to the proposals.

10.2 Representations were received from 6 local residents and from the Sayers Common Village Society. The main concerns related to

- Since proposals first mooted there is now a made NP and there would be conflict with localism;
- There is now a thriving community shop and a refurbished village hall;
- Conflict with NP (which had 92.4% support) as its allowance for the next 20 years has already been exceeded;
- Conflict with Local Plan Policy C1;
- Not a sustainable location for development, the bus service has deteriorated;
- Village not geared up for this level of development;
- Access is at a dangerous point on B2118, opposite Berrylands Farm access and close to roundabout;
- Sewerage and drainage problems have not yet been fixed; and
- Potential future problems of flooding, foul waste water contamination, pollution, school capacity, doctors' surgery over-subscribed, increased traffic and road safety.

11. Conditions

11.1 The conditions suggested by the previous Inspector, following discussions at the Inquiry in October 2013, were discussed at this Inquiry and updated as necessary. MSDC took part in these discussions. Most of the suggested conditions were agreed to meet all the tests in paragraph 206 of the Framework but one condition needed to be updated. In particular, it was agreed that the proposed retail units should be allowed to open and to receive deliveries in the early morning to enable newspapers to be sold.

11.2 There is a possibility that the development might be carried out on a phased basis. Accordingly, details of phasing of the development are required in order to ensure that key aspects of the scheme are delivered at an appropriate stage of development, in the interests of the living conditions of future residential occupiers. For the avoidance of doubt it is necessary to list the plans to which

the decision relates, but only insofar as they relate to the access to the site which is not reserved for subsequent approval.

11.3 A condition in relation to external lighting, other than within an individual domestic curtilage, is necessary in the interest of residential amenity and to avoid undue disturbance to wildlife, including protected species. It is necessary to ensure that those trees to be retained within the site, and those close to but outside the site boundary, are protected during construction, in order to safeguard visual amenity.

11.4 In order to address existing flooding issues on the site, and to avoid increasing the risk of flooding elsewhere, a condition is required to deal with surface water disposal. At the 2013 Inquiry it was agreed that a condition based on the wording of the PINS model sustainable drainage condition would be more appropriate than the various iterations of suggested by MSDC. In addition, the UU secures further details relating to sustainable drainage and flooding mitigation measures. It is also necessary to secure details and implementation of a scheme for the disposal of sewage, in order to prevent pollution in the interests of amenity and the environment.

11.5 A construction management plan is necessary in the interest of highway safety and to safeguard the living conditions of adjoining occupiers. A condition controlling hours of working on the site is also necessary to protect the living conditions of local residents. Conditions relating to construction of the junction of the site access with the London Road, and the pedestrian/cycle links with Dunlop Close and Reeds Lane, are necessary in the interests of highway safety, accessibility and sustainability. A Travel Plan is required in order to promote the use of more sustainable modes of transport, in accordance with national and local planning policy and guidance.

11.6 The care/ nursing home included in the development was included at the Council's behest in response to an identified need for such a facility in the area. In order to ensure that, if built, it would continue to meet that particular need, an occupancy condition is necessary. Having regard to the likely proximity of residential properties it is necessary to secure a scheme of noise attenuation, relating to any external plant and machinery that might be installed, in order to safeguard the living conditions of nearby residents. For the same reason, conditions to control the opening times of the community building, and the hours for the opening of, and deliveries to, the retail units, are necessary.

11.7 Having regard to previous uses both on and adjacent to the site, the appellant's Phase 1 Environmental Audit identified potential sources of contamination on the land. Conditions requiring an assessment, and if necessary, a programme of remediation, are necessary to ensure that future residents of the site are protected. The presence of existence of a nineteenth century brickworks immediately to the west of the site raises the possibility of former industrial activity within the site. A programme of archaeological work is therefore necessary to ensure protection of any heritage assets.

11.8 The growing emphasis on the use of decentralised and renewable or low-carbon energy in new development is reflected in Local Plan Policy B4 and the Framework. A condition to ensure that the development maximises energy conservation is therefore warranted.

12. Obligations

12.1 Two planning obligations were submitted at the 2013 Inquiry. These remain extant and I have taken them into account. The Obligations comprise a Unilateral Undertaking (UU) and a s106 Agreement with MSDC and WSCC.

12.2 MSLP Policy G3 requires that the necessary infrastructure to support new development either exists or can be provided. That policy is supported by the MSDC's Development and Infrastructure SPD. In essence, the obligations are intended to meet a range of local policy objectives, with the aim of overcoming, or substantially mitigating, identified problems. Policy G3 sets out examples of infrastructure in the context of the policy.

12.3 Consideration of obligations is undertaken in the light of the advice at paragraph 204 of the Framework and the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regs). These require that planning obligations should only be accepted where they meet the following tests:

- they are necessary to make the development acceptable in planning terms;
- they are directly related to the development; and
- they are fairly and reasonably related in scale and kind to it.

Both obligations are conditional upon the appeal succeeding and planning permission being granted.

The Unilateral Undertaking

12.4 This is an outline application with all matters other than access into the site reserved for future consideration. Nonetheless the appellant has, in order to address concerns in relation to sewage, flooding and drainage, submitted extensive details of a sustainable drainage strategy for the site. While appropriate conditions can secure the implementation of a drainage scheme, it is imperative that its efficient operation of the surface water network across the site is secured for the lifetime of the development. Among other things, the UU secures the following:

- Maintenance of the channel profiles of the respective drainage ditches throughout their reaches, within the site boundary;
- Control of vegetation growth within the drainage ditch channels;
- Prevention of the build-up of silt within drainage channels;
- Removal of obstructions to channel flow;
- All culverted sections, channel outfalls and headwalls to be kept clear of obstructions and build-ups of silt and debris; and
- Repair and making good, as required, of the drainage ditch network on the site to maintain the efficient conveyance of surface water.

12.5 The arrangements secured allow for MSDC to adopt the open space areas, including the watercourse running westwards from Dunlop Close, all boundary

ditches, ponds and detention basins. A commuted sum is secured towards that purpose. I am satisfied that the contributions and obligations secured by the UU meet the Framework tests and comply with the CIL Regs.

The s106 Agreement

12.6 This obligation secures the financial contributions sought by MSDC and WSCC under a number of heads of terms, together with other arrangements. Its provisions are set out at paragraphs 5.13 to 5.18 of the SoCG. A joint statement between MSDC and the appellant, relating to the agreement, including background information, was submitted to the original Inquiry[29]. This sets out the contributions sought by MSDC in relation to children's play space, informal sport, formal sport, community buildings and local community infrastructure. It sets out background information relating to each contribution, and how it is calculated (with reference to the formulae in the SPD) together with information on how the contributions would be used.

12.7 The Community Buildings contribution has to be seen in light of the fact that the development proposed includes the provision of land for a community building. However, there is no obligation on the appellant to provide that building; it is a matter for the market to decide. The community buildings contribution, secured by the planning obligation, would be used towards the extension and/or improvement of the existing Village Hall and/or replacement facilities in the Parish, given the likely increase in demand for such facilities as a direct consequence of the development.

12.8 The obligation also secures the on-site provision of 30% affordable housing units, in accordance with MSLP Policy H4 and HSCNP Policy HurstH7. The size of these units and the tenure mix has been agreed by MSDC.

12.9 WSCC document CC/1 sets out the contributions sought in relation to primary and secondary education facilities and libraries. It sets out background information relating to each contribution, and how it is calculated, with reference to the formulae in the SPD, together with information on how the contributions would be used. Information about the sustainable transport contribution secured, how it is calculated and what it would be used for, can be found at Appendix 5 to CC/1. Also, as required by WSCC and referred to in the SPD, the planning obligation secures the provision of three fire hydrants within the site and ensures that suitable access for fire brigade vehicles and equipment is available for each phase of the development.

12.10 Lastly, the obligation ensures that the ground floor of the community building proposed would be used only for purposes within Use Class D1, with the first floor to be used only for B1 use. Those restrictions are to ensure that, once provided, the building is retained for those community purposes and to ensure that living conditions for future residents close to the building, and residents for the nursing/care home are protected in terms of noise and disturbance.

12.11 For the reasons set out above, I am satisfied that the contributions and obligations secured by the s106 Agreement meet the Framework tests and comply with the CIL Regs.

[29] Document 23 to 2013 Inquiry

13. Inspector's Conclusions

13.1 The following conclusions are based on the written evidence, on my summation of the oral and written representations to the Inquiry, and on my inspection of the site and its surroundings. The numbers in square brackets [ ] refer to paragraphs in the preceding sections of the Report from which these conclusions are drawn.

The site and its surroundings [2.1-2.6, 7.1]

13.2 The site, which has an area of about 5.85ha, is located immediately abutting the western edge of the defined settlement boundary of Sayers Common. There are houses to the south and east of the site. It is relatively flat and is mostly in use as paddocks subdivided by hedges, streams/ ditches and mature trees. The southern part of the site is occupied by a dwelling, Kingsland Laines, together with its outbuildings, while the easternmost part lies within the curtilage of a pair of semi-detached houses fronting London Road (B2118). These houses, Aymers and Sayers, comprise a Grade II listed building.

13.3 Sayers Common is a small settlement comprising 300-400 dwellings. It has a limited range of facilities including a community-run shop, which is open every day and provides groceries, newspapers and the like. There is also a public house, church and church hall, a parish hall and recreation ground. Close to the village, and a little distance to the west of the appeal site, are business parks providing a mix of offices, industrial and warehouse units and there is a specialist education centre to the north. Due to the surrounding houses and trees and the lack of public access there are few public views into the site.

Proposals and plans [1.5, 3.1-3.2]

13.4 The application is in outline form with all matters other than means of access into the site reserved for future consideration. The proposals include 120 dwellings, of which 30% would be affordable units, together with a two-storey 70-bed care home; a community facility with a function room on the ground floor and Class B1 offices above; two shops; a new vehicular access to London Road; pedestrian accesses to Dunlop Close and Reeds Lane; replacement parking for Aymers and Sayers; and extensive landscaping.

13.5 The previous Inspector accepted amended plans showing small revisions to the layout. The layout is purely illustrative at this stage and as the revised plans were subject to local consultation I am satisfied that no interests would be prejudiced by the consideration of these plans. For the avoidance of doubt this Report is based upon the plans listed in paragraph 1.6 (above).

Planning policy [5.1-5.17, 7.6-7.14, 7.16, 7.18-7.27, 8.1-8.10, 9.3, 10.2]

13.6 The development plan comprises the saved policies in the MSLP (2004) and the made HSCNP (2015). The emerging plans include the MSDP for which the EiP is ongoing. I have also had regard to the Framework, the PPG and the 2016 WMS "Neighbourhood Planning". The site lies outside the settlement boundary of Sayers Common as defined in both the MSLP and the HSCNP so it lies in the open countryside. However, MSDC accepts that it cannot demonstrate a five-year housing land supply and, for various reasons, none of the cited plans carry full weight; the weight that can be given is considered later in this Report.

Main issues [1.11, 1.7-1.8, 7.2-7.3]

13.7 When the appeal was first reported on in 2013/14, the Inspector identified that the main consideration was whether the proposals constitute sustainable development within the context of the Framework. She identified the factors that needed to be considered to be the effect of the proposals on i) character and appearance; ii) a listed building[30]; iii) drainage and flooding; iv) highway safety; and v) access/ sustainability.

13.8 In respect of this re-opened Inquiry, the SoS identified the following matters:

a) Having regard to the terms of the Consent Order quashing the SoS's decision (Woodcock Holdings Ltd v Secretary of State for Communities and Local Government & Mid Sussex District Council) the implications of this on the evidence that was before the Inspector and before the SoS;

b) The current state of play with regard to the preparation of Local Plans in the MSDC area and any implications for the further consideration of this appeal;

c) The HSCNP and relevant policies therein; and

d) Any other material change in circumstances, fact or policy, that may have arisen since his decision of 10 February 2016 was issued and which the parties consider to be material to his further consideration of this appeal.

13.9 For the re-opened Inquiry I identified the following additional matters arising under (d) on which I wished to be informed:

i) Five-year housing land supply;

ii) The WMS of 2016;

iii) The planning permission for the 40 unit scheme; and

iv) *Hopkins* in the Supreme Court.

13.10 For the purposes of this Report, I consider that it would be useful if I briefly recap the conclusions of the original Inspector and the SoS in respect of the five matters then under consideration and set out any updated circumstances.

i) Character and appearance [2.1-2.6, 5.10, 5.12, 5.14, 6.1, 7.4, 7.11]

13.11 The Inspector found the density of 25 dpha to be acceptable and the 2/ 2½ storey mainly detached and semi-detached houses to be characteristic of the area. She did not consider that the care home or community building need necessarily undermine the established character or appearance of the area. She noted that the site is visually enclosed by built and natural features although there are views across the site from the rising ground to the north.

13.12 The SoS, in his Decisions, agreed with his Inspector that the appeal scheme would not have a significant adverse impact on the character and appearance of the area. The unfortunate likely loss of an oak tree to the rear of Aymers and Sayers would be more than compensated for by the amount of new planting.

[30] Issues (i) and (ii) were considered together but I have separated them for clarity, to accord with the SoS's Decision and to more clearly reflect the way in which circumstances have since changed.

Update

13.13 The recent planning permission for 40 units and an extra care home on part of the site represents a fall-back position that did not exist when the appeal was previously considered. The principle of building houses on much of the current appeal site has now been established. This recent permission omitted the southernmost part of the site but that land is already in residential use as it is occupied by Kingsland Laines and its outbuildings. That permission also included works to the ditch along the northern boundary of the appeal site so the vast majority of the site is either in residential use (Kingsland Laines) or has permission for housing and an extra care home. The impact on the character of the area would now be significantly less than would have been the case at the time of the previous decisions. This favours the development.

ii) Listed building [1.7-1.8, 2.4, 5.3, 6.1, 7.4]

13.14 The Inspector identified that the elements of setting that contribute to the setting of the listed building, Aymers and Sayers, comprise its roadside location and domestic plot, rather than the surrounding fields. She opined that the contribution that the appeal site makes to setting of this listed building is negligible. The indicative layout shows that the nearest buildings would be some distance away but in any event, if the appeal were to succeed, MSDC would have control over the exact siting and height of the new buildings. The existing surrounding development does not impede the legibility of the building or harm its significance.

13.15 The new access would be sited between the extended southern gable and a recent garage forecourt; it would alter the setting. However, previous changes, including the demolition of a dwelling to the south and the widening of London Road, have altered the setting. The dwellings themselves have been altered and extended. She concluded that any harm would be less than substantial.

13.16 In his first Decision, the SoS agreed with his Inspector that there would be less than substantial harm to its setting and added that this would be clearly outweighed by the public benefit of providing housing. In his second Decision he again agreed with his Inspector that there would be less than substantial harm to the setting of the listed building. He gave considerable weight to this less than substantial harm and went on to weigh this against the benefits of the proposal including the benefit of providing housing.

Update

13.17 The appellant submitted an updated heritage assessment[31] to the re-opened Inquiry which concluded that the heritage impact of the appeal scheme remained unchanged from the original Inquiry. Since that Inquiry planning has been granted for 40 dwellings on part of the appeal site. That scheme would provide the same vehicular access as this appeal scheme to the south of the listed building so this change to the setting of Aymers and Sayers has already been approved and can be considered to be a fall-back position. Both indicative schemes show new housing quite close to rear of the listed building. The changed circumstances favour the appeal proposals.

[31] Rodwell Appendix E

iii) Drainage and flooding [1.7-1.8, 5.11, 6.1, 7.1, 7.10, 10.2, 11.4, 12.4]

13.18 The previous Inspector reported that the EA flood maps show that the site lies above the fluvial flood level and is located wholly within Flood Zone 1. She noted the concerns, problems and experiences of local residents about flooding in the area. On the evidence before her, she considered that in all probability that flooding is attributable to surface water ponding in depressions on the site with the underlying strata preventing it from draining naturally. This issue was compounded by poor maintenance of a number of the drainage ditches which inhibit their capacity and efficiency.

13.19 The Inspector was satisfied that the land drainage system proposed would lie within the appeal site and so could be the subject of a condition. The management of the system would be further addressed by the UU. She took account of the lack of objections from the EA and found no conflict with the MSLP or the Framework which seek to ensure that new development is not at risk from flooding and that flood risk in the wider area is not exacerbated.

13.20 The SoS agreed with his Inspector in both his Decisions, having particular regard to the provisions of the UU and the fact that the EA raised no objections. He agreed that the scheme would be capable of being adequately drained and would not increase flood risk elsewhere.

Update

13.21 An Addendum to the original Flood Risk Assessment (FRA) (Wood2) was submitted to the re-opened Inquiry, based upon the Alternative Drainage Scheme which had been submitted to the 2013 Inquiry. This was the scheme which led MSDC to withdraw its objection on drainage grounds and was supported by the Inspector and the SoS. The Addendum concluded that the risk of groundwater flooding to the site was negligible and set out, at Tables (i) and (ii) of Appendix A, a summary of flood risks and effects, including the benefits of ditch maintenance. This confirms the understanding of the Inspector and the SoS in respect of this matter.

iv) *Highway safety* [1.7, 3.2, 4.3, 6.1]

13.22 The Inspector reported that while there had been a highway reason for refusal to the original planning application for the site (the subject of this appeal) it was not a reason for refusal in respect of the re-submitted application due to the further work in respect of a road safety audit, visibility splays and speed survey information, that the appellant had undertaken. The reason for refusal was not pursued by MSDC although it remained a concern for local residents. The appellant had confirmed that the access would have sufficient capacity for the predicted traffic levels and that adequate visibility could be achieved; the highway authority agreed.

13.23 The Inspector noted that the Framework advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. She concluded that she had no reason to suppose that the proposals would lead to any material increase in danger to highway users. There would be no conflict with MSLP or the Framework.

13.24 In both Decisions the SoS agreed with his Inspector's conclusions.

Update

13.25 The appellant submitted a Transport Update Report[32] for the re-opened Inquiry which confirmed that the conclusions of the previously submitted Transport Assessments and Transport Statement remain valid and that WSCC's positive recommendations, as highway authority, are still relevant to the site. There have been no changes to the proposals or access arrangements and the previous Inspector's conclusions remain valid.

v) *Accessibility/ sustainability* [1.7, 2.3, 4.3, 6.1, 7.4, 7.17, 8.9, 8.13, 10.2]

13.26 A revised Framework Travel Plan, containing additional detailed information on bus, cycle and pedestrian links to the site, was submitted to the original Inquiry. This, together with the s106 Agreement, enabled MSDC to decide not to pursue the original reason for refusal regarding access by sustainable modes of transport. The Inspector considered that the residents of Sayers Common had access to a reasonable range of services and that it would be appropriate to permit further development here. The increased population would help maintain the viability of the services and facilities. She agreed with the highway authority that the provisions of the s106 Agreement do not, of themselves, make the site sustainable in transport terms. Nonetheless, she concluded that they are sufficient to ensure that access to everyday services and facilities by sustainable modes was a realistic prospect.

13.27 The SoS agreed with his Inspector that the elements contained in the s106 Agreement, together with existing public transport, walking and cycling provision, would be sufficient for there to be a reasonable prospect of providing access to everyday services and facilities by sustainable modes. In respect of the second decision, he added that he was satisfied that the scheme would represent a sustainable form of development in economic, social and environmental terms.

Update

13.28 I am not aware of any material changes in circumstances other than the grant of planning permission for 40 dwellings and an extra care home on part of the site which indicates that MSDC considers it to be a sustainable location.

Matters identified by the SoS

13.29 I turn now to the matters identified by the SoS in his letter dated 4 November 2016 and on which further representations were invited.

a) Having regard to the terms of the Consent Order quashing the SoS's decision (Woodcock Holdings Ltd v Secretary of State for Communities and Local Government & Mid Sussex District Council) the implications of this on the evidence that was before the Inspector and before the SoS [7.4-7.5, 8.5]

13.30 The Consent Order followed an acceptance by the SoS that he should not have attached weight to conflict with Policy C1 of the MSLP in the second Decision when he had found no such conflict in the first Decision. The implications of this Consent Order on the evidence before the Inspector and the SoS include that

[32] Rodwell Appendix D

the scheme was deemed, on two separate occasions, to be acceptable in terms of its effect upon i) character and appearance; ii) a listed building; iii) drainage and flooding; iv) highway safety; and v) access/ sustainability.

13.31 These factors all remain unchanged in principle, albeit subject to the updates identified above. These updates tend to weigh in the appellant's favour, as does the SoS's conclusion in his second Decision that the scheme would represent a sustainable form of development in economic, social and environmental terms[33].

b) *The current state of play with regard to the preparation of Local Plans in the MSDC area and any implications for the further consideration of this appeal* [5.13-5.15, 7.6-7.8, 8.3, 9.3]

13.32 The emerging plan is the MSDP which is currently undergoing its EiP. There have been a number of sessions and there is currently ongoing correspondence between MSDC and the Examining Inspector. MSDC identified to this Inquiry that a key issue in relation to the EiP has been the proposed level of new housing for the District over the plan period. The Inspector set out his interim conclusions in a letter to MSDC on 20 February 2017. He concluded that the OAHN for the District is 876 dpa but he also concluded that MSDC should provide 150 dpa to meet the unmet need of a neighbouring authority.

13.33 The timing of the provision of the additional 150 dpa is a matter of ongoing correspondence between the Inspector and MSDC as, in MSDC's opinion, this additional requirement may only be needed in the latter half of the plan period. By letter dated 7 April 2017 MSDC submitted evidence of its five-year housing land supply based upon an assumed current requirement of 876 dpa. At the time of the re-opened Inquiry there had been no response to this. It is clear, however, that the issue of the scale of the requirement remains unresolved.

13.34 The Examining Inspector further commented that the spatial strategy should be clarified by establishing the approximate number of dwellings expected in each settlement or groups of settlements. He considered that, as submitted, the plan was not sound because it provides inadequate guidance to NPs on the amounts of housing development they should aim to accommodate.

13.35 The current position, therefore, is that the position concerning the OAHN and MSDC's housing requirement remains unresolved. It is accepted by all parties that MSDC does not have an agreed OAHN or requirement figure and so there is no figure against which supply can be assessed or judged. The OAHN figure in the Inspector's interim findings, however, substantially exceeds the 650 dpa on which the HSCNP is based. MSDC has indicated that NPs should be delayed until strategic housing numbers have been established and distributed.

13.36 At the time of the re-opened Inquiry, there was no known timetable for the resolution of these matters. The position is that MSDC does not have an agreed five-year housing land supply. It is also clear that the annual requirement figure on which the HSCMP was based is out-of-date and likely to need to be revised upwards.

[33] CD12: paragraph 20

c) *The HSCNP and relevant policies therein* [5.7-5.12, 6.1, 7.2, 7.9-7.14, 7.19-7.22, 7.25-7.26, 8.5-8.13, 10.2]

13.37 The HSCNP was made by the SDNPA on 14 March 2015 and by MSDC on 18 March 2015; it covers the period 2014 to 2031. The most relevant policies for the purposes of this appeal are Policies HurstC1, HurstH1 and HurstH3. A further policy, HurstH7 "Affordable Homes", is also pertinent but as its requirement for 30% of new homes to be affordable is fully met by the appeal scheme its provisions are not at issue.

13.38 Concerning Policy HurstC1, in accordance with the *Hopkins* judgement this is not a relevant policy for the supply of housing. The site lies in the countryside and this policy restricts the types of development that are permissible in the countryside; housing is not identified as a permissible land use. However, when read with the whole plan and Policy HurstH3 in particular, it is inevitable that some house building will have to take place in the countryside as there is not sufficient space within the defined settlement confines to accommodate the anticipated increase in housing. The policy uses the settlement boundary for Sayers Common that was identified in 2004's MSLP. Given that the housing requirement is likely to increase and that some housing will have to be accommodated in the countryside outside the settlement boundary, this policy must be considered to be out-of-date.

13.39 This policy was in place at the time of the SoS's second Decision although, at that time, and in accordance with High Court Judgements, it was considered to be a relevant policy for the supply of housing. That is no longer the case but it is still out-of-date for other reasons than MSDC's inability to demonstrate a five-year housing land supply. In dismissing the appeal the SoS did not identify any conflict with it. Indeed, he commented that any impact on the character and appearance of the area would be more than compensated for by the new planting. In respect of this appeal it is also relevant that the Council has approved 40 dwellings and an extra care home on part of this site although that decision was made prior to the *Hopkins* Judgement.

13.40 Policy HurstH1 is supportive of new housing development in areas where three criteria are met. Criterion (b) relates to Hurstpierpoint and so is not relevant. Criterion (a) seeks to enhance the settlement pattern of the village. The final bullet point under the heading Sayers Common in paragraph 5.2 of the HSCNP sets out the requirement to maintain the settlement pattern and avoid coalescence with neighbouring settlements. The Proposals Map indicates that the coalescence point relates to land to the south of the settlement and does not affect the appeal site.

13.41 In terms of the settlement pattern it is not clear how this would be harmed by the proposed development. The SoS has already concluded, on two occasions, that the proposals would not have a significant adverse effect on the character and appearance of the area. As restated in paragraphs 71 and 80 of the High Court Judgement[34], Holgate J referred to the SoS's positive findings that the proposal would give rise to no harm as regards scale, its effect on the character of the village, infrastructure requirements or other harm. MSDC has since approved a scheme for 40 dwellings and an extra care home on the site and this

[34] CD10

proposal would largely reflect the pattern, if not the scale, of development established by that permission. No party has identified any additional harm that would arise from allowing 120 dwellings on a site where 40 have been allowed.

13.42 Criterion (c) of Policy HurstH1, concerning flooding and drainage, is clearly met as this issue can be overcome by conditions and the UU as agreed on two occasions by the SoS.

13.43 Policy HurstH3 was amended by the NP Examiner by the deletion of reference to a cap of 30-40 dwellings as this was not considered to accord with the Framework. The word "anticipated" was substituted. The Policy adds that an appraisal of deliverable sites will be undertaken at an early stage in the plan period, although it now seems that the appraisal is unlikely to take place. There is no doubt that the proposal for 120 dwellings considerably exceeds the anticipated figure for Sayers Common. That does not mean, however, that it would involve a breach of the policy. Without a cap there cannot realistically be any breach in terms of numbers.

13.44 Neither Policy HurstH1 nor Policy HurstH3 is affected by the *Hopkins* Judgement. They remain relevant policies for the supply of housing and due to MSDC's inability to demonstrate a five-year housing land supply, they are deemed to be out-of-date by reason of paragraph 49 of the Framework.

13.45 It is also necessary to consider what harm would arise from providing more houses than anticipated in an out-of-date policy in the HSCNP. The upper figure of 40 dwellings has already been exceeded by the 40 on the appeal site and a few elsewhere in the village, including on the public house car park and at White Oaks, London Road. The principle of residential development on most of the appeal site is established by the existing dwelling and the permission for 40 units. No additional harm has been identified that arises from an increase in the number of dwellings. The benefits are considered in the planning balance.

d) Any other material change in circumstances, fact or policy, that may have arisen since his decision of 10 February 2016 was issued and which the parties consider to be material to his further consideration of this appeal

13.46 Four other material changes in circumstances were identified at the Inquiry as being material to the SoS's further consideration of this appeal.

1) *Five-year housing land supply* [5.13-5.15, 6.1, 7.6-7.8, 7.15, 8.3, 9.3]

13.47 MSDC accepts that it is unable to demonstrate a five-year housing land supply. It is currently engaged in communications with the EiP Inspector concerning its OAHN and no final figure has yet been agreed. Until such time as an agreed OAHN emerges, MSDC does not have a figure against which to assess its supply. The consequence of this is that paragraph 49 of the Framework is engaged. This says that if the LPA cannot demonstrate a 5-year supply of deliverable sites then the relevant policies for the supply of housing should not be considered up-to-date. What constitutes relevant policies for the supply of housing has recently been clarified by the *Hopkins* Judgement.

13.48 A further consequence of this lack of a five-year housing land supply is that significant weight must be given to the provision of 120 dwellings in an area where there is no 5-year supply. Paragraph 47 of the Framework sets out the Government's objective to boost the supply of housing.

2) *The WMS of 2016* [5.16-5.17, 7.16]

13.49 The WMS, read as a whole, is clearly intended to make it easier for local people to have more of a say in local planning. The second paragraph refers to the frustration of NPs being undermined by relevant LPAs not being able to demonstrate a deliverable five-year housing land supply. Paragraphs 3 and 4 cite the impact of paragraph 49 of the Framework and say that where communities plan for housing in their NP, those plans should "*…not be deemed out-of-date unless there is a significant lack of land supply for housing in the wider local authority area*".

13.50 The fifth paragraph contains three bullet points that set out the circumstances that must arise at the time that a decision is made for the housing policies in a NP to not be deemed out-of-date under paragraph 49. The appellant has cited bullet points 1 and 3 as reasons as to why the WMS does not apply. Concerning the first bullet point I agree that the HSCNP has been part of the development plan for more than 2 years. However, the WMS is less than 2 years old so the circumstances of this bullet point do not arise in this appeal.

13.51 Concerning the third bullet point, MSDC acknowledges that while it has no OAHN or any reliable requirement figure it cannot demonstrate any housing land supply (see above) regardless of whether this is a five-year or a three-year housing land supply. The circumstances of the third bullet point, therefore, do not arise in this appeal and so the WMS is not a relevant material change in circumstances since the 2016 Decision.

3) The planning permission for the 40 unit scheme [4.3, 7.17, 8.7]

13.52 On 18 January 2017 MSDC granted outline planning permission for 40 dwellings and an extra care facility on part of the site. Full permission was given for the vehicular access from London Road. The SoS initially issued a holding direction but subsequently stated that the application could be determined locally. This scheme involves the greater proportion of the site although it excludes the buildings and grounds of Kingsland Laines, which is already in residential use. A very large proportion of the appeal site, therefore, now either has the benefit of outline planning permission for housing and an extra care home or is already in residential use.

13.53 The principle of residential development on the site has thus been established, as has the principle of new residential development being located outside the settlement boundary. In granting planning permission MSDC clearly considered that there would not be any unacceptable harm to the character of the area, to the landscape or to the amenity of nearby residents. The permission also established the principle of providing a new vehicular access through the curtilage of the listed building, Aymers and Sayers, which would be in the same position as that now sought for the 120 dwelling scheme.

13.54 This permission, therefore, reinforces MSDC's position of not objecting to this appeal scheme. It establishes the important principles concerning the location of housing and the position of the vehicular access. It also shows that the larger scheme now proposed, by providing more in the way of community benefits and more residents to use the existing facilities, would be a sustainable form of development in accordance with the provisions of the Framework.

4) Hopkins *in the Supreme Court* [1.12, 7.18-7.27, 8.2]

13.55 Four development plan policies have been identified as being particularly relevant to this appeal. Following *Hopkins*, MSLP Policy C1 and HSCNP Policy HurstC1 can no longer be considered to be relevant policies for the supply of housing for the purposes of paragraph 49 of the Framework. HSCNP Policies HurstH1 and HurstH3, however, are relevant policies for the supply of housing.

13.56 The *Hopkins* Judgement, in disagreement with the High Court, has adopted a narrow interpretation of the definition of relevant policies for the supply of housing. Nonetheless, *Hopkins* does not mean that MSLP Policy C1 and HSCNP Policy HurstC1 are not out-of-date. While they cannot be deemed to be out-of-date due to MSDC being unable to demonstrate a five-year housing land supply, they can still be out-of-date for other reasons. As set out above, I have concluded that both these policies are out-of-date.

13.57 Following *Hopkins*, therefore, all four of the principal policies cited in this appeal remain out-of-date. The Judgement does not alter this conclusion; it just alters the route to how this conclusion is arrived at. It does not mean that these policies are no longer part of the development plan or that they cease to be s38(6) policies. However, they have to be considered in the context of the tilted balance as set out in the second limb of paragraph 14 of the Framework.

14. Conditions and Obligations [11.1-11.8, 12.1-12.11]

14.1 If the SoS is minded to grant planning permission I recommend that the conditions set out in the Annex to this Report be imposed on any permission granted. The conditions are, for the most part, exactly the same as those recommended by the previous Inspector. They were discussed at the re-opened Inquiry and agreed by the main parties.

14.2 The two planning agreements, a UU and a s106 Agreement, have been brought forward from the original Inquiry and are still extant. I consider that they meet the requirements of the CIL Regs and paragraph 204 of the Framework.

15. Overall planning balance and conclusions

15.1 The SoS has already concluded that he has found this scheme to be acceptable, subject to conditions and the terms of the UU and s106 Agreement, with regard to its effect on the character and appearance of the area, in respect of drainage and flooding matters, highway safety and access/ sustainability. He has further concluded that it represents a sustainable form of development in economic, social and environmental terms. With regard to the effect on the listed building he has concluded that the proposals would result in less than substantial harm, to which he has given considerable weight, but he found that this harm is clearly outweighed by the public benefit of providing housing. MSDC, having initially refused planning permission for the development and provided two witnesses at the original Inquiry, now raises no objections and presented no evidence against the scheme at the re-opened Inquiry.

15.2 There are changed circumstances since the previous quashed Decisions, the most significant of which is MSDC's decision to approve a scheme for 40 dwellings and an extra care home on much of the appeal site. This permission, together with the existing residential use at Kingston Laines, means that a very substantial proportion of the site is either in residential use or has planning

permission for such use. This recent planning permission has established the principle of further residential development outside the settlement boundary for Sayers Common although, in reality, residential development outside the settlement boundary is inevitable if the 30-40 dwellings anticipated by the HSCNP are to be provided.

15.3 One circumstance that has not changed is the continuing failure of MSDC to be able to demonstrate a five-year housing land supply. While MSDC is now closer to establishing what the housing requirement figure is, this is still subject to ongoing correspondence with the Examining Inspector. The current position remains, therefore, that MSDC has no known housing requirement figure or OAHN. This means that the provisions of paragraph 49 of the Framework are engaged insofar as they relate to relevant policies for the supply of housing, and HSCNP Policies HurstH1 and HurstH3 cannot be considered to be up-to-date.

15.4 The other cited policies, MSLP Policy C1 and HSCNP Policy HurstC1, are also out-of-date as they rely on a settlement boundary that can no longer be justified. Due to the Government imperative to boost the supply of housing, the provisions of the HSCNP to accommodate an anticipated 30-40 more dwellings at Sayers Common and the fact that it dates from the 2004 MSLP whose housing policies are based upon out-of-date requirements, the boundary is now out-of-date. Paragraphs 36.1- 36.6 of the MSLP relate specifically to Sayers Common and confirm that a built-up area boundary is defined for the village to protect the surrounding countryside from unnecessary development. HSCNP shows housing development in the countryside to be necessary.

15.5 The second bullet point of the second limb of paragraph 14 is therefore engaged in respect of all four of the policies relied on in this appeal. All four policies are out-of-date and sot the tilted balance, set out in the first indent of the above bullet point, is engaged. It has already been established by the SoS that the proposals constitute a sustainable form of development. In accordance with the Framework, therefore, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

15.6 One of these policies is set out in paragraph 198 which says that where a planning application conflicts with a NP that has been brought into force, planning permission should not normally be granted.

15.7 By being sited outside the defined settlement boundary there is conflict with MSLP Policy C1 and with HSCNP Policy HurstC1. However, although neither of them is a relevant policy for the supply of housing in terms of paragraph 49 of the Framework, for the reasons given above they are also out of date. Indeed, there is a clear tension between HSCNP Policies HurstC1 and HurstH3 insofar as to provide the anticipated 30-40 additional dwellings in Sayers Common some development must be outside its boundary. It can reasonably be argued, therefore, that in order to comply with Policy HurstH3, housing is a necessary use in MSLP terms.

15.8 That argument is strengthened by the grant of planning permission for 40 dwellings and an extra care home on much of the land. The principle of housing on this site is thus firmly established and any conflict with the Framework or the development plan arising from the 120 dwelling scheme would result in very limited harm and so carries only limited weight against the development.

15.9 The only other identified harm concerns the exceedance of the number of dwellings that the NP anticipates that the village will accommodate in the plan period as set out in Policy HurstH3. It is acknowledged that this figure is significantly exceeded by these proposals. However, the figure is within a policy which is acknowledged to be out-of-date both by not providing for today's needs (Framework paragraph 215) and because of the absence of a five-year housing land supply (paragraph 49) and which results in no identifiable planning harm.

15.10 In any case the range (30-40 dwellings) stated in the policy is not a cap or ceiling; the Examiner specifically removed what had been a cap in draft Policy HurstH4. Exceeding an anticipated figure cannot be a breach of the policy as the policy does not prohibit more housing being provided. Indeed, the upper figure of 40 dwellings has already been exceeded.

15.11 It also has to be borne in mind that Holgate J, in his Judgement, commented that the SoS had erred in law by failing to consider his objection to a numerical increase over an anticipated number against his positive findings that the 120 dwelling scheme "*would give rise to no harm as regards scale, its effect on the character of the village, infrastructure requirements or other harm*"[35].

15.12 In terms of harm, therefore, there is conflict with MSLP Policy C1 and HSCNP Policy HurstC1. That harm carries weight. However, the HSCNP anticipates dwellings being built in the countryside and most of the site now has the benefit of planning permission for housing or is already in residential use. No unacceptable harm has been identified as arising from this conflict with the policies. There is some conflict arising from exceeding the anticipated number of dwellings anticipated in HSCNP Policy HurstH3, but that figure is not a cap or ceiling so the policy itself is not breached but there would be some limited harm arising from the conflict.

15.13 The only other identified harm is the less than substantial harm to the setting of a listed building, Aymers and Sayers. As concluded by the SoS that harm carries considerable weight. However, and in accordance with paragraph 134 of the Framework, he has weighed that harm against the public benefits of the proposal and found that the harm is clearly outweighed.

15.14 In accordance with advice in the Framework it is necessary to weigh the identified harm against the benefits of the proposals. The proposals would result in economic benefits in terms of employment opportunities during construction. The occupiers of the new dwellings would be likely to spend in the surrounding area to the benefit of local shops and other businesses. It is estimated that 120 dwellings would generate an expenditure of a little over £3m per year. It is agreed that the New Homes Bonus would be a further benefit.

15.15 There would be social benefits arising from increasing the supply of housing which is in accordance with the objectives of the Framework. This is particularly important in an area where there is no identified five-year housing land supply. The scheme also provides for 30% of the dwellings to be affordable, in full compliance with the development plan. The provision of a care home, retail facilities, community facilities and office floorspace would also result in social

[35] CD10 paragraph 80

benefits for the local community and help make Sayers Common a more sustainable community.

15.16 In environmental terms it is accepted that the proposals would encroach into the countryside but the principle of that encroachment has already been established by the 40-dwelling scheme. There would be environmental benefits arising from the improved drainage and the proposed landscaping. Overall I am satisfied that the package of benefits, and especially the provision of market and social housing in an area where there is an acknowledged shortfall, would be substantial.

15.17 There would be some harm arising from the conflict with the countryside protection policies in the development plan. However, the weight that can be given to these policies is reduced by the evident need for some new housing to be sited outside the settlement boundary. This weight is further reduced by the recent planning permission on the appeal site itself. The Council does not have a five-year housing land supply and, while there is an ongoing dialogue with the Local Plan Inspector, the extent of the OAHN is still not agreed so the scale of the shortfall is still not known. In all these circumstances I conclude that the relevant policies in the development plan must carry reduced weight. I conclude on the tilted balance set out in paragraph 14 of the Framework that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh these benefits when assessed against the policies in the Framework taken as a whole.

15.18 I agree with the SoS that the proposals, subject to the imposition of appropriate conditions and the provision of the UU and s106 Agreement, would represent a sustainable form of development in economic, social and environmental terms. I have given significant weight to the conflict with the development plan and balanced these with the other material considerations that emanate from the Framework. Notwithstanding the conflict with the development plan, I conclude that the harm arising from this is outweighed by the other material considerations which, taken together, indicate that there is a compelling case for granting planning permission.

15.19 I recognise that this recommendation will disappoint local residents who have invested time and resources in preparing the HSCNP and in contesting this appeal. This must be balanced against the aspirations of the Framework which seeks to boost significantly the supply of housing and which sets out a clear presumption in favour of sustainable development.

16. Recommendation

File Ref: APP/D3830/A/12/2189451

16.1 I **recommend** that planning permission be granted subject to the conditions set out in the Annex.

Clive Hughes

Inspector

APPEARANCES AT THE RE-OPENED INQUIRY

FOR THE APPELLANT:

Christopher Boyle QC He called	Instructed by Russell Cook LLP
Tim Rodway BSc(Hons) DipTP LMRTPI	Director, Rodway Planning Consultancy Ltd

FOR HURSTPIERPOINT AND SAYERS COMMON PARISH COUNCIL:

Dale Mayhew BA(Hons) BTP MRTPI	Director, dowsettmayhew Planning Partnership Ltd

MID SUSSEX DISTRICT COUNCIL, who did not present any evidence to the re-opened Inquiry, were represented by:

Steven King BSc (Hons) DipTP RTPI	Mid Sussex District Council

DOCUMENTS

DOCUMENT SUBMITTED PRIOR TO THE RE-OPENED INQUIRY

GEN1 Statement of Common Ground between the Appellant and Mid Sussex District Council (10 May 2017)

DOCUMENTS SUBMITTED PRIOR TO THE RE-OPENED INQUIRY BY THE APPELLANT

Wood 1 Proof of evidence and appendices of Tim Rodway
Wood 2 Addendum to Flood Risk Assessment (Hilson Moran) (6 April 2017)

DOCUMENTS SUBMITTED PRIOR TO THE RE-OPENED INQUIRY BY THE PARISH COUNCIL

HSCPC 1 Proof of evidence and appendices of Dale Mayhew

DOCUMENTS SUBMITTED PRIOR TO THE RE-OPENED INQUIRY BY THE DISTRICT COUNCIL

MSDC 1 Letter dated 12 April 2017 and enclosures

CORE DOCUMENTS

CD1 Application documents
CD2 Committee Report
CD3 Application Refusal Decision Notice
CD4 Appellant's Statement of Case – April 2013
CD5 MSDC Statement of Case – April 2013
CD6 Statement of Common Ground and appendices -Drainage – Appellant and MSDC (October 2013)
CD7 Statement of Common Ground and appendices - Planning – Appellant and MSDC (April 2013)
CD8 Inspector's Report following October 2013 Inquiry (January 2014)
CD9 SoS Decision Letter (4 September 2014)
CD10 Woodcock Holdings Limited v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin)
CD11 Correspondence to/ from PINS post Quashing Order
CD12 SoS Decision Letter (10 February 2016)
CD13 High Court quashing consent Order (10 June 2016)
CD14 Correspondence to/ from PINS post Consent Order
CD15 Mid Sussex District Council Local Plan 2004 – extracts
CD16 Neighbourhood Plan Examiner's Report
CD17 Hurstpierpoint & Sayers Common Parish Council 2031 Neighbourhood Plan Referendum Version (February 2015)
CD18 Emerging MSDP – Submission version August 2016
CD19 Correspondence between Examining Inspector and MSDC
CD20 Housing and Economic Development Needs Assessment (HEDNA) – November 2015
CD21 Housing and Economic Development Needs Assessment (HEDNA) Addendum August 2016
CD22 Sustainability Appraisal/ SHLAA – Housing provision implications
CD23 SHLAA – Test of sites paper
CD24 SHLAA with Hurstpierpoint and Sayers Common chapter (April 2016)
CD25 S106 agreement (10 October 2013)
CD26 S106 UU (10 October 2016)
CD27 List of conditions agreed at October 2013 Inquiry
CD28 Planning permission for 40 units (app DM/15/1467): Layout drawings
CD29 Planning permission for 40 units (app DM/15/1467): Drainage drawings
CD30 Planning permission for 40 units (app DM/15/1467): Consultation responses
CD31 Planning permission for 40 units (app DM/15/1467): Heritage statement
CD32 Planning permission for 40 units (app DM/15/1467): Committee report
CD33 Planning permission for 40 units (app DM/15/1467): Correspondence with DCLG as regards holding direction
CD34 Planning permission for 40 units (app DM/15/1467): Decision notice
CD35 Land West of Beech Tree Close, Oakley, Basingstoke – APP/H1705/W/15/3005729 – (9 March 2016)
CD36 Land to east of Gravelye Lane, Lindfield Mid Sussex District Council ref. no.

DM/16/5648 (Committee report and decision notice 7 March 2017)

CD37 Land Parcel at London Road, Hassocks, West Sussex APP/D3830/W/14/2226987 – (16 March 2017)

CD38 Land at Quaker's Road, Devizes APP/Y3940/V/15/3142170 (23 March 2017)

DOCUMENTS SUBMITTED AT THE INQUIRY

ID1 *Suffolk Coastal District Council v Hopkins Homes Ltd and another: Richborough Estates Partnership LLP and another v Cheshire East Borough Council* [2017] UKSC 37 (10 May 2017)

ID2 Housing completions and commitment breakdown; Hurstpierpoint and Sayers Common

ID3 Council's neighbour notification letter

ID4 Plan showing locations of other sites with submitted planning applications

ID5 Closing submissions on behalf of Hurstpierpoint and Sayers Common Parish Council

ID6 Closing submissions on behalf of the appellant

DOCUMENTS FROM 2013 INQUIRY REFERRED TO IN THIS REPORT

CC/1 Written submissions of West Sussex County Council inc Appendices 1-5

SoCG Statement of Common Ground between MSDC and appellant

SoCG/A Appendices 1-4 to Statement of Common Ground

Doc 23 Joint statement and background information relating to s106 Agreement between MSDC and the appellant

Doc 24 Unilateral Undertaking (10 October 2013)

Doc 25 S106 Agreement (11 October 2013)

PLANS

A Drawing No 55027-101A – site location plan

B Drawing No 55027-107B – indicative site layout

C Drawing No MBC17819-10E – landscape masterplan

D Drawing No SK20924-02 – proposed road junction

Annex: Suggested conditions

PHASING

1) Development shall not begin until a phasing strategy has been submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved strategy.

RESERVED MATTERS

2) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for any phase shall be submitted to and approved in writing by the local planning authority before any development begins on that phase. Development shall be carried out in accordance with the approved details.

3) Application for approval of the reserved matters for any phase shall be made to the local planning authority not later than three years from the date of this permission.

4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for that phase.

5) The reserved matters to be submitted pursuant to condition 1 above shall accord with the following parameters:

The retail element of the scheme shall not exceed 120 square metres gross internal floor area.

Houses shall not exceed 2.5 storeys in height.

Buildings containing flats shall not exceed three storeys in height.

The nursing/care home shall not exceed two storeys in height and shall not provide more than 70 bedrooms, with a gross external area of not more than 500 square metres.

The community/office building shall not exceed two storeys in height.

PLANS

6) The development hereby permitted shall be carried out in accordance with the following approved plans: Nos SK20924-02, 55027-107B and MBC17819-10E, but only in respect of those matters not reserved for later approval.

EXTERNAL LIGHTING

7) With the exception of individual domestic curtilages, no external lighting, including security lighting, is to be installed other than in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority.

BOUNDARY TREATMENT

8) Development shall not begin until details, including the position, design, materials, finish and type of all boundary treatments, and a timetable for implementation, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

TREE PROTECTION

9) Development shall not begin, including any works of site clearance, until the tree protection measures and exclusion zones shown on drawing No MBC17819-03a, are in place. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the local planning authority. The protective fencing and exclusion zones shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.

DRAINAGE

10) No building hereby permitted shall be occupied until surface water drainage works for the site as a whole have been implemented in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The submitted details shall:

provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

include a timetable for its implementation in relation to each phase of the development; and,

provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker, or any other arrangements to secure the operation of the scheme throughout its lifetime.

11) No building hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

CONSTRUCTION

12) No development shall begin, including any works of site preparation, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The approved CMP shall be adhered to throughout the construction period.

13) Works of demolition, site clearance , or construction, including the use of plant and machinery on the site, shall not take place outside 08.00-18.00 hours Monday to Friday and 09.00-13.00 hours on a Saturday, nor at any time on Sundays or bank/public holidays.

ACCESS/HIGHWAYS/TRAVEL PLAN

14) Development shall not begin until full details of the junction of the site access with the B2118 London Road, shown on Plan No 55027-107B, have been submitted to and approved in writing by the local planning authority.

15) No building hereby permitted shall be occupied until the junction of the site access with the B2118 London Road, including the visibility splays shown on

Plan No 55027-107B, has been constructed in accordance with the details to be approved pursuant to condition 14 above and is fully operational.
16) Once formed, the visibility splays associated with the junction of the vehicular/pedestrian/cycle access with the B2118 London Road shall thereafter be retained and kept free of all permanent obstructions exceeding 0.6 metres above ground level.

17) No building hereby permitted shall be occupied until the pedestrian accesses onto Dunlop Close and Reeds Lane, as shown on Plan No 55027-107B, have been constructed in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include measures for future maintenance. The accesses provided shall be retained thereafter.

18) No part of the development hereby permitted shall be brought into use until a detailed Travel Plan, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be developed in accordance with the principles set out in the Framework Travel Plan appended to the proof of Mr Kitching and shall be implemented as approved.

NURSING/CARE HOME

19) Any unit within the care/nursing home hereby permitted shall be occupied only by 'elderly' persons, or any person with a 'specific care requirement', and their partners. For the purposes of this condition, a person shall be regarded as 'elderly' if they are 65 years or over or, in the case of a couple, where one of the occupants is aged 65 years or more and the other is aged 55 years or more. A person shall be regarded as having a 'specific care requirement' if a suitably qualified medical practitioner has diagnosed the illness or disability. In respect of a couple, where one person qualifies as either having a 'specific care requirement 'or being aged 65 years or over, and that person then leaves the home, or is deceased, the other person will be required to vacate the home within six months of their partners last day at the home, unless they themselves are aged 65 or over.

20) Any external plant and machinery on the nursing/care home hereby permitted shall be enclosed with soundproofing materials, and shall be mounted so as to minimise the transmission of structure-borne and airborne sound to neighbouring residential properties, in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority.

COMMUNITY BUILDING

21) The community building hereby permitted shall not be open to the public outside of the following times: 07.30-22.30 hours Monday to Saturday; 10.00-18.00 hours on Sundays and on bank/public holidays.

RETAIL UNITS
22) No deliveries shall be taken at the retail units on the site outside of the following times: 07.00-18.00 hours Monday to Saturday; 07.00-13.00 hours on Sundays and on bank/public holidays.

23) The retail units on the site shall not be open for business other than between 07.30-22.30 hours on any day.

CONTAMINATED LAND

24) Other than as may be required by an approved scheme of remediation, no development shall take place until a full contaminated land assessment of the site has been carried out and a remediation strategy to deal with any contamination has been submitted to and approved in writing by the local planning authority for the relevant part. The contaminated land assessment shall identify the extent of any contamination and the measures to be taken to avoid risk to the environment, the general public and the proposed development. It shall include a timetable of works. Any necessary remediation strategy shall be implemented in accordance with the approved details and timetable. No part of the development shall be occupied until a Completion Report, confirming that the remediation has been carried out as approved, has been submitted to and approved in writing by the Local Planning Authority.

25) If, during development, contamination not previously identified, is found to be present at the site, then no further development on that part of the site (unless otherwise agreed in writing by the local planning authority) shall be carried out until remediation works in accordance with a Method Statement for remediation, including a timetable, that has previously been submitted to and approved in writing by the local planning authority, have been completed and a verification report demonstrating completion of the works set out in the Method Statement has been submitted to and approved in writing by the local planning authority. The Method Statement shall detail how the unsuspected contamination shall be dealt with. The verification report demonstrating completion of the works set out in the Method Statement shall include results of any sampling and monitoring. It shall also include any plan for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the local planning authority.

ARCHAEOLOGY

26) No development shall take place, including any works of site preparation, until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has previously been submitted to and approved in writing by the local planning authority.

ENERGY SUPPLY

27) At least 10% of the energy supply of the development hereby permitted shall be secured from decentralised and renewable or low-carbon energy sources (as described in the glossary of the National Planning Policy Framework). 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 before development begins. Development shall be carried out in accordance with the approved details and retained as operational thereafter.

Department for Communities and Local Government

www.gov.uk/dclg

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.