

Appeal Decision

Inquiry held on 15 - 17 October 2014

Site visits made on 14 & 17 October 2014

by R Schofield BA(Hons) MA MRTPI

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

Decision date: 17 November 2014

Appeal Ref: APP/P1425/A/14/2215421

Land south of North Common Road, Wivelsfield Green, East Sussex RH17 7RA

- 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 Gleeson Developments Ltd against the decision of Lewes District Council.
 - The application Ref LW/13/0720, dated 31 October 2013, was refused by notice dated 30 January 2014.
 - The development proposed is erection of up to 75 two, three and four bedroom dwellings to include affordable housing, access and public open space.
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Decision

1. The appeal is allowed and planning permission is granted for erection of up to 75 two, three and four bedroom dwellings to include affordable housing, access and public open space at land south of North Common Road, Wivelsfield Green, East Sussex RH17 7RA in accordance with the terms of the application Ref LW/13/0720, dated 31 October 2013, subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Gleeson Developments Ltd against Lewes District Council during the Inquiry. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was made in outline only, with all matters reserved other than access. I have determined the appeal on this basis, treating the drawings provided as illustrative.

Main Issues

4. In advance of the Inquiry the Council withdrew its third reason for refusal relating to traffic impacts. Thus, the main issues are:
 - the District's housing land supply position and its policy implications;
 - whether the appeal proposal would constitute a suitable form of sustainable development, with particular regard to its effect on the character and appearance of the area and the accessibility to services and facilities from the site by means other than the private car.

Reasons

Housing land supply

5. The housing provision figures in the Lewes District Local Plan 2003 (the Local Plan), including the potential allocation of 190 dwellings to Wivelsfield Green, ran to 2011 and, as such, it is common ground between the main parties that they are out-of-date. Acknowledging this, the Planning Statement of Common Ground sets out (p.17) that the District's Objectively Assessed Need (OAN) for housing, and thus the District Council's assessment of its five-year supply of deliverable housing land, is derived from the Sussex Coast Housing Needs Assessment (October 2013). It was also common ground between the main parties that, while the precise supply of deliverable housing land within the District was not agreed, it was no better than 1.66 years. This figure is set out in the District Council's most recent update of its Housing Land Supply position, as at 1 October 2014, appended to Mr Woodhams' first Supplementary Note to his proof of evidence. On the basis of the evidence presented to me I have no reason to disagree with this assessment of the District's housing land supply situation.
6. The District Council has submitted its Lewes District Local Plan Part 1 – Joint Core Strategy (Core Strategy) for Examination. This sets out a lower housing target than the OAN, as well as indicative housing figures for a range of settlements, including Wivelsfield Green. The Core Strategy has yet to pass Examination and the main parties agreed that there are objections to a number of its policies, including that relating to the housing target for the District. This being so, it was common ground between the parties that this document, in accordance with paragraph 216 of the National Planning Policy Framework (the Framework), carries little weight in relation to the appeal proposal. I agree with this conclusion and have considered the appeal on the basis of the Development Plan and the Framework.
7. Where a local planning authority is unable to demonstrate a five-year supply of deliverable housing sites, Paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date. Housing applications should be considered in the context of the presumption in favour of sustainable development, bearing in mind the imperative in Paragraph 47 to boost significantly the supply of housing.

Character and appearance

8. Local Plan policy CT1 aims to restrict development outside defined Planning Boundaries. The appeal proposal, seeking development on a site outside the Planning Boundary for Wivelsfield Green, conflicts with this policy. However, it was common ground between the main parties that policy CT1 is relevant to the supply of housing and, in the absence of a five-year supply of deliverable housing land, is out-of-date. I agree with this. This being so, the fact that the appeal development would be within the countryside would not make it unacceptable as a matter of principle. Nonetheless, it is important to consider the site in relation to the character and appearance of Wivelsfield Green.
9. Surrounded by open countryside, Wivelsfield Green is a village of around 360 dwellings, of a mix of styles and ages, stretching from the B2112, on the west, to the edge of Farncombe Close, which abuts the appeal site, to the east. The

eastern side of the village is typically characterised by estate development from the latter half of the twentieth century.

10. The District Council's Landscape Capacity Study (LCS) identifies land east of Wivelsfield Green as being a preferred area, in terms of limited landscape impact, for development. The Parish Council disputes the LCS's conclusions in this respect, but this is largely a matter of judgment in relation to the application of the methodology. The appeal site comprises what are, in effect, four adjoining fields that form part of the open countryside, contributing to the rural setting of the village. Nonetheless, the site is surrounded by development on three sides and is well-contained within the wider landscape. It is largely hidden from long range public views into it by mature, albeit largely deciduous, vegetation, notably the woodland belts along its eastern and southern boundaries and the existing development around it. Those views that do exist, even at relatively close range from the bridleway along the site's eastern boundary, are filtered by this vegetation and the scheme offers the opportunity, through condition, to further enhance boundary planting.
11. A few dwellings on Farncombe Close, Downsview Drive and South Road, as well as the site of the Church of Jesus Christ of the Latter Day Saints on North Common Road, have either largely unrestricted, or filtered, views over the site from their rear windows and/or gardens. These are a limited number of private views and cannot, collectively, be considered as having a public impact. Even so, the outlook from these properties would change from one of grassed fields to a housing development.
12. Visual change would also be considerable for those viewing the site from the public rights of way that cross it, albeit that these views already incorporate, to varying degrees, the existing development around the appeal site; a situation that considerably reduces any sense of rural isolation or development free surroundings.
13. Thus, I accept that housing would be nearer and the fields lost. Given the change in the site's appearance, when viewed from close quarters, some harm would arise to the 'rural' character of the site itself. This is a factor to be weighed in the planning balance. However, considering the site's wider context, outlined above, although the appeal scheme would result in an extension of development beyond the established built confines of the village, it would not appear as a significantly detrimental incursion into the open countryside.
14. The scheme would result in a not insignificant increase in the number of dwellings in the village. Even at 75 dwellings, however, the scheme would be low density and would be in character with adjacent built development. Although illustrative, the submitted plans demonstrate that the mature planting that subdivides the site, and forms much of its boundaries, can be largely retained and enhanced. The site would also be seen against the backdrop of existing, surrounding development. These factors, combined with the proposed open spaces, would ensure an acceptable transition to the countryside beyond. This being so, I conclude that the overall harm to the character and appearance of the area generally would not be substantial. The scheme would not conflict, therefore, with paragraphs 17, 57 or 61 of the Framework. These seek, among other things, to ensure that planning always seeks to secure high quality and inclusive design; contributes to conserving and enhancing the

natural environment; and addresses the integration of new development into the natural, built and historic environment.

15. The District Council also makes reference, in its decision notice, to bullet point 8 of paragraph 17 of the Framework, which seeks to ensure that planning encourages the effective re-use of land that has been previously developed. However, although the scheme would be greenfield development, there is no in principle objection to such development in the Framework nor was it suggested that the District's considerable housing needs can be met using only brownfield sites.

Access to services and facilities

16. An assessment of Wivelsfield Green's services and facilities is made in the District Council's Rural Settlement Study (RSS) 2013, which is a background document informing the Core Strategy. Although it is not part of the development plan, it provides an up-to-date assessment of Wivelsfield Green, undisputed by any party.
17. The RSS shows that Wivelsfield Green has a primary school, village shop and post office, pub, village hall with playing fields and play area, church and petrol station. It is defined by the RSS as a Local Service Centre and, although not all of the appeal scheme's occupiers would utilise all of the available facilities on a daily basis, the village has adequate services for the day-to-day needs of most current and future residents.
18. The appeal site is in easy walking distance by pavement of the village shop and post office, which is sufficiently well stocked that the day-to-day shopping needs of any future residents of the proposed development could be comfortably met. The Primary School is similarly accessible and, although it is at or near capacity, a planning obligation has been provided to address any pupil need arising from the proposed development. Secondary school provision is in nearby South Chailey and, again, although out of hours activities may give rise to the need for use of private cars, obligations have been provided to enable 'core hours' transport from Wivelsfield Green to the school and to address any pupil capacity issues arising from the proposed development.
19. While there are some employment opportunities within Wivelsfield Green, these are limited. It is almost inevitable that a substantial proportion of any future residents of the appeal scheme would need to travel elsewhere for work. The same is true for those in need of a doctor's or pharmacy, or for more extensive shopping provision. However, Wivelsfield Green is only around 5km from the two much larger settlements of Burgess Hill and Haywards Heath, which provide such facilities along with railway stations with onward access to Brighton, Croydon, Gatwick, Lewes and London. The railway station at Plumpton is also a short distance away.
20. The village is also served by three bus routes, the 40/40X, 166 and 824, which between them offer regular access to Burgess Hill and Haywards Heath and nearby railway stations. The latter is a limited 'village rider' service and, as such, discussion at the Inquiry focussed on the 40/40X and 166 services. The 40/40X service provides what is, in effect, a half hourly service to Burgess Hill and an hourly service to Haywards Heath town centre and the Princess Royal Hospital respectively, albeit with reduced, but still regular, weekend services.

- The 166 provides a two hourly service to Haywards Heath, Monday to Friday, with a much more restricted service on Saturdays and no service on Sundays.
21. Between them, these services provide reasonable access, including coverage of peak commuter times, to higher order settlements and to three railway stations by public transport. There are bus stops for the 166 very close to the site. The bus stops for the more beneficial service, the 40/40X, are around 2km away. As such, this service would be unlikely to prove attractive to all future residents of the appeal scheme that may need to access Burgess Hill or Haywards Heath. The option is nonetheless available.
22. The 166 service is currently the subject of a consultation on reducing the days on which the off-peak services would operate. However, the results of this consultation are unknown so little weight can be afforded to it. Even were the off-peak service to be reduced, it is not unreasonable to consider that the addition of up to 75 new dwellings in the village could serve to support its reinstatement.
23. There are no dedicated cycle lanes on the routes to the higher order settlements or to Plumpton railway station. These routes are also largely unlit. With the exception of the natural route to Plumpton, however, the roads are two lane routes and reasonably wide. Cyclists on such roads would also be likely to have bicycle lights and reflective clothing. Thus, although cycling might be unlikely to prove a popular option for many residents of the proposed development, particularly in the winter months when daylight hours are shorter, there is nonetheless a realistic opportunity to access higher order settlements and railway stations within a relatively short cycling distance.
24. Notwithstanding the above, Mr Gimingham agreed in cross-examination that the majority of journeys from the appeal site would be by private car. It was also agreed at the Inquiry that current residents of Wivelsfield Green own a significantly higher number of private motor vehicles than the District, County, Regional and National average. However, there are numerous opportunities available to access a reasonable range of day-to-day services, as well as two higher order settlements and three railway stations, by a range of non-car based modes of transport. Even if the majority of journeys to access other services and facilities from the site were to be by car, the close proximity of Burgess Hill and Haywards Heath would mean that such journeys would be short.
25. Mr Gimingham's evidence also shows that 14% of Wivelsfield Green's residents work in the village, with a further 24% working in Haywards Heath or Burgess Hill¹. Thus, a not insignificant number of current journey to work destinations, while acknowledging that shift workers may be disadvantaged, are readily accessible by means other than the private car. Again, even if the private car were to be used, journeys would be short. It is also notable that 16% of residents work in London, which is readily accessible by train from Haywards Heath and Burgess Hill.
26. Sites on the edge of Burgess Hill and Haywards Heath are likely to provide greater opportunity to maximise non-car based modes of transport. However, no detailed evidence on specific sites was presented to the Inquiry nor was it suggested that, while some permissions have recently been granted, there is a

¹ Proof of Evidence - paragraph 4.2.17

sufficient quantity of such urban fringe sites available to meet the District's housing need, even if a constrained OAN figure were to be adopted in the Core Strategy.

27. The District Council sought to contend that one of the village's potential employment sites and the 40/40X bus stops on the B2112 were located beyond the Wivelsfield Green policy area, as defined by the Local Plan proposals maps. However, this can be regarded as a moot point, as the movement of the village's residents would not be constrained by policy boundaries.
28. Thus, taking the above matters into consideration, I conclude that the appeal site cannot be considered isolated or remote from the main centres of population in the District. Nor is it inherently unsustainable insofar as the potential for access to services and facilities from the site by means other than the private car is concerned. Indeed, in line with paragraph 32 of the Framework, opportunities for sustainable transport modes have been taken up and, in line with paragraph 34, the site is situated, taking account of its rural location, in an area where the need to travel could be minimised and the use of sustainable transport modes could be maximised. This will be further supported by the provision of a Travel Plan, secured by planning obligation.
29. The proposal would not conflict, therefore, with Local Plan policies ST3 and T1, which seek, among other things, to ensure that demand can be met through non-car modes of transport; where appropriate, contributions are made towards ensuring that adequate accessibility by non-car modes to the site is achieved; and that development should not result in detriment to the character and amenities of the area through increased traffic levels. Nor would the proposal conflict with paragraph 17 of the Framework, which seeks, among other things, to ensure that planning actively manages patterns of growth to make the fullest possible use of public transport, walking and cycling.
30. I conclude, therefore, that in relation to the effect of the scheme on the character and appearance of the area and the accessibility to services and facilities from the site by means other than the private car, the proposed development would constitute a suitable form of sustainable development. However, the Council also seeks to rely on paragraph 14 of the Framework and my conclusions on the overall sustainability of the scheme are set out in my Conclusion below.

Other Matters

31. Although the Parish Council provided appeal decisions to suggest that, once a Neighbourhood Plan (NP) has reached a certain pre-adoption stage it can become a significant material consideration, it was common ground between all parties that the emerging NP carried little weight. Given that a draft plan has yet to be published, let alone submitted to the District Council, I agree with this. I also fully acknowledge that this appeal decision may come as a disappointment to those local residents, from some of whom I heard, that are very laudably working on alternative allocations for housing in the NP. However, the NP still has some way to go before it reaches Examination and the District is suffering from a chronic housing shortage, which weighs in favour of the appeal scheme. I also heard the evidence of local resident Mr Morris, which suggested that there is no certainty that the NP's preferences with regard to potential allocations for residential development will be supported by all local residents when it goes out for consultation.

32. The Parish Council supports the NP's allocation of sites for new residential development and is promoting a site at Springfield Farm on the west of the village. There was dispute at the Inquiry between the Parish Council and the appellant over the relative merits, in terms of effect on landscape and proximity to local services and facilities, of the Parish Council's preferred site at Springfield Farm and the appeal site. Notwithstanding that the District Council's Strategic Housing Land Availability Assessment questions the deliverability of the Springfield Farm site, it is not my role to come to a view on a 'beauty parade' of sites. It is, rather, to reach a decision on the individual merits of the scheme before me.
33. It was suggested that a grant of planning permission on the appeal site would be premature in advance of the adoption of the Core Strategy and Neighbourhood Plan, as well as in the light of the extant permissions for residential development in the Parish of Wivelsfield. However, as I have indicated above, neither document is close to adoption and, although I am sympathetic to local concerns about the level of residential development permitted in Wivelsfield Parish, the District has a significant shortfall in its housing land supply that is in urgent need of addressing.
34. The illustrative drawings have raised concerns about the effect of the appeal scheme on the living conditions of the occupiers of some dwellings overlooking the site, with regard to outlook and privacy. It is accepted that the outlook from these dwellings will change considerably. Although this may not be desirable for the occupiers of those dwellings affected, a change from fields to houses would not, of itself, have a significantly detrimental impact upon their living conditions.
35. At 75 dwellings the appeal development would be relatively low density and the illustrative drawings suggest that there is space within the site to relocate dwellings. As the application is for 'up to' 75 dwellings there is also the ability to reduce dwelling numbers if necessary. Consequently, there is no reason to consider that a scheme submitted under a reserved matters application would be unable to achieve suitable separation distances between proposed and existing dwellings, avoiding a loss of privacy for the occupiers of dwellings overlooking the site. Nor is there any reason to consider that significant adverse impacts upon outlook, which could otherwise arise in relation to the juxtaposition of new dwellings to existing properties, could not be addressed.
36. A number of objectors raised concerns in relation to highway safety, the parking provision on the site and the robustness of the Transport Assessment accompanying the original planning application. However, the Transport Statement of Common Ground confirms the Highway Authority's professional view that, following the provision of additional information by the appellant, there is adequate spare capacity on the local road network to accommodate the scheme and that the site access is acceptable in safety and capacity terms. It is also evident from the submitted access plans that the footpath link from the site along North Common Road can be achieved without any narrowing of the carriageway. Thus, the Highway Authority finds that the scheme is acceptable subject to highway conditions, off-site highway works and relevant planning obligations. It has also been shown that the level of car parking required to meet the Highway Authority's car parking standards can be achieved. The appellant has also provided updated information with regard to trip rates, using a refined dataset, which reaches conclusions very similar to that in relation to

the original data. Construction traffic could have an adverse impact upon the vicinity of the site, while development took place. However, this can be controlled by condition as proposed by the District Council.

37. The scheme may result in additional use of the nearest hospital, fire service and doctors' surgeries in Haywards Heath and Burgess Hill. However, notwithstanding the lack of representation from these bodies, or substantive evidence to suggest that their capacity is limited, any new housing development within the west of the District, whether at the appeal site or not, would have a similar effect.
38. A Flood Risk Assessment was supplied with the planning application and the Environment Agency has not raised any concerns about the scheme, in relation to flood risk, subject to appropriate conditions. Similarly, Southern Water has not raised any concerns in relation to foul drainage, subject to conditions.
39. An Extended Phase 1 Habitat Survey for the site was submitted with the application. This has been supported by additional survey work in relation to bats and reptiles, as well as an Ecology Enhancement and Mitigation Strategy. Following the evidence of Ms Tamblyn I am satisfied that, subject to conditions, which would secure the preservation and enhancement of the woodland on the south and east of the site, the scheme would not have a significant adverse impact upon any protected species, either on or off site, and that it actually presents opportunities to enhance habitats.
40. Although the site is crossed by public rights of way and a number of informal pathways, from which social benefit and enjoyment is clearly derived, it nonetheless remains private land. Consequently, development of the site would not result in the loss of public open space and would, through the provision of amenity space and formal play areas, actually increase the amount of public open space in the village. It is also clear from the evidence before me that Wivelsfield Green is surrounded by a wider network of public rights of way. Although this does not devalue the enjoyment that some local residents derive from the paths crossing the appeal site, numerous opportunities for countryside recreation will nonetheless remain available to them.
41. Submissions were made relating to both Article 1 Protocol 1 and Article 8 of the European Convention on Human Rights (ECHR), to the effect that if the appeal were allowed it would interfere with the quiet enjoyment of the properties of adjacent property holders, specifically 9 Farncombe Close, and respect for their surroundings, specifically of Roston, South Road. However, allowing the appeal would result in the introduction of activity already occurring in the immediate vicinity of the site, given that it is largely surrounded by existing development. As such, I do not consider that allowing the appeal would have a disproportionate effect upon the occupiers of 9 Farncombe Close. Although I have acknowledged that the outlook from some dwellings, including South Road, would change, I do not consider that the effect upon them, particularly given the opportunities available to retain and enhance existing planting on and around the site, would be so significant as to constitute a violation of the occupiers' human rights.
42. Concerns have been expressed that allowing the appeal would set a precedent for further extensions to the site and for further residential development in Wivelsfield Green. With regard to the first point, the site is already contained on three sides by existing development and the bridleway to the east of the

site forms a natural boundary to further extension. With regard to the second point, my decision in this appeal should not be interpreted as a finding that Wivelsfield Green is necessarily a 'sustainable location' for any future residential development. Indeed, any future proposals would need to be assessed on their own site-specific merits, in the context of any Development Plan and national policy then in place. While I have concluded that the appeal scheme is acceptable given the site context and housing land supply situation, the fact that up to 75 dwellings have been allowed on appeal in Wivelsfield Green would be a consideration to be weighed in the balance when considering any future development proposals.

43. Mention has been made of past appeal decisions in relation to the site. However, none of these are before me and no specific references to them have been provided. It is evident that they date back a number of years and I have not been informed of the detailed circumstances surrounding them. Even so, I have determined this appeal on its own merits.

Planning Obligations

44. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the Regulations) requires that if planning obligations contained in S106 Agreements are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.
45. With regards to impact on local schools, the County Council has confirmed that there is insufficient capacity at both Wivelsfield Primary School and Chailey School to accommodate the extra pupil numbers that would arise from the proposed development in relation to Early Years, Primary and Secondary Education. It has also provided calculations to demonstrate the costs of providing the necessary additional capacity. In addition, the appellant and County Council have calculated that 15 pupils from the proposed development would require free transport to Chailey School. The County Council has provided calculations to show the costs of providing this transport for a five-year period, being that agreed as sufficient for qualifying pupil numbers to normalise before the funding of the service was taken over by the County Council. I am satisfied that these obligations meet the tests in the Regulations.
46. Given the public rights of way on and around the site, I am satisfied that additional impact upon them would occur from the proposed development. The County Council has also provided calculations to demonstrate the costs of securing the appropriate improvements. I am satisfied that the obligation meets the tests in the Regulations.
47. Contributions have been secured towards the implementation of a Traffic Regulation Order (TRO) on North Common Road, implementation and monitoring of the Travel Plan and implementation of the Ditchling Local Area Transport Scheme (LATS). Calculations have been provided by the County Council setting out the stages involved in relation to both the TRO and Travel Plan processes and the related costs. Similarly, the Officer's supplementary report to Planning Committee explains the County Council's rationale for seeking contributions toward the LATS scheme. These factors, along with the need to ensure highway safety and maximise use of non-car modes of transport, satisfy me that these obligations meet the tests in the Regulations.

48. A planning obligation is provided to secure the provision of 25% of the proposed dwellings as affordable homes. This accords with policy RES9 of the Local Plan and would assist in meeting locally identified need. I am satisfied that the obligation meets the tests in the Regulations.
49. A contribution of £1425 is secured towards kerbside recycling provision. This is in line with the District Council's Supplementary Planning Guidance on kerbside recycling facilities, which, although dated, has been through public consultation and adopted accordingly. I therefore afford it moderate weight and am satisfied that the obligation meets the tests in the Regulations.

Conclusion

50. Paragraph 14 of the Framework states that a presumption in favour of sustainable development is at its heart. For decision-taking we are told that this means that, unless material considerations indicate otherwise, proposals that accord with the Development Plan should be approved without delay. It further notes that where the Development Plan is absent, silent or relevant policies are out-of-date, permission should be granted unless (a) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or (b) specific policies in the Framework indicate development should be restricted.
51. While initially suggesting otherwise, Mr Woodhams agreed in cross-examination that the Framework, although case law² indicates that the presumption cannot apply equally to sustainable and non-sustainable development, does not require a scheme to first be assessed for sustainability³. This means that the mechanism for determining whether or not a scheme constitutes sustainable development is through the application of the paragraph 14 decision taking criteria set out above.
52. Mr Woodhams further agreed in cross-examination that no specific policies in the Framework indicate that development should be restricted. Thus, given that relevant policies in the Local Plan for the supply of housing are out-of-date, the key consideration in determining whether the appeal proposal is suitable sustainable development must be whether any adverse impacts that may arise from it would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
53. The Framework indicates that there are three dimensions to sustainable development: economic, social and environmental. These roles should not be considered in isolation, because they are mutually dependant, and I address the relevant issues here.
54. The Framework does not regard housing development as economic development per se. However, the government has made clear its view that house building plays an important role in promoting economic growth. In economic terms, the appeal scheme would provide construction jobs during its build out and would generate New Homes Bonus (NHB) and Council Tax receipts for the District Council. Albeit that these jobs would be transitory, and no direct link between the spend of the NHB and Council Tax funds and Wivelsfield Green was established, I give these economic benefits moderate weight.

² Dartford Borough Council vs SSCLG and Landhold Capital Ltd [2014] EWHC 2636 (Admin)

³ Ibid

55. In social terms, I acknowledge the considerable local opposition to the appeal scheme. I have addressed elsewhere in my decision the specific concerns raised, and noted the little weight that I can attribute to the emerging NP.
56. In addition, both the District and Parish Councils made representation that Wivelsfield Parish has already accommodated a considerable amount of development, in terms of recent planning permissions, and has in effect met its social obligation with regard to the supply of housing. However, neither party identified any Parish based policy for the distribution of housing, or basis for such, with which the appeal scheme would conflict. In addition, identified impacts upon local infrastructure have been addressed by the provision of planning obligations. Both these parties also submitted that the Shepherds Close affordable housing scheme negated the need for further affordable dwellings in the Parish. However, the appellant's undisputed submission of an extract from the District Council's Housing Register shows that there are currently 41 people in need of affordable dwellings in Wivelsfield Parish. Consequently, I can give these matters little weight.
57. In favour of the scheme is the very substantial weight of the social benefit that would be derived from the provision of up to 75 new dwellings, of which 25% would be affordable, to address the significant undersupply of housing, both market and affordable, in Lewes District. It is accepted that around 56% of the District is covered by protected landscape comprising the South Downs National Park (SDNP). This may mean that meeting the OAN for housing is more challenging, but this is a matter for the Core Strategy Examination. In the context of this appeal, however, rather than reducing the weight to be attributed to the undersupply, the opportunity to provide new dwellings on a sustainable site that is unaffected by the SDNP, weighs significantly in favour of the appeal scheme.
58. In environmental terms, the appeal proposal would result in the loss of countryside and a change in appearance of the site itself. There would be moderate harm to outlook from existing dwellings and to the largely open views from within the site. However, given the site's wider context, as outlined above, I do not consider that, overall, the scheme would have a substantial adverse impact upon the character and appearance of the area. In addition, the evidence of Ms Tamblyn, supported by the ecological survey work, indicates that the scheme could secure biodiversity enhancements, which is a factor to which I afford moderate positive weight.
59. It may be that the private car would be the principal means of transport for a majority of future residents of the appeal scheme. However, the site is well located for access to the village school, shop, pub and bus stops for the 166 route. The 40/40X is also accessible. Wivelsfield Green is also located close to two higher order settlements, which can be accessed by bicycle and which have railway stations. Thus, overall, I consider that the site is in a location where the need to travel could be minimised and the use of sustainable transport modes could be maximised. I give this factor moderate weight.
60. Paragraph 14 of the Framework is engaged. Placing all of the relevant material considerations in the balance, I find that the adverse impacts of the proposed development would not significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposal would be sustainable development.

Conditions

61. The planning conditions suggested in the Officer's reports to Planning Committee were discussed in some detail at the Inquiry. I have made amendments in the light of those discussions. In some cases this is to improve precision, clarity and enforceability, as well as avoiding overlap, and elsewhere to reflect more closely the (still extant) model conditions in Circular 11/95: The Use of Conditions in Planning Permissions.
62. The standard conditions specifying the time limits for submission of reserved matters and commencement of development, and that requiring compliance with the approved plans, are necessary in the interests of proper planning. Highways conditions, including construction, parking, footways, access and road layout, are necessary to ensure highway and pedestrian safety. Conditions relating to drainage and sewerage are required to ensure that the site is properly drained. I have also attached, following the agreement of the main parties, the Environment Agency's condition in relation to flood risk, to ensure that there is no increase in flood risk on or around the site. Landscaping, boundary, tree conditions and finished floor level conditions are necessary in the interests of character and appearance. A Construction Management Plan and an hours of construction condition are necessary to ensure that there is no adverse impact upon the living conditions of local residents, or the local highway network, during construction. Notwithstanding the Council's reasons, namely to ensure that there is no adverse impact upon the living conditions of neighbouring residents, a lighting condition is also necessary in the interests of mitigating impacts upon foraging bats. An ecological condition is necessary to protect and enhance habitats on the site. The condition relating to the LEAP and LAP is necessary in the interests of character and appearance and on-going maintenance. A refuse storage condition is necessary in the interests of character and appearance and to ensure that there is no adverse impact upon the living conditions of neighbouring residents.
63. There was debate as to whether condition 11 should apply to private, domestic gardens. However, as the condition relates solely to trees, which would be significant landscape features, rather than to all plants that may be found in a private, domestic garden, I consider it reasonable to apply it as written.
64. The Planning Practice Guidance is clear that conditions restricting the future use of permitted development rights should only be used in exceptional circumstances. No such exceptional circumstances have been set out by the District Council and, although the Parish Council felt that the presence of footpaths on the site constituted such circumstances, I do not consider this condition to be necessary or reasonable. As the application is in outline with all matters reserved other than access, a condition relating to appearance is only necessary at reserved matters stage and that relating to specified illustrative plans is unnecessary and lacks clarity. The Travel Plan Statement is addressed by the S106 agreement and so the proposed condition is not necessary. Proposed conditions in relation to a water course buffer zone and archaeology are unnecessary as, respectively, there is no river on the site and the archaeological geophysical survey considered the archaeological potential of the site as low.

65. At the end of the Inquiry the appellant proposed a condition for the provision of bus shelters at the bus stops on South Road near Downsview Drive. However, very limited information was provided about the mechanism by which their delivery could be achieved, bearing in mind that they would be situated on land outside the appellant's control. Consequently, although the shelters may be desirable, and would be an added incentive to use of the 166 bus service, this condition is not consistent with the requirements of paragraph 206 of the Framework as its enforceability is unclear.

Overall Conclusion

66. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal should be allowed.

R Schofield

INSPECTOR

Richborough Estates

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Certified Copy of S106 Agreement, dated 13 October 2014, submitted by the appellant
2. Minutes of Wivelsfield Parish Council Meeting, 11 September 2014, submitted by Wivelsfield Parish Council
3. Copy of the High Court judgment in William Davis Limited, Jelson Limited v Secretary of State for Communities and Local Government, North West Leicestershire District Council [2013] EWHC 3058 (Admin), submitted by Lewes District Council
4. Copy of the High Court judgment in Dartford BC v SSCLG & Landhold Capital Ltd [2014] EWHC 2636 (Admin), submitted by Lewes District Council
5. Copy of the Court of Appeal judgment in City and District of St Albans and Hunston Properties v SSCLG [2013] EWCA Civ 1610, submitted by Lewes District Council
6. Opening Statement made on behalf of Lewes District Council
7. Opening Statement made on behalf of Wivelsfield Parish Council
8. Second Supplementary Note to Proof of Evidence of Mr Philip Woodhams
9. Letter from Mr John Wigzell dated 14 October 2014
10. Letter with attachments from Mr Gordon Harper dated 30 September 2014
11. Statement from Mr Jason Stoner (Wivelsfield Parish Council) dated 13 October 2014
12. Letter from Mr Richard Morris dated 13 October 2014
13. Copy of an internal letter of East Sussex County Council, dated 6 December 2013, explaining the requirement for planning obligations relating to education provision, submitted by the appellant
14. Copy of comparative dataset for car ownership in England and Wales, South East England, East Sussex, Eastbourne, Hastings, Lewes and parishes in Lewes District, submitted by the appellant and Wivelsfield Parish Council
15. Copy of map showing the distances from Springfield Farm to Wivelsfield Primary School and shop, submitted by the appellant and Wivelsfield Parish Council
16. Local Plan Policy RES2, submitted by the appellant
17. Local Plan Policy RES9, submitted by Lewes District Council
18. Copy of decision letter on behalf of the Secretary of State with regard to planning appeal APP/D3830/V/14/2211499, submitted by Wivelsfield Parish Council
19. Copy of decision letter on behalf of the Secretary of State with regard to planning appeal APP/D3830/A/12/2189451, submitted by Wivelsfield Parish Council

20. Copy of a letter from Wivelsfield Parish Council to Lewes District Council concerning neighbourhood planning, dated 2 September 2014, submitted by Wivelsfield Parish Council
21. Copy of Lewes District Council Supplementary Planning Guidance on the Provision of Kerbside Recycling Facilities as Part of New Residential Development, submitted by Lewes District Council
22. Copy of a minute of Lewes District Council Cabinet meeting 7 January 2004, regarding Supplementary Planning Guidance on the Provision of Kerbside Recycling Facilities as Part of New Residential Development, submitted by Lewes District Council
23. Copies of emails, with attachments, from East Sussex County Council, dated 17 October 2014, explaining the requirement for planning obligations in relation a Traffic Regulation Order, Public Rights of Way improvements, Travel Plan Audit Fee, submitted by the appellant
24. Copy of email from East Sussex County Council explaining the requirement for a planning obligation in relation to a school bus contribution, dated 15 October 2014, submitted by the appellant
25. Proposed condition relating to provision of bus stops on South Common Road, submitted by the appellant
26. Copy of East Sussex County Council School Transport Policy, dated April 2014, submitted by the appellant
27. Copy of an extract from Lewes District Council Housing Register, from the Lewes District Council Affordable Housing Needs Assessment, January 2014, submitted by the appellant
28. Certified copy of S106 Deed of Variation, dated 17 October 2014, submitted by the appellant
29. Closing Submissions on behalf of Wivelsfield Parish Council
30. Closing Submissions on behalf of Lewes District Council
31. Closing Submissions on behalf of the appellant

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans in respect of those matters not reserved for later approval: Location Plan P983-04 REV D; ITB7116-GA-001 REV F; ITB7116-GA-006 REV B.
- 5) No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. Those details shall include:
 - a) a timetable for its implementation;
 - b) the layout, levels, landscaping and fencing, as necessary, of the scheme;
 - c) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.
- 6) No part of the development hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development, in accordance with details to be submitted to and approved in writing by the local planning authority.
- 7) No development shall take place until a scheme of flood mitigation measures has been submitted to and approved in writing by the local planning authority. These measures shall accord with the approved Flood Risk Assessment (FRA), dated 28 October 2013 ref AMA304 Rev 0, and shall include details of:
 - a) how surface water run off rates will be restricted in accordance with the proposed Surface Water Drainage Strategy (ref FRA Chapter 4.2 pp10-13), to include the stated significant reduction in run-off rates for storm events greater than 1 in 1 year (FRA paragraph 6.2 p15);
 - b) finished site levels and finished floor levels, the latter to be set at a minimum of 150mm above the finished ground levels (ref FRA paragraph 4.2.13 pp12-13), to demonstrate that the site design will be resilient to exceedence events.

The scheme shall thereafter be implemented in accordance with the approved measures.

- 8) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the development is occupied or in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place until there have been submitted to and approved in writing by the local planning authority details of all hard and soft landscaping works, including a planting schedule (that schedule to include the quantity, size, species and positions or density of all trees and shrubs to be planted, how they will be protected and the proposed time of planting). The works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed in writing by the local planning authority.
- 10) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 11) If within a period of 5 years from the date of planting any tree (or tree planted in replacement for it) dies, is removed or becomes seriously damaged or diseased it shall be replaced in the next planting season with another of similar size and species, unless the local planning authority gives written approval to any variation.
- 12) In this condition 'retained tree' means an existing tree which is to be retained in accordance with any approved plans and particulars. No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement), in accordance with *British Standard BS5837: Trees in Design, Demolition and Construction - Recommendations* and the following paragraphs (a) to (f) below, has been submitted to and agreed in writing by the local planning authority:
 - a) All tree work shall be carried out in accordance with *British Standard BS3998: Recommendations for Tree Work*;
 - b) No retained tree shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 5 years from the date of the first occupation of the last unit, other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority;
 - c) If any retained tree is cut down, uprooted, destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and planted at such time as may be specified in writing by the local planning authority;
 - d) No fires shall be lit within 20 metres of the nearest point of the canopy of any retained tree;
 - e) No equipment, machinery or structure shall be attached to or supported by a retained tree;

- f) No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area.

The scheme shall thereafter be implemented as approved.

- 13) No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by condition 12 has been approved in writing by the local planning authority. This scheme will be appropriate to the scale and duration of the works and will include details of:
 - a) Induction and personnel awareness of arboricultural matters;
 - b) Identification of individual responsibilities and key personnel;
 - c) Timing and methods of site visiting and record keeping, including updates;
 - d) Procedures for dealing with variations and incidents;
 - e) The scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved in writing by the local planning authority.

The scheme of supervision shall be implemented as approved.

- 14) No development shall take place until detailed plans for the design and layout of the Local Equipped Area of Play (LEAP) and Local Area of Play together with a plan for the management and maintenance of these areas thereafter have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme agreed in writing by the local planning authority and the areas shall be managed and maintained thereafter in accordance with the approved plan.
- 15) No development shall take place until a detailed scheme of ecological enhancements and mitigation measures, including the retention and enhancement of the existing trees and hedge lines illustrated on plan P983-01 Rev E appended to the Ecology Enhancement and Mitigation Strategy (dated October 2013), based on the recommendations of the Extended Phase 1 Habitat Survey (dated May 2013), Ecology Enhancement and Mitigation Strategy (dated October 2013), Reptile Presence/Likely Absence Survey (dated June 2014) and Bat Activity Survey (dated August 2014) by PJC Ecology has been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved scheme.
- 16) No development shall take place until details of the specification for the construction of the vehicular access, to include details of levels and drainage, have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the means of vehicular access has been constructed in accordance with the approved details and specification.
- 17) A soil survey report, to include the results of California Bearing Ratio (CBR) tests taken along the lines of the proposed estate roads to be adopted, shall

be submitted to and approved in writing by the local planning authority in advance of the submission of the details required by condition 18.

- 18) No development shall take place until detailed drawings, including levels, sections and construction details of the proposed estate roads, along with details of surface water drainage, outfall disposal and street lighting, in accordance with the Highway Authority's standards, have been submitted to and agreed in writing by the local planning authority. The roads shall thereafter be constructed in accordance with the approved drawings and details.
- 19) No construction of the dwellings hereby permitted shall take place until the estate roads have been completed to base course level, together with provision of surface water, foul sewers and main services, in accordance with the approved details.
- 20) No part of each phase of the development shall be occupied until the estate road(s), footway(s) casual parking area(s) and parking and turning spaces serving each phase have been constructed, surfaced and drained in accordance with plans, phasing timetable and other details submitted to and approved in writing by the local planning authority. Parking and turning spaces shall thereafter be retained for their designated use.
- 21) No development or works in connection with this development including site preparation works shall take place until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan shall provide information including details of the:
 - a) anticipated number, frequency and types of vehicles to be used during construction;
 - b) methods of access and routing of vehicles during construction;
 - c) parking of vehicles of site operatives and visitors;
 - d) loading and unloading of plant, materials and waste;
 - e) storage of plant and materials used in construction of the development;
 - f) the appearance, erection and maintenance of security fencing;
 - g) provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
 - h) measures to control the emission of dust and dirt during demolition and construction;
 - i) lighting for construction and security;
 - j) public engagement both prior to and during construction works;
 - k) means of safeguarding public rights of way or providing temporary diversions.

The approved Plan shall thereafter be implemented and adhered to during the entire construction period.

- 22) Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0830 hours to 1300 hours on Saturdays and works shall not be carried out at any time on Sundays or Bank/Statutory Holidays.
- 23) No development shall take place until details of finished floor levels and ground levels in relation to the existing ground levels of neighbouring land

and ground floor levels of neighbouring dwellings have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.

- 24) No development shall take place until details of the facilities for the storage and removal of refuse from the permitted scheme have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 25) No external lighting or floodlighting shall be installed on the buildings hereby permitted without the prior written approval of the local planning authority.

Richborough Estates