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## Appeal Decision

Inquiry commenced on 19 November 2019

Site visit made on 29 November 2019

**by Frances Mahoney MRTPI IHBC**

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

**Decision date: 13<sup>th</sup> February 2020**

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**Appeal Ref: APP/U1430/W/19/3234340**

**Land at Clavering Walk, Cooden, Bexhill on Sea**

- 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 Bellway Homes Limited (Ben Stacey) against the decision of Rother District Council.
  - The application Ref RR/2018/3127/P, dated 30 November 2018, was refused by notice dated 20 June 2019.
  - The development proposed is an outline planning application (with all matters reserved except for means of access from Clavering Walk) for residential development of up to 99 dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 85 dwellings at land at Clavering Walk, Cooden, Bexhill on Sea in accordance with the terms of the application, Ref RR/2018/3127/P, dated 30 November 2018, subject to the conditions set out in the schedule annexed hereto.

### Preliminary matters

2. The Inquiry sat from the 19-20, 26-29 November 2019 with an accompanied site visit on the 29 November 2019.
3. The Bellway Opposition Action Group (Rule 6 Party) were granted Rule 6 party status and took a full and effective part in the Inquiry proceedings.
4. In this outline proposal all matters are reserved for future consideration save that of access. The description of development set out above reflects that of the planning application form. Over the course of the consideration of the planning application, and as a response by the appellant company to the comments of the various consultees and local residents, amendments were made to the proposal with a change in the description of the residential development reducing the maximum number of homes to be considered to 'up to 85 dwellings'. The planning application was determined by the Council on this basis and all the main parties, along with those who addressed the Inquiry were aware of this change. Therefore, my consideration of the proposal is based on the outline proposal for up to 85 units. However, I am aware that the various submitted supporting evidence such as the Transport Assessment has

been formulated on the basis of the original 'up to 99 dwelling' maximum. The relevant conclusions of this evidence has been considered in that context.

5. I am also conscious that other than the location plan and site access plan, all other plans are purely for illustrative purposes only and whilst they may not be determinative, they have informed my reasoning. That notwithstanding I have been asked to consider the broad approach to the development of the appeal site as set out on the Parameters Plan<sup>1</sup>.

### **Planning Policy**

6. The Development Plan includes the Rother Local Plan Core Strategy 2014 (CS) and the saved policies of the Local Plan 2006. Following the close of the Inquiry the Development and Site Allocations Local Plan (DSALP) was adopted, its policies in full force now forming part of the Development Plan<sup>2</sup>. The appeal site was not included within the sites allocated.
7. It is an uncontested position that the District of Rother is highly constrained with nearly 90% of it being either in the AONB or some other nationally or internationally designated area for its nature conservation value<sup>3</sup>. Rother also includes a number of Sites of Special Scientific Interest (SSSI) and over 15% of the District is covered by Ancient Woodlands<sup>4</sup>. Accommodating growth whilst ensuring that this does not conflict with the unique wildlife and habitats protected under the identified designations is identified within the CS as being particularly challenging<sup>5</sup>.
8. In this context the CS focuses new development at Bexhill<sup>6</sup> with some 3,100 homes of the planned 5,700 dwellings for the District to be accommodated within the Town.
9. The appeal site lies outside the defined development boundaries which in the Cooden area closely follow the actual built limits of development. The site does however, closely abutt the urban development of Clavering and Maple Walks, part of the outer built up edge of Cooden. The appeal site is clearly part of the countryside and, therefore, subject to the terms of CS Policy OSS1 which identifies that the overall spatial development strategy of the Local Plan is one of concentrating new development at Bexhill and giving particular attention to the intrinsic character of the countryside. CS Policy OSS2 goes on to highlight that the development boundaries around settlements will continue to differentiate between areas where most forms of new development would be acceptable and where they would not. The weight to be ascribed to these policies is a matter to be considered later in this decision.

### **Agreed housing matters**

10. It is an agreed position between the appellant company and the Council that only a 3.73 years supply of housing land can be demonstrated<sup>7</sup>. This is in the context of an accepted position of under-delivery on the Council's housing

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<sup>1</sup> Dwg No 6564/ASP1 Rev B.

<sup>2</sup> The comments of the parties were sought following the adoption of the DSALP. These are Inquiry Docs 27 & 28.

<sup>3</sup> CD 1.1.1 Para 3.5.

<sup>4</sup> CD 1.1.1 Paras 3.7 & 3.8

<sup>5</sup> CD1.1.1 – Page 18 8).

<sup>6</sup> CD 1.1.1 CS Policy OSS1.

<sup>7</sup> Statement of Common Ground Housing Land Supply Position (SofCGHLS).

requirement during the last 3 years<sup>8</sup>. Sites which already have planning permission or are awaiting the conclusion of S106 agreements have been included in the calculation of the housing land supply.

11. Consequently, the Council accepted that the CS was over 5 years old and its policies in regard to housing provision are out-of-date under the terms of the Framework<sup>9</sup>. I shall return to the weight to be ascribed to the apparent lack of a five-year housing land supply and so to the resultant contribution of up to 85 units to the identified housing need of the District.
12. That said, the important issue is whether the result of the Development Plan policies is the existence of a five-year housing land supply in accordance with the objectives of the Framework. In this instance this is not the case and so it is sufficient, as a first notion, to engage the 'tilted balance' of paragraph 11 of the Framework<sup>10</sup>, reaching a conclusion within the terms of footnote 7 that the identified most important Development Plan policies for the provision of housing are out-of-date<sup>11</sup>. This is a matter which will be returned to in the planning balance.
13. The adoption of the DSALP has not changed the Council's position on its inability to demonstrate a five-year housing land supply. Many of the sites identified in the DSALP form part of the Council's current housing position.

### **Main matters for consideration**

14. Prior to the opening of the Inquiry the Council and the appellant company were able, through discussions and offered mitigation works, to hone the matters between them to the following:
  - Whether the proposal would cause unacceptable harm to the amenity of existing residents in Clavering Walk by reason of disturbance;
  - Whether the development would have an acceptable relationship with the existing townscape; and
  - Whether the proposal would harm the character of the landscape which may or may not form part of a valued landscape<sup>12</sup>.
15. The Rule 6 Party also raised the following:
  - The impact of the proposal on highway users, in particular pedestrians in Maple Walk and at the junction of Clavering Walk and Cooden Sea Road;
  - Whether the proposal represents a suitable location for development in regard to accessibility for pedestrians and offers a real choice to residents in respect of sustainable modes of transport;
  - The impact on the adjacent Cooden Moat Scheduled Ancient Monument (SAM) along with the former WW1 Cooden Camp site; and
  - The impact of the proposal on the integrity of the adjacent European site, the Pevensey Levels (SAC).

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<sup>8</sup> Has delivered 69% of its required housing during the last 3 years.

<sup>9</sup> Framework para 11 d). DL para 9.

<sup>10</sup> Framework Para 11d).

<sup>11</sup> CS Policies OSS1 & OSS2.

<sup>12</sup> In the terms of para 170 of the National Planning Policy Framework (the Framework).

16. All of the above matters will be considered but not necessarily in the order set out above.

### *Highways*

17. Following the refusal of planning permission for this proposal the appellant company continued to negotiate with East Sussex County Council as Highway Authority (HA) and Highways England (HE). The two matters identified to be addressed were the impact on Little Common Roundabout (Strategic) in combination with other developments and site allocations, including the Spindlewood Drive development<sup>13</sup>, and the impact on the local highway network, particularly on Maple Walk, in respect of any effects on pedestrians and other road users.
18. A Transport Assessment Addendum (TAA) dated February 2019 was produced to up-date the original Transport Assessment. It identifies that following further modelling, including observations of traffic flows, the T-junction of Clavering Walk and Cooden Sea Road would operate within acceptable levels of capacity during peak hours, both with and without development in place. From the peak hour traffic counts, it is also apparent that a higher proportion of traffic associated with Clavering Walk beyond the junction with Maple Walk, use the Cooden Sea Road route to the Little Common Roundabout as opposed to Maple Walk itself. I do not find this surprising as having driven Maple Walk during both peak periods the Cooden Sea Road route, again which I experienced, seemed a much more attractive direct and more easily driven route in respect of approaching the Little Common Roundabout. I agree it may not seem to be the most direct route but length of route is only one factor which may influence drivers in respect of which way to go. The conclusion of the TAA in this regard would seem to bear out my observations and judgements.
19. At Little Common Roundabout additional enhancements are proposed, such as improved entry widths and flare lengths on both A259 arms and Cooden Sea Road, which would be sufficient to offset the impacts of the proposed development traffic on the congested arms of the junction. The HA and HE both accepted the findings of the TAA and subject to the delivery of the required mitigation no objection is maintained by the Council or these parties on highway grounds.
20. The Rule 6 Party are particularly concerned regarding the safety of pedestrians. This can be divided into the safety of pedestrians using Maple Walk and those using Cooden Sea Road to access bus stops.
21. Maple Walk is some 700 metres long and is an unadopted shared surface road. As a public right of way it provides a linkage between the adopted section of Maple Walk to the north and Clavering Walk to the south (adopted). It is maintained by 'the Frontages', that being those residents of properties which front onto the road. There is no doubt that this section of Maple Walk would not meet the adoptable standards of the HA. However, such private shared surface roads are not uncommon. The lack of a formalised pedestrian refuge on either side of the road presents a shared responsibility for highway safety between road users in general.

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<sup>13</sup> Which would have its own access directly from the A259 Barnhorn Road, connecting to Maple Walk with a secondary access.

22. At the junction of Maple Walk and Clavering Walk, the roadway stretching to the north is open with grass verges on each side sufficient to accommodate vehicles passing in opposite directions. Forward visibility is good which is a general characteristic of much of Maple Walk and the road does include some street lighting as well as almost continuous residential frontages along its length. Pedestrians and cyclists would be clearly seen. The shared nature of the roadway, in itself, would influence driver behaviour with cars slowing to anticipate pedestrians and cyclists much as would be the case on many adopted roads of a similar nature.
23. Maple Walk does narrow as it extends towards Little Common and there is a defined pinch point of only a single vehicle width. When I walked Maple Walk on a number of occasions, I did encounter vehicles in this narrowed carriageway. However, there were driveways and limited verges to step into to allow vehicles to pass. I also observed vehicles slowing and waiting to allow pedestrians with prams and buggies or with mobility issues to pass and reach the footpaths beyond. The narrowing of the road itself could be considered as a form of traffic calming which requires the slowing of traffic anticipating and accommodating other road users.
24. I do accept for shared surface carriageways to be effective and provide a safe environment for road users, there must be some reliance on driver and road user etiquette and courtesy for one another. Qualities I accept are not always exercised by all road users. I heard anecdotal evidence of pedestrian and cyclists being forced onto the verges by drivers who were breaking the speed limit of 20 miles an hour along Maple Walk and who had little regard for the well-being of other road users. Such instances are not necessarily affected by an increase in road usage. The idiocy of the driving behaviour of some cannot be legislated for, other than by enforcing appropriate restrictions. Evidence of actual accidents resulting from conflicting movements between pedestrians and vehicles was not a mainstay of the cases before me.
25. I consider that in the reality of any increased traffic movements along Maple Walk, notwithstanding the TAA conclusion that most future peak traffic movements would use Clavering Walk and Cooden Sea Road, pedestrians and cyclists, who, in the main, are likely to be locals with a good knowledge of road conditions along Maple Walk, would continue to take care when using the unadopted road. Similarly local drivers using Maple Walk would be aware of the narrowing character of the road in places and drive accordingly. The shared surfacing of the road, the advertised speed limit along its length, the persistent punctuation of emerging domestic driveways and cul-de-sacs, along with the obvious change in road width are all factors which I consider would influence driver behaviour to allow for an acceptable level of compatibility between the movements of pedestrians and those of vehicles. Any increase in traffic either from the proposed development or over-time would not, in my view, significantly increase impacts on the safety of highway users along Maple Walk<sup>14</sup>.
26. Clavering Walk/Cooden Sea Road is presented by the appellant company as the potential route for residents to reach the bus stops close to Maple Avenue. As Cooden Sea Road rises from Clavering Walk towards Maple Avenue the road narrows and goes into a banked cutting at the expense of the pedestrian

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<sup>14</sup> The nature and character of Maple Walk would belie the fears of residents of it turning into a rat-run.

footpaths on either sides of the road. I walked this route myself and certainly felt quite vulnerable as traffic came towards me in both directions. Taking the alternative route along Maple Walk and Maple Avenue, whilst longer in distance, seemed a safer option. Those existing residents from along Clavering Walk who use the bus service presumably have found their own preferences for their chosen routes to the bus stops. This is likely to be the case in respect of future bus users. I am also conscious that the appeal proposal would offer pedestrian access directly to Maple Walk close to the junction with Maple Avenue thereby presenting a more desirable walking route to the bus stops than otherwise.

27. Framework paragraph 109 sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. In the case of highway safety, I have found the impact of the proposal to be acceptable and the residual cumulative impacts on the road network cannot be described as severe<sup>15</sup>. The terms of CS Policies TR3<sup>16</sup> and CO6<sup>17</sup> would not be compromised in this instance.
28. In respect of the obligation of 'the Frontages' to maintain their section of Maple Walk, I do understand it must be frustrating to have the responsibility for a roadway over which there is a public vehicular right of way and of which the public regularly avails itself. However, this is the circumstance of Maple Walk and, much as traffic from the Spindlewood Drive allocation could use the unadopted road unimpeded, so too can existing residents of Clavering Walk or other traffic. I do not see this civil obligation as a matter which should preclude the development of the appeal site.

### *Accessibility*

29. Framework paragraph 103 identifies that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
30. Accessibility of facilities and services is fundamental to the proper functioning of a neighbourhood. The Council and the HA are in agreement that the appeal site is in a sustainable location in terms of access by non-car modes. The Rule 6 Party however is of the view that the appeal site does not form a suitable location for development due to poor accessibility for pedestrians<sup>18</sup>.
31. Little Common benefits from a number of local services and shops, including a small Tesco supermarket and there is no question that it is not in itself a sustainable location where residents can access essential day to day services on foot. I observed a good deal of footfall around the local centre as well as residents queuing at the bus-stop.

<sup>15</sup> I have also considered the terms of Framework para 102, in particular d).

<sup>16</sup> In so far as it relates to the securing of mitigation against transport impacts and improvements to local infrastructure.

<sup>17</sup> Which seeks to ensure that all development avoids prejudice to road and pedestrian safety and reduces traffic impacts in town centres, villages and residential areas.

<sup>18</sup> The route and distances could be well achieved in good time on a bike.

32. The appeal proposal would encourage cycling through the provision of cycle access across the new development and out onto Maple Walk. Little Common is within easy riding distance as are other local services in the vicinity. In respect of pedestrians, the future residents of the new development would access services on foot by walking through the pedestrian link direct to Maple Walk. I have already established that Maple Walk presents an acceptable environment for those walking in this shared surfaced roadway.
33. In practical terms it is the walking times, the nature of the walk and their purpose on that occasion, which are more likely to influence whether someone decides to stride out or to jump into their car.
34. The distance to the shops and services in the vicinity of Little Common may be a stretch of the legs but for future residents it would be no worse than the distances existing residents in Clavering Walk walk to the services, in some cases it would be actually closer.
35. In respect of access to public transport I have already indicated that the bus stops on Cooden Sea Road close to Maple Avenue are accessible. Part of the mitigating highway works includes firstly the improvement of those bus stops making them more attractive to those using the stop, secondly the provision of a 2 metre wide footway leading from the shared surface on Maple Avenue to the bus stop on the west side of the road, and thirdly a pedestrian crossing with dropped kerbs and tactile paving on Cooden Sea Road close to the Maple Avenue junction is proposed along with further dropped kerbs at other nearby junctions.
36. It is acknowledged that the bus service along Cooden Sea Road is limited. The proffered Unilateral Undertaking<sup>19</sup> makes provision for a financial contribution towards improving the bus service, in particular pump-priming later timed services on the Wave99 route. This certainly would make using the bus route more attractive with services later into the day.
37. I am also conscious that Cooden Beach train station is easily accessible on foot and an enormous advantage, providing transport links along the south coast into London and beyond.
38. An advanced Travel Plan would also form part of the detailed requirements for the development to further encourage future residents to use public transport.
39. Therefore, in these circumstances the appeal proposal would present ease of pedestrian movement with acceptable access to local facilities and public transport services providing a genuine choice of transport modes. In this way the development would meet the sustainable transport objectives of the Framework and the terms of CS Policy TR3 in particular.

#### *Noise and disturbance*

40. For the dwellings which back onto the appeal site in Clavering Walk and Maple Walk, in general, they all benefit from comparatively ample rear gardens. A goodly number have open post and rail fencing or mature trees and hedging delineating the common boundaries with the appeal site. I do appreciate that at present the appeal site as a pastoral field presents a quiet neighbour to these dwellings, although I am also aware that in an established residential

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<sup>19</sup> Inquiry Doc 26.

street it is likely, particularly in the summer months, that there would be an awareness of activity within existing neighbouring gardens for residents. However, it is reasonable to suppose that one of the factors in the consideration of any future layout for development would take into account the juxtaposition of the existing private residential gardens and any proposed similar private amenity spaces or building locations. The proffered acoustic fencing of the southern boundary, common to the properties in Clavering Walk and Maple Walk would serve to provide privacy as well as a limitation on noise of a domestic nature between residences, for both future and existing residents.

41. The essence of this matter centres on the impact of the vehicular movements using Clavering Walk generated by the future residents of the proposed development and associated movements such as deliveries or refuse collection in respect of noise and disturbance to the existing residents of Clavering Walk. Whilst a noise assessment has been produced by the appellant company and its overall conclusions remain unchallenged<sup>20</sup>, I consider in the circumstances of this case, it will be a matter of judgement as to what the extent of the overall impacts would be from the new development<sup>21</sup>.
42. Clavering Walk is a cul-de-sac. It is reasonable to suppose that the section of Clavering Walk from the junction with Maple Walk to the turning head currently is, in the main, accessed by the vehicles of existing residents, visitors and associated service traffic with the odd lost driver turning round or those parking to walk the footpath network from this point. Therefore, the general vehicular activity level in the vicinity is likely to be quieter than, for example, Maple Walk where there would be more of a through put of traffic, although I do not doubt that during the peak periods there would be more of a concentration of traffic movements in Clavering Walk as residents leave and return from their regular daily journeys such as to work or the school run. The quieter character of the lower section of Clavering Walk than that of Clavering Walk between Maple Walk and Cooden Sea Road, was borne out in my observations of the locality at varying times of the day and evening. However, it was interesting to note that there was anecdotal evidence from a resident that the turning head of Clavering Walk could be described as busy which would imply some concentration of traffic noise as vehicles make a turning manoeuvre. Nonetheless, I consider it likely that were permission to be granted the noise from future vehicle movements travelling to and from the new homes, in the peak hours, when the main concentration of vehicular movements would occur, would be likely to be noticeable to existing residents over and above that which already occurs both within their homes and their gardens<sup>22</sup>.
43. The question of whether this noise would be a disturbance or not can be specific to the person experiencing it. However, I must make a judgement on whether that impact and resultant harm to the living conditions of the existing residents would give rise to significant adverse impacts on health and quality of

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<sup>20</sup> It was based on the TAA which was assessed on the basis of the earlier 99 units – ie worse case.

<sup>21</sup> These judgements would be based on observations of the character and nature of Clavering Walk and adjacent roads at different times of the day and evening, as well as visits to a number of homes along Clavering Walk.

<sup>22</sup> Main external noise would be likely to be concentrated in the front gardens.

life<sup>23</sup>, and whether it would unreasonably harm the amenities of adjoining properties<sup>24</sup>.

44. The appellant company accept that noise would arise from the development<sup>25</sup>.
45. The mitigating measures proffered by the appellant company in respect of speed limit and road design and surfacing would go some way to assist in minimising the noise from the general comings and goings of vehicles travelling into Clavering Walk from the new development road<sup>26</sup>. However, with the potential for approximately 70 vehicles per hour, amounting to one vehicle per minute in the peak hours<sup>27</sup>, some residents would be aware of the increase in passing traffic in respect of noise generated. This would be likely to cause disturbance for some, particularly for those living closer to the turning end of Clavering Walk which would be extended to give access to the new development<sup>28</sup>.
46. That said, I am also conscious that, most of the houses close to the turning area end of Clavering Walk, are large properties set back from the road, some benefiting from mature tree and shrub planting in the front garden area. This would assist in reducing the impact of the noise, along with an awareness of moving vehicles, which can in itself heighten a sense of disturbance. In addition, over time as residents became more used to the change in the nature of traffic flows along Clavering Walk, any noise and disturbance could become less noticeable and intrusive<sup>29</sup>.
47. However, even in the face of the potential for mitigating factors to reduce noise from vehicles as they move into Clavering Walk and the beneficial set back of dwellings from the road with some intervening landscaping, I find that there would be harm to the living conditions of local residents by reason of noise and disturbance. However, whilst acknowledging that residents would be aware of a change in the noise characteristics of Clavering Walk with an increase in traffic resulting in harm, this would not unreasonably harm the amenities of residents, nor give rise to significant adverse impacts on their health and quality of life. Thereby the terms of CS Policy OSS4 and Government guidance in this regard would remain uncompromised. That said, the identified harm would still need to be weighed into the overall planning balance of this decision.

### *Heritage considerations*

48. In respect of heritage I shall firstly consider the impact of the proposal on the designated heritage asset which is Cooden Moat Scheduled Ancient Monument (SAM). This is located off to the north-east of the appeal site. The Parameters Plan shows the concentration of the proposed built development adjacent to the existing residential property on Clavering and Maple Walks. The existing central band of banked trees and hedging cuts across the appeal site and ties into the woodland which surrounds the SAM. The land to the north of this

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<sup>23</sup> Framework para 180 a).

<sup>24</sup> CS Policy OSS4 ii).

<sup>25</sup> Inquiry Doc 24 para 15.

<sup>26</sup> It is noted that the appellant company are not able to carry out mitigating measures along Clavering Walk. I accept the Council's assessment on the separate noise balance in these circumstances.

<sup>27</sup> Based on 99 units ie worst case.

<sup>28</sup> Noise and disturbance would diminish the further along Clavering Walk vehicles travelled in the approaches to Maple Walk where existing traffic levels would be more prevalent.

<sup>29</sup> The Council has urged a common sense judgement be applied. This has been done.

central landscaped band would remain open green space, including drainage features (ponds), further planted areas, as well as footpaths criss-crossing the site. The existing public footpath No 125a would link into the existing public footpaths which cross the appeal site from Clavering Walk through to Maple Walk.

49. Historic England (HE) and the Council do not maintain an objection to the proposal on the basis of the impact of the proposal on the significance and setting of the SAM<sup>30</sup>. Cooden Moat is likely to date from around 1300AD and this near square moat would have surrounded a residency of a high-status Lord of the Manor, in this case it is suggested it was the de Codynge family. Part of the SAMs significance is that of the Moat as an indicator of the status of the residents of the dwelling and its importance in understanding the distribution of wealth and status in rural medieval England. The Moat survives as a generally well-preserved example of its type.
50. Whilst the woodland within which it sits has to some degree protected it, the claustrophobic nature of the invasive woodland detracts from understanding its more typical location as a once open and occupied site being isolated within the rural landscape setting. The penetration of tree roots into the banks of the Moat has placed the definition of the very feature which identifies the manorial site at risk. The significance of the SAM is slowly being eroded by the woodland invasion.
51. The setting of the SAM would originally have been firmly based in associated open rural pastoral countryside. The development of Clavering Walk and Maple Walk and Cooden in general, as an extension to Bexhill-on-Sea has continued to erode the rural setting, as will the Spindlewood Drive extension.
52. However, with the proposed built development to be confined to adjoining Clavering Walk in the southern section of the appeal site and the northern open green space to be linked through to the woodland surrounding the SAM, the impact on the setting of the SAM<sup>31</sup> would be considerably reduced.
53. In walking the footpaths which pass close by the SAM, and even skirt the Moat itself, there was evidence of well-trodden paths indicating frequent usage. I understand the concern that future residents of the new development would also be likely to wish to enjoy the footpath network in the locality, much as existing residents obviously do, which would include those paths close to the SAM. I also heard that local youngsters have grown up on adventures centred on the woodland and the large World War II concrete blocks within the Moat have facilitated access to the 'island'. This is likely to be the case with or without the new development. This may place an added pressure on the SAM but one which would be continuous in any event to a lesser degree.
54. Part of the significance of the SAM is the fact that the hydrology of the Moat can vary between being dry to containing a depth of water over the seasons. HE were confident that any impact of the appeal proposal on the Moat in this regard could be mitigated. This will need to be explored in more detail as part of the reserved matters drainage scheme but I am satisfied it is appropriate to put this matter off until that detailed infrastructure design stage.

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<sup>30</sup> Subject to the mitigating measures being secured.

<sup>31</sup> In the context of what remains of the open pastoral landscape within which the SAM would have been located in a isolated position.

55. The designation and protection of the site is to ensure its preservation for the contribution it can bring to the quality of life of existing and future generations. The SAM needs to be appreciated and understood for its heritage significance. It is clear from the research, understanding and affection of the Rule 6 Party that locally there is an appreciation of the heritage significance of the SAM. However, from my experience of the site this was not evident for the casual, uninformed visitor. There appeared to be little or no management of the SAM being undertaken.
56. It is fair to conclude that there would be some resultant harm from the new development for the SAM in respect of a limited erosion of its significance which would amount to less than substantial harm at the very lowest point of a sliding scale of harm. However, this harm has to be weighed against the public benefits of the proposal<sup>32</sup>.
57. HE is satisfied that the Conservation Management Plan, which would include the management of invasive vegetation to the Moat, the repairing of stiles and fencing, works to existing pathways and the installation of interpretation boards to allow people to understand the site for what it is, including information on the protection that the monument is afforded and warn people off damaging the site in anyway, would mitigate the harm identified.
58. This mitigation I consider to be a public benefit as it would enhance the appreciation and enjoyment of the SAM for future visitors by better revealing the significance of the SAM. I shall return to the heritage balance later in this decision.
59. Turning then to the World War I Cooden Camp. This was a training camp and then the site of a Canadian Red Cross Hospital. Over time it accommodated initially 'Pals Battalions' and later the battalions of 'Lowther's Lambs'. The brave men of these battalions fought at the Somme and Passchendale and few survived. The extent of the original camp covers much of the existing residential streets to the east as far as Cooden Sea Road. The southern section of the appeal site has been identified as the location of the camp parade ground. The remains of the camp are below ground. It is agreed between all parties that any possibility of finding further archaeological remains associated with the Camp can be dealt with by condition securing archaeological works. Any finds do not need to be preserved in situ and Cooden Camp is not a non-designated heritage asset. I see no reason to disagree with any of these agreed points.
60. I do, however, acknowledge the importance of Cooden Camp as a reflection of those in military service, both local and international, who gathered together to train and prepare to fight in a terrible conflict making Cooden Camp of at least County wide importance. That said there is currently nothing that would inform a visitor of the importance, value and purpose of the Camp and those who served there. Maple Walk, Maple Avenue and Maple Close reflect the connection to the Canadian forces link, but this would only be apparent to those who were well informed.
61. Much of the camp now lies below the homes of local residents. Whilst some of the parade ground may lie below the southern section of the appeal site the retention of this as an open space as an expression of the earlier military

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<sup>32</sup> Framework para 196.

connection I do not find as being a persuasive argument in restricting the development on the appeal site in heritage terms. As previously the naming of streets to reflect the WWI use could highlight the Camps existence in a modern context as would the erection of interpretation boards which would have the benefit of direct education of residents and visitors on the location and purpose of Cooden Camp. This could be included with the CMP.

62. The archaeological exploration secured by condition would be a distinct public benefit in hopefully producing further evidence of this military occupation which would enrich the knowledge relating to the men and women whose journey to the Front began at Cooden and to whom a national debt is owed.

### *Landscape*

63. The appeal site lies within the National Landscape Character Area High Weald (NCA)<sup>33</sup>. It is approximately 8.1 hectares of pasture divided into two fields by a central treed bank running from east to west across the site. The appeal site is enclosed to the north, east and west by mature, well established hedgerows including large trees which link through to other wooded boundaries and woodlands. To the south and east of the appeal site the character changes to urban residential development which, whilst many of the immediately adjoining properties are large detached homes on ample plots, there is a mix of dwelling types further up Maple Walk and beyond into the wider expanse of Cooden and Bexhill-on-Sea.
64. As already established the appeal site lies outside of, but abutting this urban area. There is no doubt that the appeal proposal would result in a change from undeveloped to developed land, eroding the surrounding countryside setting of Cooden. The Framework sets out at paragraph 170 that planning decisions should recognise the intrinsic character and beauty of the countryside, amongst other matters.
65. Public footpath 138 crosses the site from east to west and from along this footpath looking north the traveller has in glimpsed distant views an overwhelming awareness of a rural wooded landscape with distant buildings along Barnhorn Road delineating the top of the ridge. However, one is always aware that by just turning slightly in either direction formalised residential development comes into view. The Council describe this as a soft edge. I cannot agree. In general, the houses are large and dominant in surrounding views from the appeal site. They create a strongly defined built up character to this immediate locality and the influence of this adjoining urban area on the appeal site is considerable. Further, the established residential development does detract from the rural character of the adjacent countryside by reason of its scale and visual and physical dominance.
66. The Council suggest the appeal site forms a countryside buffer to the suburban edge of Cooden and the enclosed nature of much of this buffer is part of the character<sup>34</sup>. I agree the appeal site is enclosed and this sense of landscaped enclosure, compartmentalised by the central dividing hedge, is a dominant characteristic. It sets it apart from the wider countryside setting where external views into the site are very limited and mainly restricted to glimpses through the trees to the northern section which is proposed as open green

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<sup>33</sup> CD 9.1.8.

<sup>34</sup> Summary proof Pullan para 7.2.

space. Any sense of change in character to this section of the appeal site would be limited. It is proposed to include open ponds as part of the Sustainable Urban Drainage Scheme (SUDS) in this area as well as further planting. Proposed housing would be concentrated in the southern section of the appeal site behind the central banked hedge<sup>35</sup> which could be enhanced as part of a detailed landscaping scheme.

67. Views from footpath 125a would be similarly defused by the central banked hedge and its route close to the woodland would limit views of any future development for walkers. Certainly, those using footpath 138 would in the future find themselves enclosed by built development. The nature of the path would change to likely a roadside path, but it may be possible to design in views between buildings out to the northern section of the site and the wider countryside context. I am also conscious that residential development is a dominant southerly visual factor for those currently using the footpath. Clearly a formalised residential scheme would change the character of the footpath route, its immediate surroundings and the experience of the walker in landscape terms.
68. Whether the appeal site could be considered as being tranquil as a characteristic of its countryside location was a matter of contention. I visited the site both during the day and after dark. Both were varying experiences. During the day close to the boundaries with the existing houses the sounds both close-by and distant of urban living were discernible, including road, train and plane noise as well as domestic and garden activities. At night the transport related noise was less pronounced and as the night wore on, I have no doubt, would diminish. Similarly, along the footpath 125a progressing into the northern section of the site, domestic noise would become less discernible. I would certainly agree that the appeal site in comparison to the built-up area of Cooden could be described as being tranquil although I am conscious that any judgement on tranquillity is somewhat subjective and could vary between times of the day, the week, the year and the seasons. Also, this is a pleasant field but being so close to the urban edge of Cooden I would not single it out as being any more tranquil than any other field in a similar location. Nonetheless, I do accept some sense of tranquillity applies to this essentially pastoral field. It is certain that the level of tranquillity in the southern part of the field would be diminished in the circumstances of the development.
69. Framework paragraph 170 refers to decisions protecting and enhancing valued landscapes. The term valued is not defined, but in this appeal both the Council and the Rule 6 Party promote Box 5.1 of the Guidelines for Landscape and Visual Impact Assessment (GLVIA) as being a tool for reaching a view on whether the appeal site is part of a valued landscape. This includes a range of factors that can help in the identification of valued landscapes. Some of these factors have already been considered but in summary:
- Landscape quality
70. As already identified the appeal site is visually contained within the wider landscape context. The two fields are in a good physical condition, including the boundaries hedges, representative of other similar pastoral fields and of no particular merit beyond the ordinary.

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<sup>35</sup> Parameters Plan secured by condition 5.

- Scenic quality
71. In this case the appeal site lies within an ordinary, everyday landscape<sup>36</sup>. Whilst it lies close-by to the Pevensey Levels it is physically and visually separated and does not exhibit the landscape characteristics of this more sensitive landscape. The physical and visual containment of the site further detaches it from any sense of scenic quality in visual terms. In respect of further sensual appreciation in the context of the adjacent urban development of Cooden, the site does not exhibit other strong sensually appreciated characteristics<sup>37</sup>.
- Rarity
72. As already indicated this is an ordinary edge of settlement field of no rarity value.
- Representativeness
73. The two linked pastoral fields enclosed by thick hedgerows in conjunction with the adjoining woodland connected by tracks and paths are characteristic elements of the High Weald NCA. However, this is not a particularly important example as it lacks a strong relationship with the wider landscape, including AONB.
- Conservation interests/Associations
74. Any elements of ecological value are likely to be retained as the existing hedgerows and treed areas are to form the basis of any landscaping and open space layout details. The only element of archaeological, historic and cultural interest which can be ascribed to the appeal site is the Cooden Camp linkage. I have already considered the heritage value of Cooden Camp. In archaeological terms the remains of the Camp would be explored prior to development and it has already been agreed it is not necessary to retain any remains in situ.
75. In respect of cultural and associative value it is clear that Cooden Camp is of importance. As one of some 6,000 WWI training camps it has left an indelible mark on the locality which is currently appreciated through local knowledge, road names and more physical evidence within the context of a museum. For the well informed the ghost of Parade Ground activities can be appreciated when looking across the southern section of the appeal site. However, this is very much curtailed by the invasion of existing urban development which has already encroached over much of the Cooden Camp site. The open southern field is an expression of the previous occupation of the field by the Camp and all of the men and women who served there, including some of notoriety but others not. This ascribes some value to this part of the appeal site but the significant value is in the knowledge and stories of the Camp and its contribution to a heroic war time struggle which has shaped the lives of following generations.
76. I do acknowledge that the two fields which make up the appeal site do continue to exhibit medieval field patterns, including wooded boundaries. However, this

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<sup>36</sup> The appeal site lies within the National Character Area Profile 122: High Weald 78% of which lies within an Area of Outstanding Natural Beauty. The appeal site is not included in this nationally designated area.

<sup>37</sup> I have considered the dark sky element of the Rule 6 Party case and experienced it myself. However, again I found this not to be an extra-ordinary dark sky area and the intrusion of domestic lighting and the glow from the urban sprawl of Bexhill was discernible. I afford this little weight in respect of evaluating scenic quality.

pattern would still be discernible with the retention of the boundary hedges, including the central banked dividing treed hedge, albeit that one field would be built upon, the subdivision would still persist and be discernible particularly from along Footpath 125a.

- Recreation Value

77. Other than via Public Footpath 138 the appeal site is not accessible to the general public. However, the footpath that crosses the site is well used and links into a network of footpaths which pass through the adjacent woodland and on into the wider countryside. As already described Footpath 138 is strongly influenced by the adjoining residential development in respect of the quality of its experience as a walk through the countryside. However, people are walking the route and in respect of well-being and an opportunity to access the wider countryside the site has recreational value.

- Perceptual aspects

78. The appeal site has few perceptual qualities. Its edge of settlement location where the influence of established urban development is strong confirms the overriding perception of the site as being just that an edge of settlement field. The enclosure of the site creates a perception of separation from the wider countryside and from within the appeal site there are only very limited, glimpsed distant views to allow some sense of placing the appeal site in a context of a rural setting. As already described the site does benefit from a sense of tranquillity. However, this is tempered by the influence of the urban sprawl reducing the quality of the tranquillity of the site, an increasing quality of which can be appreciated when walking north and then west along the footpath network into the Pevensy Levels.

79. So having considered all the elements identified in GLVIA Box 5.1 some have been identified as having value. However, that value whether considered individually or cumulatively does not elevate the appeal site to be a valued landscape in the context of Framework paragraph 170 a), in its own right or as an important contributory part of a wider landscape. However, that does not release the necessity to consider the impact of the proposal on the intrinsic character and beauty of the countryside.

80. Taking into account all of the above elements I conclude that the proposed development would cause some harm by reason of an erosion of the countryside resulting in a loss of its intrinsic character and beauty. It would compromise the terms of CS Policy OSS4 in so far as it relates to development detracting from the character and appearance of the locality, along with CS Policy OSS1 (e) which picks up the reference to giving particular attention to the intrinsic value of the countryside.

### *Townscape*

81. The Council has pursued a point relating to Townscape and I have dealt with it in the context of the submitted Parameters Plan and the description of development being up to 85 units. The Parameters Plan shows a distinct developable area. Framework paragraph 8 b) identifies a Government objective to be pursued of supporting strong and vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations. That requires a

mix of housing types to respond to the needs of our communities. The appeal proposal before me is for up to 85 dwellings. It is not for me to set a specific number of units which may be best accommodated on the site. That is a matter for a future decision maker at the reserved matters stage. However, I can consider the impact of developing the appeal site in the context of the Parameters Plan and the design concept expressed within the Design and Access Statement<sup>38</sup>.

82. It is intended that the appeal site should accommodate a range of types, sizes and tenures of housing, including semi and detached homes. Whilst the properties adjoining Clavering Walk and Maple Walk are large detached houses I do not consider that this immediate character should limit new development to a similar scale and nature. Looking at the wider context of Cooden there is more of a mix of type of homes including smaller properties. This creates an environment that offers housing opportunities for a variety of members of the community in differing circumstances and with differing needs.
83. In the context of the suburban nature of the immediate locality of the appeal site, I see no reason why it would not be possible to design a scheme which would reflect the pleasant sylvan nature of Clavering Walk, along with the individuality of the house types, whilst creating a mixed community to respond to local needs. This would obviously be at a greater density than that of Clavering Walk but at the reserved matters stage the appropriate mix of development can be settled upon in the context of the need to make optimal use of the potential of sites. Nonetheless, a future scheme should contribute positively to the character of the site and surroundings and it will be the responsibility of a future decision maker to secure a scheme of a quality which meets this policy requirement.
84. This conclusion on townscape does not diminish the landscape harm I have already identified.

*Impact of the proposal on the integrity of the adjacent European site, the Pevensey Levels*

85. The Pevensey Levels has a number of designations, RAMSAR/SAC/SSSI, designated for its international importance as a wetland habitat. The appeal site lies adjacent to but not falling within the European designations. The section of the Pevensey Levels immediately to the west of the proposed development site is currently in use as the Cooden Beach Golf Course.
86. The Pevensey Levels are characterised by low-lying wetland meadows of grazed grassland intersected by a network of ditches which support important assemblages of both fauna and flora, including wetland plants and invertebrates.
87. As the appeal site lies outside of the Pevensey Levels designated site but is sufficiently close that the proposal has the potential to result in likely significant effects on the European sites<sup>39</sup>, accordingly an Appropriate Assessment is needed<sup>40</sup>. The matter of concern centres on the impact of the proposal on the

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<sup>38</sup> CD 2.1.6 – it is noted this relates to the earlier scheme of 99 units.

<sup>39</sup> There would be a possibility of contaminated run-off reaching the protected site.

<sup>40</sup> Court of Justice of the European Union (CJEU) judgement *People over Wind and Sweetman v Coillte Teoranta* ECLI:EU:C:2018:244

Levels relating to any potential alterations in hydrology (impacts on water quality or quantity discharging from the site) which could adversely affect discharge into the Levels which ultimately could put the flora and fauna at risk.

88. The following Appropriate Assessment considers the measures of mitigation proposed intended to avoid or reduce effects.
89. I am aware that considerable preliminary work was undertaken between the appellant company, Natural England, the Lead Local Flood Authority (East Sussex County Council), the Pevensey and Cuckmere Water Level Management Board and the Environment Agency. This co-operative approach allowed for an agreed series of technical requirements centring on a suitable drainage strategy, including the provision of a multi-level SUDS treatment train. Details of mitigation measures such as silt traps and clay liners, as well as additional information relating to management of the proposed enhanced SUDS<sup>41</sup> was submitted. Confirmation was given that surface water runoff from all parts of the proposal would pass through the entirety of the proposed enhanced SUDS and three treatment stages. On this basis agreement was reached with Natural England that the proposed development would not affect water quality entering Pevensey Levels SAC. Further all statutory consultees similarly agreed that with the proposed mitigation, the proposed development at the appeal site would not have an adverse effect on the integrity of the Pevensey Levels SAC/RAMSAR site.
90. I have noted that some detail of the formulation of the approach to the drainage strategy, such as ground investigation tests to determine existing levels of the groundwater, and the susceptibility of the proposed impermeable liner to damage from groundwater pressure have not yet been undertaken or determined. However, statutory consultees including Natural England and the Environment Agency have agreed it would be appropriate to reserve these details to the reserved matters stage of the planning process. The appellant company in the context of not having undertaken detailed groundwater monitoring, modelled the worse-case ground water scenario for the assessment. This was accepted by the Council in consultation with the statutory consultees as demonstrating that beyond reasonable scientific doubt it would be possible to deliver a SUDS incorporating 3-4 treatment stages on the site that would mitigate the risk of harm to the SAC/RAMSAR site.
91. In respect of the adequacy of the impermeable liner, following groundwater monitoring undertaken prior to the construction phase, to determine maximum groundwater depth, the clay liner would be designed. This would form part of the detailed design phase and would eliminate the risk of floatation of the feature. Again, this was an approach accepted by the Council and statutory consultees.
92. The alterations to the groundwater recharge potential was also questioned by the Rule 6 Party. Hydrological work was undertaken which concluded that the reduction in the potential recharge is insignificant, with loss in groundwater recharge mitigated via water being directed instead towards the SUDS and then to the Cole Stream which forms part of the Pevensey Levels. A more

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<sup>41</sup> The enhanced SUDS would comprise a multi-level treatment train of a series of swales and attenuation basins that would slow and moderate run-off to green field rates, filter and capture sediment and pollutants and enable the temperature of the run-off to reduce to ambient levels. Native species of planting would be used in landscaping to avoid any need for fertilisers. The future management of the SUDS would be drawn up to ensure that drainage strategy continues to fulfil its role for the lifetime of the development.

detailed design would be informed by further hydrogeological assessment at the reserve matters stage. The calculations to date have provided the certainty that the statutory consultees and the Council required. Future survey work would provide informative data to update the final design.

93. From the evidence before me, which I found to be authoritative and convincing<sup>42</sup>, I have no reason to depart from the conclusions of the statutory consultees, particularly those of Natural England and the Environment Agency in respect of the matters raised. The proposed mitigation measures which are included in the S106 Obligation are intended to avoid or reduce the effects. On that basis I consider that the proposed development, beyond reasonable scientific doubt will not have any adverse effect on the integrity of the European sites, either alone or in combination with other plans or projects. In coming to this conclusion I have taken account of the CJEU judgement, the positive response from Natural England and the comments provided by both the appellant company, the Rule 6 Party and the Council.

*Public benefits*<sup>43</sup>

94. Delivery of market housing – The agreed position is that the Council can only show a 3.73 years supply of housing land. This amounts to an acute shortage now. The appellant company has indicated that it is highly likely that units could be delivered as early as mid-2021<sup>44</sup>. I consider in these circumstances, this benefit goes beyond that normally ascribed to the provision of market housing. It plays heavily in favour of the proposal.
95. Even if the 3.73 years supply of housing land were not to be the case, the provision of market and affordable housing weighs significantly in favour of the proposal, in the light of the national policy to significantly boost the supply of homes.
96. Delivery of affordable housing (AH) – The proposal would include 30% AH which would be policy compliant, but the Council accept this to be a benefit in the circumstances where AH provision has fallen short of CS expectations.
97. Social benefits – Provision of open space. At present the site offers only limited recreational value. The proposed open space would serve the future residents of the development in respect of enhancing their experience of the countryside as well as their health and well-being. This equally applies to the wider population as access would not be restricted to residents and the network of Public Footpaths would facilitate admittance to this open space currently unavailable to the general public.  
Conservation Management Plan – This would provide heritage benefits to the SAM but would also enhance the understanding for the general public of the importance, significance and history of the Manorial moated site. This equally applies to the archaeological excavation of Cooden Camp and the provision of informative boards to enrich directly accessible local knowledge of the Camp.
98. Economic benefits – Future residents would support the local centre of Little Common and the services and shops in the centre of Bexhill on Sea.

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<sup>42</sup> Includes Updated Information to inform a Habitat Regulations Assessment dated May 2019.

<sup>43</sup> This is not an exhaustive list – the evidence of Mr Wheeler set them out in more detail in his proof para 3.122 and onwards.

<sup>44</sup> Condition 2 has been adjusted to reflect this delivery date.

Construction jobs would form part of the short-term benefits as well as increased economic input into the local economy.

99. Environmental benefits – It has been concluded that the appeal site is in a location accessible to services and facilities of an already established settlement. The upgrading of the existing public footpath, encouragement of cycling, implementation of the Travel Plan, along with the provision of the extended bus availability would provide options for other modes of transport other than the car. The proposed highway improvements whilst being mitigating measures for the impact of the proposed development would benefit the wider population in respect of improving highway safety. The proposed open space and intended works of improvement and planting to the existing hedgerows and within the detailed landscape scheme would present a benefit to the ecology and biodiversity of the site.
100. All of these benefits weigh positively in favour of the proposal in the balance of this decision. That planning balance will be applied shortly.

### **Conditions**

101. A range of conditions was discussed and agreed (without prejudice) at the Inquiry. I have made minor amendments in the interest of precision.
102. Only conditions which are formally required to be discharged prior to works commencing on site have been promoted as pre-commencement conditions. These have been agreed by the appellant company as a party to the agreed schedule of conditions. These are imposed as they involve details to be approved for the arrangements of the work on site.
103. Given the outline nature of the proposal, the first three conditions are required by law, and a number of reserved and other matters need to be submitted for approval, in accordance with the approved plans and the Parameters Plan.
104. The approved plans need to be identified to avoid confusion.
105. The locality has been identified as having some possible archaeological interest, particularly in relation to Cooden Camp. Therefore, conditions requiring a programme of investigation are justified. The need to mark the history and importance of the Camp is also necessary and a condition securing this is justified
106. In the interests of both the amenities of nearby residents as well as maintaining the free flow of traffic and safeguarding highway safety in the locality, a condition relating to a Construction Traffic Management Plan is required. Hours of working are restricted to similarly safeguard residential amenity.
107. In order to protect the delicate balance of the Pevensey Levels SAC/RAMSAR/SSSI, particularly in relation to accidental contamination or damage a Construction Environmental Management Plan is justified and land contamination as an unknown is similar necessary to control. The Construction Biodiversity Management Plan along with the Ecological Design Strategy also are required to properly ensure the protection of protected species/habitats.

108. To secure the satisfactory drainage of the site in the context of the adjacent European site, the general surroundings and any flood risk, details of foul and surface water drainage are required to be submitted and agreed. Finished floor levels are also required to be agreed in the interests of avoiding the consequences of flooding.
109. A condition to secure the highway mitigation works is required to ensure the development can be satisfactorily accommodated within the highway network. Other highway conditions seek to secure the provision of useable access by vehicles to serve individual dwellings in the interests of highway safety and management and residential amenity.
110. In the interests of landscape character, biodiversity, visual and residential amenity and for the avoidance of doubt a detailed hard and soft landscape scheme dealing with the public realm should be required. This includes a condition relating to the protection of existing trees and hedgerows. The submission and agreement to a Landscape and Ecology Management Plan is also justified in the interests of the long-term well-being and retention of the landscaping and to continue to protect and enhance the ecological value of the wetland features of the site.
111. The Council has requested further conditions be imposed in respect of detailed matters which could be dealt with at reserved matters stage. The appellant company should nonetheless note the relevant requirements of the DSALP in designing the next phase of the development.

### **Obligations<sup>45</sup>**

112. A certified copy of the Unilateral Undertaking<sup>46</sup> under section 106 of the Town and Country Planning Act 1990 has been submitted covering the following matters:

- Affordable housing
- Green Infrastructure including management
- Conservation Management Plan
- Sustainable Urban Drainage System
- Highway works
- Travel Plan

113. All of the above provisions are considered to be necessary, in order to make the development acceptable taking into account the terms of the CIL Compliance Statement.

### **Heritage balance**

114. Having assessed the impact of the proposal in heritage terms it is necessary to undertake a separate heritage balance in accordance with the Framework paragraph 196. In doing so I am conscious that great weight and considerable importance should be given to the asset's conservation<sup>47</sup>. With this already in

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<sup>45</sup> Inquiry Doc 26 refers.

<sup>46</sup> Dated 10 December 2019.

<sup>47</sup> Framework para 193.

the balance having found that there would be harm to the SAM as a designated heritage asset, albeit limited harm at the very lowest end of the sliding scale of less than substantial harm, this too needs to be weighed in. However, the identified public benefits of the appeal proposal do present cumulatively considerable weight to be added in the heritage balance.

115. I am satisfied that the public benefits set out above are cumulatively of considerable weight particularly taking into account the wider public benefits of the mitigating measures within the Conservation Management Plan<sup>48</sup>. This heritage balance tips in favour of the proposal, the public benefits outweighing the identified heritage harm.

### **Planning balance and conclusion**

116. As already indicated above the tilted balance of paragraph 11 of the Framework has been engaged due to the relevant policies in relation to the provision of housing being out of date. It is now necessary to consider what needs to go into the various sides of the balance.
117. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the Development Plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework which is of course a material consideration to which substantial weight should be attached.
118. It has already been established that the appeal site lies outside of the settlement boundary for Cooden, Bexhill-on-Sea which is to be the main focus of development within the Development Plan. Due to the lack of a five-year housing land supply CS Policies OSS1 & OSS2 have been found to be out of date. This reduces the weight to be ascribed to them as Development Plan policies it does not neutralise them. The harm to the conflict with the Development Plan by reason of an 'at face value' breach of CS policy does go into the negative side of the balance, but in the circumstances of this case can only be ascribed limited weight.
119. Some harm has been identified to the living conditions of existing residents which whilst not offensive to Development Plan policy or National guidance does add slightly more than limited harm to the balance.
120. The heritage harm also needs weighing in although that too is only of limited weight taking into account the proffered mitigation.
121. The identified landscape harm by reason of an erosion of the countryside resulting in a loss of its intrinsic character and beauty does carry considerable weight<sup>49</sup>.
122. In the other side of the balance is the presumption in favour of sustainable development. Added to this are all the benefits set out above, the most weighty of which include the provision of much needed housing in this constrained District<sup>50</sup>, in an area with access to existing services, recognising the significant role the delivery of housing has in the sustainable economic well-being of the District. Also given the national objective of significantly

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<sup>48</sup> Through the UU.

<sup>49</sup> This is an additional harm to that of the conflict with Development Plan policy.

<sup>50</sup> Both nationally and internationally designated areas of nature conservation value

boosting the supply of homes, the provision of market and affordable housing carries significant weight.

123. So, taking all of the elements in the balance into account I find that the side of the balance in favour of the proposal<sup>51</sup> prevails as the identified harms in combination do not significantly and demonstrably outweigh the benefits of the scheme.

124. Consequently, for the reasons given above I conclude that the appeal should be allowed.

*Frances Mahoney*

**Inspector**

Richborough Estates

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<sup>51</sup> The totality of the weight in combination of the harms.

## **SCHEDULE OF CONDITIONS**

1. Before any part of the approved development is commenced approval of the details of the appearance, landscaping, layout and scale of the site, (hereinafter called "the reserved matters"), shall be submitted to and approved in writing by the local planning authority. Development shall be carried out only as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 18 months from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. The development hereby permitted shall be carried out in accordance with the following approved plans and particulars: S101 B site location plan received 18/12/2018; and Proposed Site Access Ref 180300-01A.
5. The development hereby permitted shall be carried out in broad conformity with the Parameters Plan Dwg No 6564/ASP1 Rev B.
6. The Reserved Matters shall be accompanied by full details of existing and finished ground levels and finished ridge heights within the development. The development shall be carried out in accordance with the approved details.
7. Prior to commencement of development, including any works of site clearance, a programme of archaeological works in accordance with a written scheme of investigation shall be submitted to and approved in writing by the Local Planning Authority. The scheme of archaeological investigation shall then be implemented strictly as approved.

8. No part of the development shall be occupied until the archaeological investigation and the post-investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) has been completed and approved by the Local Planning Authority. The archaeological site investigation assessment shall be undertaken in accordance with the programme set-out in the written scheme of investigation approved under Condition 7.
9. Prior to commencement of the development and subsequent to the approved archaeological site investigation a Construction Method Statement to show the preservation in site of significant archaeological remains shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
10. No development shall take place, until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to in full throughout the entire construction period. The Plan shall provide details as appropriate but not be restricted to the following matters:
  - a) the anticipated number, frequency and types of vehicles to be used during construction,
  - b) no deliveries to and from the site before 09.00 and after 17.00 hours on any permitted working day (see condition 20);
  - c) the method of access and egress and routeing of vehicles, including construction vehicles, site operatives and visitors during construction;
  - d) the parking of vehicles by site operatives and visitors,
  - e) the loading and unloading of plant, materials and waste,
  - f) the storage of plant and materials used in construction of the development,
  - g) the erection and maintenance of security hoardings,
  - h) the provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction traffic upon the public highway (including the provision of temporary Traffic Regulation Orders);
  - h) details of public engagement both prior to and during construction works,

- i) contact details of site manager during construction period and details of how this will be advertised.

11. No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP will include the following details:

- a) results of a full site investigation that has been carried out to identify any potential sources of contamination and proposals for appropriate safeguards to ensure that no contamination is transferred to be implemented throughout the construction works;
- b) details of the source of any inert fill material for land raising including evidence to demonstrate that it is free from contaminants that could potentially enter the Pevensey Levels;
- c) include, but not be limited to, the measures set out in paragraph 6.2.2 of the Updated Information to inform a Habitats Regulations Assessment, May 2019 (UIIHR) and, in particular, set out the measures necessary to prevent silt entering the SAC/Ramsar and avoid water quality impacts on the Pevensey levels during the construction phase.
- d) detailed measures to manage flood risk, both on and off the site, during the construction phase;
- e) complaints and public consultation procedure.

Thereafter the construction of the development shall be carried out strictly in accordance with the approved CEMP.

12. If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy and timetable detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

13. No development shall take place (including ground works and vegetation clearance) until a Construction Biodiversity Management Plan (CBMP) has

been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:

- a) risk assessment of potentially damaging construction activities upon biodiversity;
- b) identification of "biodiversity protection zones";
- c) practical measures (both physical measures and sensitive working practices) to avoid or reduce biodiversity impacts during construction (may be provided as a set of method statements), with particular regard to dormice, badgers and nesting birds;
- d) the location and timing of sensitive works to avoid harm to biodiversity features;
- e) the times during construction when specialist ecologists need to be present on site to oversee works;
- f) responsible persons and lines of communication;
- g) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h) use of protective fences, exclusion barriers and warning signs.

The approved CBMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

14. No development shall take place until an Ecological Design Strategy (EDS) in general accordance with Part 6 of Aspect Ecology's Ecological Appraisal dated November 2018 project No.ECO-5335 and addressing the creation of new wildlife features, the restoration and enhancement of semi-natural habitats and the provision for wildlife corridors, linear features and habitat connectivity

has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include the following:

- i. purpose and conservation objectives for the proposed works;
- ii. review of site potential and constraints;
- iii. detailed design(s) and/or working method(s) to achieve stated objectives;
- iv. extent and location/area of proposed works on appropriate scale maps and plans;
- v. type and source of materials to be used where appropriate, e.g. native species of local provenance;
- vi. timetable for implementation;
- vii. persons responsible for implementing the works;
- viii. details of initial aftercare and long-term maintenance by the residential management company;
- ix. details for monitoring and remedial measures;
- x. details for disposal of any waste arising from the works;
- xi. details of interpretation facilities including signage and information boards.

In particular, the EDS shall incorporate details of external lighting in public areas for the site and shall:

- i. identify those areas/features on site that are particularly sensitive for bats, badger and dormice and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, e.g., for foraging; and
- ii. show how and where external lighting in public areas will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding site and resting places.

The EDS shall be implemented as approved. Under no circumstances should any other external lighting in public areas be installed without the prior consent from the LPA.

15. No development shall commence until a Tree/Hedgerow Protection Plan providing details for the protection of existing trees, hedgerows and the existing bank to be retained on the site have been submitted to and approved in writing by the Local Planning Authority. The details shall include a description of the particular trees and hedgerows to be retained and shall include the locations proposed for protective fencing and ground protection, which shall include no dig surface construction methods where appropriate.

The approved protection measures shall be put in place before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained in situ until all equipment, machinery and surplus materials have been removed from the site. 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 written consent of the Local Planning Authority.

In particular:

- (a) No fire shall be lit within 10 metres from the outside of the crown spread of any tree which is to be retained;
- (b) No equipment, machinery or structure shall be attached to or supported by a retained tree;
- (c) 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 development shall be implemented in accordance with the approved details.

16. No development shall commence until a scheme for the provision of foul water drainage works has been submitted to and approved in writing by the Local Planning Authority and none of the dwellings shall be occupied until the approved drainage works to serve the development have been satisfactorily provided.

Should a pumping station be required, the scheme for the provision of foul water drainage works shall include details of a back-up pump to safeguard in the event the primary pump fails.

17. No development shall take place until details of the Surface Water Drainage have been submitted to and approved in writing by the Local Planning Authority.

No development shall take place until groundwater level monitoring is undertaken to evaluate whether groundwater levels will impact upon the overall design and safe working of the SuDS. Groundwater monitoring should be undertaken over a suitable timeframe to be agreed with the Council in writing but will include December to November. The results of the monitoring must be used to inform the SuDS design.

The detailed Surface Water Drainage Scheme shall be designed following the principles set out in Ardent Consulting Engineers Flood Risk Assessment report ref: 180300-01 dated November 2018, Flood Risk Addendum dated 11<sup>th</sup> March 2019 and Flood Risk Addendum 2 dated 15<sup>th</sup> May 2019 and include the following details:

- i. interim measures during the construction period to avoid adverse impacts on the water environment;
- ii. measures to avoid drainage onto and from the highway;
- iii. the operation of the SuDS to maintain the quality and quantity of the surface water run-off entering the Cole Stream and the Pevensey Levels;
- iv. If required, details of works to the western ditch to maintain water levels.

The development shall be carried out in accordance with the approved details and no dwelling shall be occupied until the drainage works to serve the development have been completed and are operating satisfactorily. The surface drainage works shall be retained and operational thereafter.

18. Prior to first occupation of each dwelling, the new estate road[s] required to access that dwelling shall be completed to base course level, together with the surface water and foul sewers and main services to the approval of the Planning Authority in consultation with the Highway Authority.

19. The development shall be carried out in accordance with the submitted Flood Risk Assessment (ref 180300-01, November 2018), Flood Risk Assessment Addendum dated 11<sup>th</sup> March 2019 and Flood Risk Assessment Addendum 2 dated 15<sup>th</sup> May 2019 and the following mitigation measures it details:

- Finished floor levels shall be set no lower than 4.1m above Ordnance Datum (AOD), as specified in paragraph 8.6 of the FRA;

These mitigation measures shall be fully implemented prior to first occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

20. Construction activities, including piling, associated with the development hereby permitted shall not be carried out other than between the hours of 08:00 and 18:00 hours on Mondays to Fridays inclusive and 08:00 and 13.00 on Saturdays and not at any time on Sundays, Bank and Public Holidays.

21. No part of the development shall be occupied for its permitted use until the highway mitigation works as shown on drawing no. 180300-003 Rev F dated 04/09/2019 have first been provided in accordance with the approved drawing.

22. The landscape reserved matters to be submitted pursuant to condition 1 shall include full details of the hard and soft landscape proposals including timetable for implementation for the development shall be submitted to and agreed in writing by the Local Planning Authority. These details shall be in general accordance with the Landscape Strategy Plan 6564/ASP4 and shall include:

#### Hard Landscaping

- the means of enclosure of the site generally and individual plots, including the design and location of acoustic fencing;
- the provision and layout of car-parking areas;
- the details of the pedestrian and cycle route to Maple Walk from the site, which shall be retained only for use by pedestrians and cycles in perpetuity;
- the materials proposed for hard-surfacing;
- details of all minor structures proposed in the public-realm (including street-furniture, play-equipment, refuse or other storage units, signage);

#### Soft Landscaping

- detailed planting plans, supported by written material as necessary, setting out the mix of species, their size, number and planting densities as appropriate;
- the detail of any ancillary operations proposed as part of the soft landscaping proposals for the site, including the mounding or contouring of the land;
- the detail of all new trees, including their species, sizes, quantity, positions, the time of planting and how they will be protected and maintained until successfully established in accordance with BS5837:2012 "Trees in Relation to Design, Demolition and Construction – Recommendations".

Details of the measures to be employed to ensure the successful establishment of all planting, including new trees, and its maintenance into the future for a period of five years from the date of the planting being undertaken shall also be provided. Regard shall be had the measures suggested in BS 8545:2014 "Trees: From Nursery to Independence in the Landscape – Recommendations".

All hard and soft landscaping works shall be undertaken in accordance with the approved landscaping works. Any trees or plants that, within a period of five years after planting, are removed, die or are seriously damaged shall be replaced by others of the same species, size and number as originally proposed, unless otherwise agreed in writing by the Local Planning Authority.

23. No part of the development shall be occupied until an appropriate vehicle turning head/space has been constructed within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The approved turning head shall thereafter be retained at all times for this use and shall not be obstructed.
24. Prior to first occupation a Landscape and Ecology Management Plan (LEMP), including long-term design objectives, management responsibilities and maintenance schedules for all hard and soft landscaped areas (except privately owned domestic gardens) shall be submitted to and approved in writing by the Local Planning Authority.

The LEMP, which will ensure that the landscape within the site is managed in such a way as to protect and enhance the ecological value of the wetland features of the site, including the proposed new wetland and swales, shall include, but is not confined to the following elements:

- details of new wetland and swales;
- details of management responsibilities.
- floodplain meadows species as part of the wildflower grassland proposals;
- retention of the existing watercourses and new swales and ditches;

- provide for connectivity to adjacent watercourses to enhance the potential for breeding and dispersal of reptiles and amphibians on and around this site and to adjacent habitat;

The LEMP shall be carried-out as approved and any subsequent variation shall be agreed in writing by the Local Planning Authority.

25. Prior to the commencement of development a scheme of recognition measures of the former use of the site as part of the WWI Cooden Camp shall be submitted to the Local Planning Authority for approval. This scheme could include measures such as interpretation boards and street naming. The approved measures shall be implemented prior to occupation of the first residential dwelling.

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## **APPEARANCES**

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

Richard Langham of Counsel

He called

Terry Hardwick

Contracted Planning Consultant to the Council

Virginia Pullan

County Landscape Architect East Sussex County Council

### **BELLWAY OPPOSITION ACTION GROUP (RULE 6 PARTY)**

Giles Atkinson of Counsel

He called

David Walker

Hydrogeologist and Environmental Consultant

Christine Forster

Heritage

David Walpole

Highways Consultant

Neil Williamson

Landscape

### **FOR THE APPELLANT:**

Hashi Mohamed Of Counsel

He called

Adrian Braun

Highways

Peter Sparham

Hydrology

Conor Lydon

Hydrogeology

Alistair Baxter

Ecology

Lee Dursley

Noise

Liz Vinson

Heritage and Archaeology

Ben Wright

Landscape

Kieran Wheeler

Planning

### **INTERESTED PARTIES**

|                   |                                                                         |
|-------------------|-------------------------------------------------------------------------|
| Cllr Kathy Harmer | District Council member for St Mark's Ward Bexhill                      |
| Dr David Knell    | GP Bexhill-on-Sea                                                       |
| David Beales      | Bexhill Heritage                                                        |
| Geoffrey Lawson   | Local Resident and representing some residents of Maple Walk – Highways |
| Hugh Stebbings    | Hydrology                                                               |
| John Harmer       | East Sussex Ramblers Association                                        |
| Stephen Shaw      | Local Resident speaking on behalf of Ms Franklin                        |
| Michael Harrison  | Local Resident                                                          |
| Keith Drysdale    | Local Resident                                                          |
| Graham Stone      | Local Resident                                                          |
| David Aldwinckle  | Local Resident                                                          |
| Philip Mears      | Local Resident                                                          |
| Julie Church      | Local Resident                                                          |
| Michael Varney    | Local Resident                                                          |

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## INQUIRY DOCUMENTS LIST

| Document Number | Document Title                                                                                                     |
|-----------------|--------------------------------------------------------------------------------------------------------------------|
| 1               | List of Draft Conditions dated 18 <sup>th</sup> November 2019                                                      |
| 2               | Appeal Decision Reference: APP/U1430/W/17/3191063 regarding residential development at Land South of Barnhorn Road |
| 3               | Archaeology Collective map of Listed Buildings in the area 19 <sup>th</sup> November 2019                          |
| 4               | Mr Richard Langham Opening Statement on behalf of the LPA                                                          |
| 5               | Mr Giles Atkinson Opening Statement on behalf of the Rule 6 Party                                                  |
| 6               | Mr Hashi Mohamed Opening Statement on behalf of the Appellant                                                      |
| 7               | Third Party Statement – Muriel Franklin                                                                            |
| 8               | Third Party Statement – Stephen Shaw                                                                               |
| 9               | Third Party Statement – Michael Harrison                                                                           |
| 10              | Third Party Statement – Keith Drysdale                                                                             |
| 11              | Third Party Statement – Graham Stone                                                                               |
| 12              | Third Party Statement – David Aldwinckle                                                                           |
| 13              | Third Party Statement – Philip Mears                                                                               |
| 14              | Bexhill Heritage Statement – David Beales                                                                          |
| 15              | Inspector's Report on the Development and Site Allocations Plan dated 5 <sup>th</sup> November 2019                |
| 16              | Hastings Observer Homes Extract                                                                                    |
| 17              | Third Party Statement – John Harmer on behalf of East Sussex Ramblers Association                                  |
| 18              | Bexhill Heritage Statement – David Beales                                                                          |
| 19              | Third Party Statement – Hugh Stebbing                                                                              |
| 20              | Email from Samantha Gibbs to Historic England on 10 <sup>th</sup> June 2019                                        |
| 21              | RDC Landscape Assessment 2008 Volumes 1 and 2                                                                      |

|    |                                                                                                                           |
|----|---------------------------------------------------------------------------------------------------------------------------|
| 22 | Mr Richard Langham Closing Statement on behalf of the LPA                                                                 |
| 23 | Mr Giles Atkinson Closing Statement on behalf of the Rule 6                                                               |
| 24 | Mr Hashi Mohamed Closing Statement on behalf of the Appellant                                                             |
| 25 | Rule 6 Party comments on the final version of the draft conditions                                                        |
| 26 | Certified copy of the completed Unilateral Undertaking dated 10 December 2019                                             |
| 27 | Comments of the Council following the adoption of the Development and Sites Allocation Local Plan on the 16 Dec 2019      |
| 28 | Comments of the Rule 6 Party following the adoption of the Development and Sites Allocation Local Plan on the 16 Dec 2019 |

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