



Department for
Communities and
Local Government

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

Our Ref: APP/D3830/A/13/2203080
Your Ref: S.6436

4 September 2014

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY RYDON HOMES LIMITED
LAND AT LITTLE PARK FARM and LAND NORTH OF HIGHFIELD DRIVE,
HURSTPIERPOINT, WEST SUSSEX**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Jennifer Vyse DipTP DipPBM MRTPI, who held a public local inquiry between 17 and 19 December 2013 into your clients' appeal against the refusal by Mid-Sussex District Council ("the Council") to grant outline planning permission for a residential development for 140 units on land at Little Park Farm and 17 units on land north of Highfield Drive, together with a change of use from agricultural land to country open space (18.63 ha) and a temporary construction access from Chalkers Lane servicing the Little Park Farm development proposal, in accordance with application No 12/04141/OUT dated 30 November 2012.
2. The appeal was recovered for the Secretary of State's determination on 1 November 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves proposals which raise important or novel issues of development control and/or legal difficulties.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendations. 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 application for costs (IR1.1) made by your clients at the Inquiry is the subject of a decision letter being issued separately by the Secretary of State.

Jean Nowak, Decision Officer
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Policy considerations

5. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the Mid Sussex Local Plan, adopted in May 2004; and the Secretary of State agrees with the Inspector that the policies most relevant to this case are those referred to at IR5.3-5.6.
6. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework) and the subsequent planning guidance (comments on which were taken into account by the Inspector –see IR2.9); as well as the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. He has also had regard to the Submission version of the Hurstpierpoint and Sayers Common Parish 2031 Neighbourhood Plan and, in that context, the Written Ministerial Statement on Neighbourhood Planning published on 10 July 2014.

Main issues

Whether the contribution to the supply of housing is outweighed by other considerations

7. The Secretary of State agrees with the Inspector (IR14.3) that, although the site lies in open countryside where development would be contrary to the relevant policies of the development plan, the Council has a substantial shortfall in its five-year supply of housing land so that paragraph 49 of the Framework indicates that the policies on the supply of housing land should not be considered up-to-date. He therefore further agrees with the Inspector (IR14.4) that the main consideration in this case is whether the proposal constitutes sustainable development having regard to its effect on the character and appearance of the surrounding countryside and, if so, whether that would significantly and demonstrably outweigh any benefits associated with the development.

Character and appearance

8. The Secretary of State agrees with the Inspector that, for the reasons given at IR14.5, the strategic gap would not be compromised by the appeal scheme and there would be no harm in this regard. He also agrees with the Inspector at IR14.6 that there would be no impact on the local gap between Hurst Wickham and Hassocks.
9. For the reasons given at IR14.13-14.17 with regard to the Highfield Drive development Area, the Secretary of State agrees with the Inspector's conclusions at IR14.17 that there would be no material harm to the character and appearance of the Hurst Wickham Conservation Area and, therefore, no harm to its significance as a heritage asset. Nor, subject to conditions, would there be any material harm to the character and appearance of the surrounding area as a consequence of this part of the appeal scheme.
10. With regard to the majority of the appeal site, including the Little Park Farm development area, the Secretary of State has given careful consideration to the Inspector's analysis at IR14.18-14.27 and, for the reasons which she gives there, agrees with her overall conclusion at IR14.28 that, whilst the landscape and visual impact would, initially, be moderate adverse in extent, magnitude and significance, this

would largely be capable of appropriate mitigation in the longer term and the impact would reduce to slight adverse.

11. The Secretary of State has also considered the Inspector's recommendation with regard to the proposed Countryside Open Space (COS), which forms a main element of the appeal proposal and, for the reasons given at IR14.29, agrees with her conclusion that the COS would cause no harm to the established character and appearance of the area while augmenting other nearby green spaces.

Highway safety

12. The Secretary of State has carefully considered the Inspector's findings with regard to highway safety and related issues at IR14.30-14.38. He notes that the highway authority has raised no concerns about the impact of the development on the local highway network and he is satisfied that, subject to the conditions and planning obligations proposed, the vehicular and pedestrian access arrangements are not a cause for concern.

Living conditions

13. For the reasons given at IR14.39, the Secretary of State agrees with the Inspector that there would be no conflict with the Local Plan or the Framework with regard to protecting residential amenity.

Biodiversity and trees

14. For the reasons given at IR14.40-14.43, the Secretary of State agrees with the Inspector's conclusion that the development proposed would not have a material adverse impact on the biodiversity and/or arboricultural interest of the appeal site.

Flooding and drainage

15. The Secretary of State agrees with the Inspector at IR14.46 that, although there clearly are existing problems with localised flooding and sewage disposal, for the reasons given at IR14.44-14.45, and subject to appropriate conditions, the development proposed need not exacerbate existing sewage disposal problems or the risk of flooding either on the appeal site or over the wider area.

Accessibility

16. For the reasons given at IR14.47-14.48, the Secretary of State agrees with the Inspector at IR14.48 that existing public transport provision in the area, along with the walking and cycling links included in the scheme, would be sufficient to ensure a realistic prospect that access to those services and facilities required by people on an everyday basis would be possible by sustainable transport modes.

Neighbourhood Plan (NP)

17. The Secretary of State notes that both development sites are allocated for housing in the emerging NP, which also allocates the COS included in the appeal scheme for that purpose (IR14.49). Within that context, the Secretary of State has noted the arguments set out by the Inspector at IR14.50-14.53, including her assessment of the appeal scheme against your clients' LVIA (IR14.52) and of the weight to be given to the emerging NP (IR14.53). However, since the Inspector wrote her report, the

Submission Version of the NP has completed its public consultation (on 23 May 2014) and has now been submitted to the Council for examination. Therefore, although the NP has yet to complete its assessment by an independent examiner and, if approved, be put to public referendum, the terms of the Framework and the guidance mean that it can now be given more weight than when the Inspector was considering it.

18. In the light of this, the Secretary of State considers it appropriate (as stated in the Written Ministerial Statement of 10 July 2014 - referred to in paragraph 6 above) to give local people an opportunity to ensure they get the right types of development for their community while also planning positively to support strategic development needs. The Secretary of State has therefore given significant weight to the fact that the emerging NP has identified these sites for housing and, as the Council has yet to complete an up-to-date objectively assessed housing needs analysis against which to measure the overall NP proposals, he considers it appropriate, as things currently stand, to tip the planning balance in favour of the emerging NP proposals.

Benefits and other matters considered by the Inspector

19. For the reasons given at IR14.54, the Secretary of State agrees with the Inspector that, as the Council accepts that it does not have a five year housing land supply, related policies in the Local Plan are to be considered as being out of date so that the presumption in favour of development set out in the Framework should apply unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
20. The Secretary of State also agrees with the Inspector (IR14.55) that, although there would be no harm arising from the appeal scheme in terms of highway safety, flooding/drainage, living conditions and biodiversity, the absence of harm does not add positive weight in the overall planning balance. However, he also agrees with the Inspector at IR 14.56 that there would be significant benefits arising from the provision of 157 dwellings and a large area of publicly accessible COS. He also agrees with her with regard to her reasoning on the other matters raised as set out at IR14.57-14.59.
21. Overall, the Secretary of State agrees with the Inspector that, for the reasons summarised at IR15.1-15.3, the proposed scheme would represent a sustainable form of development in economic, social and environmental terms.

Conditions

22. The Secretary of State has considered the proposed conditions and the Inspector's comments on them at IR12.1-12.21 and, like the Inspector, he is satisfied that those conditions set out at Annex A to this letter are reasonable and necessary and meet the tests of the Framework and the guidance.

Obligation

23. The Secretary of State has considered the terms of the planning obligation submitted at the Inquiry and considered by the Inspector at IR13.1-13.15; and he agrees with her at IR15.3 that these meet the Framework tests and comply with the CIL Regulations.

Overall Conclusions

24. Overall, the Secretary of State considers that, although the proposed development would represent an extension of the built-up area into what is presently countryside, it represents a sustainable form of development which accords with the emerging NP currently going through the statutory processes as well as with the policies of the Framework taken as a whole.

Formal Decision

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendations. He hereby allows your clients' appeal and grants planning permission for a residential development for 140 units on land at Little Park Farm and 17 units on land north of Highfield Drive, together with a change of use from agricultural land to country open space and a temporary construction access from Chalkers Lane servicing the Little Park Farm development proposal, in accordance with application No 12/04141/OUT dated 30 November 2012, subject to the conditions set out at Annex A to this letter.

26. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

27. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

29. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

JEAN NOWAK

Authorised by Secretary of State to sign in that behalf

Richborough Estates

CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for any phase of the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins on that phase. Development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters for any phase of the development hereby permitted shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for that phase.

PLANS

- 4) Insofar as access is concerned, the development hereby permitted shall be carried out in accordance with the following approved plans: 0454-GA-05 RevB and 0454-GA-12B RevB.

ACCESS/HIGHWAYS/TRAVEL PLAN

- 5) Prior to commencement of development on the **Highfield Drive** phase, including works of ground clearance or site preparation, full details of the access to the site from Highfield Drive, including a timetable for implementation of the different stages of construction of the access, shall be submitted to and approved in writing by the local planning authority. The access shall be constructed in accordance with the approved details and timetable.
- 6) Prior to commencement of development on any part of the **Little Park Farm** phase, including works of ground clearance or site preparation, full details of the access from Iden Hurst, including a timetable for implementation of the different stages of construction of the access, shall be submitted to and approved in writing by the local planning authority. The access shall be constructed in accordance with the approved details and timetable.
- 7) Prior to commencement of development on any part of the **Little Park Farm** phase, including works of ground clearance or site preparation, full details of the access from Chalkers Lane, including temporary traffic lights and a timetable for implementation of the different stages of construction of the access, shall be submitted to and approved in writing by the local planning authority. The access shall be constructed in accordance with the approved details and timetable.
- 8) Prior to commencement of development on any part of the **Little Park Farm** phase, details of a scheme to ensure that, once no longer required for construction traffic, use of the access off Chalkers Lane is restricted to pedestrians/cyclists and emergency vehicles only, shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall include a timetable for implementation of the scheme. Development shall be carried out in accordance with the approved scheme and timetable.
- 9) Prior to commencement of development on any part of the **Little Park Farm** phase, including works of ground clearance or site preparation, details of a scheme to prevent general construction vehicles from entering the site via Iden Hurst shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 10) Prior to commencement of development on any part of the **Little Park Farm** site, a scheme for the assessment of the post-construction impact of the development hereby permitted on traffic speeds on Iden Hurst shall be submitted to and approved in writing by

the Council. The details to be submitted shall include a timetable for both implementation of the scheme of assessment, at defined intervals of occupation, and for the submission of the results to the Council.

- 11) Prior to commencement of development on any part of the **Little Park Farm** site, a scheme for the assessment of the post-construction impact of the development hereby permitted on traffic flows along Cuckfield Road shall be submitted to and approved in writing by the Council. The details to be submitted shall include a timetable for both implementation of the scheme of assessment, at defined intervals of occupation, and for the submission of the results to the Council.
- 12) Prior to commencement of development, details of a scheme to upgrade existing public footpaths within the site and showing how the proposed footpaths and cycle ways within the site will link to the existing network, shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall include a timetable for implementation. Development shall be carried out in accordance with the approved scheme and timetable.
- 13) No dwelling on any phase of the development hereby permitted shall be occupied until a detailed Travel Plan for residents of that phase, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be developed in accordance with the principles set out in the WSP Framework Travel Plan dated 30 January 2013, submitted with the planning application, and with the West Sussex County Council on travel plans. It shall be implemented in accordance with the agreed timetable and details and shall remain operative as long as the development is occupied.

BOUNDARY TREATMENT

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

SITE LEVELS

- 15) Development shall not begin on any phase of the development hereby permitted, until details of the finished ground and floor levels within that phase, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

DRAINAGE

- 16) No building on any phase of the development hereby permitted shall be occupied until surface water drainage works for that phase have been implemented in accordance with details that shall have previously been submitted to and approved in writing by the local planning authority. The submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation in relation to each phase of the development; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker, or any other arrangements to secure the operation of the scheme throughout its lifetime.

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

PLAY AREAS

- 18) No development shall take place on any phase of the development hereby permitted until details of the layout and equipment for the play area for that phase, together with a timetable for its construction, and details of future management and maintenance, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and timetable.

ARCHAEOLOGY

- 19) No development shall take place on any phase of the development hereby permitted, including any works of ground clearance or site preparation, until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation that has previously been submitted to and approved in writing by the local planning authority.

TREES/ECOLOGY/LANDSCAPE MANAGEMENT

- 20) No development shall take place on any phase of the development hereby permitted, including any works of ground clearance or site preparation, until all existing trees, shrubs and hedges to be retained within that phase, and any associated buffer zones, have been protected by fencing in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the local planning authority. The protective fencing and exclusion zones shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.
- 21) No dwelling in any phase of the development hereby permitted shall be occupied until a Landscape Management Plan, including long term objectives, management responsibilities, arboricultural supervision and maintenance schedules for all associated landscaped, treed and open areas, other than small privately owned domestic gardens, has been submitted to and approved in writing by the local planning authority. The Landscape Management Plan shall be carried out in accordance with the approved details.
- 22) No development shall take place on any part of the development hereby permitted, including any works of ground clearance or site preparation, until details of how the mitigation measures set out in Section 5 of the Ecological Assessment undertaken by Ecology Solutions Limited (November 2012) are to be implemented have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include a timetable for implementation. Development shall be carried out in accordance with the approved details and timetable.

LIGHTING

- 23) No external lighting shall be installed within any part of the site (other than within private domestic curtilages) other than in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

CONTAMINATED LAND

- 24) Other than as may be required by an approved scheme of remediation, no development, including works of ground clearance and site preparation, shall take place on any phase of the development hereby permitted until a full contaminated land assessment for that

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

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

CONSTRUCTION

- 26) No development shall begin on any phase of the development hereby permitted, including any works of ground clearance or site preparation, until a Construction Management Plan (CMP) for that phase has been submitted to and approved in writing by the local planning authority. The CMP shall address, but is not restricted to the following matters:

- i) public safety, amenity and site security
- ii) noise and vibration controls
- iii) air and dust management
- iv) storm water and sediment control
- v) waste and materials re-use
- vi) traffic management
- vii) on-site signage

The approved CMP shall be adhered to throughout the construction period.

- 27) Works of demolition, site clearance, or construction, including the use of plant and machinery on the site, shall not take place on any phase of the development hereby permitted outside 08.00-18.00 hours Monday to Friday and 09.00-13.00 hours on a Saturday, nor at any time on Sundays or bank/public holidays.
- 28) No burning of construction waste shall take place on any phase of the development hereby permitted.

ENERGY SUPPLY

- 29) Prior to commencement of any phase of development, details, including a timetable for implementation, of how the development will maximise energy conservation shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and timetable.

Report to the Secretary of State for Communities and Local Government

by Jennifer Vyse DipTP DipPBM MRTPI

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

Date 23 April 2014

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY

RYDON HOMES LIMITED

AGAINST THE DECISION OF

MID-SUSSEX DISTRICT COUNCIL

Inquiry opened on 17 December 2013

Land at Little Park Farm, Hurstpierpoint, West Sussex BN6 9XX and
Land north of Highfield Drive, Hurstpierpoint, West Sussex BN6 9QU

Appeal Ref: APP/D3830/A/13/2203080

Appeal Ref: APP/D3830/A/13/2203080

**Land at Little Park Farm, Hurstpierpoint, West Sussex BN6 9XZ and
Land north of Highfield Drive, Hurstpierpoint, West Sussex BN6 9QU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Rydon Homes Limited against the decision of Mid-Sussex District Council.
- The application No 12/04141/OUT, dated 30 November 2012, was refused by a notice dated 22 July 2013.
- The development proposed comprises residential development for 140 units on land at Little Park Farm and 17 units on land north of Highfield Drive, together with a change of use from agricultural land to country open space, and a temporary construction access from Chalkers Lane servicing the Little Park Farm development proposal.

Summary of Recommendation: That the appeal be allowed, and planning permission granted subject to conditions.

1. Application for Costs

- 1.1 An application for costs was made by the appellant against the Council. That application is the subject of a separate Report.

2. Procedural and Background Matters

- 2.1 The Inquiry sat for three days (17-19 December 2013). I undertook an accompanied visit to the site and its surroundings on the first day.
- 2.2 The application was submitted in outline, with all matters other than access reserved for future consideration. It was refused, against officer recommendation, on 22 July 2013. The subsequent appeal was recovered for determination by the Secretary of State by a direction made on 1 November 2013 under the provisions of the Town and Country Planning Act 1990 (as amended). The stated reason for recovery is that the appeal involves proposals that raise important or novel issues of development control and/or legal difficulties.
- 2.3 The Council's Decision Notice sets out two reasons for refusal. The first, which relates only to the Little Park Farm element of the appeal scheme, cites conflict with one Local Plan policy, policy C1. However, the subsequent evidence of the Council included reference to policy C2 and referred to potential impact on Ancient Woodland. In correspondence between the parties prior to the Inquiry, the Council confirmed that, whilst policy C2 was relevant (on the basis that it relates to Strategic Gaps, the appeal site lying within such a Gap) the Council's case was predicated, in this regard, only on conflict with policy C1.¹
- 2.4 With regard to Ancient Woodland, the Council maintained that impact on the Woodland had clearly been a concern of Members in the context of paragraph 118 of the National Planning Policy Framework (the Framework) and maintained that those concerns were reflected in the reason for refusal. That was disputed by the appellant, who objected to what was perceived as an attempt to supplement and expand the reason for refusal. Rebuttal proofs were subsequently submitted by the appellant to deal with the matter, seeking to demonstrate that the land crossed by the proposed access off Iden Hurst was

¹ Document 20

not Ancient Woodland.² However, at the start of the Inquiry, it was confirmed for the Council that its concerns in relation to the Ancient Woodland were limited to its impact on, and value to, the landscape and the Council adduced no evidence on arboricultural or ecological loss or deterioration.³ Consequently, it was agreed that there would be no benefit to the Inquiry in calling Mr Forbes-Laird, the appellant's witness on this matter and author of the rebuttal proof.

- 2.5 In addition, although the Council maintained that paragraph 118 of the Framework was contravened by a 'landscape context' impact, that point was abandoned in cross-examination of Mr Griffiths, when he accepted that the fifth bullet of Framework paragraph 118 related to the protection of irreplaceable habitats, in the context of the whole paragraph being directed to conserving and enhancing biodiversity and was not a landscape issue.
- 2.6 The combination of those changes in the Council's position resulted in the striking through of substantial parts of its written evidence.
- 2.7 The second reason for refusal set out on the Decision Notice concerns the absence of a planning obligation to address infrastructure requirements and affordable housing. An Agreement in the form of a deed was submitted at the Inquiry under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended).⁴ As confirmed by the Council in opening, there was consensus between the parties on the arrangements secured and the appeal scheme was no longer resisted on this basis.⁵
- 2.8 In August 2011, the Council refused an outline application for 51 units on land to the north of Highfield Drive (Application No 11/01391/OUT). The subsequent appeal⁶ was dismissed in March 2012 for reasons relating to the impact on the character and appearance of the surrounding area and the significance of the Hurst Wickham Conservation Area. Whilst the appeal site in that case now forms part of the current appeal site, that scheme was quite different from the Highfield Drive element of the scheme now proposed. The current proposal, which relates to a significantly fewer number of units at a lower density, concentrates built development on the southern boundary of the site, away from the boundary with Hurst Wickham Conservation Area and its associated properties. It is not directly comparable, therefore, with the scheme the subject of this appeal.
- 2.9 Following the close of the Inquiry, the Government's Planning Practice Guidance (planning guidance) was issued. The main parties were given the opportunity to comment on the implications of that guidance on their respective cases. I have taken the comments received,⁷ as well as the guidance itself, into account in making my recommendation.

3. The Site and its Surroundings

- 3.1 The site and its surroundings are described in detail in the Landscape Report⁸ and Design and Access Statement⁹ submitted with the planning application; in

² APP/3/P and APP/3/A

³ Document 1 paragraph 24

⁴ Document 13

⁵ Document 1 footnote 1

⁶ Appeal Ref: APP/D3830/A/11/2160683 Doc 24

⁷ Docs 25 and 26

⁸ ADF2 Tab 13 section 3

the evidence of Mr Huskisson¹⁰ and Mr Griffiths;¹¹ at section 2 of the Statement of Common Ground;¹² and at the relevant section of the officer's report to the planning committee.

- 3.2 The appeal site, which extends to some 32 hectares of generally open fields, lies between two 'spurs' of development which extend north from the developed ridge of Hurstpierpoint: the western spur follows the B2117 Cuckfield Road; the eastern spur, which includes the linear hamlet of Hurst Wickham, a designated Conservation Area, extends along College Lane. Part of the boundary of the Conservation Area is contiguous with the eastern boundary of the appeal site.
- 3.3 A sunken track, which is excluded from the application site, runs north from St Georges Lane in Hurstpierpoint, dissecting the appeal site into two unequal parts. The smaller eastern part includes what is referred to hereafter as the Highfield Drive development area. The much larger, roughly L-shaped western part contains what I shall refer to as the Little Park Farm development area.
- 3.4 Two public footpaths cross the appeal site. In the north, footpath No 62Hu crosses a stream and turns west to enter a roughly triangular area of woodland known as Tilley's Copse. Although a number of well used paths criss-cross the woodland, the definitive route heads south along the western edge of the Copse, from where there are informal access points across the stream into the adjacent Fairfield Recreation Ground, before turning west along the along the rear boundary of properties on Iden Hurst, emerging eventually onto Cuckfield Road. Footpath No 63Hu enters the appeal site near to Trinity Road, following the former Little Park Farm field boundary, continuing along the field to the south of Big Edgerley (a substantial, detached residential property that stands in its own grounds) and the adjacent Little Edgerley (a timber framed barn) before exiting the site at its north-east corner where it meets the sunken track referred to above. Other footpaths link from the sunken track eastwards to Hurst Wickham.
- 3.5 Levels change across the fields that comprise the Little Park Farm development site, from a high point in the south, to a low point at Tilley's Copse (a change of around 12 metres overall). Little Park farmhouse, a grade II* listed building, lies outwith the appeal site, close to the south-western corner. North End House, an attractive flint cottage, also lies adjacent to the site boundary here. To the north, beyond further fields, are Chalkers Lane and the substantial grounds of Hurstpierpoint College, including its grade II listed Chapel. Tilley's Copse lies at the northern end of this part of the appeal site, with a further belt of woodland of varying width, known as The Wilderness, running along the western boundary to the rear of properties on Iden Hurst, St Lawrence Way, Fairfield Crescent and Wilderness Road.
- 3.6 The Highfield Drive site, which is relatively level, is separated from Highfield Drive, a residential estate road, by an established hedgerow and public footpath No 65Hu which runs immediately adjacent to, but outside the southern boundary, linking College Lane with St Georges Lane. The site has an open

⁹ ADF1 Tab 4

¹⁰ APP/1/P and APP/1/A

¹¹ DC/2/P and DC/2/A

¹² SoCG1

aspect to the north and west. Residential properties within the linear hamlet of Hurst Wickham back onto the eastern boundary, with residential development at the edge of Hurstpierpoint to the south.

- 3.7 Hurstpierpoint Conservation Area, which does not have a contiguous boundary with the appeal site, lies to the southwest.¹³

4. The Proposal

- 4.1 The scheme comprises three main elements. Two areas of housing would provide a total of 157 dwellings as a mix of 1, 2, 3, 4 and 5 bedroom properties (140 on the Little Park Farm site and 17 on the land north of Highfield Drive) 30% of which would be affordable units. In addition, it is proposed that the land between and around the two residential areas would be transferred to the Parish Council, to be maintained as publicly accessible Country Open Space (COS). Although all matters other than access are reserved for future consideration, the Design and Access Statement indicates that the majority of dwellings would be two-storey.
- 4.2 Site access to the Little Park Farm site would be obtained from the end of Iden Hurst, a residential cul-de-sac, through a narrow strip of woodland at the northern end of The Wilderness, just to the south of Tilley's Copse. The illustrative layout suggests a central spine road on a north-south axis, incorporating natural features such as hedgerows and a swale linking to a new balancing pond. Existing landscaping would be retained and strengthened and new areas of tree planting are proposed. Housing density would vary across the site, reducing towards the boundaries with the adjacent countryside. The housing would also be separated from the adjacent Ancient Woodland by a buffer zone. A local equipped area of play would be provided within this part of the development. A temporary construction access to the site is proposed off Chalkers Lane, to be retained during the construction phase. Thereafter, it would be surfaced and retained as a pedestrian/cycle/emergency access to the Little Farm Park development.
- 4.3 Access to the Highfield Drive site would be taken from the existing spur at the northern end of Highfield Drive. The illustrative layout shows a cul-de-sac extending northwards into the site, with driveways leading off to the east and west and pedestrian links to the neighbouring open space. Existing hedgerows would be retained, apart from openings required to afford access. Balancing ponds and a small play area would also be provided. An area of open space, some 80-130 metres wide would be retained between the dwellings proposed and the Conservation Area boundary. The development parcel is irregular in shape and, whilst it would dissect a field boundary on the site, the edge of the built development would be enclosed by new hedgerow planting. The illustrative layout shows that the density of development would reduce to the west, as that area is more visible from St Georges Lane. It also indicates single storey bungalow properties along the northern edge, with two storey buildings towards the boundary with Highfield Drive, to give a 'softer' edge to the wider open land beyond.

¹³ Conservation Area boundaries relative to the site are shown on plan DHA3 at ADF2 Tab 3.

- 4.4 An Outline Landscape and Ecological Management Plan setting out the principal features to be included, and future management of the green infrastructure and the COS, is included with the application.¹⁴

5. Planning Policy and Guidance¹⁵

- 5.1 In addition to the National Planning Policy Framework (the Framework) reference was made to:

*The Mid Sussex Local Plan*¹⁶

- 5.2 At the time of the Inquiry, the statutory development plan for the site included the saved policies of the Mid Sussex Local Plan, adopted in May 2004. The policies referred to below are those most relevant to the issues raised by this appeal.
- 5.3 The appeal site lies adjacent to but outwith the defined settlement boundary for Hurstpierpoint, in a Countryside Area of Development Restraint, as defined by the Local Plan. Within such areas, policy C1 resists new development, other than in particular circumstances, in order to protect the countryside for its own sake. Policy C2 identifies Strategic Gaps with the objectives of preventing coalescence and retaining the separate identity and amenity of settlements.
- 5.4 Policy B4 promotes energy efficiency, efficient use of water and the use of natural drainage.
- 5.5 Policy H4 seeks to secure 30% provision of affordable units on sites proposing more than 15 dwellings.
- 5.6 Policies G3, CS9 and CS11 require that the infrastructure necessary to support new development either exists or can be provided, including new community facilities.

*The Hurstpierpoint and Sayers Common Parish 2031 Neighbourhood Plan*¹⁷

- 5.7 The Draft Plan and the associated Draft Sustainability Appraisal have completed their consultation period and a summary of responses has been published.¹⁸ The Plan proposes the allocation of 140 new homes at Little Park Farm (policy H4) and for 17 new homes at Highfield Drive (policy H5). In addition, policy A1 Hurst Meadows seeks the provision of a new area of County Open Space for informal recreation in conjunction with the housing development at Little Park Farm.
- 5.8 At the time of the Inquiry, the next stage was for the Parish Council to produce its Submission Plan to the local planning authorities (Mid-Sussex District Council and the South Downs National Park Authority) for further consideration. In the meantime, however, the District Council had refused permission for the H4 and H5 housing allocations (which has led to this appeal). In addition, the Secretary of State's decision on an appeal relating to a development of 120 houses at

¹⁴ ADF2 Tab 14

¹⁵ See the officer's committee report; sections 4 and 5 of SoCG1; section 3 of APP/2/P; and section 4 of DC/1/P. This section is also updated to reflect progress of the emerging Neighbourhood Plan.

¹⁶ DC/1/A Tab 1 and SoCG1 (Section 4)

¹⁷ Consultation Draft March 2012 – APP/2/A Tab 1

¹⁸ APP/2/A Appendices 1, 2 and 3

Sayers Common is awaited.¹⁹ As noted in SoCG1,²⁰ the Parish Council has decided to continue to progress work on the Neighbourhood Plan, including assessing the effects of possible outcomes of the large development planning appeals, and maintaining the strategic objectives of keeping the village feel and sense of place in existing settlements, protecting and enhancing the countryside, containing new development to a manageable and sustainable level and working closely with relevant authorities.

- 5.9 Paragraph 216 of the Framework allows that weight may be afforded to emerging plans. In this regard, I am mindful that, as set out in SoCG1,²¹ few objections were received to the consultation version of the Plan. Whilst they were unresolved at the time, pending preparation of the Submission version, only three objections were made in relation to policies H4 and H5:²² one was from another housing developer (Boyer/Thakeham Homes) suggesting that both development sites were unsuitable for development; one opposed the Highfield Drive development; and the other expressed concern at the use of Iden Hurst to provide access to the Little Park Farm site.
- 5.10 In their responses on the planning guidance, the main parties confirm that the Neighbourhood Plan has now been submitted to the District Council and that is currently being reviewed to check that it meets the basic conditions before commencing formal consultation.²³ I am mindful, in this regard, that the new planning guidance advises on the circumstances when it might be justifiable to refuse planning permission before a neighbourhood plan is made on the grounds of prematurity.²⁴ In addition, it advises that decision makers should respect evidence of local support prior to the referendum when seeking to apply weight to an emerging Local Plan.²⁵
- 5.11 Although there appears to be no material conflict with the thrust of the Framework insofar as the policies relevant to this appeal are concerned,²⁶ it seems to me, having regard to the recent planning guidance, that only little weight can be given to the emerging Neighbourhood Plan, since the due process still has some way to go: the policies within it may change and it would still have to meet the final challenge of the local referendum.

*The Mid Sussex District Plan*²⁷

- 5.12 The submission version of this emerging plan was submitted to the Secretary of State in July 2013. Following a Hearing session in November 2013, the Inspector issued a Note advising of his conclusion that the legal duty to cooperate had not been met, suggesting that the Plan be withdrawn.
- 5.13 The Plan is still the subject of considerable objection and remains to be independently tested, both in relation to the duty to cooperate, and whether it meets the full objectively assessed needs for market and affordable housing in the housing market area. As set out in SoCG1, the parties are agreed that it

¹⁹ APP/D3830/A/12/2189451

²⁰ paragraph 4.8

²¹ SoCG1 paragraph 4.9

²² APP/2/A Appendix 3 Reference Nos 16, 21 and 25

²³ Doc 25

²⁴ Paragraph: 014 Reference ID:21b-014-20140306

²⁵ Paragraph: 007 Reference ID:41-007-20140306

²⁶ SoCG1

²⁷ SoCG1 (paragraphs 4.5-4.6)

should, therefore, be given little weight, other than to the extent that its policies are consistent with the Framework. In the event, no policies from the emerging plan were referred to or relied on by the parties.

Supplementary Planning Documents

5.14 The Council has produced a number of Supplementary Planning Documents (SPDs). Although part of the Local Development Framework, they are not part of the development plan. Of particular relevance to this appeal is the Development and Infrastructure SPD, adopted in February 2006, which sets out guidance on the Council's approach to the calculation of developer contributions.²⁸

6. Agreed Matters

6.1 A Statement of Common Ground between the Council and the appellant was submitted prior to the Inquiry.²⁹ A further statement, relating to the planning obligation, was submitted during the Inquiry.³⁰ Among other things, it is agreed that:

- The appeal site lies within a Countryside Area of Development Restraint (Local Plan policy C1) wherein only certain categories of development are allowed as an exception to the policy of restraint. The appeal scheme does not fall within any of the defined categories. The appeal site is not allocated for housing in the adopted Local Plan and is, therefore, contrary to the provisions of policy C1.
- Although the appeal site falls within the Burgess Hill and Hurstpierpoint/Keymer/Hassocks Strategic Gap (Local Plan policy C2) the development proposed would not result in coalescence. Neither would there be any impact on the Local Gap (policy C3) between Hurstpierpoint and Hassocks.
- The housing supply policies in the Local Plan are out of date, since they do not provide for housing numbers beyond 2006.
- Although the Mid Sussex District Plan is currently in preparation, the housing numbers have not been fully tested. At the present time, the Council cannot currently demonstrate a five year housing land supply for the District. A 20% buffer should be applied to reflect past performance in relation to housing completions.
- The application is significantly different from the previous proposal for land at Highfield Drive that was dismissed at appeal and is much more sympathetic to the character and appearance of the Hurst Wickham Conservation Area.
- The Council would receive a New Homes Bonus for each of the units when built. The construction phase of the development would provide employment for tradesmen and builders and will increase the local population which, in turn, would result in increased spending on local services and a direct boost to the local economy.

²⁸ Doc 23

²⁹ SoCG1

³⁰ SoCG2

- The Council's drainage engineer raises no objection in terms of flooding, subject to conditions. Southern Water raises no objection subject to conditions.
- There were few objections in response to the public consultation of the emerging Neighbourhood Plan. It represents the principle of localism and there is no serious conflict with the National Planning Policy Framework. However, it cannot be given full weight because of the number of stages in the due process that remain to be completed.

7. Matters not Agreed

7.1 Matters that are not agreed include:

- The impact of the development proposed at Little Park Farm (but not Highfield Drive) on the character of the countryside and its relationship with the built up settlement of Hurstpierpoint;
- The severity of the shortfall in the Council's five year housing land supply, and thus the weight to be afforded to that consideration;
- The Council has continuing concerns in relation to perceived inconsistencies between the strategic layout drawing and the OLEMP strategic diagram.

8. The Case for Rydon Homes Limited (the appellant)³¹

8.1 The appellant's Closing Statement to the Inquiry sets out a résumé of its case.³² The issues between the appellant and the Council narrowed considerably during the Inquiry. The material points can be summarised under the following headings:

Preliminary Matters

8.2 The appeal relates to an outline application for a greenfield extension to the sustainable settlement of Hurstpierpoint³³. The scheme of residential development of 157 units relates to two discrete areas: Little Park Farm with 140 units and Highfield Drive with 17 units.³⁴ These two areas are divided and surrounded by the Country Open Space (COS), a considerable green infrastructure of open grassland and woodland, including Ancient Woodland, which will be transferred to the Parish Council with an agreed landscape and ecological management plan and associated funding.³⁵

8.3 There is no objection from the local planning authority in respect of the Highfield Drive scheme.³⁶ There is no objection either, to the COS – indeed, it was accepted to amount to a beneficial part of the proposal in landscape and planning terms.³⁷

³¹ Updated to reflect progression the emerging Neighbourhood Plan and comments received following publication of the Government's Planning Practice Guidance.

³² Document 17

³³ SoCG1 section 2

³⁴ APP/2/P section 2

³⁵ See Section 9 of the planning obligation 106 (Document 13)

³⁶ See the terms of the first reason for refusal on the Council's decision notice

³⁷ Mr Griffiths xx, Day 1; Mr Lindley xx, Day 2

- 8.4 Hurstpierpoint is a 'Category 2' settlement within the District's settlement hierarchy (i.e. in the first tier after the three main towns) and is accepted to be a sustainable settlement that can accommodate additional housing growth.³⁸ The site is agreed to be sustainably located as regards access to services and facilities.³⁹ It lies outside, but immediately adjacent to, the adopted settlement boundary of Hurstpierpoint (in the context that the adopted 2004 Local Plan sought to accommodate development needs only to 2006⁴⁰ and that the Council has no more than a 2.43 year supply of housing land.)⁴¹ The two areas the subject of the application accord with the emerging Neighbourhood Plan (March 2013)⁴² and represents the only material sites considered 'suitable' for housing development in the March 2013 SHLAA.⁴³ There was no objection from the Council's landscape officer.⁴⁴
- 8.5 Perhaps unsurprisingly, given the above, the application was recommended by officers for approval.⁴⁵ However, Members rejected their officers' recommendation and refused the application for two reasons. The second, which related purely to the absence of a Section 106 obligation, has been satisfied by the submitted Agreement.⁴⁶ The first reason for refusal alleged harm to the character and beauty of the countryside, contrary to policy C1 of the Mid Sussex Local Plan 2004.
- 8.6 Through written evidence,⁴⁷ the Council sought to expand the issues of objection to embrace 'coalescence' under Policy C2, and direct and indirect impact on Ancient Woodland (citing paragraph 118 of the Framework). In correspondence prior to the Inquiry, the Council rescinded any allegation of conflict with C2.⁴⁸ It maintained, however, an allegation of impact on Ancient Woodland.⁴⁹ This necessitated the production of evidence by Mr Forbes-Laird, who identified not only no net harm to Ancient Woodland, but also very serious doubt that the land crossed by the access was Ancient Woodland at all.⁵⁰
- 8.7 On the morning of the first day of the Inquiry, the Council abandoned any allegation of harm (direct or indirect) to the arboricultural or ecological Ancient Woodland interest, but still maintained a suggestion that paragraph 118 of the Framework was contravened through a 'landscape context' impact.⁵¹ In cross-examination, Mr Griffiths abandoned that point, correctly acknowledging that Framework paragraph 118 (fifth bullet) concerned protection of irreplaceable

³⁸ APP/2/A Appendix 17

³⁹ SoCG1 Section 2 and appendices A and B; Mr Lindley xx, Day 2

⁴⁰ APP/2/P paragraph 3.3

⁴¹ APP/1/P paragraph 5.4 (a 20% buffer was agreed to be necessary – see SoCG1 paragraph 28); Mr Hough notes three recent appeals and concludes that actual supply is 'about 2 years' [APP/1/P paragraphs 4.29-4.35]; Mr Lindley volunteered that the shortfall in housing, whatever the exact figure, was 'very serious' and housing provision in this context should be given 'very significant weight' [Mr Lindley EIC and xx, Day 2]

⁴² APP/2/A Appendix 1; policies H4, H5 and A1

⁴³ APP/2/A Appendix 5, sites 2 and 238

⁴⁴ APP/2/A Appendix 19 – officer's report to the planning committee

⁴⁵ *ibid*

⁴⁶ Confirmed for the Council in opening – see footnote 1 to Document 1

⁴⁷ DC/1/P and DC/2/P

⁴⁸ Document 20

⁴⁹ *ibid*

⁵⁰ APP/3/P His conclusion, based on cartographic evidence not considered by the Council, was that it was not.

⁵¹ At least in Opening - see paragraphs 9, 24 and 31 of Document 1

habitats, in the context of the whole paragraph being directed to conserving and enhancing biodiversity. It is not a landscape issue at all.⁵²

- 8.8 These changes necessitated extensive striking through or re-writing of the Council's written evidence. They did, however, allow the Inquiry to focus on the remaining reason for refusal: an allegation of harm to the character and appearance of the countryside, contrary to C1 of the Local Plan.

The development plan

- 8.9 For the purposes of this appeal, the development plan comprises only the adopted Mid Sussex Local Plan 2004.⁵³ The only policy cited in the reason for refusal is C1, a settlement boundary policy that defines all land outside the settlement boundary as countryside, in which it restricts all forms of development except for a limited number of recognised countryside uses. There are other 'C' policies⁵⁴ dealing with specific land types and designations, but none of these is alleged to be harmed by the development proposed.⁵⁵ The weight to be attached to the 2004 Local Plan and policy C1 is considered below.
- 8.10 There is an emerging Mid Sussex District Plan. However, there have been significant objections to the proposed housing numbers and it has recently been the subject of a finding that it does not comply with the Duty to Cooperate (again, concerning housing numbers) and the Inspector has recommended that it be withdrawn.⁵⁶ Prior to that letter, the parties had agreed that little weight could be given to its policies.⁵⁷ That weight can only have decreased since the Inspector's letter.
- 8.11 There is also the emerging Hurstpierpoint and Sayers Common Neighbourhood Plan.⁵⁸ At the time of the Inquiry, this had reached a consultation draft (and SEA⁵⁹). However, the submission version has now been submitted to the Council. Among other things, policies H4 and H5 allocated both development sites for residential development, with policy A1 noting that, in conjunction with the H4 housing, a new area of countryside public open space should be provided (Hurst Meadows). Those policies attracted no objection other than from a rival site promoter.⁶⁰ Attention is drawn, in this regard, to the '*What is Neighbourhood Planning?*' section of the new planning guidance, which indicates, among other things, that decision makers should respect evidence of local support prior to the referendum when seeking to apply weight to an emerging Neighbourhood Plan.⁶¹

⁵² Mr Griffiths xx, Day 1

⁵³ There is a 2008 'Small-scale Housing Allocations DPD' [APP/2/P paragraph 3.1] but it has run its course and has no bearing on this case.

⁵⁴ Policies C2-C5 (DC/1/A Appendix 1 and Document 7)

⁵⁵ Mr Lindley xx, Day 2

⁵⁶ Document 3

⁵⁷ SoCG1 paragraphs 4.5 and 4.6

⁵⁸ APP/2/A Appendix 1

⁵⁹ APP/2/A Appendix 2

⁶⁰ APP/2/A Appendix 3 page 2 – Boyer Planning and Thakeham Homes, objecting on landscape reasons, already considered in the Hankinson Duckett Associates work 'Landscape Character Assessment and Evidence Base for Hurstpierpoint and Sayers Common Parish' [APP/1/A Appendix 4] and found not to preclude allocation.

⁶¹ Paragraph 007 Ref ID:41-007-20140306

8.12 While it cannot be afforded full weight under paragraph 216 of the Framework, there is no suggestion that the relevant policies are in conflict with it⁶² and the decision to promote the appeal site is a powerful expression of Localism. Whatever weight it attracts is a positive weight in favour of granting the appeal.⁶³

The correct approach to decision-making under the National Planning Policy Framework

8.13 Although the Council accepted ultimately, through cross examination, the appellant's analysis of the correct approach to decision-making, it is useful to set it out here, as the Council's written evidence and Opening were founded on error (errors accepted to be such, but still in the documents before the Secretary of State).⁶⁴

8.14 The error was twofold: firstly in according full weight to policy C1 and secondly, in asserting that the decision was not to be made under paragraph 14 of the Framework but rather, anterior to paragraph 14, by reference to policy C1.

8.15 The Council's approach stemmed from an over-enthusiastic⁶⁵ reading of the judgment in *William Davis Ltd and Jelson Limited vs SSCLG and North West Leicestershire DC [2013] EWHC 3058 (Admin)*⁶⁶ and the finding that a green gap policy [E20] was not a policy 'relevant to the supply of housing' and so was not affected by paragraph 49 of the Framework.⁶⁷ This led Mr Lindley to take the position (erroneous view 1) that policy C1 was not out of date because it is not affected by paragraph 49 (even though the Council could not demonstrate a five year land supply); he considered it a 'countryside protection policy' that should be afforded 'full weight'. On that basis, he concluded that the proposal was contrary to C1 and that, as a consequence (erroneous view 2) it was not sustainable development and it did not fall to be considered under Framework paragraph 14.⁶⁸

8.16 The first error (that C1 is not out of date because it escapes the force of paragraph 49) is unsustainable in the light of the *Cotswold DC v SSCLG and Fay and Son Limited [2013] EWHC 3719 (Admin)* case⁶⁹ concerning just such another traditional 'settlement boundary' policy.⁷⁰ At paragraph 72 of the judgement, the suggestion that the policy, which applied to all development, including housing, was not a policy 'relevant for the supply of housing', was rejected out of hand.

8.17 This led the Council to revise its position. In the light of the Cotswold DC case, the new position involved acceptance that there could be no 'in principle' objection to housing under C1 merely by virtue of the development being outside the settlement boundary and hence, in the countryside, as policy C1

⁶² Mr Lindley xx, Day 2

⁶³ Mr Lindley xx, Day 2

⁶⁴ Notably DC/1/P and Document 1 eg paragraphs 8, 9 and 31

⁶⁵ Mr Lindley xx, Day 2

⁶⁶ DC/1/A Appendix 7

⁶⁷ DC/1/A Appendix 7 - Judgement paragraph 47

⁶⁸ These errors were perpetuated in the Council's Opening (Document 1) which added that somehow, the applicability of Framework paragraph 118 also meant that the proposal did not fall to be considered under Framework paragraph 14. With Mr Griffith's concessions on paragraph 118, this erroneous argument was dropped in any event.

⁶⁹ Document 9

⁷⁰ *ibid* at paragraph 16

was rendered out of date 'in so far as it seeks to restrict housing' by Framework paragraph 49. But, in seeking to preserve a vestige of the case in the written evidence, the Council sought to argue that C1 was really a 'protection of the countryside for its own sake' policy, and (relying on the William Davis case) this element of C1 escaped Framework paragraph 49 and, it was asserted, 'gave development plan support' to the landscape objection.⁷¹

- 8.18 This refinement foundered under cross-examination. Mr Lindley accepted, in the end, that the proposition that C1 is not out of date is a proposition which is also unsustainable in terms of the William Davis case. This is because, even for policies not caught by paragraph 49, the judge in that case acknowledged that weight to pre-Framework development plan policies is governed by paragraph 215 of the Framework and, in particular, the requirement that they be given weight according to the degree to which they are consistent with the Framework policies.
- 8.19 Thus, there are two routes by which policies can be found to be 'out of date' for the purpose of Framework paragraph 14 (second bullet of second half): insofar as they are relevant for the supply of housing, by paragraph 49 if there is no five year housing supply; and, additionally, and in all other cases, by paragraph 215 if they pre-date and do not accord with the Framework. Policy C1 fails by both routes.
- 8.20 By reference to Framework paragraph 49, the Council acknowledges that it cannot show a five year land supply and so policy C1, to the extent that it is relevant to the supply of housing (which is apparent on its face) is deemed to be out of date. One is taken directly, therefore, to the second bullet of the second half of Framework paragraph 14.
- 8.21 In addition, the preamble to C1 makes it plain that the settlement boundaries in the 2004 Local Plan were drawn to accommodate housing needs judged at the time.⁷² Indeed, the 2004 Local Plan only provided for development up to 2006, after which the LDF was supposed to take over.⁷³ The 2004 plan does not, therefore, provide for the objectively judged needs for development in 2013 and beyond. It fails, thereby, to comply with paragraphs 17 and 182 of the Framework. That conflict alone renders the settlement boundaries upon which the operation of the policy relies, out of date by reference to paragraph 215. That takes one, therefore, to the second bullet of the second half of Framework paragraph 14.⁷⁴
- 8.22 To compound this, any suggestion that, in protecting countryside 'for its own sake' policy C1 is foremost a 'landscape' policy, so escaping paragraph 49, founders under paragraph 215, as paragraph 113 of the Framework requires landscape policies to be criteria-based, reflecting the hierarchy of designations and importance. Policy C1 does not do this. While it was suggested that policies C2-C5 do this,⁷⁵ none of those policies is said to be breached in this case.⁷⁶ We are left, then, with only C1, which simply imposes a blanket

⁷¹ Document 1

⁷² DC/1/A Appendix 1

⁷³ APP/2/P paragraph 3.3

⁷⁴ All the points in this paragraph i.e. paragraph 6.20, were accepted by Mr Lindley xx, Day 2

⁷⁵ In re-examination of Mr Griffiths, Day 2 and Mr Lindley EiC, Day 2

⁷⁶ Mr Lindley xx, Day 2

restriction on all land outside the (now admittedly) out of date settlement boundaries.

- 8.23 Although Mr Lindley began by asserting that C1 provided development plan support for the landscape objection, he accepted, in cross-examination, that the moment it was recognised that the settlement boundaries were out of date, it was not possible to know to what land the restriction in C1 was supposed to apply. In other words, C1, depending as it does on the 2004 settlement boundaries for its operation, is rendered inoperable once those boundaries are removed. Thus, while a landscape impact allegation is a perfectly respectable material consideration to raise in respect of a given scheme, it is not one which, in 2013, can be underpinned by reference to policy C1, a policy which has been agreed to be inoperable given that the 2004 settlement boundaries are (whether by paragraph 49, or by paragraph 215, or by both routes) agreed to be out of date.⁷⁷
- 8.24 We come, thus, to Framework paragraph 14. Contrary to Mr Lindley's initial assertion, that landscape harm rendered the scheme unsustainable and so prevented its consideration under paragraph 14 (second erroneous view) he accepted, in cross-examination, that it was within paragraph 14 that the sustainability, or otherwise, of a scheme would be examined and determined. From its terms, paragraph 14 is clear that a scheme is sustainable if it accords with the development plan, in which case, it should be granted permission without delay. Further, under paragraph 14, a scheme can be sustainable even if it does not accord with a development plan, where that plan is absent, silent or relevant policies are out of date and the harms do not significantly and demonstrably outweigh the benefits, taking account of all the policies in the National Planning Policy Framework, and there are no specific policies which indicate that development should be restricted.
- 8.25 It was agreed (contrary to Mr Lindley's starting point and the Council's Opening) that what is *not* done is to decide first, whether a proposal is sustainable and only then move to paragraph 14. Quite the reverse: it was agreed that paragraph 14 provides the mechanism by which one judges whether a scheme amounts to sustainable development and, in the event that it does, directs that the presumption in favour of sustainable development means that permission should be granted. It was further agreed that, in the exercise of balance within paragraph 14 (first or second dagger points under the second bullet in relation to decision taking) Framework paragraph 7 provides a useful basis for considering the claimed benefits of a scheme, and any alleged harms. In that respect, it was agreed that a scheme is not rendered unsustainable because it causes *any* harm to *any* degree to *any* one of the material considerations contained in the bullets of paragraph 7. The benefits/harms need to be assessed and weighed. If we are in the first dagger of the second bullet (which it is agreed we are) the harms must not only outweigh the aggregate weight of the benefits, they must significantly and demonstrably do so for the development to cease to be sustainable development to which the presumption in favour applies.⁷⁸

⁷⁷ All the points in this paragraph ie 6.22 were accepted by Mr Lindley xx, Day 2

⁷⁸ All the points in this paragraph i.e. 6.24 were accepted by Mr Lindley xx, Day 2

The harm alleged: landscape and visual

- 8.26 The only harm alleged to go into the negative side of the paragraph 14 balance is landscape and visual harm arising from the Little Park Farm development.⁷⁹ In judging this, no account seems to have been taken of the positive contribution to landscape character and visual amenity of the COS and the Outline Landscape and Ecological Management Plan (OLEMP) proposals of green infrastructure and management.⁸⁰
- 8.27 Further, the written landscape evidence (and hence, the mental formulation of the degree of harm) was informed by a view that policy C2, and impact on Ancient Woodland, were points open to the Council to take, and points that the Council did take. These have undoubtedly coloured the approach to landscape and visual impact, although they have now been abandoned.
- 8.28 In relation to landscape, the recent planning guidance stresses the value of landscape character assessment as a tool to help understand the character and local distinctiveness of the landscape and identify the features that give it a sense of place. It can help to inform, plan and manage change. In this regard, the site forms part of the much larger Area 66 within the 2007 Landscape Capacity Study⁸¹ which, at its strategic level, judged there to be negligible to low capacity for 'strategic' development. It has nothing to say about the capacity of parcels within Area 66, save to note that it does not rule out development. Cognisant of the 2007 Study, the Council's 2013 SHLAA found the Little Park Farm site to be suitable for 140 units – the only suitable site in Hurstpierpoint, other than the wholly unobjectionable Highfield Drive site.⁸²
- 8.29 In addition, in the 2012 Parish Capacity Study,⁸³ the Little Park Farm site formed part of the much wider Area 13, which was found to have a lower value than Area 66 and a 'low' capacity for development – again not ruling out development in parts of Area 13. Consistent with that, and with the approach in the SHLAA, the Neighbourhood Plan allocates, through policy H4, 140 dwellings on the two western fields of the Little Park Farm site, precisely what is now proposed. The area to the south, subject to policy A1 'Hurst Meadows', is co-incident with the COS proposed in the appeal scheme.⁸⁴
- 8.30 This accords with Mr Huskisson's 'finer grain' assessment of Areas 13 and 14,⁸⁵ where he divides up the land into different capacities.⁸⁶ He concludes that the two western fields of Little Park Farm are suitable for development, but the rising land to the south is not. Hence its identification as COS.
- 8.31 It is only Mr Huskisson who has done this finer grain capacity study. Additionally, it is only Mr Huskisson who has undertaken an LVIA into the

⁷⁹ Mr Lindley xx, Day 2

⁸⁰ Mr Griffiths xx, Day 1

⁸¹ APP/1/A Tab 3

⁸² APP/2/A Tab 5

⁸³ APP/1/A Tab 4

⁸⁴ APP/2/A Tab 1

⁸⁵ Area 14 – Hurst Wickham Western Fringe. The Highfield Drive development site lies within this area. The Study identifies that development in the south western corner (the area proposed for development) would be consistent with the existing development pattern.

⁸⁶ APP/1/A Figure DH4

proposals themselves.⁸⁷ His methodology and criteria are not challenged. Nor is it argued that the inevitable change of the site from greenfield to housing, or the inevitable moving outwards from an existing settlement boundary, amount to legitimate landscape objections *per se*.⁸⁸ Neither is it argued that development must be invisible in order to be acceptable.⁸⁹ What is critical therefore, is not the change, or the fact of change, it is the extent to which the change is, or is not, characteristic in the receiving landscape. Hence the terms of his unchallenged magnitude criteria.⁹⁰

- 8.32 Mr Griffiths accepted for the Council that the landscape character was a 'settled' landscape; that it was characteristic of this landscape to see settlement, albeit 'layered' with hedges, shaws, trees and woodland. He accepted therefore, that the resultant settlement edge of Hurstpierpoint, with the development in place – while changed from the present – would not be uncharacteristic in the receiving landscape.⁹¹
- 8.33 And there we have it: in this undesignated landscape, not subject to any development plan landscape policies, there would be a proposal which would introduce development which would not, of itself, be uncharacteristic and which would be accompanied by material landscape benefits. All this, in the only locations found suitable at Hurstpierpoint in the Council's own SHLAA and proposed to be allocated in the Neighbourhood Plan as informed by a local landscape character assessment and as required by the new guidance.
- 8.34 The adverse impacts, as recorded by Mr Huskisson, are minor and limited, both in nature and extent,⁹² and their weight is concomitantly low.

Benefits

- 8.35 By contrast, the benefits of the scheme are agreed to be many, manifest and weighty.⁹³ In the second bullet of Framework paragraph 7, the starting point must surely be the weight to be given to the provision of housing, both market and affordable, in the context of what is admitted to be a very substantial shortfall against the five year requirement and an acute and worsening affordable housing need.⁹⁴ There is no prospect of this improving any time soon. This provision of market and affordable housing is agreed to be accorded very significant weight.⁹⁵ That weight increases when it is acknowledged, as here, that the housing is to be provided in an accessible location, in a sustainable settlement, and in a high quality environment.⁹⁶ Thus, this is a sustainable site for badly needed housing growth.
- 8.36 Secondly, in relation to the first bullet of Framework paragraph 7, while housing is not itself 'economic development', it is agreed that the economic benefits that housing brings are to be accorded significant weight, given the

⁸⁷ APP/1/P Section 9

⁸⁸ Mr Griffiths xx, Day 1

⁸⁹ *ibid*

⁹⁰ APP/1/A Appendix 1, table 3

⁹¹ Mr Griffiths xx, Day 2

⁹² APP/1/P Section 9

⁹³ Mr Lindley xx, Day 2

⁹⁴ APP/2/P Section 4

⁹⁵ Mr Lindley xx, Day 2

⁹⁶ *ibid*

terms of paragraphs 18 and 19 of the Framework and in terms of the figures involved.⁹⁷ Construction is anticipated to provide some 300 jobs, plus the multiplier effect; residential spend would be in the order of £3.8m-£4.4m per annum; and there would be a significant public sector finance boost.⁹⁸

- 8.37 Thirdly, against the landscape harm alleged under the 'natural environment' part of the third bullet of Framework paragraph 7, there is positive weight to be given to a scheme which develops much needed housing without any alleged harm to the built or historic environment, that improves biodiversity, and that also fosters the aims of prudent use of natural resources, minimising waste and pollution, mitigating and adapting to climate change and moving to a low carbon economy by developing housing in an accessible location in a sustainable settlement.⁹⁹

The paragraph 14 balance

- 8.38 These 'very significant', 'significant' and otherwise 'positive' benefits need to be aggregated to establish the weight on the positive side of the scale. They then need to be compared to the weight of any negative impact (on landscape). Mr Lindley admitted that he had not sought to establish the weight of the benefits in his evidence.¹⁰⁰ As a result, there is no evidence from the Council that weighs the balance agreed to be necessary under the second bullet of paragraph 14 of the Framework.¹⁰¹
- 8.39 What can be concluded though, is that for permission to be refused, the negative weight must be significantly more weighty than the 'very significant positive weight' agreed to be accorded, at base, to the provision of housing in a District that is failing in its duty to provide for its objectively judged needs. This materially undersells the true positive weight of the aggregated benefits of the scheme but, in the absence of the Council having turned its mind to the exercise it gives, at least, an agreed baseline.
- 8.40 It is somewhat irrational therefore, to assert that a development of 157 houses, in accordance with the SHLAA and the Neighbourhood Plan, which brings positive landscape improvements while introducing a settlement character which is not uncharacteristic with the undesignated landscape in which it sits would, nonetheless, exhibit a landscape and visual harm '*significantly more weighty than very significant*'.
- 8.41 The paragraph 14 balance, agreed to be necessary but not undertaken by the Council, is clearly in favour of the appeal scheme. As such, the proposal amounts to 'sustainable development' and permission should, according to the Secretary of State's policy, be granted.

⁹⁷ *ibid*

⁹⁸ APP/2/P paragraphs 5.12-5.18

⁹⁹ Mr Lindley xx, Day 2

¹⁰⁰ Mr Lindley xx, Day 2: Because, as he explained, his evidence had proceeded on the basis – which by then he had acknowledged to be a false one – that the scheme fell to be determined as 'unsustainable' before one reached paragraph 14

¹⁰¹ *ibid*

9. The Case for Mid Sussex District Council¹⁰²

9.1 The Council's Closing Statement to the Inquiry sets out a résumé of its case.¹⁰³ The main issue identified by the Inspector at the start of the Inquiry comprises the central issue for determination in this case. As the Section 106 Agreement¹⁰⁴ has now been signed and agreed, the second of the reasons for refusal on the Council's Decision Notice was not pursued.¹⁰⁵ The material points of the Council's case are summarised below:

Planning policy

9.2 With regard to the Local Plan, Mr Lindley made clear in EiC¹⁰⁶ that the Council takes no point on policy C2.¹⁰⁷ As to policy C1, he accepted, in cross-examination that: the development boundaries are relevant policies for the supply for housing within paragraph 49 of the National Planning Policy Framework (the Framework) which are rendered out of date due to the accepted lack of a five year housing land supply; and that, to the extent that it provides more general support for protection of the countryside '*for its own sake,*' the policy is incapable of operation without the development boundaries. Consequently, Mr Lindley accepted that policy C1 is not consistent with the Framework for the purposes of its paragraph 215.

9.3 On that basis, the Council accepts that the Local Plan is out of date for the purposes of determining this matter and the appeal falls to be assessed under the second part of Framework paragraph 14, namely '*where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless..... any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*'

9.4 The adverse impacts identified by the Council are impacts to the local landscape character and setting of Hurstpierpoint. In that regard, the relevant provisions of the Framework to be considered are:

- i) Paragraph 7, which confirms that the third dimension of sustainable development is its environmental role:

'an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.'

- ii) The fifth core principle at paragraph 17, which sets out that planning should:

¹⁰² Updated to reflect progression the emerging Neighbourhood Plan and comments received following publication of the Government's Planning Practice Guidance.

¹⁰³ Document 16

¹⁰⁴ Document 13

¹⁰⁵ Confirmed for the Council in opening – see footnote 1 to Document 1

¹⁰⁶ Evidence in Chief

¹⁰⁷ See also Document 20

'take account of the different roles and character of different areas [...] recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it.'

iii) Section 11, and particularly paragraph 109, which provides that:

'The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes'

9.5 For completeness, after Mr Griffiths' evidence in cross-examination, and Mr Lindley's confirmation in EIC, the Council no longer asserts deterioration or harm to the Ancient Woodland within the meaning of Framework paragraph 118. In that regard, it is further noted that the Council has not had any time to adduce evidence in response to Mr Forbes-Laird's rebuttal proof which asserted on behalf of the appellants, for the first time, that part of the relevant woodland is not properly to be categorised as Ancient Woodland. Again, the Council has adduced no evidence in response to that proof and Ancient Woodland impacts do not form part of its case. Nonetheless, for the avoidance of any doubt, Mr Forbes-Laird's evidence has not been tested and is certainly not accepted.

Neighbourhood Plan

9.6 The application of the emerging Plan is of interest to the Secretary of State.¹⁰⁸ As to its procedural history:

- i) The consultation draft was produced in March 2013;¹⁰⁹
- ii) Consultation responses were collated and published on 29 May 2013;¹¹⁰
- iii) The Submission version has now been lodged with the Council.
- iv) After a review as to whether it meets the basis conditions, it will go out to further consultation, before being examined by an independent examiner and, ultimately, being put to referendum. As Mr Hough fairly accepted in cross-examination, no one yet knows how the Neighbourhood Plan is likely to fare through the referendum process.
- v) Mr Lindley notes in his proof of evidence, that the Parish Council is 'continuing its work' on the Neighbourhood Plan by, *inter alia*, assessing the effects of this appeal.¹¹¹

9.7 As Mr Hough accepted, there will be several further opportunities for both members of the public and the Council to offer views and consultation responses to the Plan. In his view, the predominance of that input is likely to come through responses at the examination stage.

9.8 On the weight to be given to the Neighbourhood Plan:

¹⁰⁸ By a letter from the Planning Inspectorate dated 1.11.13, this appeal was recovered by the Secretary of State because the appeal "involves proposals which raise important or novel issues of development control, and/or legal difficulties". In an email from the Planning Inspectorate to Mr Hough, dated 19 November 2013, it was said that "the important and novel issue of development control is the interaction of the appeal with the emerging Neighbourhood Plan for Hurstpierpoint, which is at a relatively advanced stage".

¹⁰⁹ APP/2/A Appendix 1

¹¹⁰ APP/2/A Appendix 3

¹¹¹ Paragraph 4.46 of APP/1/P

- i) The first point is that, given the stages which remain for the emerging Plan to travel, it is not at a relatively advanced stage.
- ii) Second, even at this early stage, the Plan has given rise to a variety of objections, including in relation to its housing policies, and particularly H4 (Little Park) and H5 (Highfield Drive).¹¹² Mr Hough accepted that the question, for the purposes of Framework paragraph 216, was not the *number* of objections, but their quality. He also accepted that, when assessing quality, it was important for the Secretary of State to take account of the extent to which the objections were objectively justifiable, and the extent to which they are consistent with the plan's evidence base.
- iii) In this case, there has been a fulsome objection on several grounds from Boyer/Thakeham Homes.¹¹³ That objection is supported by a full LVIA¹¹⁴ assessment. More importantly, it is consistent with and draws support from the December 2012 Hankinson Duckett Associates (HDA) work '*Landscape Character Assessment and Evidence Base for Hurstpierpoint and Sayers Common Parish*,¹¹⁵ which considered the Little Park Farm site and noted a low landscape capacity for housing development. It also set out detailed challenges that any development would have to meet, including avoiding access through Ancient Woodland and conserving the area's rural character.¹¹⁶ In consequence, the quality of the objection must weigh against the Neighbourhood Plan in the analysis required by paragraph 216 of the Framework.

9.9 In addition, the Parish Council has indicated that the preparation of the Plan is in a hiatus pending the outcome of that other appeal at Sayers Common. It would be antithetical to the Framework's 'plan-led' system for a policy to be weighed in favour of an appeal proposal to which it expressly intends to *respond*.

9.10 For those reasons, taking account of the approach set out at Framework paragraph 216, it is the District Council's view that the Neighbourhood Plan can, at this stage, attract only limited weight at most.

Mid Sussex District Plan

9.11 For the avoidance of doubt, given the recent comments of the Inspector dealing with the emerging Mid Sussex District Plan in relation to the failure to observe the duty to cooperate,¹¹⁷ it is common ground that it can be afforded little, if any weight.¹¹⁸

Landscape Impacts

9.12 Landscape Capacity Studies – Mr Griffiths sets out the relevant landscape designations in his proof.¹¹⁹ Taking those studies together, it is beyond doubt that the rural landscape within which the appeal site sits has consistently been

¹¹² APP/2/A Appendix 3

¹¹³ APP/2/A Appendix 3 page 2

¹¹⁴ Landscape and Visual Impact Assessment

¹¹⁵ APP/1/A Appendix 4

¹¹⁶ *ibid* paragraph 7.3.2

¹¹⁷ Document 3

¹¹⁸ SoCG1

¹¹⁹ DC/2/P section 2

held to be of high quality and sensitivity, with a low capacity for development.¹²⁰

- 9.13 The 2007 Mid Sussex Capacity Study set out to identify sites for strategic development in the District.¹²¹ The Study's definition of strategic plainly embraces the 2-3 storey edge-of-village development at, *inter alia*, Hurstpierpoint.¹²² That expressly includes consideration of the capacity of development at a 'small scale.'¹²³
- 9.14 Mr Huskisson's interpretation of 'strategic development' as being restricted only to 'larger' development was, as he fairly accepted in cross-examination, nowhere to be found in the study itself. He further accepted, in cross-examination, that the 2007 Study embraced the type and scale of development proposed in the appeal scheme. The 2007 Study is, of course, to be viewed alongside the more recent and localised capacity work undertaken by the same company for the Parish Council. Nonetheless, Mr Huskisson's approach of giving the 2007 Study no weight is unsafe. Its findings for the Hurstpierpoint Low Weald area (Area 66) are that it has:
- i) Substantial value;
 - ii) Substantial sensitivity;
 - iii) Negligible to low capacity for development.
- 9.15 Those conclusions are endorsed by Mr Griffiths and the Council. Even Mr Huskisson made clear, in cross-examination, that he made no criticism of the 2007 Study's methodology. The authors of that Study tell us what the consequences are of a low or negligible capacity rating:¹²⁴
- 'In relation to this study, a low or negligible rating for landscape capacity indicates that development would have a significant and detrimental effect on the character of the landscape as a whole and, or, on the setting to existing settlement or outstanding assets within the District. Development in these character areas should only be small scale and proposals would need to demonstrate no adverse impacts on the setting to settlement or wider landscape.'*
- 9.16 That position is re-emphasised by the findings of the 2012 Study,¹²⁵ which forms part of the evidence base for the emerging Neighbourhood Plan.
- 9.17 The 2012 Study is, as Mr Huskisson accepted, prepared at a more localised level and brings with it a finer grain of detail. In addition, his view was that it was inconceivable that the authors of the Study were not aware of the instant application having been made to the Council in respect of the appeal scheme. Assuming he is right about that, the Study assesses the appeal site in detail against, we are told, the back-drop of the submitted appeal scheme. In consequence, its findings are to be given significant weight. Those findings broadly align with the 2007 Study.

¹²⁰ *ibid* paragraph 2.9

¹²¹ APP/1/A Appendix 3

¹²² *ibid* paragraphs 1.1, 1.2 and 5.1.2

¹²³ For example *ibid* paragraph 5.2.2

¹²⁴ *ibid* paragraph 5.2.2

¹²⁵ APP/1/A Appendix 4

- 9.18 For 'Hurstpierpoint Eastern Low Weald', Character Area 13, the 2012 Study notes:¹²⁶
- i) sensitivity = substantial
 - ii) landscape value = moderate
 - iii) capacity = low
- 9.19 The authors tell us that Area 13 is one of the areas which '*would be unsuitable for development.*'¹²⁷ Mr Huskisson accepted, in cross-examination, that the view expressed in that paragraph was not departed from elsewhere in the 2012 Study.
- 9.20 At the request of the Parish Council, HDA considered Area 13 in more detail.¹²⁸ After repeating that it has been found to have low capacity for development, the authors tell us that:
- 'In order to mitigate the potential impacts of development on this sensitive landscape, potential applications should seek to:*
- *Preserve the area of ancient woodland to the west of the character area and ensure that there is a minimum of a 15m buffer zone between the ancient woodland and any development.*
 - *Retain any landscape features of good quality*
 - *Provide a substantial landscape buffer to any proposed development to recreate the existing soft settlement edge.*
 - *Avoid access through the woodland*
 - *Conserve the key views within the character area*
 - *Conserve the rural character of the remainder of Area 13.'*
- 9.21 The Council does not maintain an objection *in principle* to development on the appeal site. True it is, as the Inspector put in a question to Mr Griffiths, that the 2012 Study 'does not say it is a wholly inappropriate area' for development. However, the Council's position is that the extent to which the bullet points identified at paragraph 7.3.2 of the Study are met, should guide the Secretary of State's view on whether the landscape impacts of this appeal scheme are acceptable.
- 9.22 Mr Huskisson accepts in his proof that, in respect of the fourth bullet point (avoid access through the woodland) the appeal scheme will create impacts that do not meet the criteria in the Study and are not capable of mitigation.¹²⁹ Further, as considered in more detail below, Mr Griffiths' evidence is that the appeal scheme will damage key views and will fail to preserve the rural character of the remainder of Area 13.

¹²⁶ APP/1/A Appendix 4

¹²⁷ *ibid* paragraph 7.2.1

¹²⁸ *ibid* paragraph 7.3.2

¹²⁹ APP/1/P paragraph 7.13

Mr Huskisson's Assessment

9.23 As to that character, Mr Huskisson accepted, in cross-examination that, as set out in the bullet points under 'landscape analysis' in the 2012 Study's table dealing with Area 13, the appeal site falls within an 'intact and rural landscape.' That is consistent with the comments in his proof that:

- i) *'the landscape quality of the countryside in the vicinity of the appeal site, north of the Hurstpierpoint settlement ridge is generally good.'*
- ii) *'I consider the landscape quality of the LPF development site and the balance of the LPF appeal site that would form the Country Open Space is good:' and,*
- iii) *'It is a coherent, intact and settled landscape that reads with, and contributes to, both the local character and to the setting of the urban edge.'*¹³⁰

9.24 Mr Huskisson accepts that the quality of the landscape is good.¹³¹

9.25 As to value, he recognises that:

- i) *Those residents who live nearby the site and enjoy walking on the local footpath network across or near to the site would be likely to value it very highly:*
- ii) *It is highly valued by the Parish Council:*
- iii) *The site has a 'good condition and largely unspoilt character. Its location and landform that sweeps south to the settlement ridge gives a heightened interest and some local prominence.'*¹³²

9.26 Notwithstanding those points, and despite the findings of the 2007 and 2012 Studies, Mr Huskisson attributes only medium value to the site at the District level, and medium-high at the local level.¹³³ However, he accepted in cross-examination that, albeit landscape value could be informed by the existence of formal designations, it is not predicated on designations. Further, that the appeal site comprises a representative sample of a site which has been acknowledged to be of high value does not, the Council submits, serve to diminish its value. On the contrary, the only proper approach is to treat a representative sample of a substantially valued landscape as of substantial value in itself.

9.27 Mr Huskisson's views on susceptibility and magnitude of change relied on the appellant's Outline Landscape and Ecological Management Plan (OLEMP). Albeit at outline stage, he expressly places great weight on it, and asks the Inspector to do the same. Indeed, the November 2012 Landscape Report that accompanied the planning application, which Mr Huskisson wrote,¹³⁴ says that:

'The LEMP is considered to be a fundamental part of the overall development strategy. Without this mechanism in place, the landscape structure and potential of the site to deliver an attractive and distinctive development in an appropriate landscape setting would be significantly impaired.'

¹³⁰ *ibid* paragraphs 6.61, 6.64, 6.65

¹³¹ *ibid* paragraph 6.64

¹³² *ibid* paragraphs 6.67, 6.68, 6.69

¹³³ *ibid* paragraph 6.71

¹³⁴ ADF2 Tab 13 paragraph 5.38

- 9.28 Mr Huskisson accepted in cross-examination that, without the protection afforded by the LEMP, *'you would draw a different conclusion'*, albeit he had not undertaken an analysis of whether the appeal scheme would be acceptable or unacceptable absent the LEMP.
- 9.29 Given the weight that he attaches to the LEMP, and asks the Inspector to attach to it, and given that it is a 2012 document, it is surprising that it was only at the stage of giving oral evidence in EiC, that Mr Huskisson identified a series of errors with it. In cross-examination, he accepted that at least one of those errors, in relation to planting east of Tilley's Copse, was a significant error, albeit it was not addressed or corrected in his proof of evidence. He also accepted that, if the planting scheme in the OLEMP was to proceed, as set out in its plans, then some of the screening he relies on in his illustrative viewpoints and photomontages would simply not exist.
- 9.30 Given the LEMP's outline status, given the admitted variety of details that have yet to be finalised, and given the significant errors in drafts up to now, the Inspector must be cautious in giving weight to the various benefits it is said by the appellant to bring about. It is entirely accepted that the LEMP is only an outline document, but what flows from the consequent lack of detail as to its implementation is that it must be weighed with caution. Mr Huskisson's approach of relying on the LEMP to render the landscape less sensitive, the scheme's impact of less magnitude and, in consequence, the overall impacts of less significance is unsafe given the errors in the LEMP and its lack of detail.
- 9.31 In any event, as Mr Griffiths notes, Mr Huskisson's assertions of the position on screening after 10 years are made with *'no technical information such as depths of proposed planting, or assumed growth rates.'*¹³⁵ Absent those inputs, Mr Huskisson's viewpoints and projections as to the screening position at 10 years are speculative.
- 9.32 Finally on screening, it is noted that Mr Huskisson's photomontages represent summer views.¹³⁶ The Inspector has now conducted a winter site visit, and will of course form her own view.

Appeal Scheme Impacts

- 9.33 There is, as Mr Griffiths says:¹³⁷

'at present a striking and dramatic contrast between the built-up areas of Hurstpierpoint and Hurst Wickham and this attractive, broad wedge of open countryside contained between the two "arms" of the settlement.'

and,

"The site is perceived as entirely rural, relatively tranquil and as forming an integral part of the wider countryside setting to the north of Hurstpierpoint.'

- 9.34 Those views are consistent with the character assessments in the 2007 and 2012 capacity studies.

¹³⁵ DC/2/P paragraph 4.4

¹³⁶ APP/1/A VP1-VP5

¹³⁷ DC/2/P paragraphs 2.14 and 3.4

9.35 Mr Griffiths notes that the appeal scheme would *'form an obvious extension of the urban area beyond the present well-defined containment and lacking any relationship to the existing settlement.'*¹³⁸ It would be visible from a number of public viewpoints, including:

- i) Public footpath 63Hu near Big Edgerley¹³⁹
- ii) Chalkers Lane¹⁴⁰

9.36 On the footpaths, as Mr Griffiths says: ¹⁴¹

'Both the local footpaths appear to be well-used, (SoCG) providing an indication that this area is valued by local residents. As was acknowledged in the applicants' Landscape Report (paragraphs 3.28 and 3.30), the footpath 63Hu provides opportunities for attractive views to the north, and as shown in my photo view no. 9, the rising ground towards the site's southern edge provides a wide panorama across open countryside between Cuckfield Road and College Lane. The Landscape Report also refers at paragraph 3.75 to the availability of notable views southwards to the site from Chalkers Lane.'

9.37 The appeal scheme would harm key views in the Hurstpierpoint Eastern Low Weald character area. As Mr Griffiths said, in answer to one of the Inspector's questions:

'There will be areas to the north from the southern edge of the site where the development will form a part of the panorama in a way that it doesn't at the moment. There are some instances where views would be lost and some where they would be adversely impacted upon.'

9.38 In answer to another of the Inspector's questions, Mr Griffiths said that there would further be intrusion into the setting of the Hurstpierpoint College and that

'to some extent, the separate perception of setting of the College will be weakened by development on the appeal site.'

9.39 The Appeal Scheme would introduce roads, together with modern, non-agricultural buildings and related lighting where none exist at present.

9.40 Mr Griffiths' view is that, albeit an extent of screening may be achieved after 10 years, the appeal scheme would be plainly visible and the screening would be necessarily insufficient.¹⁴² Similarly, in relation to the eastern boundary of the southern parcel, opportunities for screening are constrained by power lines. Mr Griffiths explains why the proposed tree planting is not likely to form a 'soft edge.'¹⁴³

9.41 With regard to the recent planning guidance, the section relating to *Natural Environment – Landscape* draws attention to one of the core principles of the Framework, namely that planning should recognise the intrinsic character and

¹³⁸ DC/2/P paragraph 3.5

¹³⁹ DC/2/A Appendix 3 photo 4

¹⁴⁰ ibid photo 7

¹⁴¹ DC/2/P paragraph 2.14

¹⁴² ibid paragraph 4.5

¹⁴³ ibid paragraph 4.6

beauty of the countryside, including not only designated landscapes, but also the wider countryside.¹⁴⁴

Conclusions

- 9.42 For reasons developed in the evidence of Mr Lindley and Mr Griffiths, the appeal scheme fails to comply with Framework policies dealing with protection for the countryside.
- 9.43 The Council accepts that it cannot demonstrate a five year housing supply. That there are a benefits brought about by the appeal scheme is accepted, and it is also accepted that those benefits are to be given significant weight. Notwithstanding that weight, the Council's case is that the extent of harm to the landscape, as identified by Mr Griffiths, clearly and demonstrably outweighs such benefits as the scheme would deliver.
- 9.44 On that basis, the appeal should be dismissed.

10. The Case for Interested Parties

- 10.1 Oral representations made in addition to the respective parties' written submissions:

The case for Mr Maidment¹⁴⁵

- 10.2 All development has taken place along the three axes or routes within Hurstpierpoint, without encroaching into the countryside. This is especially true of the north-south axes of Cuckfield Road and Hurst Wickham.
- 10.3 The appeal scheme seeks to break through the natural boundary provided by the Ancient Woodland that in itself, by definition, forms part of the countryside area of restraint. This natural woodland provides a special amenity to the population of Hurstpierpoint. Most residents are within 300 yards of countryside which, in its natural form, has been managed for centuries by our farming community. The development proposed would not only encroach with its buildings, but would also turn natural countryside into either a manicured park, which would be totally out of keeping, or countryside to be managed by those with little experience of farmland husbandry. This would come with a new and expensive responsibility to maintain it by the community.
- 10.4 The concept that the development could be screened to the same level as currently exists, would require a new false boundary. Whilst it is interesting that the developer acknowledges the need for a new boundary, even if it would take 35-50 years to grow, they seem unwilling to accept that a natural boundary exists now.
- 10.5 The sewage infrastructure on which the site would rely is the Goddards Green Plant, which was commissioned in 1990. It is a very good tertiary plant until it rains. In storm conditions the four combined sewer overflows (CSOs) linked to the plant, discharge untreated sewage into the local water network, which they can do under current legislation. This is a problem, since there is no definition of storm conditions.

¹⁴⁴ Paragraph 001 Ref ID:8-001-21040306

¹⁴⁵ Document 12 supplemented by additional oral information relating to drainage infrastructure

- 10.6 The four CSOs were surveyed during 2004, when 124 discharges were recorded in a 12 month period. In one instance, rainfall of just ½" led to a discharge. There have been some improvements since then but they are very minor. There needs to be a condition to ensure that, during storm conditions, sewage is stored on site for 24 hours, to prevent undiluted discharge to local water courses.
- 10.7 It is clear that the developer has left any need to engage in community involvement, as is required under the Framework, to the Neighbourhood Plan process. There has been no direct communication with the neighbouring residents of the two development sites, who would be directly affected by the application. Of all the large recent applications at Hurstpierpoint, this application has produced the largest number of objections, including a petition of almost a thousand signatories. Despite the best efforts of the Parish Council, most people don't realise the implications of the Neighbourhood Plan consultation. It is only when an application comes forward, as in this case, that people actually then use their voices to make their views known.
- 10.8 This has now shown that this application is hugely unpopular and has, perhaps, undermined a great deal of responsible work that has been achieved through the neighbourhood planning process. This, then, has been the true voice of localism in Hurstpierpoint, which will test the authenticity of localism and the ability of the Localism Act to have any meaning at all.

11. Written Representations

- 11.1 A 903 signature petition opposing the development was submitted at application stage, as well as 211 letters of objection. These are summarised in the officer's committee report.¹⁴⁶ The responses submitted in relation to the appeal are summarised here and cover much the same ground:¹⁴⁷
- Approval has recently been granted for several smaller, more manageable sites in the village, with less environmental impact. The previous village plan mapped out 225 houses over 20 years: we are now getting on for 200 in 12 months. The development proposed is therefore redundant.
 - West Sussex already has massive housing programmes in Horsham, Crawley and Haywards Heath. New houses in Hassocks are still for sale two years after being built.
 - Recent housing developments have already consumed countryside and damaged the infrastructure of the village.
 - Some new development is required, but it should comprise smaller groups of dwellings across the village.
 - The large number of objections means that the village plan must be seen as ill-conceived.
 - Represents a threat to obvious aspects of life for local residents, such as services like health centres, schools, and waste water disposal. The primary

¹⁴⁶ Attached to the appeal Questionnaire

¹⁴⁷ Responses from 22 households

school at Hurstpierpoint is already oversubscribed. It is necessary to wait up to two weeks for an appointment at the local health centre.

- Loss of green space, trees and Ancient Woodland.
- Although Little Park Farm is allocated in the Neighbourhood Plan for housing, it states that Tilley's Copse and the Ancient Woodland should be protected.
- Impact on habitat and wildlife, flora/fauna, including Great Crested Newts.
- A previous application for 51 homes on the Highfield Drive site was dismissed at appeal due to impact on the Hurst Wickham Conservation Area, loss of open land, and harm to the historic development pattern and semi-rural character of the Conservation Area. That Inspector's rejection of the development proposed was categorical. Nothing has changed since then, other than that things have got worse, with other housing schemes coming forward. The development proposed includes houses over a wider area, making it more intrusive.
- The small linear settlement of Hurst Wickham will be absorbed by the development proposed and it will impact on its distinct character.
- Noise and disturbance from additional traffic on Iden Hurst and Highfield Drive, both quiet residential culs-de-sac.
- The development will exacerbate existing grid-lock problems on Hurstpierpoint High Street and other local roads/lanes.
- Increase in pollution and air quality will suffer with more stationary car exhausts.
- Local bus services are infrequent and unreliable and are insufficient to support the development proposed. The corollary to this is that any increase in bus movements would increase congestion.
- Inadequate car parking in the village centre, at doctors' surgeries and at railway stations, to accommodate growth proposed. Existing on-street parking causes tremendous traffic flow and safety problems.
- Increased danger to pedestrians from increase in traffic movements.
- The traffic surveys should have been undertaken over longer periods, at a time when the College is not on holiday, to get a true picture of the situation here.
- The provision of a single vehicular access point for each development site is unsafe.
- Increased delays at the traffic light controlled Stone Pound crossroads in Hassocks and increased problems with air quality.
- The access to the Highfield Drive site is unacceptable – it crosses a well used public footpath and would result in the loss of established hedgerow.
- The proposed construction access onto Chalkers Lane is not sustainable – it is a quiet country lane.

- Existing sewage infrastructure is at capacity and problems occur on a regular basis, discharging untreated waste at times of high rainfall. Those problems would be exacerbated.
- The land floods regularly. The water table is already stretched and supplying the number of houses proposed would contribute to existing problems.
- Loss of views and outlook. Contrary to policy C1 relating to development in the countryside.
- The development will spread beyond the exiting village boundaries and the village will lose its village feel. Adverse visual impact on the existing character and appearance of this rural area.
- Noise and loss of privacy from use of the Country Open Space.
- Overlooking from the dwellings proposed.
- Consequential decrease in property values will mean that the area is less desirable, leading to a lack of people in the village to support local services, with a decrease in tourism and investment in the area. Crime will increase further decreasing property values.
- More thought needs to be given to house types given in older age profile of the local population.
- Public footpaths will be blocked. Construction traffic crossing footpath No 65Hu will conflict with pedestrian use.

12. Conditions

- 12.1 A list of suggested conditions is set out at section 8 of SoCG1, with additional conditions emerging during the related discussion. All conditions were discussed in some detail at the Inquiry and alterations to some were subsequently made in the interests of precision and, in some cases, to deal with implementation.
- 12.3 It was also agreed that suggested condition 11, which relates to signage for the location of the proposed play areas, be deleted, on the basis that it did not meet the tests of necessity or reasonableness. Suggested condition 14, which requires the submission of a scheme to protect relevant buffer zones, including a minimum 15 metre separation between the development and the edge of woodland within The Wilderness and Tilley's Copse, was also deleted, since its provision was duplicated in suggested condition 13. Suggested condition 15 (dealing with the Landscape Ecological Management Plan) was deleted as it duplicated provisions contained in the planning obligation. Suggested conditions 21, 22 and 29, which deal with the provision of car and cycle parking spaces, were also agreed as being otiose, since they relate to detailed layout which is a reserved matter. I consider suggested condition 5, which relates to external materials, and condition 6, which relates to landscaping, also to be unnecessary, since they too relate to reserved matters, namely appearance and landscaping. In addition, it was agreed that suggested condition 28 (dealing with car and cycle parking etc) was merged with suggested condition 3.

- 12.4 In addition to the standard conditions relating to the submission of reserved matters details and commencement of development (1, 2, 3) it is necessary, for the avoidance of doubt, and in the interests of proper planning, to list the plans to which the decision relates, but only insofar as they relate to the matter of access, which is not reserved for subsequent approval. (4)
- 12.5 For reasons of highway safety, a condition requiring full construction details of the access to the Highfield Road site is necessary. However, that is the only access to that site and, whilst base layers would need to be in place to facilitate access by construction traffic, it would be impractical to construct the top layers until such time as construction work is largely complete. On that basis, a timetable for the construction of different stages of the access works is also necessary. (5) A similar condition is required in relation to the access to the Little Park Farm site. (6)
- 12.6 The main construction access to the Little Park Farm site, off Chalkers Lane would, once construction works have finished, be retained to provide a pedestrian/cycle route into the residential development and act as an emergency vehicular access. So, whilst the base layers to the access would need to be in place during the construction phase, it would not be practical to lay the final layers until the majority of construction work had finished. (7, 8)
- 12.7 For reasons of highway safety, and in the interest of protecting the living conditions of existing residents in terms of noise and disturbance, it is necessary to ensure that general construction traffic does not access the Little Park Farm site via Iden Hurst. (9)
- 12.8 Also for reasons of highway safety, it is necessary to require post-construction monitoring of traffic speeds on Iden Hurst and traffic flows on Cuckfield Road. The results of those surveys will need to be submitted to the Council in order that it can assess whether any traffic calming measures are required. Should such measures prove to be necessary, contributions secured through the planning obligation would fund the relevant traffic orders and works. (10, 11)
- 12.9 As originally worded, suggested condition 4 sought to require works to land outside the red line boundary. Such a condition would not, however, be lawful. It was agreed, however, that a scheme showing how the existing public footpaths within the site will be upgraded and how the proposed footpaths and cycle ways within the site as a whole will link to the existing network, will need to be submitted and agreed by the Council, in order to promote walking and cycling. (12)
- 12.10 Whilst a Framework Travel Plan was submitted with the planning application, a full Travel Plan is required in order to promote the use of more sustainable modes of transport, in accordance with national guidance. (13)
- 12.11 Details of boundary treatments, including the boundaries to the development sites themselves, and inter-plot boundaries, and finished ground and floor levels are necessary in the interest of visual amenity and to protect the living conditions of future occupiers. (14, 15)
- 12.12 In order to ensure that the development sites are satisfactorily drained, and to avoid increasing the risk of flooding elsewhere, a condition is required to deal with surface water disposal. At the Inquiry it was agreed that a condition based on the wording of the PINS model sustainable drainage condition would

be more appropriate than suggested condition 9. (16) It is also necessary to secure details and implementation of a scheme for the disposal of sewage, in order to prevent pollution in the interests of amenity and the environment. (17)

- 12.13 It is necessary to ensure that the play area proposed for each of the development areas is provided, together with future management/maintenance, in order to provide a necessary community facility for future occupiers. (18)
- 12.14 The appellant's desk based heritage assessment indicates that a small number of prehistoric artefacts have been recorded, dispersed across the study area and there is evidence of a potentially widespread rural Romano-British settlement at Hurstpierpoint.¹⁴⁸ Medieval settlement in the locality is documented close to the appeal site and there is, in addition, some potential for the recovery of buried deposits of later periods associated with that same settlement. A programme of archaeological work is therefore necessary, to ensure that any heritage assets are properly recorded. (19)
- 12.15 It is necessary to ensure that those trees to be retained within the development sites, and those close to but outside the site boundaries, are protected during construction, in order to safeguard visual amenity. (20)
- 12.16 In the interest of visual amenity, it is necessary to secure the submission of Landscape Management Plan for the development site (as opposed to the Country Open Space). (21)
- 12.17 In the interest of biodiversity, and in accordance with policy C5 of the Local Plan, it is necessary to ensure that development is carried out in accordance with the recommendations set out in the Ecology Assessment undertaken by Ecology Solutions Limited (November 2012) submitted with the planning application. (22)
- 12.18 In order to protect the wildlife interest of the site, it is necessary to ensure that the details of external lighting are agreed with the local planning authority. (23)
- 12.19 The Council's Environmental Health Department confirms that the appeal site has been used for agriculture and that historic mapping identifies several potentially contaminative land uses in the area of the development sites. On that basis, conditions requiring an assessment, and if necessary, a programme of remediation, are necessary to ensure that the health and safety of future residents is protected. (24, 25)
- 12.20 A construction management plan is necessary in the interest of highway safety and to safeguard the living conditions of adjoining occupiers. (26) Conditions controlling hours of working on the site, and preventing the burning of construction waste, are also necessary to protect the living conditions of local residents. (27, 28)
- 12.21 Although not listed as one of the suggested conditions, SOCG1 indicates that, to ensure that the development is sustainable, in accordance with national

¹⁴⁸ ADF1 Tabs 8 and 9

guidance and Local Plan policy B4, a condition to ensure that the development maximises energy conservation is required. (29)

13. Planning Obligation

- 13.1 A planning obligation in the form of a completed bilateral agreement was submitted at the Inquiry.¹⁴⁹ The obligation is conditional upon the appeal succeeding and planning permission being granted. It secures the financial contributions sought by the District and County Councils under a number of heads of terms, together with other arrangements.
- 13.2 Relevant baseline information with regard to the context for calculating the contributions is provided through policies G3 and CS11 of the Local Plan, which require that the necessary infrastructure to support new development should exist, or can be provided. The policies support the Council's Development and Infrastructure SPD.¹⁵⁰ In essence, the obligation is intended to meet a range of local policy objectives with the aim of overcoming, or substantially mitigating, identified problems.
- 13.3 Consideration of the obligation must be undertaken in the light of the advice at paragraph 204 of the National Planning Policy Framework and the statutory requirements of Regulation 122 of the Community Infrastructure Levy Regulations. These require that planning obligations should only be accepted where they are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to it.

County Council Contributions¹⁵¹

- 13.4 Contributions towards primary and secondary education facilities, based on the formulae in the SPD are secured. At the Inquiry, it was confirmed that the population increase generated by the development proposed would give rise to increased pressure at Hassocks, and possibly Albourne primary schools, and Downlands secondary school, which would need to be expanded and/or improved to meet that increased demand.
- 13.5 The libraries contribution would be used to increase services at the Hurstpierpoint library to meet increased demand. Again, the calculation is based on the formula in the SPD.
- 13.6 There are existing problems with traffic and parking on Cuckfield Road, which could be exacerbated by the appeal scheme. The Cuckfield Road Parking Management contribution would fund the making of a Traffic Regulation Order to manage traffic speeds and on-street parking, in the event that such is found to be necessary following post-development monitoring. Such arrangement is identified as policy T3 in the emerging Neighbourhood Plan. The monitoring would be secured by planning condition.
- 13.7 In 2011, the Parish Council appointed specialist consultants to investigate existing problems with traffic flow and pedestrian safety on Hurstpierpoint High

¹⁴⁹ Doc 13

¹⁵⁰ The policies and the SPD are with the appeal Questionnaire

¹⁵¹ Paragraphs 8.3-8.5 of SoCG1, SoCG2, appendix 10 of APP/1/A and consultation responses from the County Council within the Questionnaire and within the S106 Document itself (Document 13).

Street, which would be exacerbated by the development proposed. The contribution secured in this regard is necessary to help fund improvements to traffic movement and pedestrian safety on the High Street (policy T2 of the emerging Neighbourhood Plan).

- 13.8 Iden Hurst, a residential cul-de-sac, would provide the main vehicular access to the Little Park Farm site. The traffic calming contribution secured would fund the costs associated with a public consultation and implementation of traffic calming features along Iden Hurst, should post-development monitoring (secured by planning condition) demonstrate that speed restriction measures are required.
- 13.9 The development proposed is likely to increase pedestrian use of the Stonepound crossroads which are traffic light controlled. The related contribution would fund the introduction of a pedestrian phase at that junction.

District Council Contributions

- 13.10 The SPD confirms that the leisure and recreation needs generated by new housing development will need to be met by the developer. The recreation (formal sport) contribution is based on the formula in the SPD, supported by Local Plan policies R3 and R4, and is likely to be used toward extending the existing Fairfield Recreation ground, or on other sporting facilities within the Parish, the demand for which would increase as a direct consequence of the development proposed.
- 13.11 The community building contribution, based on the SPD formula as supported by Local Plan policy CS9, may be used towards a new pavilion at the Fairfield Road recreation ground and/or towards improving existing community facilities elsewhere in the Parish.
- 13.12 The development of sustainable communities requires the provision of a wide range of local facilities and services. Whilst many are specifically identified in the SPD, others are not specified but are still needed by the respective communities – listing them all would be impractical. The local community infrastructure contribution secured, based on the formula in the SPD, would be used towards expanding the cemetery facilities at Hurstpierpoint and/or public seating.

Hurstpierpoint and Sayers Common Parish Council

- 13.13 Policy A1 of the emerging Neighbourhood Plan indicates that a parcel of some 16 hectares of what is currently agricultural land should be provided as Country Open Space in connection with the two residential development sites to provide opportunities for more extensive informal recreation (such as walking, picnicking and games) than is presently available to local residents. The planning obligation provides that ownership of the land would be transferred to the Parish Council, who would then maintain it in accordance with a Landscape Ecological Management Plan for the area, to have previously been submitted to and agreed in writing by the local planning authority. A sum for ongoing maintenance of the area is also secured.

Other Arrangements

- 13.14 The obligation secures the on-site provision of 30% affordable housing units across both development sites (five units on the Highfield Drive site, the

remainder on the Little Park Farm site). The level of provision accords with policy H4 of the Local Plan and the SPD, and would meet an identified need.

- 13.15 As required by the County Council, and referred to in the SPD, the planning obligation secures the provision of one fire hydrant within the Highfield Drive site and three hydrants within the Little Park Farm site.

Richborough Estates

14. Inspector's Conclusions

- 14.1 The following conclusions are based on my report of the oral and written representations to the Inquiry, and on my inspection of the site and its surroundings. The numbers in parentheses thus [], refer to paragraphs in the preceding sections of the report from which these conclusions are drawn.
- 14.2 At the heart of the Framework is a presumption in favour of sustainable development. In relation to decision taking, and in cases where relevant housing land supply policies are out of date, Framework paragraph 14 confirms that permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.
- 14.3 The appeal site lies adjacent to existing housing at Hurstpierpoint and Hurst Wickham, but is outside the development boundary as defined on the Local Plan Proposals Map. In planning policy terms, therefore, the site lies in open countryside. General residential development in the open countryside is contrary to policy C1 of the Local Plan. However, the Council accepts that it has a significant shortfall in its five year housing land supply.^[6.1, 8.4, 8.20, 9.2, 9.43] In such circumstances, paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up to date. For the reasons set out in the cases for the appellant and the Council, and having regard to the case law referred to therein, I consider that, for the purposes of this appeal, policy C1 can be held as relating to the supply of housing.^[8.13-8.25, 9.2-9.3] Thus, given the shortfall in the Council's five year supply of housing land, it is to be considered as out of date for the purposes of this appeal. That was the eventual agreed position of the parties and I have no reason to demur from that view.
- 14.4 I therefore consider the **main consideration** in this appeal to be whether the proposal constitutes sustainable development within the context of guidance in the National Planning Policy Framework, having particular regard to its effect on the character and appearance of the surrounding countryside and, if there is any harm in that regard, whether it would significantly and demonstrably outweigh any benefits associated with the development proposed when assessed against the policies of the Framework as a whole.

Character and Appearance

- 14.5 The appeal site lies within a strategic gap, as defined by the Local Plan, between Burgess Hill and Hurstpierpoint/Hassocks. Local Plan policy C2 seeks to safeguard such areas with the objective of preventing coalescence and retaining the separate identity and amenity of settlements. I find no conflict with the thrust of relevant guidance in the Framework in this regard. Given the existing development pattern at Hurstpierpoint, with two limbs of development extending north, the proposed development between the 'base' of those limbs would not lead to coalescence with Burgess Hill and would not affect the separate identity or amenity of the two settlements. Therefore, with regard to the stated purposes of policy C2, the strategic gap would not be compromised and there would be no harm in this regard. Indeed, the Inspector who determined the appeal for a larger scheme here concluded that there would be no adverse impact on the visual separation between

Hurstpierpoint and any other surrounding village.¹⁵² Moreover, the Council took no issue on this particular point at the Inquiry.^[2.3]

- 14.6 Given that the development would be contained between two limbs of existing development, there would be no impact either on the local gap between Hurst Wickham and Hassocks, which is located further to the east.
- 14.7 Section 11 of the Framework requires that the planning system should contribute to and enhance the natural and local environment. In addition, one of the twelve core planning principles set out therein requires that planning should, among other things, take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside.
- 14.8 The entirety of the 32 hectare appeal site lies adjacent to, but outside the defined settlement boundary for Hurstpierpoint and forms part of the surrounding open countryside.^[5.3] However, only a proportion of the total site is proposed for housing, with some 18.63 hectares¹⁵³ comprising Country Open Space (COS) plus the adjacent woodland belt (Tilley's Copse and The Wilderness) and large areas of green infrastructure within the development sites themselves.
- 14.9 The character and appearance of the wider landscape is defined by various studies and assessments,^[8.28-8.31, 9.12-9.20] and is set out in some detail at section 5 of APP/1/P,¹⁵⁴ and section 2 of DC/2/P. The site lies at an interface at the toe of the South Downs (now a National Park) which is characterised by a prominent chalk scarp slope that forms a dramatic southern backdrop to Hurstpierpoint, and the Low Weald to the north. Generally, the countryside to the north of Hurstpierpoint (which includes the appeal site) comprises an attractive patchwork of pasture and arable land with well hedged field boundaries and woodland blocks. These frame and accentuate the undulating landform character that has been formed by small streams, ditches and numerous ponds, all characteristic of the Low Weald area.
- 14.10 The Mid-Sussex Landscape Capacity Study of 2007 set out to identify sites for strategic development.¹⁵⁵ Although there was some discussion as to whether the appeal scheme equated to strategic development or not, the Study looked at a number of broad strategic options for the distribution of housing development within the District, including a dispersed pattern spreading across the District, including sites adjacent to the larger and smaller villages. Hurstpierpoint is identified as one of those settlements.^[9.13-9.15]
- 14.11 The appeal site lies within area 66: Hurstpierpoint Low Weald defined by the 2007 Study. Area 66 encompasses a large swathe of countryside north of Hurstpierpoint, the entirety of which is identified as being of substantial landscape sensitivity and substantial landscape value, with negligible to low capacity for strategic development.^[8.28, 9.14, 9.15] The Study confirms that negligible or low capacity rating indicates that development would have a significant and detrimental effect on the character of the landscape as a whole

¹⁵² Doc 24

¹⁵³ APP/2/P paragraph 2.6

¹⁵⁴ See also APP/1/A Tab 2

¹⁵⁵ APP/1/A Tab 3

and, or, on the setting to existing settlements or outstanding assets within the District. Development in these character areas should only be small scale and proposals would need to demonstrate no adverse impacts on the setting to settlement or wider landscape.^[9.15]

- 14.12 In 2012, at the request of the Parish Council, the same consultants who prepared the 2007 Study prepared a Landscape Character Assessment and Evidence Base for Hurstpierpoint and Sayers Common Parish, to inform the emerging Neighbourhood Plan.¹⁵⁶

Highfield Drive Development Area

- 14.13 The Highfield Drive development area lies within Area 14: Hurst Wickham Western Fringe. Area 14 is described as having a strong urban influence, particularly to the south east of the area. The Study concludes that the area is of moderate landscape sensitivity and landscape value, with a medium capacity for new development.¹⁵⁷ It notes that development within the south eastern corner (the area within which the Highfield Drive development is proposed) would be in keeping with the existing settlement pattern and would have a low landscape impact, provided that existing vegetation to the north and west is retained and that the setting of Hurst Wickham Conservation Area, which has a contiguous boundary with the eastern edge of this part of the appeal site, is maintained.^[8.30]
- 14.14 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Furthermore, paragraph 132 of the Framework confirms that great weight is to be given to the conservation of heritage assets, such as Conservation Areas, and indicates that the significance of an asset can be harmed by development within its setting. I am mindful, in this regard, that the Inspector dealing with the previous appeal on this site found, among other things, harm in relation to the impact of the development then proposed on the character and appearance of the adjacent Conservation Area.
- 14.15 That Inspector reported that Hurst Wickham '*originated as a farmstead on the edge of Hurstpierpoint and grew with mid-late 19th Century workers' cottages and terraces along the narrow and steeply banked College Lane. Although there are later houses of no discernable heritage value, and no single building possesses any particular significance, the strong linear form, deeply furrowed nature of College Lane and the old dwellings combine to create an intimate, village character of historic and architectural interest.*'¹⁵⁸
- 14.16 In terms of the setting of heritage assets, the Framework explains that this comprises the surroundings in which the asset is experienced. I saw that the Conservation Area is generally inward looking, focussed on the narrow winding College Lane. Whilst its southern end merges with existing residential development at Highfield Drive, it is bounded to the east and west by open countryside, including farmland and allotments, underlining its historic setting. The two fields to the north of Highfield Drive that lie within the appeal site

¹⁵⁶ APP/1/A Tab 4 and DC/2/A Tab ii)

¹⁵⁷ Areas with a high and medium capacity are considered more suitable for development in landscape terms.

¹⁵⁸ See also ADF2 Tab 13 paragraph 3.13

boundary contribute to the open feel to the western side of the Conservation Area, as acknowledged by the previous Inspector.

- 14.17 Given the relatively small area that would be developed for residential purposes on the Highfield Drive site, and having regard to the retention of a swathe of open space around that development, including between the development and the Conservation Area, all of which land would be included in the COS, I am satisfied that there would be no material harm to the character, appearance or setting of the Conservation Area, and there would be no harm, therefore, to its significance as a heritage asset. I also conclude, having regard to the findings of the 2012 Study and subject to conditions, that there would be no material harm to the character and appearance of the surrounding area as a consequence of this part of the appeal scheme. I am mindful, in this regard, that the Council took no issue with this element of the appeal scheme.^[7.1, 8.3]

Little Park Farm Development Area

- 14.18 The majority of the appeal site, including the Little Park Farm development area, falls within Area 13 - Hurstpierpoint Eastern Low Weald defined in the 2012 Study. This Area is described as being of substantial landscape sensitivity and moderate landscape value, with a low capacity for new development.^[9.18, 9.19] However, in response to a request from the Parish Council, a further assessment of the effect of potential development on the Area was undertaken by the consultants and is reported in the Study. It confirms that, in order to mitigate impact on this sensitive landscape, development should: preserve the area of ancient woodland to the west of the character area (Tilley's Copse and The Wilderness) ensuring a minimum 15 metre buffer zone between the woodland and any development; retain any landscape features of good quality; provide a substantial landscape buffer to any proposed development to recreate the existing soft settlement edge; avoid access through the woodland; conserve key views within the character area; and conserve the rural character of the remainder of Area 13.^[9.20]
- 14.19 Hurstpierpoint comprises a ridge top development on an east-west axis but with two spurs of development extending northwards, down towards the Low Weald. As noted earlier, the appeal site lies between the two spurs of development. The Council agreed that the 2012 Study does not preclude all development and it was confirmed that the Council does not maintain an *in principle* objection to the development on this part of the appeal site. Rather, its concerns relate to the extent to which the proposal meets the criteria set out above.^[9.21]
- 14.20 The western boundary of the appeal site is wooded, (Tilley's Copse and The Wilderness) whilst the open high point of the southern extremity provides far reaching views to the north. In those views, the tower and other parts of Hurstpierpoint College are prominent local landmarks, set to the north of a small woodland (Sandfield Shaw).
- 14.21 In addition to Tilley's Copse and The Wilderness (both areas of Ancient Woodland) the appeal site is divided by well established hedgerows, some of which have individual trees within them. The vegetation pattern on the development site links with that of the surrounding land at the settlement edge, so that in local views north, there is a well vegetated appearance

fringing the settlement. This extends to the hedgerows along the sunken track that bisects the larger appeal site, linking north from St George's Lane to College Lane, thus preventing intervisibility between the two proposed development parcels. This well defined pattern of vegetation is an important component of the established landscape character of the area and informs the appellants' landscape masterplan.

- 14.22 I saw that existing detractors in the landscape are limited, but include the raised hard court sports pitches and associated mast lighting to the west of Hurstpierpoint College. The main visual attributes of the appeal site are the role it plays in providing a foreground to views south across the settlement of Hurstpierpoint to the backdrop of the South Downs, and the view north out over the Low Weald. Within that landscape, views of the Little Park Farm development site are limited to a few locations to the north and from the south east, and from the proposed access point at the end of Iden Hurst on the western side of the site.
- 14.23 The appellants' landscape witness undertook a very detailed assessment of the landscape character and capacity of the component parts of Area 14.¹⁵⁹ That evidence demonstrates that the capacity of different parts of the site to accommodate new development varies.^[8.30] Whilst some parts have no capacity, the development proposed would be located within a part of Area 14 that is already relatively well contained, but with increasing sensitivity to the south and east as the land rises and becomes more central. Nonetheless, it has a strong landscape structure and is well related to the existing development pattern. With regard to the whole of Area 14, that part where development is proposed has the greatest capacity for new development.
- 14.24 The appeal site lies within a coherent, largely intact and settled landscape that reads with, and contributes to, both the local character and the setting of the urban edge of Hurstpierpoint.^[8.32, 9.23] The appellants' witness considered that the landscape value of the Little Park Farm development site, and the balance of the appeal site, to be medium in the context of the District as a whole, but medium to high at a local level. Having walked the site itself and seen it from various vantage points in the wider area, that is a view with which I agree.
- 14.25 The introduction of housing onto land that is currently open and undeveloped will, inevitably, change its character and appearance. The question is, whether that change would cause material harm. As agreed by the Council, the settlement edge here is characterised by a layering effect of hedges and woodland that provide a framework within which the settlement of Hurstpierpoint is seen but is well contained.^[8.32] Whilst the development proposed would effect a noticeable change in the character and appearance of the site in the short term, that impact would reduce in the longer term as the landscaping and green infrastructure proposed matured, and when considered in the context of the COS and the management arrangements outlined in the Outline Landscape and Ecological Management Plan (OLEMP),¹⁶⁰ an integral part of the appeal scheme.^[4.4, 8.26]

¹⁵⁹ APP/1/P section 9

¹⁶⁰ ADF2 Tab 14

- 14.26 With regard to the criteria referred to in paragraph 4.18 above, the appeal scheme would preserve the Ancient Woodland, with the layout being capable of including a 15 metre buffer, as agreed at the Inquiry. In terms of existing landscape features, the woodland and the majority of the existing hedgerows would be retained, with their management being secured by conditions were the appeal to succeed. I am in no doubt either, that a detailed landscape scheme (secured via reserved matters) and the COS, would provide a substantial landscape buffer and could, over time, recreate the existing soft settlement edge. The rural character of the remainder of Area 13 would be conserved by means of the COS and the detailed LEMP, the provision of which is secured by the planning obligation.
- 14.27 In relation to key views, these are not formally identified in the Local Plan. However, both the appellant and the Council undertook assessments from a variety of public vantage points around the wider area. From my own observations from those vantage points we stopped at during the site visit, I am satisfied that, whilst the development would be seen, it would not intrude unduly into those views. That is due to a combination of factors: the distances involved, the changing ground levels; existing and proposed planting. Whilst the access off Iden Hurst would pass through the woodland belt, that would be via an existing gap through the trees, which comprises bare, compacted ground. As I explain in more detail later, I have no reason to suppose that the connectivity of the woodland, or the contribution that it makes to the character and appearance of the part of Hurstpierpoint, would be compromised to any material degree by the arrangement proposed.
- 14.28 All in all, I consider that whilst the landscape and visual impact of the Little Park Farm development area would, initially, be moderate adverse in extent, magnitude and significance, that impact would largely be capable of appropriate mitigation in the longer term and the impact would reduce to slight adverse.

Countryside Open Space

- 14.29 The other main element of the appeal proposal is the safeguarding of a significant area of land, some 18.63 hectares,¹⁶¹ as COS. As noted above, an OLEMP for that land, and the two development areas and their associated green infrastructure, was submitted with the planning application. I recognise that there appear to be some errors with it.^[9.29, 9.30] However, it is only an outline document that sets out general principles. I am mindful, in this regard, that it confirms that the COS would be managed in a 'naturalistic' manner, with low key maintenance inputs to ensure that the visual separation between Hurstpierpoint and Hurst Wickham is maintained, as well as providing a pleasant local amenity and increasing biodiversity and habitat. It would also provide a robust landscape edge to the extended edge of Hurstpierpoint as proposed. That land would be an attractive and valuable local asset that would enable the ridge top setting of the settlement, relative to the Low Weald and Hurstpierpoint College, to be better appreciated and safeguarded in perpetuity. The COS would also help safeguard the setting of the Hurst Wickham Conservation Area. I conclude, therefore, that the COS would cause no harm

¹⁶¹ APP/2/P paragraph 2.6

to the established character and appearance of the area. Indeed, it would augment the nearby St George's Millennium Garden and St George's Green.

*Highway Safety*¹⁶²

- 14.30 Saved policies T4 and T5 of the Local Plan set out the requirements for parking provision and access to new developments, with policy T6 seeking to secure cycle storage provision within new development. The Development and Infrastructure SPD also sets out maximum parking requirements.¹⁶³
- 14.31 The main vehicular access to the Little Park Farm development site would be off Iden Hurst, a residential cul-de-sac, through the woodland belt.^[4.2] The access has been the subject of much discussion with the local highway authority and the Council. As it passes through the woodland, the access would be some 7.75 metres wide in total, comprising a 5.5 metre wide vehicular carriageway plus a footway each side, one with a width of 1.5 metres, the other 0.75 metres.¹⁶⁴ That is wide enough to accommodate two-way traffic. A pedestrian access at the southern end of this part of the site would also be created off Marchants Close.
- 14.32 In addition, a temporary access to the Little Park Farm site is proposed, off Chalkers Lane, for use of construction traffic during the building phase. Construction traffic would be precluded from accessing the site via Iden Hurst during that period. The Chalkers Lane access has been the subject of a road safety audit.¹⁶⁵ Subject to temporary three way traffic lights at the Chalkers Lane/Cuckfield Road junction during the construction phase, the highway authority raises no objections in terms of highway safety in relation to his arrangement. Following construction, the access would be retained for cyclists and pedestrian only, and possibly emergency access.
- 14.33 In terms of the impact of development on the local highway network, the assessments took account of further residential developments on Chalkers Lane and College Road, as well as the impact on the High Street/Cuckfield Road/Brighton Road and the A273/Hurst Road/Keymer Road junctions. The figures show that the High Street/Cuckfield Road/Brighton Road junction had sufficient capacity to accommodate the additional estimated flows and, whilst the A273/Hurst Road/Keymer Road junction was already over capacity, the increased overall traffic flows consequential on the appeal development would have only a marginal impact on its operation.¹⁶⁶
- 14.34 There are existing problems with traffic and parking on Cuckfield Road, which could be exacerbated by the appeal scheme. However, the Cuckfield Road Parking Management contribution, secured via the planning obligation, would fund the making of a Traffic Regulation Order to manage traffic speeds and on-street parking, in the event that such is found to be necessary following post-development monitoring. The monitoring would be secured by planning condition.^[13.6]

¹⁶² Officer's report and SoCG1 paragraphs 6.19-6.26

¹⁶³ Doc 23

¹⁶⁴ As shown on plan No 0454-GA-12B rev B.

¹⁶⁵ ADF1 Tab 10 Section 5.4 and Tab 10.1 Section 5

¹⁶⁶ ADF1 Tabs 10 and 10.1

- 14.35 With regard to Highfield Drive, the vehicular access proposed would be a continuation of an existing spur/turning head in front of No 38 Highfield Drive.^[4.3] The highway authority raises no highway safety concerns in relation to the arrangement proposed, although further safety audits would be required in relation to the operation of what will become a defunct turning head in front of Nos 38 and 38A Highfield Drive.¹⁶⁷
- 14.36 There are existing problems with traffic flow and pedestrian safety on Hurstpierpoint High Street, which would be exacerbated by the development proposed. The contribution secured by the planning obligation in this regard would help fund improvements to traffic movement and pedestrian safety on the High Street.^[13.7]
- 14.37 As noted above, Iden Hurst, a residential cul-de-sac, would provide the main vehicular access to the Little Park Farm site. The traffic calming contribution secured by the planning obligation would fund the costs associated with a public consultation and implementation of traffic calming features along Iden Hurst, should post-development monitoring demonstrate that speed restriction measures are required in the interest of highway safety.^[13.8]
- 14.38 The development proposed is also likely to increase pedestrian use of the Stonepound crossroads which are traffic light controlled. The contribution secured in this regard would fund the introduction of a pedestrian phase at that junction.^[13.9]

Living Conditions

- 14.39 The officer's committee report¹⁶⁸ and SoCG1¹⁶⁹ set out a comprehensive consideration of these matters, including visual impact, privacy and loss of light, noise and disturbance, air quality, and security. The appellant also provided a briefing note in response to my request.¹⁷⁰ They conclude that these matters could be addressed at reserved matters stage and that there would be no material adverse impact on the living conditions of local residents in these regards.¹⁷¹ No further objective or substantiated evidence was submitted to undermine the Council's conclusions on this matter and I have no reason to take a different view. There would be no conflict, therefore, with policy B3 of the Local Plan, or with the thrust of the Framework which, among other things, seek to protect residential amenity.

Biodiversity and Trees

- 14.40 The committee report and SoCG1¹⁷² also set out a comprehensive appraisal of these matters, based on the ecological and arboricultural assessments submitted with the planning application.¹⁷³ Although the report refers, among other things, to loss of Ancient Woodland, by the time of the Inquiry, the Council was no longer pursuing any concerns in that particular regard.^[2.3, 2.4, 8.6, 8.7, 9.5]

¹⁶⁷ Ibid

¹⁶⁸ Attached to the Questionnaire

¹⁶⁹ Paragraphs 6.27-6.31

¹⁷⁰ Doc 14

¹⁷¹ That position is confirmed at paragraphs 6.27-6.31 of SoCG1.

¹⁷² Paragraphs 6.32-6.37

¹⁷³ ADF1 Tabs 6 and 7 and ADF2 Tab 12

- 14.41 With regard to habitats, the study area is generally of low intrinsic value from an ecological perspective, although the hedgerows, rough grassland and woodland blocks have a greater value within that context. The woodlands and the majority of the hedgerows would be retained and, where possible, incorporated into the development proposed. In addition, as agreed at the Inquiry, it would be feasible to include a 15 metre buffer along the boundary with the woodland belt adjacent to the Little Park Farm site. As confirmed in the officer's report, the development proposed could significantly increase the floristic richness and diversity of the site. Whilst Great Crested Newts and Common Reptiles are identified on part of the appeal site, specific measures are proposed to safeguard those populations.¹⁷⁴
- 14.42 There would, however, be some impact on the woodland known as The Wilderness at the point of the proposed access. The access would be sited within an existing gap through the woodland that comprises, in the main, bare compacted ground. However, the minimum width of the access required by the highway authority means that, although constructed on a decking system to minimise compaction and damage to existing root systems and allowing for wildlife dispersal beneath it (a matter that could be secured by condition were the appeal to succeed) the root plates to two oak trees might be affected and at least one oak, identified as being of fair condition, would need to be felled, in addition to the loss of a hawthorn and young holly.¹⁷⁵ Should the two oaks referred to be affected adversely by the proposal, such that they were to fail in the future, the Arboricultural Implications Assessment confirms that they would be retained as a standing deadwood resource.
- 14.43 The three trees likely to be affected lie adjacent to an existing gap within a much larger woodland area that would be retained and actively managed were the appeal to succeed (there is no management regime for the woodland at present). On balance, I consider that the overall connectivity of the woodland, particularly at canopy level, would not be harmed to any material degree by the development proposed. All in all, and in the absence of any objective evidence to the contrary, I consider that the development proposed would not have a material adverse impact on the biodiversity and/or arboricultural interest of the appeal site. There would be no conflict with policies C5 and B7 of the Local Plan, or the objectives of the Framework in this regard, which together seek to minimise the impact of development on biodiversity and trees, providing net gains where possible.

Flooding and Drainage

- 14.44 Although the appeal site lies within Flood Zone 1,¹⁷⁶ local residents refer to flooding, particularly on the Highfield Drive site. Indeed, as acknowledged in the committee report, the watercourses around the perimeter of the appeal site are currently unmanaged and there have been examples of localised flooding. However, the appellant's landscape and ecological management plan provides for maintenance of these ditches.¹⁷⁷ Moreover, the developable areas proposed would provide some control over surface water run-off to these

¹⁷⁴ ADF2 Tab 12

¹⁷⁵ ADF1 Tab 7 – Arboricultural Implications Assessment (T51 - oak)

¹⁷⁶ ADF2 Tab 16

¹⁷⁷ Officer's report and SoCG1 paragraphs 6.38-6.45

ditches, the capacity of which could be increased, if necessary, at detailed design stage to minimise flood risk.

- 14.45 There are also concerns about the capacity of the local sewerage systems,^[11.1] with Mr Maidment advising that, during storm conditions, the combined sewer overflows discharge untreated sewage into the local watercourses.^[10.5-10.6] Indeed, the consultation response from Southern Water¹⁷⁸ confirms that there is currently inadequate capacity in the local network to provide foul sewage disposal to service to the development proposed and that additional off-site sewers or improvements to existing sewers will be required. Again, this is a matter that could be dealt with by condition were the appeal to succeed. I note that the Environment Agency also raises no objection subject to conditions,¹⁷⁹ which position is reiterated by the Council's Senior drainage engineer.
- 14.46 There clearly are existing problems with localised flooding and sewage disposal. However, based on the information before me, I consider that, subject to appropriate conditions, the development proposed need not exacerbate existing sewage disposal problems. Moreover, it would not be at risk from flooding and flood risk in the wider area would not be exacerbated. There would be no conflict therefore, with policy CS13 of the Local Plan, or with the objectives of the Framework in this regard which, together, seek to protect such interests.

*Accessibility*¹⁸⁰

- 14.47 The appeal site lies adjacent to the north-eastern side of the Hurstpierpoint, a 'Category 2' settlement within the District's settlement hierarchy (i.e. in the first tier after the three main towns). It is identified as a local service centre that can accommodate additional housing growth. The site is agreed to have relatively good access to services and facilities.^[8.2, 8.4, 8.35, 8.37] Although it does not have a railway station or secondary school, these are available in the nearby village of Hassocks, some 2.5 kilometres away.
- 14.48 I consider that existing public transport provision in the area, and the walking and cycling links included in the scheme, would be sufficient to ensure that access to those services and facilities required by people on an everyday basis, by sustainable transport modes, would be a realistic prospect. I find no material conflict with the thrust of the Framework in this regard.

Neighbourhood Plan

- 14.49 Both development sites are allocated for housing in the emerging Neighbourhood Plan (policies H4 and H5). The Plan also allocates a swathe of land as COS, which correlates with the COS proposed as part of the appeal scheme (policy A1).^[5.7]
- 14.50 The Submission version of the Plan is now with the Council and is being reviewed to check that it meets the basic conditions before commencement of formal consultation. Following that consultation, the Plan will need to be

¹⁷⁸ Attached to the Questionnaire

¹⁷⁹ Ibid

¹⁸⁰ SoCG1 paragraphs 2.1-2.3 and Appendix A thereto and APP/2/P paragraph 8.2

assessed by an independent examiner and, if approved, would then be the subject of a public referendum.^[5.10, 5.11, 9.6]

- 14.51 Framework paragraph 216 indicates that, from the day of publication, decision takers may give weight to the relevant policies in emerging plans according to, amongst other factors, the plan's stage of preparation - the more advanced the preparation, the greater the weight may be given. The recent planning guidance confirms that factors to take into consideration also include the extent to which there are unresolved objections to relevant policies. Whilst a referendum ensures that the community has the final say on whether a Neighbourhood Plan comes into force, decision makers are required to respect evidence of local support prior to the referendum when seeking to apply weight to an emerging plan.
- 14.52 The emerging Neighbourhood Plan provides an indication of how the Parish wishes to see the village evolve in the future, reflecting the requirement at paragraph 16 of the Framework that Neighbourhood Plans should plan positively to support local development. There are objections to the emerging Plan.¹⁸¹ However, in relation to the specific policies relevant to this appeal, no objections were drawn to my attention in relation to policy A1, which relates to the COS. In relation to policy H4 (Little Park Farm) and H5 (Highfield Drive) the summary indicates very few objections.^[5.9, 6.1, 8.11] I recognise that the objection by Boyer/Thakeham Homes might well be fulsome, as described by the Council, supported by an LVIA.^[9.8] However, I have assessed the appeal scheme against the appellant's LVIA, the only one before me, together with the other published landscape assessments and, although I have found some harm, I consider that harm to be relatively limited.
- 14.53 All in all however, it is my view that the advice in the Framework, and particularly the new planning guidance, mean that the emerging Plan can only be given little weight, since the adoption process still has a way to go and its policies may change during that process. Indeed, as noted by the District Council, no-one knows how the Plan is likely to fare through the referendum process.^[9.6]

Benefits

- 14.54 As reported above, the Council accepts that it does not have a five year housing land supply and that, as a consequence, related policies in the Local Plan are to be considered as being out of date. In such circumstances, paragraphs 14 and 49 of the Framework indicate that planning permission should be granted for the development proposed unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
- 14.55 I have found that local services and facilities would be accessible from the sites the subject of this appeal by a range of transport modes and that there would be no harm in terms of highway safety, flooding/drainage, living conditions, and biodiversity. However, the absence of harm does not add positive weight in the overall planning balance.

¹⁸¹ APP/2/A Tab 3 and SoCG1

14.56 Significant benefits of the proposal include the provision of a large area of publicly accessible COS, together with a management plan for that area, and active management of Tilley's Copse and The Wilderness. The 157 dwellings proposed would make a worthwhile contribution towards the acknowledged shortfall of both open market and affordable housing and the development would also bring economic benefits in terms of some 300 jobs plus the associated multiplier effect; residential spend would be in the order of £3.8m-£4.4m per annum; and there would be a significant public sector finance boost. ^[8.35-8.37]

Other Matters

14.57 Local residents express concern at the capacity of the local health centre. However, NHS Sussex was consulted on the planning application. It advised that the existing Primary Care service delivery has the necessary space, facilities and capacity for future growth and no objection was raised to the proposal.

14.58 SoCG1 confirms that the development proposed would not have any adverse impact on the settings of the South Downs National Park, Hurstpierpoint Conservation Area, and the grade II listed Little Park Farmhouse. Based on the submitted evidence, and my own observations during the site visit, I have no reason to take a different view.

14.59 It was confirmed for appellant that the implications of the appeal scheme had been considered in conjunction with other approvals and the ability of Hurstpierpoint to accommodate that scale of development. I was also advised that the Local Plan allows for housing numbers to be exceeded, with no cap identified. Neither are there any material infrastructure impediments to the proposal. ¹⁸²

15. Overall Conclusion

15.1 I have found the site to be acceptable in terms of its locational characteristics, with regard to accessibility to local services and facilities. It would also make a timely contribution to economic growth in the area by providing much needed market and affordable housing in the context of a substantial shortfall in the Council's five year housing land supply. In addition, there would be benefits in terms of employment, consumer expenditure and public sector finance. The combination of those factors accords with the principal thrusts of the National Planning Policy Framework of securing economic growth and boosting significantly the supply of housing.

15.2 I have found limited, non-material harm to The Wilderness, through the direct loss of three specimens and the potential loss of two further trees. However, the proposal would involve building in open countryside, contrary to policy C1 of the Local Plan. However, that policy has been agreed as being out of date. Whilst I have found that there would be little if any material harm to the character and appearance of the area in relation to the development off Highfield Drive, there would be harm in this regard, in relation to the Little Park Farm development. That said, for the reasons set out, I find that the sum

¹⁸² Doc 14

total of the harm that would be caused would be limited/moderate, with that harm reducing over time as the landscaping proposed matures.

- 15.3 The development proposed would represent an extension of the built-up area into what is presently countryside. Both sites are, however, identified in the Council's SHLAA as potentially being capable of being developed.^[8.4, 8.28, 8.33] I also consider that the resultant village edge would be defensible, especially given that it would be protected by the proposed COS and, once established, would appear logical. Change, by itself, is not necessarily harmful. All in all, the adverse impacts that I have identified do not significantly and demonstrably outweigh the benefits set out above, when assessed against the policies of the Framework as a whole. Furthermore, I am satisfied, subject to the imposition of appropriate conditions, and the contributions and obligations secured by the planning obligation (which, for the reasons set out in Section 13 of this Report, meet the Framework tests and comply with the Community Infrastructure Levy Regulations) that the scheme proposed would represent a sustainable form of development in economic, social and environmental terms. As such, I consider there to be sound reasons for releasing the site for development.
- 15.4 I recognise that this finding will be disappointing for local residents who have opposed development of the appeal site¹⁸³ and am mindful, in this regard, of the Government's 'localism' agenda. However, even under 'localism', the views of local residents, very important though they are, must be balanced against other considerations, including national planning policy and, in this case, the importance the Government attaches to boosting, significantly, the supply of housing development. In coming to my conclusions on the various issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan, the National Planning Policy Framework and other material considerations, including the emerging Neighbourhood Plan. On balance though, even were the emerging Plan to be afforded no weight, the evidence in this case leads me to the view that the appeal should succeed.

16. Recommendation

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

- 16.1 For the reasons set out above, I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Appendix C attached hereto.

Jennifer A Vyse

INSEPECTOR

¹⁸³ A 903 signature petition was submitted in response to the planning application, together with more than 200 individual letters of objection.

Appendix A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Z Simons, of Counsel

Instructed by Mid-Sussex District Council

He called

Mr P M Griffiths
BSc(Hons), DipLA, CMLI

Landscape consultant working for Development
Planning and Design Services

Mr C S Lindley
BA(Hons), MSc, MRTPI

Associate Director with Development Planning
and Design Services

Ms V Cummins*

School Planning Officer with West Sussex County
Council

*Mrs Cummins did not present a proof of evidence but was called to answer my questions on the education contributions sought by the County Council. The County Council's written evidence in relation to the contributions it sought, can be found at Appendix 10 of APP/1/A

FOR THE APPELLANT:

Mr C Boyle, of Queen's Counsel

Instructed by Ms N Morris of Rydon Homes Limited

He called

Mr D Huskisson
DipLA, CMLI

Principal of David Huskisson Associates

Mr C M Hough
BSc, FRICS

Principal of Sigma Planning Services

As set out in paragraphs 2.4, 8.6 and 9.5 above, Mr Julian Forbes –Laird had submitted a rebuttal proof dealing with the Council's concerns in relation the potential impact of the development proposed on the Ancient Woodland. In the event, given the Council's altered stance on the matter as confirmed at the start of the Inquiry, he was not called as a witness.

INTERESTED PERSONS:

Mr C Maidment

Local resident

Appendix B: DOCUMENTS

STATEMENTS OF COMMON GROUND

- SoCG1** Statement of common ground between Mid-Sussex District Council and Rydon Homes Limited (including Appendices A, B1, B2i, B2ii, B3i and B3ii and CD containing documents referred to)
- SoCG2** Additional Statement of Common Ground relating to Section 106 matters and CIL compliance

APPLICATION DOCUMENTS FOLDERS (ADF)

Folder 1 of 3 (ADF1)

- Tab 1** Application form
- Tab 2** Notice No 1
- Tab 3** Drawings
- Tab 4** Design and Access Statement
- Tab 5** Planning Statement
- Tab 6** Arboricultural Implications Assessment – Highfield Drive
- Tab 7** Arboricultural Implications Assessment – Little Park Farm
- Tab 8** Archaeological Report – Highfield Drive
- Tab 9** Archaeological Report – Little Park Farm
- Tab 10.0** Transport Assessment
- Tab 10.1** Travel Plan
- Tab 10.2** Supplementary Transport Assessment

Folder 2 of 3 (ADF2)

- Tab 11** Safety Audit Review
- Tab 12.0** Ecological Assessment
- Tab 12.1** Ancient Woodland Addendum Statement
- Tab 13** Landscape Report
- Tab 14** Outline Landscape and Ecological Management Plan
- Tab 15** Air Quality Assessment
- Tab 16** Flood Risk Assessment
- Tab 17** Site Waste Management, Lighting Assessment, Drainage and Utilities Statements
- Tab 18** Statement of Community Involvement
- Tab 19** Affordable Housing Statement
- Tab 20** List of Consultees
- Tab 21** Consultee responses
- Tab 22** List of Objections
- Tab 23** Copies of all objections

Folder 3 of 3 (ADF3)

General correspondence

APPELLANT'S DOCUMENTS

APP/1/P	Proof of evidence of Mr Huskisson
APP/1/A	Appendices, plans and photographs forming part of the proof of Mr Huskisson (Appendices Nos 1-5; Figures DH1-DH5; Photomontages VP1-VP5; Photosheet A and sheets 1-5)
APP/1/S	Summary to the proof of Mr Huskisson
APP/2/P	Proof of evidence of Mr Hough
APP/2/A	Appendices to the proof of Mr Hough (Nos 1-19)
APP/3/P	Rebuttal proof of Mr Forbes-Laird
APP/3/A	Appendices to the rebuttal proof of Mr Forbes-Laird (Nos 1-6)

DISTRICT COUNCIL DOCUMENTS

DC/1/P	Proof of evidence of Mr Lindley (as amended at the Inquiry)
DC/1/A	Appendices to the proof of Mr Lindley (Nos 1-10)
DC/1/S	Summary to the proof of Mr Lindley
DC/2/P	Proof of evidence of Mr Griffiths (as amended at the Inquiry)
DC/2/A	Appendices to the proof of Mr Griffiths (Nos 1-7)
DC/2/S	Summary to the proof of Mr Griffiths

DOCUMENTS TABLED AT THE INQUIRY

Doc 1	Opening submissions for the Council
Doc 2	Council's letters of Notification
Doc 3	Inspector's conclusions regarding the duty to cooperate in relation to the Submission Version of the Mid-Sussex Local Plan (2 December 2013)
Doc 4	Hurstpierpoint and Hurst Wickham Conservation Areas
Doc 5	Statutory list descriptions for Little Park Farmhouse and Hurstpierpoint College
Doc 6	Mid-Sussex District (Hurstpierpoint No 1) Tree Preservation Order 2011
Doc 7	Local Plan policies C2, C5 and C6
Doc 8	Report on the objections made to the Revised Deposit Draft of the Mid Sussex Local Plan (31 July 2003)
Doc 9	Cotswold DC v Secretary of State for Communities and Local Government [2013] EWHC 3719 (Admin)
Doc 10	Extract from Mid-Sussex District Plan Submission Version (May 2013)
Doc 11	Draft version of Section 106 Agreement and office copy entries
Doc 12	Written statement of Mr Maidment, read out at the Inquiry
Doc 13	Engrossed version of the S106 Agreement
Doc 14	Appellant's written responses to matters raised by in correspondence from third parties at application and appeal stage
Doc 15	Possible wording for traffic calming condition in relation to Iden Hurst
Doc 16	Closing Submissions for the Council, including rebuttal to the appellant's application for costs
Doc 17	Closing Submissions for the appellant
Doc 18	Skeleton application for costs by the appellant

OTHER DOCUMENTS

- Doc 19** Outline Landscape and Ecological Management Plan
- Doc 20** Bundle of pre-Inquiry correspondence between the parties dated 2 and 3 December 2013
- Doc 21** Additional information relating to the data on tree growth rates used to inform Mr Huskisson's photomontages
- Doc 22** Council's response to the growth rate information
- Doc 23** Development and Infrastructure SPD
- Doc 24** Appeal Decision APP/D3830/A/11/2160683
- Doc 25** Post-Inquiry comments from the Council on the new Planning Practice Guidance
- Doc 26** Post-Inquiry comments from the appellant on the new Planning Practice Guidance

Richborough Estates

Appendix C: RECOMMENDED CONDITIONS

RESERVED MATTERS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") for any phase of the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins on that phase. Development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters for any phase of the development hereby permitted shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved for that phase.

PLANS

- 4) Insofar as access is concerned, the development hereby permitted shall be carried out in accordance with the following approved plans: 0454-GA-05 RevB and 0454-GA-12B RevB.

ACCESS/HIGHWAYS/TRAVEL PLAN

- 5) Prior to commencement of development on the **Highfield Drive** phase, including works of ground clearance or site preparation, full details of the access to the site from Highfield Drive, including a timetable for implementation of the different stages of construction of the access, shall be submitted to and approved in writing by the local planning authority. The access shall be constructed in accordance with the approved details and timetable.
- 6) Prior to commencement of development on any part of the **Little Park Farm** phase, including works of ground clearance or site preparation, full details of the access from Iden Hurst, including a timetable for implementation of the different stages of construction of the access, shall be submitted to and approved in writing by the local planning authority. The access shall be constructed in accordance with the approved details and timetable.
- 7) Prior to commencement of development on any part of the **Little Park Farm** phase, including works of ground clearance or site preparation, full details of the access from Chalkers Lane, including temporary traffic lights and a timetable for implementation of the different stages of construction of the access, shall be submitted to and approved in writing by the local planning authority. The access shall be constructed in accordance with the approved details and timetable.
- 8) Prior to commencement of development on any part of the **Little Park Farm** phase, details of a scheme to ensure that, once no longer required for construction traffic, use of the access off Chalkers Lane is restricted to pedestrians/cyclists and emergency vehicles only, shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall include a timetable for implementation of the scheme. Development shall be carried out in accordance with the approved scheme and timetable.

- 9) Prior to commencement of development on any part of the **Little Park Farm** phase, including works of ground clearance or site preparation, details of a scheme to prevent general construction vehicles from entering the site via Iden Hurst shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 10) Prior to commencement of development on any part of the **Little Park Farm** site, a scheme for the assessment of the post-construction impact of the development hereby permitted on traffic speeds on Iden Hurst shall be submitted to and approved in writing by the Council. The details to be submitted shall include a timetable for both implementation of the scheme of assessment, at defined intervals of occupation, and for the submission of the results to the Council.
- 11) Prior to commencement of development on any part of the **Little Park Farm** site, a scheme for the assessment of the post-construction impact of the development hereby permitted on traffic flows along Cuckfield Road shall be submitted to and approved in writing by the Council. The details to be submitted shall include a timetable for both implementation of the scheme of assessment, at defined intervals of occupation, and for the submission of the results to the Council.
- 12) Prior to commencement of development, details of a scheme to upgrade existing public footpaths within the site and showing how the proposed footpaths and cycle ways within the site will link to the existing network, shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall include a timetable for implementation. Development shall be carried out in accordance with the approved scheme and timetable.
- 13) No dwelling on any phase of the development hereby permitted shall be occupied until a detailed Travel Plan for residents of that phase, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be developed in accordance with the principles set out in the WSP Framework Travel Plan dated 30 January 2013, submitted with the planning application, and with the West Sussex County Council on travel plans. It shall be implemented in accordance with the agreed timetable and details and shall remain operative as long as the development is occupied.

BOUNDARY TREATMENT

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

SITE LEVELS

- 15) Development shall not begin on any phase of the development hereby permitted, until details of the finished ground and floor levels within that phase, have been submitted to and approved in writing by the local planning

authority. Development shall be carried out in accordance with the approved details.

DRAINAGE

- 16) No building on any phase of the development hereby permitted shall be occupied until surface water drainage works for that phase have been implemented in accordance with details that shall have previously been submitted to and approved in writing by the local planning authority. The submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation in relation to each phase of the development; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker, or any other arrangements to secure the operation of the scheme throughout its lifetime.
- 17) No building on any phase of the development hereby permitted shall be occupied until works for the disposal of sewage have been provided to serve that phase, in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

PLAY AREAS

- 18) No development shall take place on any phase of the development hereby permitted until details of the layout and equipment for the play area for that phase, together with a timetable for its construction, and details of future management and maintenance, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and timetable.

ARCHAEOLOGY

- 19) No development shall take place on any phase of the development hereby permitted, including any works of ground clearance or site preparation, until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation that has previously been submitted to and approved in writing by the local planning authority.

TREES/ECOLOGY/LANDSCAPE MANAGEMENT

- 20) No development shall take place on any phase of the development hereby permitted, including any works of ground clearance or site preparation, until all existing trees, shrubs and hedges to be retained within that phase, and any associated buffer zones, have been protected by fencing in accordance with a scheme that shall previously have been submitted to and approved in writing by the local planning authority. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written approval of the local planning authority. The

protective fencing and exclusion zones shall not be removed other than in accordance with a timetable that shall previously have been submitted to and approved in writing by the local planning authority.

- 21) No dwelling in any phase of the development hereby permitted shall be occupied until a Landscape Management Plan, including long term objectives, management responsibilities, arboricultural supervision and maintenance schedules for all associated landscaped, treed and open areas, other than small privately owned domestic gardens, has been submitted to and approved in writing by the local planning authority. The Landscape Management Plan shall be carried out in accordance with the approved details.
- 22) No development shall take place on any part of the development hereby permitted, including any works of ground clearance or site preparation, until details of how the mitigation measures set out in Section 5 of the Ecological Assessment undertaken by Ecology Solutions Limited (November 2012) are to be implemented have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include a timetable for implementation. Development shall be carried out in accordance with the approved details and timetable.

LIGHTING

- 23) No external lighting shall be installed within any part of the site (other than within private domestic curtilages) other than in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

CONTAMINATED LAND

- 24) Other than as may be required by an approved scheme of remediation, no development, including works of ground clearance and site preparation, shall take place on any phase of the development hereby permitted until a full contaminated land assessment for that phase has been carried out, and a remediation strategy to deal with any contamination has been submitted to and approved in writing by the local planning authority for the relevant part. The contaminated land assessment shall identify the extent of any contamination and the measures to be taken to avoid risk to the environment, the general public and the proposed development. It shall include a timetable of works. Any necessary remediation strategy shall be implemented in accordance with the approved details and timetable. No part of the development shall be occupied until a Completion Report, confirming that the remediation has been carried out as approved, has been submitted to and approved in writing by the Local Planning Authority.
- 25) If, during development, contamination not previously identified, is found to be present on any phase of the development hereby permitted, then no further development on that part of the site (unless otherwise agreed in writing by the local planning authority) shall be carried out until remediation works, in accordance with a Method Statement for remediation, including a timetable that has previously been submitted to and approved in writing by the local planning authority, have been completed and a verification report demonstrating completion of the works set out in the Method Statement has been submitted to and approved in writing by the local planning authority. The Method Statement shall detail how the unsuspected contamination shall

be dealt with. The verification report demonstrating completion of the works set out in the Method Statement shall include results of any sampling and monitoring. It shall also include any plan for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the local planning authority.

CONSTRUCTION

26) No development shall begin on any phase of the development hereby permitted, including any works of ground clearance or site preparation, until a Construction Management Plan (CMP) for that phase has been submitted to and approved in writing by the local planning authority. The CMP shall address, but is not restricted to the following matters:

- i) public safety, amenity and site security
- ii) noise and vibration controls
- iii) air and dust management
- iv) storm water and sediment control
- v) waste and materials re-use
- vi) traffic management
- vii) on-site signage

The approved CMP shall be adhered to throughout the construction period.

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

28) No burning of construction waste shall take place on any phase of the development hereby permitted.

ENERGY SUPPLY

29) Prior to commencement of any phase of development, details, including a timetable for implementation, of how the development will maximise energy conservation shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and timetable.



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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from 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 permission 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

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.