



Ministry of Housing,  
Communities &  
Local Government

Mr Chris Hough  
Sigma Planning Services  
Sigma House  
6 Garden Street  
Tunbridge Wells  
Kent  
TN1 2XB

Our ref: APP/D3830/V/17/3166992  
Your ref: CMH/JM/S.6517A

1 March 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY ROYDON HOMES LIMITED  
LAND KNOWN AS FRIARS OAK FIELDS, EAST OF LONDON ROAD, HASSOCKS  
APPLICATION REF: DM/15/0626**

1. I am directed by the Secretary of State to say that consideration has been given to the report of John Felgate BA(Hons) MA MRTPI, who held a public local inquiry on 6-8 June 2017 into your client's application for outline planning permission for residential development of up to 130 dwellings, consisting of 12 No. 1 bed apartments, 27 No. 2 bed houses, 47 No. 3 bed houses, and associated access, together with full permission for change of use of part of the land to form country open space in accordance with application ref: DM/15/0626, dated 13 February 2015. On 11 January 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

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

2. The Inspector recommended that planning permission be refused.
3. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to refuse 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**

4. The Secretary of State notes (IR3-4) that minor changes have been made to the plans, as originally submitted, including reducing the residential content from 140 to 130 dwellings. However, the Secretary of State notes that these changes have been agreed with the local planning authority, and he does not consider that the issues leading to them raise any matters that would require him to refer back to the parties for further

representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

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

5. On the 24 October 2017, the Secretary of State wrote to the main parties to afford them an opportunity to make representations on the implications, if any, of:
  - a: the 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.
  - b: the Secretary of State's letter of 24 October 2017 to Natural England seeking their formal advice on the need for the Secretary of State to undertake an appropriate assessment.
6. On the 17 November 2017, the Secretary of State wrote to the main parties to afford them the opportunity to comment on the implications, if any, of the letter from Natural England (dated 17 November 2017) and further information received from parties.
7. A list of post-inquiry representations and representations received in response to these letters, is set out at Annex A. Copies of these letters may be obtained on written request to the address at the foot at the first page of this letter.

### **Policy and statutory considerations**

8. 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.
9. In this case the development plan consists of the saved policies of the Mid Sussex District Local Plan 2004 (MSLP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR18-21, and he agrees with the Inspector's conclusions at IR151 that the proposed scheme would conflict with Policies C1 and C2 of the MSLP.
10. 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').

### *Emerging plan*

11. The submission version of the Mid Sussex District Local Plan 2014-2031 (MSDP) contains policies which are potentially relevant to the appeal, including policies relating to housing, the countryside, the Ashdown Forest Special Protection Area (SPA)/Special Area of Conservation (SAC), infrastructure and transport. The MSDP was submitted to the Secretary of State in August 2016, has been through Examination, and consultation on the Main Modifications document ended in November 2017. However, the Local Plan Inspector's key conclusion was that the minimum housing requirement for the Plan period should be uplifted from 800dpa to 1,026dpa. He therefore convened a further hearing on 5 February 2018 to consider the issues relating to a new site allocation on land north of Clayton Mills, Hassocks, intended to contribute to meeting the minimum housing requirement. Thus, having regard to all three of the parameters set out in paragraph 216

of the Framework<sup>1</sup>, the Secretary of State concludes that great uncertainty remains so that the emerging DP should be given limited weight.

12. For the reasons given at IR30-35 and IR158-161, the Secretary of State agrees with the Inspector that limited weight should be given to the emerging Hassocks Neighbourhood Plan (HNP) until the new housing figures for the MSDP have been settled.

### **Main issues**

13. The Secretary of State agrees with the Inspector that the main issues are those set out at IR152.

#### *The supply and delivery of housing in Mid Sussex*

14. For the reasons given at IR162-165, the Secretary of State agrees with the Inspector's conclusion at IR166 that the scheme would accord with the aims of the housing policies in the Framework and that the social benefits of providing such a development, in accordance with national policy, commands significant weight.

#### *Weight to other benefits*

15. For the reasons given at IR167-169, the Secretary of State agrees with the Inspector that moderate weight should be afforded to the economic benefits of the scheme; and he also gives moderate weight to the social benefit arising from the provision of a large area of public open space. In coming to this conclusion, the Secretary of State also agrees with the Inspector at IR198 that the "country open space" would make the best use of the site's landscape features, avoid built development in the floodplain, and limit the incursion into the countryside.

#### *Effects on flood risk*

16. For the reasons given at IR170-171, the Secretary of State agrees with the Inspector's conclusion at IR172-173 that, subject to the imposition of appropriate conditions, the proposed development could be carried out without giving rise to unacceptable flood risks, either on or off-site.

#### *Effects on air quality*

17. For the reasons given at IR174-177, the Secretary of State agrees with the Inspector's conclusion at IR178 that the proposals would not give rise to any unacceptable impacts on air quality and would not therefore conflict with MSLP Policy CS22.
18. In coming to this conclusion, the Secretary of State sought advice from Natural England (NE) (see paragraph 5 above) to verify the Inspector's consideration on this matter. They responded that they considered that the increased Annual Average Daily Traffic (AADT) expected from this proposal is significantly below the threshold for potential significance and is considered nugatory and indistinguishable from background variations. They therefore advised that the appeal scheme can be screened out as having no likely significant effect on the Ashdown Forest SAC and SPA, either alone or in combination with other plans or projects, and a full Appropriate Assessment is not required.

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<sup>1</sup> 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,

### *Safety of future occupiers in relation to the railway crossing*

19. Having given very careful consideration to the Inspector's analysis of the potential safety of future occupiers in relation to the railway crossing (IR179-188), the Secretary of State agrees with his conclusion at IR189 that the potential implications for public safety are an important consideration and, in the absence of any measure to improve the safety of the unmanned railway crossing, permitting the proposed development in such close proximity to it would involve an unacceptable risk to the safety of future occupiers, contrary to paragraph 32 of the Framework.

### *Other matters*

20. Having carefully considered the Inspector's views on the other matters discussed at IR190-197, the Secretary of State does not consider that, either individually or together, they would justify a refusal of permission for the proposed housing development.

### **Planning conditions**

21. The Secretary of State has given consideration to the Inspector's analysis at IR204-210, 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. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission.

### **Planning obligations**

22. Having had regard to the Inspector's analysis at IR200-203, the planning obligation dated 8 June 2017, 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 IR202 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligation overcomes his reasons for refusing planning permission.

### **Planning balance and overall conclusion**

23. For the reasons given above, the Secretary of State considers that the application is not in accordance with Policies C1 and C2 of the development plan, and is not in accordance with the development plan overall. However, he considers that these policies are out of date and inconsistent with the Framework and therefore carry limited weight. 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.

24. In the absence of a 5-year supply of housing land, paragraph 14 of the Framework indicates 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.

25. The Secretary of State considers that the housing benefits of the proposal carry substantial weight, and the economic, social and environmental benefits each carry moderate weight, including the fact that the proposals would not have any significantly harmful effects on biodiversity in the area while the "country open space" would provide a moderate benefit to the community. However, in the absence of any measure to improve the safety of the unmanned railway crossing, the Secretary of State concludes that permitting the proposed development in such close proximity to the crossing would involve an unacceptable risk to the safety of future occupiers and, for this reason, the development should be resisted.
26. Overall, therefore, the Secretary of State concludes that, despite the benefits that would flow from the proposal, the unacceptable risk to the safety of future occupiers from the unmanned railway crossing represents a sufficiently substantial material consideration to outweigh the benefits, so that the application should be refused.

### **Formal decision**

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses planning permission for outline planning permission for residential development of up to 130 dwellings, consisting of 12 No. 1 bed apartments, 27 No. 2 bed houses, 47 No. 3 bed houses, and associated access, together with full permission for change of use of part of the land to form country open space in accordance with application ref: DM/15/0626, dated 13 February 2015.

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

28. 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.
29. A copy of this letter has been sent to Mid Sussex District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by Secretary of State to sign in that behalf

**ANNEX A – Schedule of representations – Friars Oak Fields, East of London Road, Hassocks**

<b>Party</b>	<b>Date</b>
Geoff Moore, Friars Oak Fields Residents Association (FOFRA)	28 May 2017

**Representations received in response to the Secretary of State’s reference back letter of 24 October 2017**

<b>Party</b>	<b>Date</b>
Sally Bloomfield, Mid Sussex District Council	13 November 2017
Peter Rainier, DMH Stallard	14 November 2017
Cllr Kirsty Lord (Hassocks and Burgess Hill South, West Sussex)	14 November 2017
Dale Mayhew, Dowsettmayhew Planning Partnership	14 November 2017
Marian Ashdown, Natural England	14 November 2017

**Representations received in response to the Secretary of State’s reference back letter of 17 November 2017**

<b>Party</b>	<b>Date</b>
Marian Ashdown, Natural England	29 November 2017
Peter Rainier, DMH Stallard	8 December 2017
Bob Brewer, FOFRA	11 December 2017
Sally Bloomfield, Mid Sussex District Council	12 December 2017
Richard Barnby, East Grinstead Post Referendum Campaign	12 December 2017
Cathy Fishenden, DMH Stallard	12 December 2017
Geoff Moore, FOFRA (enclosing earlier FOFRA letter of 28 May 2017)	18 December 2017
Marian Ashdown, Natural England	12 January 2018

**Further representations received by the Secretary of State**

Kelvin Williams, Wealden District Council	26 January 2018
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# Report to the Secretary of State for Communities and Local Government

by John Felgate BA(Hons) MA MRTPI

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

Date: 10 August 2017

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TOWN & COUNTRY PLANNING ACT 1990

MID SUSSEX DISTRICT COUNCIL

CALLED-IN PLANNING APPLICATION BY RYDON HOMES LTD

LAND KNOWN AS FRIARS OAK FIELDS, EAST OF LONDON ROAD, HASSOCKS

Inquiry held on 6-8 June 2017

File Ref(s): APP/D3830/V/17/3166992

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Richborough Estates

## ABBREVIATIONS

AQA	Air Quality Assessment
AQMA	Air Quality Management Area
CADR	Countryside Area of Development Restraint
dpa	dwellings per annum
EIA	Environmental Impact Assessment
FOFRA	Friars Oak Fields Residents' Association
FRA	Flood Risk Assessment
HNP	Hassocks Neighbourhood Plan
HPC	Hassocks Parish Council
IQAM	Institute of Air Quality Management
LEMP	Landscape and Ecological Management Plan
LGS	Local Green Space
LLFA	Lead Local Flood Authority
MSDC	Mid Sussex District Council
MSDP	Mid Sussex District Plan (2016)
MSLP	Mid Sussex Local Plan (2004)
NO <sub>2</sub>	nitrogen dioxide
NPPF	National Planning Policy Framework
NPWG	Neighbourhood Plan Working Group
OAN	objectively assessed need
PM	particulate matter
PINS	The Planning Inspectorate
PPG	Planning Practice Guidance
RHL	Rydon Homes Limited
SAC	Special Area of Conservation
SCG	Statement of Common Ground
SHLAA	Strategic Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoS	Secretary of State (for Communities and Local Government)
TPO	Tree Protection Order
TA	Transport Assessment
WMS	Written Ministerial Statement
WSCC	West Sussex County Council

**File Ref: APP/D3830/V/17/3166992**

**Land known as Friars Oak Fields, East of London Road, Hassocks**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 11 January 2017.
- The application is made by Rydon Homes Limited to Mid Sussex District Council.
- The application, Ref DM/15/0626, is dated 13 February 2015.
- The development proposed is residential development of up to 130 dwellings, consisting of 12 No. 1 bed apartments, 27 No. 2 bed houses, 47 No. 3 bed houses, and 44 No. 4 bed houses, and associated access, together with change of use of part of the land to form country open space.
- The reason given for making the direction was because of the issues involved.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - i) Its consistency with the development plan and emerging local and neighbourhood plans for the area;
  - ii) Its consistency with policies in the National Planning Policy Framework on delivering a wide choice of high quality homes, in particular those set out in paragraph 50 on delivering a wide choice of high quality homes, widening opportunities for home ownership and creating sustainable, inclusive and mixed communities; and
  - iii) Any other matters the inspector considers relevant.

**Summary of Recommendation: that planning permission be refused.**

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**Preliminary Matters**

1. The proposal is described by the applicants Rydon Homes Limited (RHL) as a hybrid application, in that it seeks outline permission for the proposed residential development, and full permission for the change of use of part of the site to 'country open space'. All details of the outline elements are reserved, except for access.
2. The proposed access details are shown on Plan No 4937-GA-08D, Revision C<sup>1</sup>, and the extent of the proposed open space is defined on Plan No. 10552-OA-02<sup>2</sup>. The latter is an amended plan, submitted after the date of the Secretary of State's (SoS's) call-in direction<sup>3</sup>, but the changes from the previously submitted version are minor and uncontroversial. All of the other details shown on the submitted plans are for illustrative purposes only.
3. As originally submitted, the residential content of the application was for 140 dwellings. The number was reduced to 130 during the course of the application, as part of a package of measures to accommodate a revised drainage strategy. These changes are agreed with the Council.
4. On 13 October 2016, Mid Sussex District Council (MSDC)'s Planning Committee resolved to grant planning permission for the proposed development<sup>4</sup>, subject to completion of a Section 106 agreement. The resolution was in accordance with the Planning Officer's recommendation<sup>5</sup>. The required agreement was not completed before the SoS issued his call-in Direction.

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<sup>1</sup> File 1/Doc 13

<sup>2</sup> CD 53

<sup>3</sup> CD 44

<sup>4</sup> File 1/Doc 3

<sup>5</sup> File 1/Tab 1

5. A Section 106 agreement has now been entered into<sup>6</sup>. The agreement commits the developer to providing 30% of the proposed dwellings as affordable housing, and financial contributions to formal sport, community buildings, local community infrastructure, healthcare, primary and secondary education, and libraries. It also provides for a phasing plan. The question of compliance with the relevant legal and policy tests is dealt with later in my report.
6. At the inquiry, MSDC confirmed that its position remains as stated in the Committee's resolution, and consequently the Council offered no evidence. The Council's position is reflected in two Statements of Common Ground (SCGs) agreed between MSDC and RHL, on planning<sup>7</sup> and air quality matters<sup>8</sup>. A further SCG has also been agreed between the applicants and West Sussex County Council (WSCC) on highways and transportation matters<sup>9</sup>.
7. At the inquiry the proposed development was opposed by Hassocks Parish Council (HPC), who appeared as a Rule 6 party, and by members of the Friars Oak Fields Residents' Association (FOFRA). In addition, prior to the Planning Committee meeting in October 2016, MSDC received 178 letter of objection from other local residents, and since then the Planning Inspectorate (PINS) has received a further 60.
8. During the inquiry, with the agreement of the parties, I carried out unaccompanied visits to the site and the surrounding area on 5, 7 and 8 June. These visits included viewing the site from the key photographic viewpoints identified in the evidence, and walking all of the various routes between the site and the village centre, including those shown on the agreed site visit plan<sup>10</sup>.
9. An Environmental Impact Assessment (EIA) screening opinion was issued by MSDC on 13 November 2014<sup>11</sup>, and a further screening decision was made by PINS on 16 March 2017. On both occasions it was determined that, for the purposes of the relevant legislation, the proposal was not EIA development.
10. The application site is crossed by public footpath No. 5K. A separate application (Ref. DM/16/3730) has been made by RHL to divert a section of this path, to accommodate highway and drainage works associated with the proposed residential development<sup>12</sup>. That application is not included in the SoS's call-in direction, and remains to be determined by MSDC.

### **The Site and Surroundings**

11. The application site lies on the north-western edge of the settlement of Hassocks. Primarily it comprises four roughly rectangular fields, with a total area of 10.5 hectares, enclosed by hedgerows and woodlands. The land is agricultural in nature, but at the time of the inquiry, none was being used except for growing hay, and the northernmost was unused and overgrown.

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<sup>6</sup> Doc. APP/4

<sup>7</sup> CD 45

<sup>8</sup> CD 47

<sup>9</sup> CD 46

<sup>10</sup> Doc. MIS/6

<sup>11</sup> File 3/Tab 61

<sup>12</sup> File 4/ Tabs 82 and 84

12. On its western boundary, the site includes the wooded margin of the Herring Stream, and the south-western corner crosses the watercourse to include a further block of woodland and an access track which joins the A273 London Road. To the north of this access, there is sporadic development between the Herring Stream and London Road, including the Friar's Oak pub and two houses in large plots, and opposite is the Hassocks Golf Club. The site also has another connection to London Road via a narrow strip in the north-west corner.
13. The site's eastern boundary follows the main London to Brighton railway, which runs on a steep wooded embankment. The northern boundary is formed by a substantial hedge, with arable land beyond, and a small woodland plantation to the north-west. On its southern boundary the site abuts the Shepherds Walk estate, which includes the residential cul-de-sacs The Bourne, Bankside and The Spinney.
14. Internally, the site's four field parcels are separated by further mature hedgerows, within which there are occasional larger trees. A Tree Protection Order (TPO) protects four oak trees, of which three are within the central north-south hedge and the other is close to the southern boundary<sup>13</sup>.
15. Public footpath No 5K runs from west to east across the southern edge of the site, from the main access point at London Road to an unmanned pedestrian crossing point across the railway tracks, known as Woodside Crossing. The path forms part of a wider network of public rights of way which traverse this part of the countryside<sup>14</sup>.
16. The site is predominantly fairly flat, with a gentle fall on the western side, towards the Herring Brook.
17. Hassocks, and the contiguous village of Keymer, together form a settlement of over 7,600 population. The combined settlement has a good range of shops, a secondary school and choice of primary schools, a health centre, community centre, recreational facilities and a number of small-scale office and industrial sites. There is a railway station with services to Brighton, Gatwick and London. The application site is about 1 km from most of these facilities. Bus services to Brighton and Burgess Hill stop on London Road, close to the site access.

## **Planning Policy and Background**

### *The adopted Local Plan*

18. The development plan for the area includes the saved policies of the Mid Sussex Local Plan (the MSLP), adopted in May 2004<sup>15</sup>. For the purposes of the present application, the MSLP is the only part of the development plan that has any direct relevance.
19. The MSLP was prepared in the context of the 1993 West Sussex Structure Plan, and accordingly its provisions for housing and other development addressed the period up to 2006 only (paragraph 5.7).

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<sup>13</sup> Doc. MIS/2

<sup>14</sup> PROWs are shown at Mr Plumb's Appendix 3

<sup>15</sup> CD 2

20. On the proposals map<sup>16</sup>, the application site is outside the built-up area boundary of Hassocks, and within a Countryside Area of Development Restraint (CADR). Policy C1 states that the CADR will include all of the plan area outside the defined settlement boundaries, and that within such areas, the countryside will be protected for its own sake, and development firmly resisted.
21. The site is also within a defined Strategic Gap, between the villages of Hurstpierpoint, Hassocks and Keymer and the town of Burgess Hill. Policy C2 states that the Strategic Gaps will be safeguarded, in order to prevent coalescence and retain the separate identity of settlements.

*The emerging draft District Plan*

22. The Mid Sussex District Plan (MSDP) is currently undergoing its public examination. The submission version, incorporating focussed amendments and further proposed modifications, was published in August 2016<sup>17</sup>. On the proposals map, the settlement boundary to the north west of Hassocks is not proposed to change, with the application site remaining excluded.
23. Policy DP5 sets out the proposed housing targets for the period 2014-31, and the broad distribution. Two strategic developments, of 3,500 dwellings and 600 dwellings respectively, are proposed at Burgess Hill and Pease Pottage. After allowing for expected windfalls, a residual figure of 2,262 dwellings is left to be found in neighbourhood plans, a future Site Allocations DPD, and from sites identified in the Strategic Land Availability Assessment (SHLAA).
24. Policy DP6 defines a settlement hierarchy, with five categories. Hassocks and Keymer is included in Category 2, larger villages acting as local service centres. The policy supports the growth of settlements to meet local housing, employment and community needs. This includes expansion outside the existing boundaries, in cases where the site is allocated for development, adjoins the settlement edge, and is shown to be sustainable.
25. Policy DP10 states that the countryside is to be protected in recognition of its intrinsic character and beauty, and amongst other things, any development there must maintain or enhance the quality of the rural landscape. The settlement boundaries may be subject to review in neighbourhood plans or the Site Allocations Plan.
26. Policy DP11 seeks to prevent coalescence and protect the separate identity of settlements. To this end, neighbourhood plans or the Site Allocations Plan may identify Local Gaps, where there is evidence to show they are necessary, and where other policies cannot provide the necessary protection.
27. The Examining Inspector published his Interim Conclusions on housing issues on 20 February 2017. The Inspector considered the draft plan to be unsound. This was firstly because a significant uplift needed to be made to the objectively assessed need (OAN) for housing, and consequently also to the overall housing requirement<sup>18</sup>. In addition, the plan provided inadequate guidance to

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<sup>16</sup> CD 2, inset map 29

<sup>17</sup> CD 4

<sup>18</sup> CD 8, top of p5

neighbourhood plans, and the Site Allocations Plan, as to the numbers of dwellings to be provided for in each settlement or group of settlements<sup>19</sup>.

28. Since then, further hearing sessions have been held and the Inspector has issued further letters on 17 March, 23 March and 31 March 2017<sup>20</sup>. Further work on housing requirements and provision is continuing, in response to the Inspector's requests, and as at the close of the present call-in inquiry, further LP examination sessions on housing matters were scheduled for July 2017.
29. It is common ground between MSDC and RHL that the relevant policies of the MSDP are subject to unresolved objections, and consequently that the draft plan carries limited weight<sup>21</sup>.

#### *The emerging Neighbourhood Plan*

30. The Regulation 16 submission version of the Hassocks Neighbourhood Plan (HNP)<sup>22</sup> was published in June 2016, and has been submitted to MSDC for public examination.
31. On the proposals map, the application site is shown outside the settlement boundary, and within a proposed Burgess Hill Gap. Policy 1 states that the Burgess Hill Gap will be safeguarded to prevent coalescence and to retain the settlements' separate identities.
32. The southern half of the site is proposed to be allocated as a Local Green Space (LGS). Policy 3 seeks to protect the proposed LGSs from development that would conflict with their purpose.
33. Policy 13 proposes three other sites for housing, totalling 290 dwellings, and Policy 17 allows for windfall sites within the built up area.
34. However, although the Neighbourhood Plan has been submitted, no Examiner has yet been appointed, and the plan's progress has currently been suspended. The reasons for this are set out in a letter from MSDC to HPC dated 19 April 2017<sup>23</sup>, which advises against proceeding until the new housing figures for the MSDP have been agreed.
35. It is common ground between MSDC and the applicants that the weight to be given to the HNP is limited<sup>24</sup>.

#### *Housing land supply*

36. It is also common ground between MSDC and RHL that Mid Sussex District does not currently have a 5-year supply of deliverable housing sites<sup>25</sup>.
37. The position is summarised in the Examining Inspector's letters to the Council. The housing requirement set out in the draft MSDP is based on an average rate

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<sup>19</sup> CD 8, top of p11

<sup>20</sup> CDs 9, 9A and 10

<sup>21</sup> CD 45, para 5.11

<sup>22</sup> CD 13

<sup>23</sup> CD 54

<sup>24</sup> CD 45, para 5.16

<sup>25</sup> CD 45, para 7.6

of 800 dwellings per annum (dpa)<sup>26</sup>. The Inspector in his Interim Conclusions considers that this should be increased to a minimum of 1,026 dpa<sup>27</sup>. This was based on an OAN for Mid Sussex District itself of 876 dpa, plus an allowance of 150 dpa for the adjoining Borough of Crawley. In his further letter of 17 March 2017, the Inspector postulates a possible 'stepped trajectory' approach, starting from 876 dpa, and rising to a higher level at some point thereafter<sup>28</sup>.

38. Further consultation on this approach has been undertaken, including with the other authorities in the North West Sussex housing market area, and MSDC has submitted further evidence in letters and attachments dated 7 April and 12 May 2017<sup>29</sup>. This correspondence accepts that the 20% buffer for persistent under-delivery is appropriate. Further consideration was to be given to these matters at the July 2017 hearing sessions.
39. At the present inquiry, both MSDC and HPC<sup>30</sup> confirmed that they accept that until the final requirement figure is known, there cannot be a 5-year supply.

#### *Recent Secretary of State decisions in Mid Sussex*

40. My attention has been drawn to a number of recent SoS decisions within the same local authority district of Mid Sussex.
41. In February 2016, in a re-determined case, the SoS dismissed an appeal for 120 dwellings and other development, on land at Kingsland Laines, Sayers Common<sup>31</sup>. In August of the same year, he allowed an appeal for up to 40 dwellings on land north of Birchen Lane, Haywards Heath<sup>32</sup>. On 17 March 2017, in another re-determination, the SoS allowed a development of up to 97 homes on land at London Road, Hassocks<sup>33</sup>. The latter, known locally as 'Ham Fields', lies on the western edge of the village, and is identified in the HNP as site LGS2.
42. On 11 January 2017, the SoS issued a letter withdrawing an Article 31 Direction in respect of an application for 130 dwellings at Hassocks Golf Club<sup>34</sup>. The site is close to the present application site, on the opposite side of the A273 London Road<sup>35</sup>. The effect of the SoS' letter is that the application is not called in. MSDC has subsequently resolved to grant permission for the application.
43. I have treated all of these decisions as material considerations in the present case, and reference is made to them where issues of consistency may arise.

#### **Other Agreed Matters**

##### *The need for Appropriate Assessment in relation to the Ashdown Forest SAC*

44. The Council and applicant have jointly drawn my attention to the judgement of the High Court in the case known as *Wealden DC v SSLG, Lewes DC and South*

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<sup>26</sup> CD 8 (MSDP Inspector's Interim Conclusions), top of p2

<sup>27</sup> CD 8, p10

<sup>28</sup> CD 9, bottom of p2

<sup>29</sup> CDs 10A and 10B

<sup>30</sup> HPC's position as stated by Mr Mayhew, in response to cross-examination

<sup>31</sup> CD 33

<sup>32</sup> CD 35

<sup>33</sup> CD 36

<sup>34</sup> CD 43

<sup>35</sup> See Mr Allen's Fig. DA2 for location of the Golf Club and Ham Fields in relation to Friars Oak Fields



*Downs National Park Authority*<sup>36</sup>, dated 20 March 2017. The judgement concerned the potential effects of increased levels of nitrogen deposition within the Ashdown Forest Special Area of Conservation (SAC), due to increased traffic movements from development in an adjoining Local Authority district. The position is covered briefly in the SCG<sup>37</sup>, and in varying levels of detail in a number of other inquiry documents<sup>38</sup>.

45. At the Inquiry, the parties were agreed that the effect of this judgement is that planning permission for the present application cannot be granted without the SoS, as the competent authority, first re-assessing whether the proposed development should now be treated as EIA development; and then if necessary carrying out an Appropriate Assessment for the purposes of the Habitats Regulations. It is also agreed that, although in these circumstances, a 'shadow assessment' would sometimes be carried out by the developer at the application stage, in the case of Ashdown Forest, this is not possible at the present time. This is partly because of difficulties regarding the release of information held by Wealden District Council, and partly because the assessment would need to be based on information as to other plans and projects within the relevant area, which would have to be fully up-to-date at the time when the decision is made.
46. It is therefore jointly suggested by MSDC and RHL that the SoS should first consider the application on its other planning merits. Then, if the SoS is minded to grant planning permission, he should call for further information and evidence as to the development's potential effects on the SAC, in combination with other relevant proposals. Then, if he is satisfied with that information, he would be in a position to make his final decision, incorporating into it his Appropriate Assessment, by reference to the submitted evidence.
47. No counter-submissions on this point were made by any other party. I am not aware of anything that would prevent the SoS from following the course suggested.

### **The Case for Rydon Homes Ltd**

#### *The site and proposed development*

48. RHL make the case that Hassocks is a sustainable location, and that the application site is well located for access to all the village's facilities<sup>39</sup>. In the April 2016 SHLAA, the site was assessed as a '3-tick' site, being suitable, available and achievable<sup>40</sup>.
49. The development would provide 130 dwellings, including a range of sizes from 1-bedroom apartments to 4-bedroom houses. 39 units (30%) would be affordable, and most of these would be for social rent. The mix of sizes and tenures is agreed with the Council and reflects the needs identified in the Strategic Housing Market Assessment (SHMA)<sup>41</sup>.

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<sup>36</sup> [2017] EWHC 351 (Admin)

<sup>37</sup> CD 45, paras 7.36 – 7.37

<sup>38</sup> CD's 51 and 52; Doc. MIS/3; Doc APP/3 (paras 21-37); and Mr Hough's 'Update' note

<sup>39</sup> Mr Hough's proof, paras 1.15 – 1.26; Mr Plumb's proof, paras 2.6 – 2.11, and Appendices 5 and 6

<sup>40</sup> CD 29, site ref. 221 (HA/24)

<sup>41</sup> Mr Hough's proof, paras 1.28 – 1.29

50. The development would include a 7-hectare country open space. This and the other landscaped areas, and the attenuation ponds and other surface water drainage infrastructure, would be managed by a residents' management company. The funding for this would be provided by a commuted sum. The landscape management regime would be agreed with the Council through a Landscape and Ecological Management Plan (LEMP)<sup>42</sup>.
51. Most of the existing trees and hedges could be retained, including all of those in the TPO. The woodland belt on the western side of the site would be retained and its ecological and biodiversity value enhanced.
52. The existing public footpath would be retained, and although a short section would need to be realigned, the path could be kept open during construction. A new connection would be made to Shepherds Walk, and a new network of paths could be created within the site, including a perimeter route linking to the new country open space.

### Policy

53. The applicants regard the adopted MSLP as out-of-date, for three reasons: firstly because it is time-expired; secondly because its housing provisions were based on a strategic plan that has long been revoked; and thirdly there is not currently a 5-year housing supply<sup>43</sup>. In the light of the Supreme Court judgement in *Suffolk Coastal DC v Hopkins Homes*<sup>44</sup>, MSLP Policies C1 and C2 are no longer housing supply policies, but they are still out of date, and still inconsistent with the NPPF's aim to meet housing needs<sup>45</sup>. The same applies to the settlement boundaries. These policies therefore carry reduced weight, as agreed in the SCG<sup>46</sup>.
54. In any event, it is argued that all of the MSLP's remaining housing policies, such as H1 which deals with housing numbers and distribution, are clearly made out of date by NPPF paragraph 49. This on its own is enough to bring the second bullet-point of NPPF paragraph 14 into play<sup>47</sup>. Consequently, to justify refusal, it would be necessary to show that any harm would outweigh the benefits significantly and demonstrably.
55. The emerging MSDP is seen as carrying limited weight, for the reasons stated in the SCG, because there are outstanding objections and because the housing requirement and distribution remain unresolved<sup>48</sup>. This was accepted by the SoS in the Ham Fields decision<sup>49</sup>. In addition it is argued that the weight due to draft Policy DP 10 is further reduced because the settlement boundaries which are to form the basis for the policy are acknowledged to need review<sup>50</sup>.

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<sup>42</sup> Mr Hough's proof, paras 1.30 – 1.33

<sup>43</sup> Mr Hough's proof, paras 2.5 – 2.6

<sup>44</sup> CD 39

<sup>45</sup> Mr Hough's Update, para 12

<sup>46</sup> CD 45, pars 5.3 – 5.7; and Doc. APP/3, paras 39 - 42

<sup>47</sup> Doc. APP/3, paras 3 and 6-20

<sup>48</sup> CD 45, para 5.11

<sup>49</sup> CD 36, para 18

<sup>50</sup> Doc. APP/3, para 43

56. The draft HNP is also given limited weight, as agreed in the SCG<sup>51</sup>, because of the uncertainty regarding the overall housing requirement in the draft MSDP, and the share of this that may be directed to Hassocks. In the Ham Fields appeal decision, the SoS gave the HNP moderate weight because it had reached the stage of being submitted for examination<sup>52</sup>, but now that its further progress has been stopped for the time being, it is argued that this reasoning no longer applies.
57. RHL has objected to all of the relevant HNP Policies, and it is argued that this further reduces the weight to those policies. The LGS designation under Policy 1 is objected to, principally on the grounds that the public has no rights of access to the land, apart from the existing public footpath, and there is no prospect of such rights being granted<sup>53</sup>. The Burgess Hill local gap in Policy 3 is objected to mainly on the grounds that there is no robust evidence of a need for it, contrary to the enabling provision in Policy DP11 of the draft MSDP<sup>54</sup>. The housing provisions in Policy 13 are objected to because they fail to recognise the scale of the numbers which are likely to be needed at Hassocks, which RHL suggest should be between 685 to 903 dwellings<sup>55</sup>; and because the proposed housing allocation sites are less suitable than Friars Oak Fields<sup>56</sup>.
58. It is also argued that the Written Ministerial Statement (WMS) on neighbourhood planning, dated 12 December 2016, does not apply in this case, firstly because the HNP is not yet made, and secondly because there is no certainty that the housing supply can meet even the 3-year level that would be required<sup>57</sup>. The question of prematurity also does not arise, because the SoS rejected that point in the Ham Fields decision<sup>58</sup>.

#### *The need for housing*

59. Based on the Local Plan inspector's interim requirement figure of 1,026 dwellings p.a., RHL contend that the deliverable housing supply is between 3.17 years to 3.73 years' worth, reflecting the alternative assessments of availability and delivery rates put to the Examination by the developers' forum and the Council respectively. Even if the requirement were reduced to 876 p.a. in the first five years, as part of a possible stepped-trajectory approach, the supply would still be no more than 4.5 years' worth, based on the Council's own supply data as presented to the examination<sup>59</sup>.
60. It is therefore argued that although the exact figure cannot be calculated until the 'policy-on' requirement is known, on any basis the supply is less than five years' worth. This indicates a District with a chronic housing shortage, a history of under-delivery, a worsening affordability ratio, and a growing need for all types of housing, and especially affordable<sup>60</sup>. As things stand, the MSDP will

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<sup>51</sup> CD 45, para 5.16

<sup>52</sup> CD 36, para 19

<sup>53</sup> Mr Hough's proof, paras 6.11 – 6.29

<sup>54</sup> Mr Hough's proof, paras 6.2 – 6.10

<sup>55</sup> Mr Hough's proof, paras 4.5 – 4.28; Doc. APP/3, para 49

<sup>56</sup> Mr Hough's proof, paras 4.30 – 4.31

<sup>57</sup> Doc. APP/3, para 56

<sup>58</sup> CD 36, para 31; and Mr Hough's proof, paras 6.30 – 6.37

<sup>59</sup> Mr Hough's proof, paras 2.7 – 2.8, and 5.15 – 5.17

<sup>60</sup> Doc. APP/3, para 59

allocate two strategic sites, but sites below that size will still need to wait for the Site Allocations DPD or neighbourhood plans. These plans may yet take some years to come forward<sup>61</sup>.

61. To rectify the shortfall in supply, both for the 5-year calculation and for the plan period as a whole, will inevitably mean that additional greenfield sites will be needed, including all of the '3-tick' SHLAA sites; the Council's response document MSDC 5A makes it clear that the application site would be needed for any requirement above 800 dpa<sup>62</sup>. But in any event, Hassocks is the most sustainable of the District's Category 2 settlements, and is therefore a natural location for a large part of the extra houses that will be needed<sup>63</sup>.
62. Against this background, the development now proposed would help boost the local housing supply. It would widen opportunities for both home ownership and renting, creating a mixed and balanced community. It would provide homes in a sustainable location, with a choice of non-car modes of transport. It would also offer an attractive location, where a very high quality residential environment could be created.

#### *Other benefits of the development*

63. The development's economic impact is assessed in a report by Nathaniel Lichfield and Partners<sup>64</sup>. The development would directly create around 47 full-time equivalent jobs during the 4-year construction period, plus around 71 indirect jobs. This employment is estimated to generate around £7.5m worth of 'gross value added' during the construction phase. The first-occupation expenditure by new households is estimated to be £715,000, which would mainly be spent locally, and could support a further 4 permanent full-time equivalent jobs. When fully occupied, the scheme would generate £3.7m per annum in spending by residents in local shops and services, of which nearly half would be net additional to Mid Sussex. This new expenditure could support a further 18 jobs.
64. The area would also benefit from Council Tax receipts of around £230,000 p.a., and one-off receipts of around £920,000 from the New Homes Bonus and about £1.25m from S.106 contributions.
65. There would also be some less quantifiable economic benefits in terms of labour mobility and labour market flexibility, and improving the overall quality of the village and its housing stock, which would potentially benefit both employers and the local economy.
66. In addition it is argued that the proposed scheme could bring benefits in terms of public open space provision, biodiversity, flood risk reduction, public access and low carbon energy usage<sup>65</sup>. In some cases these benefits would rely on conditions being imposed on any permission.

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<sup>61</sup> Mr Hough's proof, para 3.1

<sup>62</sup> Mr Hough's proof, para 3.13; and CD 12, p1 and p67

<sup>63</sup> Mr Hough's proof, para 3.19

<sup>64</sup> Mr Hough's Appendix 4

<sup>65</sup> Mr Hough's proof, paras 5.24, 5.31 – 5.33, 5.43, 5.47 – 5.52; an APP/3, paras 79 - 80

### *Landscape impact and coalescence*

67. The application site is not subject to any landscape-related designation other than the Strategic Gap and proposed local gap. Consequently, having regard to the *Stroud* judgement<sup>66</sup>, it is argued that the site is not part of any valued landscape<sup>67</sup>.
68. The site is well screened from external public views<sup>68</sup>. Visual impacts would be largely confined to private views from adjoining properties, and views from the public footpath within the site itself. Any views from the edge of Burgess Hill would be long-distance, and thus would have little if any impact. The SHLAA assessment recognises that the site is well contained<sup>69</sup>. It is therefore contended that the effects on the wider landscape would be negligible.
69. Within the site, most of the existing trees and hedgerows could be retained, and the watercourse would be unaffected. The historic landscape pattern could thus be preserved. The illustrative plans show that more than adequate space would be available for new planting and open space to mitigate the development's impact. This would also allow the development to create a softer urban edge than that which exists currently<sup>70</sup>.
70. With regard to the gap between Hassocks and Burgess Hill, the development would slightly reduce the distance between the settlements, but that gap will be reduced anyway, by the approved housing development at Hassocks Golf Club. In that context, the Friars' Oak development would not encroach any further. The gap that remains will still be 1.34 km.
71. In any event, it is argued that the only part that would be seen would be the new access road, which would only extend the perceived threshold of the village by about 50m, and would still be within the existing transition zone<sup>71</sup>. Consequently the scheme would not diminish the perception of open countryside, and would not lead to coalescence.
72. The development would not materially affect views from the South Downs. Although the site is potentially visible at long distance, it is seen in the context of the existing settlement in the foreground, and in this context additional development in this location would not be harmful.
73. Overall, although the development would have some impact on the landscape, this would be minor. Such impacts would be an inevitable consequence of finding sites to meet the District's housing needs, and development on the present application site would be acceptable in that context.

### *Flood risk*

74. A surface water drainage strategy for the development is set out in the revised Flood Risk Assessment (FRA) dated April 2016<sup>72</sup>, and the plan 'Outline Drainage

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<sup>66</sup> CD 40: *Stroud DC v SoS and Gladman Developments* [2015] EWHC 488 (Admin)

<sup>67</sup> Mr Allen's oral evidence

<sup>68</sup> Mr Allen's Volume 2, Appendices DA 3.1 – 3.4, photographic analysis

<sup>69</sup> CD 29 – site No 122

<sup>70</sup> Mr Allen's Volume 2, Appendices DA 4 - 6, landscape proposals, components, and principles

<sup>71</sup> Mr Allen's Volume 2, Appendices DA 7 – 14, Coalescence Study

<sup>72</sup> File 3/Tab 50

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Strategy EVY 100yr + 50% CC – Proposed Bridge Scenario'<sup>73</sup>. The strategy is based on extensive hydraulic modelling and testing<sup>74</sup>.

75. The strategy provides for surface water run-off to be attenuated through a series of swales and ponds, before discharging to the Herring Stream. The rate of discharge would be controlled to a rate which would be less than one-third of the 'Qbar' (greenfield) rate for a 1-in-100-year storm, including a 40% allowance for climate change. The design would also allow for the outfall to the Herring stream to be temporarily closed during times when the watercourse is in full flood.
76. Although part of the site is within the functional flood plain, the Illustrative Layout plan<sup>75</sup> shows how the proposed housing and attenuation ponds can all be sited outside that area. Indeed the hydraulic modelling demonstrates that these elements would be able to be kept out of the floodplain in both the '100-year plus 50% climate change + 40% blockage', and the '1-in-1,000 year' scenarios.
77. The proposed access road into the site, and its embankments, would have to cross the Herring Stream and the floodplain area. However, the proposed solution, as shown on the submitted access plan<sup>76</sup>, would include a bridge with a clear span of 15m, and a soffit height of 36.0m, giving at least 600mm clearance above the maximum flood level, more than meeting the Environment Agency's stated requirements. The proposed strategy would also include a flood relief culvert to draw flood water away from the lower section of the access road, and a floodwater storage area, providing level-for-level and volume-for-volume flood compensation, outside the floodplain.
78. As a result, the appellants contend that none of the proposed new dwellings would be at risk of flooding, and that safe access into and out of the site, for vehicles and pedestrians, would be maintained at all times. It is also argued that no existing properties would be placed at increased risk; indeed the attenuation of surface water run-off in storm conditions would tend to reduce any such risks to off-site properties.
79. Although part of the site is within flood zones 2 and 3, the applicants contend that the only development that would need to be located in these zones would be open space, which is classed as water-compatible, and the access road, which comes within the category of essential infrastructure which cannot be located elsewhere. All of the new houses can be located within zone 1. Consequently, no sequential or exception testing is necessary. It is further argued that National Planning Practice Guidance (PPG) accepts this kind of disaggregation of a development into its component parts.
80. In any event, the earlier objections by statutory consultees relating to drainage and flood risk have all been withdrawn. There are no longer any objections from the Environment Agency<sup>77</sup>, or from WSCC as Lead Local Flood Authority (LLFA)<sup>78</sup>, or from MSDC's Drainage Officer<sup>79</sup>.

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<sup>73</sup> Contained in Mr Daykin's Appendix2, Part 1 (Volume 2); and File 3/ tabs 45 and 46, and File 4/ Tabs 50 and 51

<sup>74</sup> Mr Daykin's proof, sections 6-9;

<sup>75</sup> File 1/ Tab 12 (Drawing No. 10552-OA-01, rev. B)

<sup>76</sup> Drawing No 4937-GA-08D, Revision C

<sup>77</sup> Consultation response from Hannah Packwood dated 18 May 2016

<sup>78</sup> Consultation response email from Kevin Mackay dated 30 September 2016

<sup>79</sup> Consultation response email from Fiona Bishop dated 30 September 2016

### *Traffic impact*

81. The application is accompanied by a full Transport Assessment (TA)<sup>80</sup>. This includes a full analysis of future traffic generation and likely impacts, taking account of other developments which were committed at that time.
82. The TA identified that the development would add to the existing traffic congestion at the signal-controlled junction of the A273 (London Road/Brighton Road) and the B2116 (Hurst Road/Keymer Road), known locally as the Stonepound Crossroads. However, an improvement scheme for this junction has been agreed with WSCC as Highway Authority, which is designed to increase the junction's capacity and reduce queuing<sup>81</sup>. On this basis, the Highway Authority has withdrawn its earlier objections<sup>82</sup>.
83. Subsequently, the proposed development at Ham Fields, London Road has been allowed on appeal, in March 2017. However, the SoS's decision letter makes it clear that in granting that permission he took into account the combined impact of other committed developments, including the development now proposed at Friars Oak Fields<sup>83</sup>.
84. An updated junction assessment for the Stonepound Crossroads, on the same cumulative basis, has been prepared for the present inquiry<sup>84</sup>. This shows that although the junction would remain over-capacity, the impact would be partly mitigated by the proposed improvements, and thus would not be severe. The Highways SCG<sup>85</sup> confirms that WSCC remains content with the present proposed development, subject to the Stonepound junction improvement scheme being implemented.
85. The proposed access to the Friars Oak site has been designed to take account of the planned development at the Golf Club, which will also take access from the same section of London Road. The junction layout has been subject to a full safety audit<sup>86</sup> and is accepted by the Highway Authority.

### *Woodside railway crossing*

86. Although the unmanned Woodside railway crossing offers a potential route to some local facilities, the applicants suggest the development is unlikely to lead to a significant increase in its use. The approaches to the crossing involve steep steps and stiles, crossing the tracks themselves is an intimidating experience, and the footpath route beyond is unsurfaced, unlit, and passes through woodland<sup>87</sup>. Alternative pedestrian routes are available, especially that which makes use of the existing underpass known as the Woodland<sup>88</sup> tunnel, to the village centre, and also the route via Semley Road and Stanford Avenue, leading to Hassocks Station.

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<sup>80</sup> File 3/Tab 58

<sup>81</sup> Mr Plumb's Appendix 4

<sup>82</sup> Consultation responses from Matthew Bartle, dated 16 December 2015 and 28 September 2016

<sup>83</sup> CD 36, paras 6 and 24

<sup>84</sup> Mr Plumb's proof, Tables 3.1 and 3.2 (p7)

<sup>85</sup> CD 46

<sup>86</sup> File 3/Tab 58, Transport Assessment section 6 and Appendix I

<sup>87</sup> File 3/Tab 59 (WSP Woodside Crossing report) – section 3

<sup>88</sup> The spelling on road name signs is 'Woodland'; but also referred to by some as 'Woodlands'

87. For access to many of the village's main facilities, including all three local schools, both supermarkets, the Health Centre, the Leisure centre, the Station, the Bank, Post Office, and Boots pharmacy, it is argued that the alternative routes are shorter, as well as more commodious<sup>89</sup>. And whilst in some other cases the route via the Woodside crossing may be shorter in terms of distance, this does not take account of the disincentives in terms of the physical difficulty, the perceived issues of safety and security, and the slowing effect of steps, stiles and muddy conditions<sup>90</sup>.
88. Taking account of the above, the applicants have assessed the likely level of use of the Woodside crossing by future residents of the proposed development, using two different methodologies. The first is based on surveys of the existing usage, and a pro-rata calculation between the existing population in the surrounding catchment area and the likely number of future occupants<sup>91</sup>. The second method is based on conventional trip generation and distribution modelling, using 'TRICS' data<sup>92</sup>. Both methods lead to similar results, that the number of additional traverses of the crossing is unlikely to exceed 1.5 - 2 per day. This compares to the existing surveyed level of between 17 – 38 traverses per day. In this context, the applicants contend that the increase would be marginal.
89. In the surveys of existing usage, most users of the crossing do so for leisure purposes, including rambling, dog-walking, and running or jogging. This supports the view that few of the new residents will use it for essential daily journeys, such as for access to local facilities.
90. Network Rail (NR), which is responsible for the safety of the railway line, gives the Woodside Crossing an ALCRM (All level Crossing Risk Management) safety rating of C4, which makes it amongst the safest on this particular line. This reflects the relatively low level of use, the clear visibility in both directions, and the fact that users who have mobility difficulties or are vulnerable for other reasons are mostly precluded by the terrain. An increase of 1-2 traverses per day would not alter the safety rating assessment<sup>93</sup>.
91. Although NR initially objected, that was based on an incorrect understanding of the application. After receiving the appellants' TRICS-based forecast, the company has withdrawn its objection and confirmed that it does not intend to seek any financial contributions<sup>94</sup>.
92. If necessary, the approach to the Woodside crossing along footpath 5K could be made less attractive by creating a tightly fenced corridor, possibly with additional stiles at either end<sup>95</sup>. This option is not advocated, but could be conditioned if the risks were considered otherwise unacceptable.

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<sup>89</sup> Mr Plumb's Appendix 6 – comparative Table

<sup>90</sup> Mr Plumb's proof, paras 6.21 – 6.34

<sup>91</sup> File 3/Tab 59 (WSP Woodside Crossing report) – sections 4 and 5

<sup>92</sup> Mr Plumb's proof, para 3.18

<sup>93</sup> Mr Plumb's proof, paras 3.7 – 3.12 and 6.50 – 6.53

<sup>94</sup> Consultation response from Adrian Tooley, dated 16 October 2016

<sup>95</sup> Mr Plumb's Appendix 13



## Air Quality

93. The application was accompanied by an Air Quality Assessment (AQA) report dated February 2015<sup>96</sup>. This has since been superseded by an updated AQA dated May 2017<sup>97</sup>, which takes account of more recent guidance and research. The AQAs model the proposed development's likely effects on air quality, both from the initial construction, and from on-going traffic movements.
94. Traffic-related air quality impacts are considered firstly for the year 2021, to represent the early stages of occupation, and then in 2024 as the estimated date of completion. The development's impacts are assessed for a range of receptor locations, both on and off site, which include existing residential properties in the vicinity of the Stonepound Crossroads, where an Air Quality Management Area (AQMA) has been declared. The application site is about 800m from this AQMA. The assessment takes account of the cumulative impact including other committed developments<sup>98</sup>, and also the effects of the planned highway works which will improve flows through the Stonepound junction<sup>99</sup>.
95. Various alternative assumptions have been used with regard to future changes in vehicle emissions technology and the differences between the nitrogen dioxide (NO<sub>2</sub>) levels indicated by laboratory-testing compared to real-world conditions. The basic assessments in both of the AQAs use DEFRA's standard 'Emission Factor Toolkit', which incorporates the widely-used COPERT<sup>100</sup> program. To counter doubts about the accuracy of this, in the 2015 AQA a sensitivity test was carried out, in which it was assumed that no further improvement in emissions per vehicle would be achieved between the baseline year and the assessment year<sup>101</sup>. This was seen as a worst-case scenario.
96. However, more recent research has shown this to be unduly pessimistic, because newer vehicles built to 'Euro 6' and 'Euro VI' standards are starting to achieve better real-world results. So, the 2017 AQA substitutes a different sensitivity test, using a tool known as CURED<sup>102</sup>. RHL regards this as a robust approach because the assumptions incorporated in CURED are more pessimistic than those in the COPERT-based assessment<sup>103</sup>. This is also demonstrated in a graph tabled by Ms Wilson<sup>104</sup>. Consequently the 2017 sensitivity test using CURED is still seen as a worst-case scenario.
97. Based on the 2017 AQA, the relevant statutory air quality objectives<sup>105</sup> would be achieved in 2021 at all receptor locations except for a single property, being one of the apartments at Overcourt, 1 Keymer Road, where the worst-case assessment indicates the NO<sub>2</sub> objective being exceeded by 0.5 micro-grammes per cubic metre. However, by 2024, all receptors are shown as meeting all the relevant objectives, for both NO<sub>2</sub> and particulate matter (PM).

<sup>96</sup> File 2/Tab 40

<sup>97</sup> Appendix A to Ms Wilson's proof

<sup>98</sup> Para A4.5, of Appendix A4 to the 2017 AQA (in Ms Wilson's Appendix A)

<sup>99</sup> Mr Plumb's Appendix 4

<sup>100</sup> 'Computer Programme for Emissions from Road Transport'

<sup>101</sup> Paras 6.7 – 6.10 of the 2015 AQA (File 2/Tab 40)

<sup>102</sup> 'Calculator Using realistic Emissions for Diesels'

<sup>103</sup> Paras 3.9 – 3.13 of the 2017 AQA (Ms Wilson's Appendix A)

<sup>104</sup> Doc. APP/1

<sup>105</sup> Under the Air Quality (England) Regulations 2000, and amended Regulations dated 2002

98. In all other cases, although the proposed development would have the effect of slightly raising the levels of NO<sub>2</sub> compared to the without-development scenario, and in some cases also the levels of PMs, for the most part these increases would be no more than 1%. As such they would be classed as 'low/imperceptible' using the IQAM's<sup>106</sup> descriptors, or 'low/imperceptible-medium' using those of the Sussex Air Quality Partnership<sup>107</sup>. Other than the Overcourt apartment, the development would not cause any other receptor to exceed any of the objectives, either permanently or temporarily.
99. The 'damage cost' attributed to the development's air quality impact is just under £110,000. RHL has identified a package of measures with a value said to exceed this amount, which could be secured by condition. The residual impacts after allowing for this mitigation are argued to be negligible.
100. Dust emissions from construction activities are assessed as low risk or negligible<sup>108</sup>.
101. In the Ham Fields appeal decision<sup>109</sup>, which was for a development of a similar scale, the SoS found that the development's effect would be negligible, and that it would not impede the Council's aims for the Stonepound AQMA. In coming to this view on air quality, as with the issue of traffic impact, he again took into account the cumulative impacts of the Ham Field scheme together with others including the development now proposed at Friars Oak.
102. The 2017 AQA has been accepted by MSDC, and the Council has joined in signing the Air Quality SCG<sup>110</sup>.

### **The Case for Hassocks Parish Council**

#### *5-Year housing land supply*

103. In the light of the MSDP Examining Inspector's interim conclusions<sup>111</sup>, it is reasonable to treat his figure of 876 dpa as the agreed OAN for the District. The final 'policy-on' requirement is likely to be higher than this, because an element will be added for Crawley, but that will not change the 'policy-off' OAN figure that represents Mid-Sussex's own needs.
104. In MSDC's letter to the Examining Inspector dated 7 April 2017<sup>112</sup>, the Council shows that it has a 5-year supply measured against this OAN. In the absence of a fully agreed requirement figure, the OAN is the next best thing for the purpose of the 5-year supply calculation. But nevertheless, HPC accepts there is not an NPPF-compliant 5-year supply at the present time.

#### *Development plan weight*

105. The application site is within the area defined as countryside and the Strategic Gap. The proposed development conflicts with MSLP Policy C1 because that policy seeks to protect the countryside for its own sake. And it conflicts with

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<sup>106</sup> Institute of Air Quality Management

<sup>107</sup> Tables 11, 12 and 13 of the 2017 AQA (Ms Wilson's Appendix A); and Table 1 in Ms Wilson's proof

<sup>108</sup> Chapter 5 of the 2017 AQA

<sup>109</sup> CD 36

<sup>110</sup> CD 47

<sup>111</sup> CD 8

<sup>112</sup> Mr Mayhew's Appendix PC1 (also CD 10A)

Policy C2 because it would erode the gap's open character, and diminish the separation between Hassocks and Burgess Hill.

106. Following the Supreme Court's judgement<sup>113</sup>, neither of these policies can now be considered as relating to housing supply, so paragraph 49 of the NPPF is not engaged. Consequently, the lack of a 5-year housing land supply need not prevent Policies C1 and C2 from carrying full weight. Both policies are consistent with the NPPF, and should be given weight accordingly.

*Draft HNP weight*

107. The application conflicts with the draft HNP in respect of Policy 1, the Burgess Hill Gap, and Policy 3, the allocation as local green space.
108. The draft HNP makes sufficient housing provision in relation to the District's needs. It has been prepared positively, with a view to facilitating sustainable development. The policies are consistent with the emerging MSDP and with the NPPF. The plan was supported by MSDC at the Regulation 14 stage<sup>114</sup>. The plan therefore deserves to be given weight.
109. The SoS, in his decision on the Ham Fields appeal, gave the HNP moderate weight. The plan remains at the same stage, and at least the same degree of weight should be given to it now.

*Hassocks' role in future housing requirements*

110. MSDC's most recent submissions to the MSDP Examination include a proposed modification to Policies DP 5 and 6, with a breakdown of the District's housing requirement between individual settlements<sup>115</sup>. For the first 8 years of the plan period, 2014-22, the proposed figure for Hassocks is 322. The draft document makes it clear that this is to include existing completions, permissions, and allocations.
111. Against this figure, Hassocks has already had 58 dwellings completed in this period, and has outstanding commitments for a further 387 dwellings (including 70 at the Station Goods Yard, which are expected to be post-2027)<sup>116</sup>. The HNP also proposes to allocate two more sites, at North of Clayton Mills and the national Tyre Centre, for a further 160 units<sup>117</sup>. Policy 17 will allow more windfall sites to come through, and in the past these have run at 10-20 per annum. The village is therefore more than meeting its share of the District's requirements.
112. Although MSDC has also indicated that Hassocks' residual requirement may be a further 344 dwellings, this has not yet been agreed, and may be challenged by HPC. It does not appear to accord with the stated aim of reducing the requirement sought from parishes adjoining Burgess Hill, where the largest strategic allocation is planned. There is therefore no certainty that Hassocks will be required to take any more large developments in the plan period.

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<sup>113</sup> CD 39

<sup>114</sup> Doc. HPC/1

<sup>115</sup> CD 10B – MSDC letter of 12 May 2017, attachment entitled 'MSDC 8c'

<sup>116</sup> Mr Mayhew's Appendix PC2

<sup>117</sup> CD 13 (the HNP - Policies 13 and 17; note the Golf Club site is counted in the Commitments at PC2 )

### *Assessment of the application site in HNP process*

113. In preparing the HNP, the Neighbourhood Plan Working Group (NPWG) considered the merits of the application site with regard to both the housing and LGS allocations. With regard to housing, after carrying out technical assessments, the site was assessed as potentially suitable, and was carried forward to the next stage, which included public consultation. However, the site was eventually rejected because of concerns about biodiversity, the railway crossing, flood risk, and the Strategic Gap<sup>118</sup>. Of these, the latter two remain of concern to HPC at the present inquiry.
114. With regard to green space, the southern part of the site was rated according to a range of factors, including proximity to the community, public access, landscape character, heritage significance, wildlife, and recreational value. The site was considered to meet all of the relevant criteria<sup>119</sup>.
115. The allocation of part of the site for LGS, and rejection of housing from the whole, also took account of the Hassocks Landscape Character Assessment carried out on behalf of HPC<sup>120</sup>, historic flooding maps<sup>121</sup>, a parish-based Land Availability Assessment<sup>122</sup>, and site suitability appraisals<sup>123</sup>. The draft HNP proposals for the site were therefore soundly researched and evidence-based.

### *Flood risk*

116. The application site is partly within flood risk zones 2 and 3, where the probability of flooding is medium to high. The development includes residential development, which is classed as a 'more vulnerable' land use. National policy in the NPPF, and the guidance in the PPG, seeks to steer such development to the areas of lowest risk.
117. NPPF paragraph 101 makes it clear that development should not be permitted if other suitable sites are available with a lesser flood risk. In the PPG, Footnote 1 to Table 3 also makes it clear that the sequential test should be undertaken first, to guide development to zone 1 if possible, before considering other zones.
118. In the present case the application has not been subject to any sequential test. There is no evidence to show that all suitable sites in zone 1 have been exhausted. It therefore cannot be concluded there are no lower risk sites available.
119. The applicants have sought to get round this important policy hurdle by considering the scheme in its component parts rather than as a whole, but this approach is not in accordance with relevant policies. The main purpose of the development is to provide housing, so that is the basis on which the flood risk should be assessed. This was the approach taken by MSDC in their letter to the applicants dated 20 January 2016<sup>124</sup>.

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<sup>118</sup> Mr Mayhew's Appendix PC4 (also at CD 20)

<sup>119</sup> Mr Mayhew's Appendix PC5 and CD 19 (see also 19A)

<sup>120</sup> CDs 24 and 25

<sup>121</sup> CD 22

<sup>122</sup> CDs 16 and 17

<sup>123</sup> CD 21

<sup>124</sup> Doc HPC/5

120. Although the applicants have been able to design a layout, a drainage scheme, and a road bridge that avoid exacerbating the flood risks, all of these are essentially just mitigation works. The fact that they are needed simply highlights the fact that the development is being proposed in an inherently unsafe location. These measures can reduce the risk, but not eliminate it, because there is always the possibility that one or more components could fail.

### *Sustainability*

121. The proposal fails to comply with the development plan, or with the NPPF. It poses a potential flood risk. It would undermine the policies relating to the Strategic Gap and proposed local gap, and proposed LGS. It would erode confidence in the neighbourhood planning process. Together these failings would cause social and environmental harm. The scheme therefore cannot be regarded as sustainable development.

### **The Case for Friars Oak Fields Residents' Association (FOFRA)**

#### *Woodside railway crossing*

122. FOFRA's comments relating to safety at the Woodside railway crossing are set out in a large number of written submissions, including those prepared specifically for this inquiry, and those made previously to MSDC before the date of the SoS's call-in direction<sup>125</sup>.
123. FOFRA highlights the fact that the Woodside crossing is unmanned and uncontrolled. An average of 332 trains per day pass through it, at up to 90mph. There is a 'live' third rail. In FOFRA's view, the crossing is potentially dangerous<sup>126</sup>.
124. NR's own ALCRM rating of C4 means that the crossing is close to the upper end of the scale for both individual and collective risks. If the number of traverses were to increase by 18 per day (to a total of 35) that would raise the rating to C3. That level of increase would be achieved if only 11% of the total of 168 forecast pedestrian trips per day from the new development were to go via Woodside. Or alternatively, 6% of those forecast trips, plus 4 dog-walkers. This illustrates that it would only take a small deviation from the applicants' assumptions to push the crossing's ALCRM rating into a higher category.
125. In terms of access to local facilities, the Woodside Crossing provides a shorter route from the application site to some destinations, including the Clayton Mills play areas, the Adastra Park football pitches, the local tennis courts, the cricket and bowls clubs, and the Thatched Inn pub<sup>127</sup>. In these cases the difference in distance is significant. Some of these facilities are ones that are likely to attract children and teenagers, who will be less capable of using the crossing safely.
126. Although the Woodside Crossing route is partly unsurfaced, FOFRA contend that this will not deter people from using it in dry weather. Again, younger

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<sup>125</sup> Principally, FOF/4, FOF/6, and pre call-in submissions relating to the rail crossing, dated 23 March 2015, 11 August 2015, 25 September 2015, 28 September 2015, 28 November 2015, 18 January 2016, 12 June 2016, 16 July 2016, 7 August 2016, 24 September 2016 and 27 September 2016

<sup>126</sup> Doc. FOF /4.1

<sup>127</sup> Doc. FOF/4.2

people are the least likely to be deterred, even in poor weather conditions. Some might even be drawn by it. In any event, WSCC in its role as rights-of-way authority, is said to have written to the owners of the path in 2016 asking them to improve the footpath's condition<sup>128</sup>, so there is no certainty that it will continue to be unsurfaced and muddy. If it were improved, that would encourage residents of the proposed development to use it even more.

127. An internal email from NR's Head of Liabilities<sup>129</sup> expresses concern about the crossing becoming a short-cut, and the consequent potential for misuse, and issues with vulnerable users. The email also suggests that safety measures could be needed, albeit at a cost, including either pedestrian stop lights or a footbridge. FOFRA agrees with the views expressed.
128. The applicants' attempts to forecast the level of usage generated by the development are flawed. The catchment-based method fails to give sufficient weight to proximity and locational factors<sup>130</sup>. Residents of the new development would be more likely to use the railway crossing, firstly because it was close to them, and secondly because it lies between them and the destinations they may want to visit. Whereas the existing residents, even if they live a similar distance from the crossing, are mostly on the 'wrong' side of it. Comparisons based on the existing usage pattern are therefore of little value.
129. The alternative method, based on TRICS data, makes an assumption that less than 2% of all pedestrian trips from the development will go to the Woodside crossing, including none in the peak hour. But these assumptions are only guesswork. There is no proper basis for such assumptions<sup>131</sup>. For example, the applicants' forecasts take no account of the dog walkers from the surrounding area who currently use the site, and will be displaced by the development. Some of those would be likely to start to use the railway crossing, to find suitable alternative walks. RHL's forecasts are therefore inaccurate and unreliable.
130. In Mr Plumb's evidence, the applicants appear to suggest a further alternative forecasting method, based on an appeal decision at Tackley in Oxfordshire. FOFRA rejects this method too<sup>132</sup>, because in that case the number of traverses was artificially boosted by the presence of a station, which necessitated a larger number of crossing movements to reach the required platform. This is not relevant to the present proposal.

#### *Local Green Space*

131. FOFRA's comments relating to the site's proposed designation as Local Green Space are again set out in a number of written submissions, including those prepared specifically for this inquiry, and those made previously to MSDC before the date of the SoS's call-in direction<sup>133</sup>.

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<sup>128</sup> Doc. FOF/4.1, p7

<sup>129</sup> Doc. FOF/4, Exhibit F

<sup>130</sup> Doc. FOF/4.2

<sup>131</sup> Doc. FOF/4.2

<sup>132</sup> Doc. FOF/6

<sup>133</sup> Principally FOF/1, FOF/7, and pre call-in submissions relating to LGS dated 23 March 2015, 28 September 2015 and 28 May 2016

132. FOFRA contends that the LGS designation of the Friars Oak site in the draft HNP is strongly supported by local people. In the HNP consultation, the application site was voted the No 1 preferred site for LGS. It is argued that this support for the emerging policy should count against the present application for housing<sup>134</sup>.
133. In 2014, FOFRA carried out a questionnaire survey of local residents' views regarding the application site's value as LGS. The survey drew 153 responses, which showed that the application site is used by local people for a large number of uses: dog walking, leisure walking, running, photography, wildlife observation, picking blackberries and sloes, star gazing, tree climbing, and as a safe place for children to exercise and dogs to be let off leads. The survey responses are tabled<sup>135</sup>. FOFRA argues that this response adds further weight to the HNP's allocation of part of the site for LGS.
134. It is also argued that people need green space for reasons of health and well-being<sup>136</sup>. The application site is considered to meet all of HPC's criteria for LGS, and is seen as the only natural green space left in this part of Hassocks.

#### *Air quality*

135. FOFRA's comments relating to air quality issues are set out in their written submissions, both before and after the date of call-in<sup>137</sup>.
136. FOFRA draws attention to the High Court judgement in *Client Earth (No 2) v SoS for the Environment, Food and Rural Affairs*<sup>138</sup>. As a result of that judgement, it is argued that the COPERT system of measuring and forecasting vehicle emissions has been found unsound, and consequently there is currently no reliable basis for assessing the impact of new developments on AQMAs such as that at Stonepound Crossroads. In the absence of any such assessment, granting permission for the proposed development would risk worsening the existing breach of the relevant EU legislation<sup>139</sup>, or at best prolonging the timescale needed for compliance<sup>140</sup>.
137. There is ample evidence that exposure to NO<sub>2</sub> carries significant risks to human health. The development now proposed should be considered together with the cumulative effects of other planned developments in the same road corridor.

#### *Flood risk and drainage*

138. As with other issues, FOFRA's comments relating to flood risk and drainage issues are set out in a large number of written submissions<sup>141</sup>.

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<sup>134</sup> Doc. FOF/1

<sup>135</sup> Doc. FOF/7

<sup>136</sup> Doc. FOF/1

<sup>137</sup> Principally FOF/2, FOF/5, and pre call-in submissions relating to air quality dated 23 March 2015, 26 September 2015, 25 January 2016, 30 April 2016, 10 May 2016, 19 May 2016, 28 May 2016 and 26 June 2016

<sup>138</sup> [2016] EWHC 2740 (Admin)

<sup>139</sup> Articles 13 and 23 of the Ambient Air Quality Directive (2008/50/EC)

<sup>140</sup> Docs FOF/2 and FOF/5

<sup>141</sup> Principally FOF/3, and pre call-in submissions relating to flooding dated 23 March 2015, 25 September 2015, 28 September 2015, 20 January 2016, 31 January 2016, 14 March 2016, 30 April

139. FOFRA concurs with HPC's view that a sequential test is required. In the absence of this, permission should be refused on principle<sup>142</sup>.
140. Regardless of the site's flood zone classification on the Environment Agency maps, the land is known by local people to be subject to frequent flooding. Photographs of such flooding have been submitted<sup>143</sup>. This may be from surface water and/or groundwater, as well as fluvial flooding. According to MSDC's flood risk guidance, this additional source of flood risk means that the whole site should be considered as if it were in zone 3b. Consequently, sequential testing is needed anyway.
141. If a sequential test were carried out, it would be necessary to consider the sites that are proposed to be allocated for housing in the HNP. These are believed to have a lower flood risk.
142. The Planning Officer's report and Planning Committee minutes show that MSDC misunderstood the purpose of sequential testing and the relevant policy requirements relating to flood risk<sup>144</sup>.
143. FOFRA also has doubts about the adequacy of the proposed surface water drainage system and flood control measures, and their future management<sup>145</sup>.

*Other issues raised by FOFRA*

144. In other written submissions, FOFRA also raise issues relating to flora and fauna, traffic congestion, coalescence, archaeology, capacity in local schools and health facilities, bus services, sewage capacity, the diversion of the public footpath, and prescriptive easements<sup>146</sup>. These issues were not pursued at the inquiry, but remain as the subject of written objections.

**Other oral submissions**

*County Councillor Kirsty Lord*

145. Cllr Lord spoke as the WSCC member for Hassocks, and as a local resident. She was concerned regarding public confidence in the planning process, following the decision to allow the Ham Fields scheme, and the halting of the HNP. The local community had invested time, effort and money in these. There was now a risk of ending up with two large developments which had both been ranked low in terms of public preferences.
146. Cllr Lord supported the positions taken by HPC and FOFRA on the issues of the railway crossing, flooding, the Strategic Gap and coalescence threat. She also voiced concerns about traffic, congestion and local schools.

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2016, 22 May 2016, 19 June 2016, 29 June 2016, 16 July 2016, 31 July 2016, 7 August 2016, 9 August 2016 and 26 August 2016

<sup>142</sup> Doc. FOF/3

<sup>143</sup> FOFRA's written submissions dated 23 March 2015

<sup>144</sup> Doc FOF/3 – attachment 'Document 4'

<sup>145</sup> FOFRA's written submissions dated 23 March 2015, 30 April 2016 and 22 May 2016

<sup>146</sup> FOFRA's submissions dated 23 March 2015, 28 September 2015, 7 February 2016, 20 May 2016, 16 July 2016 and 7 August 2016



*Parish Councillor Ian Weir*

147. Cllr Weir, appearing in a personal capacity, considered that teenagers and young people from the proposed development would find the railway crossing the most convenient route to take when visiting friends at the Clayton Mills estate and other areas to the east of the railway. Given that new developments usually have about 1.5 children per household, this could amount to a significant number of movements across the railway.

**Other written representations**

148. A total of 178 objection letters were received by MSDC before the application was called-in, and a further 60 have been received by PINS since that date. The objections include a number written in a personal capacity by Mr and Mrs Brewer, who also appeared at the inquiry on behalf of FOFRA.
149. The objections cover matters similar to those reported above. In addition, some objectors raise issues regarding the safety of the proposed vehicular access, the location of the proposed open space, and over-reliance on private car travel.
150. There are two letters from the local Member of Parliament, the Rt Hon Nick Herbert MP, supporting FOFRA's stance over the railway crossing, and requesting that significant weight be given to the draft HNP.

**Inspector's Reasoning**

*Note: In the following sections, the numbers in square brackets refer back to the relevant paragraphs earlier in this report.*

*Main issues*

151. From the above, there is no dispute that the proposed development would conflict with Policies C1 and C2 of the adopted MSLP, with regard to its location in the CADR and the Strategic Gap [20,21]. Nor is it disputed that there would be conflict with Policy DP10 of the draft MSDP [25], and Policies 1 and 3 of the emerging HNP [31, 32], with regard to development in the countryside, and the proposed Burgess Hill Gap, and the loss of a proposed LGS. On the other hand, there is a wide measure of agreement that there is not a 5-year supply of housing land in the District [36 - 39]. The other benefits claimed by the applicants [63 - 66] are also largely undisputed.
152. Having regard to these agreed matters, together with the issues identified in the SoS's direction, and those discussed at the inquiry, I consider that the main issues are as follows:
- the weight to be given to the conflict with the policies identified above;
  - the weight to be given to the provision of housing in this location;
  - the weight to be given to the development's other benefits
  - the development's effects on flood risk;
  - the effects on air quality;
  - the safety of future occupiers in relation to the Woodside railway crossing;

*Weight to be given to the conflict with relevant policies*

153. By MSDC's own admission, Mid Sussex lacks a 5-year land supply. In the light of the Supreme Court's ruling [53], MSLP Policies C1 and C2 are not housing supply policies, and so do not come within the ambit of NPPF paragraph 49. However, it is evident that the MSLP did not make any provision for housing beyond 2006 [19, 53]. Its other policies dealing with housing are therefore out of date (giving these words their 'ordinary' meaning), and with regard to how present and future housing needs are to be met, the development plan is either silent or absent.
154. In these circumstances, since additional housing sites must be identified, and Policies C1 and C2 have the effect of restricting the potential supply, these policies cannot be regarded as fully consistent with the NPPF's aim to meet housing needs. As such, NPPF paragraph 215 requires them to be given reduced weight. This does not mean that they carry no weight at all. Policy C1 seeks to protect open countryside, and Policy C2 to prevent coalescence [20, 21], and these are planning considerations which find some support in the NPPF. But their restrictive effect, in the face of a 5-year supply shortfall and an absence of up-to-date housing policies, means they cannot have full weight.
155. Policy C1 is a particularly broad-brush policy, in that it seeks to prevent any expansion of settlements beyond their existing boundaries. In the absence of any evidence to the contrary, it is likely that some of the additional sites needed for housing will have to be found outside the current settlement boundaries. The present application site is directly adjacent to an existing settlement, with a good range of services and transport facilities available, and was assessed as suitable for housing in the SHLAA [48]. Consequently, in this case, it seems to me that C1 should carry only limited weight.
156. Policy C2's purpose is more targeted, in seeking to preserve a gap between Hassocks and Burgess Hill. But that does not necessarily justify protecting the whole of the existing gap in its entirety. The development already approved at Hassocks Golf Club [42] will result in the gap being narrowed to some extent. In that context, the proposed development at Friars Oak would not reduce it any further. Although the development would be seen in glimpsed views from London Road, and distantly from the edge of Burgess Hill, it would not be unduly dominant in the landscape, nor would it extend the village threshold [68 - 71]. A clear gap of around 1.3km to Burgess Hill would still remain. As such, although the development would conflict with Policy C, and would cause some landscape harm, it would not significantly damage the policy's main aims with regard to coalescence and preserving settlement identity. In the circumstances, it seems to me that the conflict with Policy C2 should carry no more than moderate weight.
157. Turning to the draft MSDP, the considerations that apply to draft Policy DP10 [25] are similar to those relating to MSLP Policy C1. The plan as it stands has yet to be found sound, and changes must therefore be expected, possibly including additional housing sites [27, 28]. Blanket protection of the countryside, as in draft Policy DP10, cannot realistically be supported while there is not an identified housing supply. The need for settlement boundaries to be reviewed is acknowledged in the draft policy itself. In the meantime, the uncertainty as to the District-wide housing target, and the possibility of

individual settlement-based targets [110 - 112], means that the boundaries as currently drawn can be given only limited weight.

158. Similarly, in the case of the emerging HNP, the same uncertainties apply. The draft Neighbourhood Plan was prepared on the basis of conformity with the MSDP, which was itself still in the draft stages, and has now run into serious difficulties. This means that the HNP has now effectively had to be put into abeyance [34]. MSDC's action, in pausing the process for the time being, acknowledges that the unresolved problems with the MSDP make it likely that if the HNP were to proceed further, it would be likely to become out of date before it had been made.
159. Consequently, although the proposal for a Burgess Hill Gap appears to accord with draft MSDP Policy DP11 [26, 31], there is no certainty that this enabling policy will survive, nor that the boundaries currently proposed would allow for the housing needed to meet future requirements. Whilst Hassocks has already made a considerable contribution to the District's housing needs [33, 111], the village is amongst the District's most sustainable locations [24], and there seems no compelling reason why it should not be able to take some more if necessary, consistent with its position in the settlement hierarchy.
160. Likewise, there is no guarantee that some sites proposed for Local Green Space will not be needed for housing. Even if the application site is found to meet the criteria for LGS designation [134], that would not necessarily override an unmet need for housing; bearing in mind that the latter will be subject to specific targets in the MSDP, whereas the amount of LGS will not. In this context I also note that the relevant HNP policies are subject to unresolved objections [29].
161. Local people have invested time and energy in the neighbourhood plan process [145]. In the course of that process, the Friars Oak site was rejected for housing. Granting permission contrary to local opinion could undermine public confidence in neighbourhood planning. But the HNP has not reached the stage where it would carry significant weight. In the Ham Fields decision, the SoS gave the draft plan moderate weight, but that was before its progress had been halted [41]. The WMS on Neighbourhood Planning does not apply, and none of the objectors raises any serious arguments as to prematurity. In the circumstances, I conclude that the conflict with Policies 1 and 3 in the draft HNP carries only modest weight.

#### *Weight to be given to the provision of housing*

162. The NPPF requires authorities to boost the supply of housing, meet the full OAN as far as possible, and identify a supply of specific deliverable sites (paragraph 47); to apply the presumption in favour of sustainable development (49); and to deliver a wide choice of high quality homes, widen opportunities for home ownership, and create sustainable, inclusive and mixed communities (50).
163. The present application would provide 130 new homes in an area where there is agreed to be no 5-year land supply. The District's requirement, although yet to be fully quantified, is likely to exceed the identified supply, and there is an accepted record of past under-delivery.

164. The Section 106 agreement<sup>147</sup> provides for a range of tenures, with 30% affordable housing, complying with adopted MSLP Policy H4. As such, the development would be capable of creating a mixed and inclusive community, whilst also widening the opportunities for home ownership.
165. The application site is set in an attractive edge-of-settlement location. There is no reason to doubt that the development would provide a good quality residential environment, and that it could support a development of high quality. The site also has reasonable accessibility to a good range of local facilities [17].
166. In all these respects the development would accord with the aims of the NPPF's housing policies. The social benefits of providing such a development, in accordance with national policy, command significant weight.

*Weight to other benefits*

167. NPPF paragraphs 18 and 19 emphasise the importance of economic growth and job creation. Paragraphs 6 - 8 make it clear that the role of the planning system is to contribute to the achievement of sustainable development, and that economic, social, and environmental gains should be sought jointly and simultaneously in order to guide development to sustainable solutions.
168. The unchallenged evidence is that the development would create significant numbers of jobs both during construction and afterwards, initially through direct investment and construction activity, and then on a longer-term basis through the spending power of 130 new households [63]. On the basis of the evidence, these benefits would be substantial, and would make a meaningful contribution to national and local economic growth. These would be augmented by Council Tax and New Homes Bonus receipts and S.106 payments [64]. In the light of the relevant NPPF advice, it seems to me that these benefits would attract at least moderate weight.
169. The other benefits claimed by the applicants [65, 66] would be largely mitigatory, but the provision of a large area of public open space as proposed would be a social benefit worthy of some weight.

*Effects on flood risk*

170. RHL's proposed drainage strategy has been subjected to extensive and rigorous testing [74-78]. The resulting scheme has been accepted by all of the relevant bodies who have statutory responsibilities for drainage and flooding [80]. There is no technical evidence to counter that of the applicants. Although some elements, such as the proposed road bridge, are not yet designed in full detail, the testing has taken in an appropriate range of worst-case scenarios. I therefore see no reason to doubt that the scheme would be effective in controlling surface water run-off by sustainable means, managing flooding from fluvial and any other sources, maintaining a safe, dry access route, and accommodating 130 dwellings and open space, without risk to future occupiers or to the surrounding area.

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<sup>147</sup> Doc. APP/4

171. Although the western part of the site is within flood zones 2 and 3, the applicants have adequately demonstrated that vulnerable development would not need to be located in this area. If this were not the case, then in accordance with PPG advice, it would have been necessary to apply the sequential test (and possibly also the exceptions test), based on the scheme as a whole. But in this case the scheme lends itself to the 'component-parts' approach that the applicants have taken [79]. That approach is not ruled out by anything in the PPG, and indeed is clearly envisaged in the third footnote to Table 3. In any event, in the present case it is evident that through the MSDP process, MSDC has already sought to identify the most suitable sites for housing, and it seems likely that any sequentially preferable alternative sites would by now have come to light. In this context, the sites already identified in the HNP are not alternatives, as they are already part of the identified supply. In the circumstances, I consider that the approach taken by the applicants is acceptable.
172. Satisfactory arrangements will be needed for the future management and maintenance of the drainage infrastructure. However, the need for such arrangements is commonplace in large developments. There is no reason why this cannot be dealt with satisfactorily by condition.
173. I therefore conclude that the proposed development could be carried out without giving rise to unacceptable flood risks, either on or off-site. In this regard, the scheme would comply with the relevant MSLP Policies CS13, CS14 and CS15, which together seek to ensure that all developments have adequate drainage, and that river channels and floodplains are properly protected.

#### *Effects on air quality*

174. Traffic from the proposed development would add slightly to the levels of NO<sub>2</sub> and PM at the Stonepound Crossroads AQMA. However, the applicants' updated AQA shows that this development, together with all other relevant planned or permitted developments, could be carried out without the relevant air quality objectives for the AQMA being breached beyond 2024. Prior to that date there would be a small breach, in relation to NO<sub>2</sub> only, at one receptor site, but only under the worst-case sensitivity test. At no time would the effect of the Friars Oak development add more than 1% to the levels that would have been achieved without it [93, 97, 98].
175. There is no dispute that NO<sub>2</sub> and PMs are harmful to health. But based on these findings, the authors' conclusion appears justified, that these effects would be imperceptible and insignificant.
176. In the light of the 'Client Earth 2' judgement [136], it is accepted that the COPERT system has its weaknesses, including a tendency to over-estimate future improvements. But the AQA compensates for this by the additional sensitivity testing with CURED [95, 96]. There is no technical evidence to refute the effectiveness of CURED in this respect.
177. In any event, the 'damage cost' system provides a method of mitigating for any residual impacts [99]. An appropriate package of mitigation measures equating to the assessed figure can be secured by condition.

178. I therefore conclude that the proposed development would not give rise to any unacceptable impacts on air quality. Nor do I find any conflict with MSLP Policy CS22, which seeks to avoid unacceptable pollution in any form.

*Safety of future occupiers in relation to the railway crossing*

179. For access to most local facilities, the walking distances from the application site do not differ markedly, whatever the choice of route, whether by the Woodside railway crossing, or the Woodland Tunnel or the Semley Road/Stanford Avenue route [86, 87, 125]. Faced with this range of options, it seems probable that, for these types of trips, the majority would opt for the easier and safer alternatives, rather than the unmanned rail crossing, with its steep steps, stiles, sometimes muddy paths and lack of surveillance, to say nothing of the likely feeling of danger in crossing the track itself.
180. However, this does not necessarily mean that future residents at Friars Oak Fields would not use the railway crossing. Some trips generated by the development would have destinations unrelated to the village centre facilities. These could include leisure walking, dog-walking and running [89], for which the crossing would offer easy access to the countryside, or social trips to other parts of the village, for which in some cases the rail crossing would save a lengthy detour. As Cllr Weir points out, the latter could well include a higher proportion of teenagers and young people, who are likely to be more reliant on walking than other age groups [147].
181. In this context, it also seems to me that for younger people, the factors that make the crossing a less attractive option for many other users may be less of a deterrent amongst this age group. Indeed, as FOFRA suggest, it may be that for some, the perception of danger might actually have the opposite effect [126]. Although this theory is unproven and untested, to my mind it is a possibility that cannot be ruled out.
182. RHL estimate that the increase in usage of the railway crossing would be no more than about two traverses a day, and this estimate is supported by two separate quantitative assessments [88]. However, neither of these is fully convincing. The original, catchment-based method seems to have no proven rationale, and the trip rate per dwelling, derived from the population of the catchment area, is purely a function of the size of the area chosen. Furthermore, the proposed development would be closer to the crossing, and located so that the crossing would lie between them and the village. The logic therefore seems tenuous at best [128]. The comparison with the Tackley case suffers similar weaknesses, and was not pursued by the appellants at the inquiry [130].
183. In the second method, using TRICS, the pedestrian trip rates are derived from actual surveys at other developments, but there is insufficient detail to be able to judge the extent to which these comparators are truly comparable. And distributing these forecast trips between the various destinations and routes relies on a series of assumptions and judgements, which at this stage cannot be verified. Although TRICS is a well-established method for forecasting vehicular movements, those are usually more numerous and predictable. Here the numbers of forecast pedestrian movements are relatively low, and consequently the margin of error is higher. Consequently, as FOFRA point out, quite small variations in the assumptions would be capable of producing a

significantly different result [129]. There is no evidence that any alternative assumptions or scenarios have been tested, as was done in the case of the flood risk and air quality assessments. This seems to me a significant weakness.

184. The contrary opinions expressed by FOFRA, and other objectors, are not based on any factual data or recognised methodology, and it would be easy to dismiss them for that reason. However, there is in my view some strength in their principal argument that, on a purely instinctive basis, the forecast of only two additional traverses per day seems unrealistically low. To my mind this public perception could not have come as any surprise to the applicants, and should have led them to either carry out further testing, or to justify the forecasting methodology in more detail. In these circumstances, the lack of any such further evidence leaves room for significant doubts as to the likely accuracy of the applicants' forecasts.
185. The applicants rely heavily on the view of Network Rail [91]. Significant weight attaches to NR's view, because of their statutory role, and I have no doubt that the company takes safety matters very seriously indeed. But nevertheless, NR's opinion is not determinative. The ALCRM safety grading system puts the Woodside crossing towards the more dangerous end of both the individual and collective risk scales [90, 123-124]. To my mind, this indicates a need for some caution. There is no dispute that the proposed development would increase the crossing's usage to some extent. Irrespective of whether this might change the ALCRM rating, any increase in usage must increase the level of actual risk. For the reasons explained above, in my view the level of that increase has been insufficiently quantified.
186. Furthermore, the correspondence produced by FOFRA suggests that additional safety measures may be feasible, including warning lights or a bridge [127]. At the inquiry, evidence was also given regarding the possible introduction of 'whistle boards', or safer waiting areas at the trackside<sup>148</sup>. There is no indication that such measures have been considered in any detail by the applicants. NR express the view that a contribution to any improvements would be difficult to justify [91], but in the absence of any apparent cost-benefit assessment, I am unable to either agree or disagree on that point. In any event, no contribution to any safety measures is proposed.
187. There is no evidence that enclosing public footpath 5k within a tightly fenced corridor would succeed in reducing the use of the railway crossing [92]. Such a measure would however detract from users' enjoyment of the footpath, and from the appearance of this part of the development. Although this option was presented by the applicants for consideration at the inquiry, they did not go so far as to advocate it. To my mind this would not be an acceptable way of addressing the railway safety issue.
188. I acknowledge the argument that users of the rail crossing should be responsible for their own actions. But in a development of 130 dwellings there is also the likelihood that some potential users would be persons classed as vulnerable, for one reason or another, who could not necessarily take such responsibility. In this context, paragraph 32 of the NPPF requires safe and

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<sup>148</sup> Mr Plumb's oral evidence in response to Inspector's questions

suitable access for all people. Although in this case the rail crossing would not be the only access available, the issues that it raises would still potentially affect the safety of some persons in accessing the development.

189. Drawing these considerations together, it seems to me that the potential implications for public safety are an important consideration. In the absence of any measures to improve the safety of the unmanned railway crossing, permitting the proposed development in such close proximity to it would in my view involve an unacceptable risk to the safety of future occupiers, contrary to the aims of NPPF paragraph 32.

#### **Other matters [144, 149]**

190. The proposed development's potential impacts on flora and fauna are comprehensively examined in the 'Extended Phase 1 Habitat Survey and Protected Species Assessment', and in the accompanying suite of reports dealing with bats, great crested newts, Hazel Dormice, reptiles, and water voles and otters, and the Ecological Method Statement<sup>149</sup>. In the light of these, Natural England saw no need to comment, and the Council's ecological consultant considers that any impacts could be mitigated by condition<sup>150</sup>. I see no reason to disagree.
191. The question of sewage capacity is addressed in the Waste Management, Lighting, Drainage and Utilities Statement<sup>151</sup>, which acknowledges that the existing public sewer in London Road will need to be upgraded. Southern Water's consultation response confirms that this can be secured under the Water Industry Act 1991 requisition procedure<sup>152</sup>. A condition relating to foul drainage is proposed, and I consider this would be adequate.
192. Traffic impact and the safety of the proposed vehicular access are dealt with in the TA, and the Highway Authority's initial objections have been overcome [82-85]. Even with the proposed junction improvement at Stonepound, there would continue to be some queuing, but the development's net effect would not be severe, and therefore would not justify refusal on those grounds. The safety of the access onto London Road has been properly audited, and I see no reason to disagree with the conclusions reached by the Highway Authority.
193. I accept that the distance from the application site to the village centre<sup>153</sup>, whether by the rail crossing or the other routes available, would be enough to deter some residents from making use of walking for regular journeys. But the distances are not so great as to rule it out, and it is likely that many residents would make some use of walking for some journeys. The network of quiet streets to the south of Shepherds Walk would make cycling an attractive option for the more able. Despite the length of the access road, the distance to the bus stops would be not be excessive from most parts of the site. And although some local bus services may have been reduced, the overall level of service still appears reasonable. There is little doubt that a large proportion of journeys would be made by car, as reflected in the TA, but from the evidence

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<sup>149</sup> Files 2/tabs 35-39, and File 3/ tabs 47 and 48

<sup>150</sup> Consultation responses dated 27 February 2014 and 27 March 2015 respectively

<sup>151</sup> File 3/ Tab 54

<sup>152</sup> Consultation response dated 6 March 2015

<sup>153</sup> Mr Plumb's Appendices 5 and 6



available, I do not consider that the degree of reliance on the car would be excessive.

194. As noted earlier, I agree that there would be some harm to the landscape, irrespective of the coalescence issue [156]. But the site is not unduly visible. Most of the existing landscape features could be retained, and some mitigation could be achieved through new planting. On balance, the harm to the landscape would not be so great as to warrant refusal on this ground.
195. The diversion of public footpath 5k, to accommodate one of the proposed attenuation ponds and the new access road [10], would lengthen it slightly, and would add to the changes to its character. But there is no reason to doubt that the path would be retained, and that an appropriate surfacing and landscape treatment could be devised. Although the separate application for the footpath diversion remains before MSDC for a decision, for the purposes of the present inquiry, the SCG records the parties' view that the proposed diversion does not give any grounds to justify a refusal of permission for the proposed housing development<sup>154</sup>. I agree.
196. The site has acknowledged potential for Romano-British and Anglo-Saxon archaeology, including a former Roman Road. The County Archaeologist recommends that further archaeological investigations be required, including trial trenching and a targeted geophysical survey<sup>155</sup>, and a condition is proposed to this effect. The consultation response does not seek preservation in situ, nor does it suggest any reason for refusal on archaeological grounds, and again I concur.
197. Issues with the capacity of local primary and secondary schools and the Hassocks Health Centre are acknowledged in the consultation responses from WSCC as Education Authority, and from the NHS's Horsham and Mid Sussex Clinical Commissioning Group<sup>156</sup>. The S.106 agreement<sup>157</sup> provides for contributions to primary and secondary education, and to healthcare infrastructure, in accordance with the sums and formulae requested by these bodies [5]. On the evidence available it appears that these contributions are likely to be sufficient to mitigate the additional pressure on these local services resulting from the proposed development.
198. The location of the proposed 'country open space', is criticised by some objectors. As proposed, the open space would form a corridor around the west and north sides of the site<sup>158</sup>, and there is some force in the argument that the location would not help to integrate the development with the existing village. However, the configuration would make the best use of the site's landscape features, avoid built development in the floodplain, and limit the incursion into the countryside. On balance, this issue does not provide sufficient grounds for refusal.

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<sup>154</sup> CD 45, para 3.6

<sup>155</sup> Consultation response dated 15 April 2015

<sup>156</sup> Consultation responses dated 17 March 2015 and 28 September 2016 respectively

<sup>157</sup> Doc. APP/4

<sup>158</sup> Plan No 10552-OA-02 (CD 53)

199. Any question of 'prescriptive easements', or similar rights over the land, would be a private matter, separate from the planning process. Such rights are not a material consideration in the present decision.

### **The Section 106 agreement**

200. The main provisions of the S.106 agreement are set out above [5]. In the case of the contributions to education and libraries, the reasons why these contributions are required, the purposes for which they would be used, and the basis for the calculation of the amounts, are set out in a statement by WSCC<sup>159</sup>, as well as in the County Council's consultation response to the application<sup>160</sup>. An explanation in relation to the sport, community buildings, community infrastructure and healthcare contributions is contained in an equivalent statement from MSDC<sup>161</sup>, and the consultation responses from the Leisure Officer and the NHS<sup>162</sup>. The statements make reference to the relevant development plan policies and supplementary guidance<sup>163</sup>.
201. The agreement's provisions relating to affordable housing accord generally with Policy H4 of the MSLP, and in particular with that policy's target that 30% of the total should be affordable. The further requirement for a phasing plan is required to give effect to the provisions relating to affordable housing.
202. None of the obligations are disputed by either party. Based on the above evidence, I am satisfied that the obligations contained in the agreement are necessary to make the development acceptable in planning terms, and are directly related to it, and are reasonable in scale and kind, meeting the relevant legal tests in Regulation 122 of the relevant legislation<sup>164</sup>.
203. Both the WSCC and MSDC statements also confirm that the pooling restrictions in Regulation 123 of the same regulations are complied with.

### **Conditions**

204. The draft conditions contained in the SCG<sup>165</sup> were discussed at the inquiry. In the light of that discussion, I have reduced their number and made some further amendments, to avoid duplication, improve clarity, and ensure that those that remain meet the tests in NPPF paragraph 206. Those that I consider should be imposed, if permission were granted, are set out at the end of this report.
205. A condition would be needed to ensure that the proposed access, and associated road into the development, are provided ahead of any other construction works, for reasons of highway safety. That condition needs to ensure that the access itself accords with the approved plan, and also to control the details of the remainder of the access road, which are not yet submitted. A further condition is needed to ensure the timely provision of estate roads and footways, also for highway safety reasons. A 'Grampian'-

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<sup>159</sup> Doc. MIS/4

<sup>160</sup> Consultation response dated 17 March 2015

<sup>161</sup> Doc. MIS/5

<sup>162</sup> Consultation response dated 20 June 2016 and 28 September 2016 respectively

<sup>163</sup> CD 27 (Development and Infrastructure SPD)

<sup>164</sup> The Community Infrastructure Levy Regulations 2010

<sup>165</sup> CD 45, section 10

style condition is needed to ensure that the development is not occupied until the Stonepound junction improvement has taken place, for reasons of congestion and air quality, as discussed elsewhere in this report. A requirement relating to the Travel Plan is needed, to encourage sustainable travel patterns, but I see no need for this to require any further resubmission of the Travel Plan, as the version already submitted appears adequate. A requirement for the proposed footpath link to Shepherds Walk is reasonable, to ensure that a safe walking route into Hassocks is available.

206. A condition is needed to ensure that the proposed open space areas, including the 'country open space', are laid out and made available to the public, and to secure suitable arrangements for their management. Conditions relating to flood risk management, surface water and foul drainage are needed to minimise the risks to people and property from flooding, and to ensure that the development is satisfactorily drained, in accordance with the matters considered elsewhere in this report.
207. A scheme of air quality mitigation measures is needed to offset the development's residual impacts in this regard, as recommended in the submitted AQA. Similarly, measures are needed to ensure that noise levels can be controlled within and around the proposed dwellings, to accord with the submitted Noise Assessment. Further archaeological investigation is needed, to ensure that any remains are properly recorded.
208. A condition relating to landscaping is needed, in addition to the standard reserved matters, to ensure implementation. A condition regarding ecological mitigation is reasonable, to manage the development's impacts on flora and fauna. However, I have simplified the requirements to avoid over-prescription and duplication with other conditions. A condition to retain the existing trees and hedges is reasonable, but this does not need to duplicate any other conditions with regard to landscaping and I have amended it accordingly.
209. Of the other suggested conditions in the SCG, some related to matters that would be better left to the reserved matters stage. Others related to controls over construction work, which are unnecessary because the majority of the site is well away from existing occupiers. The remainder were unnecessary, unclear or imprecise for other reasons, some of which were agreed at the inquiry. I have therefore omitted all of these further conditions.
210. None of the conditions suggested or recommended overcomes the principal harm that I have identified, relating to safety at the railway crossing.

### **Planning Balance and Conclusions**

211. The proposed scheme would conflict with Policies C1 and C2 of the adopted MSLP, by intruding on open countryside and the Strategic Gap [151]. The latter would include some minor harm to the landscape [156]. Section 38(6) requires that the decision should be made in accordance with the development plan unless outweighed by other material considerations.
212. The District lacks an agreed 5-year supply of housing land, and thus Policies C1 and C2 command reduced weight [153-156]. For the reasons given elsewhere, I consider that C1 should have limited weight, and C2 moderate weight. But nevertheless, these count against the proposed development.

213. With regard to the emerging MSDP Policy DP10, and HNP Policies HNP 1 and 3, although carrying only limited or modest weight, these draft policies are also unfavourable to the development [151, 157-161]. Despite their relatively low weighting therefore, these policy considerations are against the development.
214. On the positive side, the proposed scheme would provide 130 new dwellings, of which 30% would be affordable. It would be capable of creating a high quality residential development, in an attractive environment, and contribute to meeting NPPF objectives for housing choice and home ownership [163-165]. It would also create jobs and inject money into the local economy, and provide around 7 ha of new public open space. Together these social and economic benefits carry significant or moderate weight in favour of the development [166, 168-169]. In respect of flood risk and air quality the development would cause no demonstrable harm, and these considerations are therefore neutral [170-173, 174-178].
215. However, the key factor, in my opinion is the site's proximity to the unmanned and unguarded Woodside railway crossing. The crossing's ALCRM safety rating indicates some danger. The development would increase the level of usage. The available forecasts of the scale of that increase are not convincing. No additional safety measures are proposed. In these circumstances, I consider that the proposed development would pose a significant threat to the safety of future occupiers, and potentially put lives at risk. To my mind, this is a planning consideration that weighs heavily against the development [179-189].
216. Given my finding that the development plan is absent or silent on relevant matters, and that its housing policies are out of date, the application falls to be considered under NPPF paragraph 14. In the light of the above, it is clear to me that the combined weight of the risk to public safety, together with the conflict with relevant policies (albeit that these have reduced weight), plus the harm to the landscape, significantly and demonstrably outweighs the social and economic benefits identified.
217. It follows that the development now proposed does not benefit from the NPPF's presumption in favour of sustainable development.
218. I have had regard to all the other matters raised at the inquiry, and in the written representations, but I find nothing else that could lead me to any different conclusion on these matters.

### **Formal Recommendation**

219. I recommend that planning permission be REFUSED.
220. In the event that this recommendation is not accepted, I recommend that any planning permission be made subject to the recommended conditions set out at the end of this report. I also recommend that planning permission be not granted until the SoS has been satisfied as to the cumulative effects of this and any other relevant development proposals on the Ashdown Forest SAC, in accordance with the relevant Directives and High Court judgement [44-47].

*John Felgate*

INSPECTOR



## INQUIRY DOCUMENTS

### PRE CALL-IN DOCUMENTS

#### APPLICATION DOCUMENTS

Set of 4 black lever-arch files entitled 'Call-In Inquiry Documents':

- |         |       |  |
|---------|-------|--|
| File 1: | 1-33  | Committee report and minutes; application form and plans, etc    |
| File 2: | 34-46 | Submitted reports  |
| File 3: | 47-71 | Submitted reports, screening opinion, application correspondence |
| File 4: | 72-85 | Superseded documents; and footpath diversion application         |

#### CONSULTATION RESPONSES

Black ring-binder entitled 'Consultation responses':

Responses from statutory and technical consultees and other bodies

Set of 3 black lever-arch files entitled 'Representation Letters':

- |           |  |
|-----------|--|
| File 1/3: | Representation letters from members of the public  |
| File 2/3: | Representation letters from members of the public  |
| File 3/3: | Representation letters and consultation responses relating to footpath diversion application |

Blue folder entitled 'FOFRA pre call-in':

Pre call-in representations from FOFRA and its members (extracted from Files 1/3 and 2/3 above)

### POST CALL-IN DOCUMENTS

#### RYDON HOMES

##### Proofs of Evidence

- |          |   |
|----------|---|
| C Hough  | Proof (Planning) and bound-in appendices  |
| C Hough  | Update note, dated 30 May 2017            |
| D Allen  | Vol. 1: proof (Landscape)                 |
| D Allen  | Vol. 2: Figures (A3 booklet)              |
| D Allen  | Vol. 3: Appendices                        |
| P Daykin | Vol. 1: proof (Flood Risk) and Appendix 1 |
| P Daykin | Vol. 2: Appendix pt 1                     |
| P Daykin | Vol. 3: Appendix pt 2                     |
| B Plumb  | Proof (Transport) and bound-in appendices |
| P Wilson | Proof (Air Quality)                       |
| P Wilson | Appendices                                |

##### Documents Tabled at the Inquiry

- |       |  |
|-------|--|
| APP/1 | Graph comparing 'CURED' and 'CPOERT' levels - tabled by P Wilson |
| APP/2 | Plan showing illustrative net developable areas and densities    |
| APP/3 | Mr Boyle's closing submissions                                   |
| APP/4 | Executed Section 106 Agreement, dated 8 June 2017                |

#### HASSOCKS PARISH COUNCIL

##### Proofs of Evidence

- |          |       |
|----------|-------|
| D Mayhew | Proof |
|----------|-------|

D Mayhew	Appendices
D Mayhew	Summary

#### Documents Tabled at the Inquiry

HPC/1	MSDC letter 18 January 2016 re Hassocks Neighbourhood Plan
HPC/2	Table of housing completions and commitments at Burgess Hill
HPC/3	Nexus Planning representation to Mid Sussex District Plan examination
HPC/4	Sequential Flood Risk Test for Mid Sussex District Plan
HPC/5	Email from MSDC dated 20 January 2016, containing comments on Rydon Homes' FRA
HPC/6	Reply to the above, and covering email from C Sampson dated 29 January 2016
HPC/7	Mr Mayhew's closing submissions

### **FRIARS OAK FIELDS RESIDENTS' ASSOCIATION**

#### Tabled prior to the Inquiry

FOF/1	Submission on local green space (20 February 2017)
FOF/2	Submission and attachments relating to air quality (21 February 2017)
FOF/3	Submissions relating to the sequential test (comprising Documents 1-4 and Exhibits A-D), dated 23 February 2017
FOF/4	Submissions relating to the railway crossing, dated 23 February, including: FOF/4.1: FOFRA opinion on Woodside crossing FOF/4.2: FOFRA evaluation of WSP methodology 1 FOF/4.3: FOFRA evaluation of WSP methodology 2 TRICS Exhibits A-N

#### Tabled at the Inquiry

FOF/5	Air quality supplementary submission
FOF/6	Woodside crossing - explanation of the 'Tackley method'
FOF/7	Bundle of local green space evidence gathering forms

### **OTHER REPRESENTATIONS**

Red folder containing 60 objection letters from local residents

### **MISCELLANEOUS**

MIS/1	Core Documents list
MIS/2	Tree Preservation Order relating to the application site
MIS/3	MSDC letter dated 1 June 2017 to the Examining Inspector, and attached doc. 'MSDC 18' re Ashdown Forest case
MIS/4	'CIL Justification' statement by West Sussex County Council, relating to the S.106 agreement
MIS/5	'Planning Obligations Written Justification' by MSDC
MIS/6	Agreed plans of routes and viewpoints to be covered in final site visit

### **CORE DOCUMENTS**

CD1 - CD54	Bundle of numbered Core Documents (see list at MIS/1)
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### **RECOMMENDED CONDITIONS (IF PLANNING PERMISSION IS GRANTED)**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters"), for each phase of the development, shall be submitted to and approved in writing by the local planning authority before any development takes place, and the development shall be carried out as thus approved.
- 2) Application for approval of the reserved matters for each phase of the development shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development of each phase shall commence not later than 2 years from the date of approval of the last of the reserved matters for that phase to be approved
- 4) The access to the development shall be constructed in accordance with the approved access plan, No 4937-GA-08D, Revision C. The remainder of the main access road, including the proposed bridge, embankments and culvert, shall be constructed in accordance with further details, to be submitted to the local planning authority and approved in writing. No other development on the site shall be commenced until the junction with London Road, and the first 200 metres of the access road, have been provided, at least to base course, in accordance with these approved details.
- 5) No dwelling shall be occupied until the estate roads, footways, turning areas, and parking spaces to serve that dwelling have been provided, at least to base course, in accordance with details to be submitted to the local planning authority and approved in writing.
- 6) No dwelling shall be occupied until a scheme of improvement works at the Stonepound Crossroads has been implemented in accordance with a detailed scheme to be submitted to the local planning authority and approved in writing.
- 7) No dwelling shall be occupied until the submitted Residential Travel Plan, dated 15 July 2015, has been brought into effect. Thereafter, the Travel Plan shall be implemented in accordance with the recommendation set out therein.
- 8) No dwelling shall be occupied until a footpath link has been provided from the development to Shepherds Walk, in accordance with details to be submitted to the local planning authority and approved in writing.
- 9) No construction work on any dwelling shall commence until a detailed scheme for the provision of the proposed public open space, shown on the approved plan No 10552-OA-02, has been submitted to the local planning authority and approved in writing. The open space scheme shall include detailed proposals with regard to layout, landscaping, drainage, equipment, footpaths, cycleways, and boundary treatments within the open space areas. The scheme shall also contain proposals for the future management and maintenance of the open spaces, and the timing of provision. The open space scheme shall thereafter be implemented in accordance with these approved details, and the open space shall be kept available for use by the public.



- 10) No development of any kind shall be commenced until a detailed Flood Risk Management Scheme has been submitted to the local planning authority and approved in writing. The scheme shall contain detailed proposals for the management of all types of flood risks within the site, including the detailed design of all proposed bridges, culverts and structures within the floodplain, all necessary flood compensation areas, and any other necessary mitigation measures, broadly in accordance with the principles outlined in the approved Flood Risk Assessment, dated 12 April 2016. The scheme shall also set out a timetable for the implementation of these measures, and the proposed arrangements for their future management and maintenance. The Flood Risk Management Scheme shall thereafter be implemented in accordance with the details and timetable thus approved, and the measures provided shall be retained and maintained in full working order for the lifetime of the development.
- 11) No construction work on any dwelling shall commence until a detailed scheme of surface water drainage has been submitted to the local planning authority and approved in writing. The scheme shall contain details of all proposed attenuation ponds, basins, swales, and other surface water drainage infrastructure, broadly in accordance with the principles outlined in the approved Flood Risk Assessment, dated 12 April 2016. The scheme shall also set out a timetable for the implementation of these measures, and the proposed arrangements for their future management and maintenance. The Surface Water Drainage Scheme shall thereafter be implemented in accordance with the details and timetable thus approved, and the measures provided shall be retained and maintained in full working order for the lifetime of the development.
- 12) No construction work on any dwelling shall commence until a Foul Drainage Scheme for the development has been submitted to the local planning authority and approved in writing. The foul drainage scheme shall thereafter be implemented as approved, and no dwelling shall be occupied until the relevant foul drainage infrastructure to serve that dwelling has been provided.
- 13) No dwelling shall be occupied until an Air Quality Mitigation Scheme for the whole development has been submitted to the local planning authority and approved in writing. The scheme shall contain full details of the mitigation measures that are proposed, and their costs, broadly equating to the emissions mitigation calculation at Table 15 of the submitted Air Quality Assessment report, dated May 2017. The scheme shall also include a timetable for the implementation of these approved mitigation measures. The mitigation measures shall be carried out in accordance with the details and timetable thus approved.
- 14) No dwelling shall be occupied until a Noise Mitigation Scheme for that phase of the development has been submitted to the local planning authority and approved in writing. The scheme shall show how each dwelling will be enabled to achieve the ambient indoor noise target levels set out in Table 1 of the submitted Environmental Noise and Vibration Assessment, dated February 2015. The development shall be carried out in accordance with the Noise Mitigation Scheme as thus approved.
- 15) No development shall take place until a programme of archaeological work has been secured in accordance with a written scheme of investigation, to be submitted to the local planning authority and approved in writing. The scheme of investigation shall thereafter be carried out in full.
- 16) The details of landscaping to be submitted pursuant to Condition 1 shall include a timetable for their implementation, and the landscaping works shall thereafter be

implemented in accordance with the timetable thus approved. For a period of five years after planting, any plants or trees which die or are destroyed, or become seriously damaged or defective, shall be replaced by another of the same size and species, at the same place, within the next available planting season.

- 17) No development shall take place until a scheme of ecological mitigation has been submitted to the local planning authority and approved in writing. The scheme shall include details of:
- i) the relocation of reptiles from within the site
  - ii) other ecological management measures during construction
  - iii) a lighting strategy to minimise light pollution to wildlife
  - iv) new habitat creation and enhancement
  - v) a Landscape and Environmental Management Plan

The ecological mitigation scheme shall thereafter be implemented in accordance with the approved details.

- 18) All existing trees and hedgerows on the site shall be retained unless specifically approved for removal at the reserved matters stage. All trees and hedges to be retained shall be protected during construction by means of protective fencing, in accordance with the details specified in the submitted Arboricultural Implications Assessment, dated 12 February 2015. Within the areas thus fenced, there shall be no excavation, trenching, alterations to ground levels, or storage of materials at any time during the construction period. For a period of five years after the removal of the protective fencing, any tree or hedge which is cut down, uprooted, destroyed, or become seriously damaged or defective, shall be replaced at the same location by another of a size and species to be approved by the local planning authority in writing, within the next available planting season.

Richborough Estates



# Ministry of Housing, Communities & Local Government

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## 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.